Enforcement Management System

Iowa Department of Natural Resources
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TABLE OF CONTENTS

Introduction 1
Roles 1
Compliance Monitoring and Evaluation 2
Criteria for Escalated Enforcement 3
The Referral Process 4
Referral to Legal 5
Types of Administrative/Civil Enforcement 6
Criminal Enforcement 9
Administrative Penalties 9
Supplemental Environmental Projects (SEPs) 13
Monitoring Compliance with Administrative Consent Orders and Administrative Orders 13
Reporting 14
Enforcement Priorities 14
APPENDIX I: Bilateral Compliance Agreements 19
APPENDIX II: Penalty Calculation Form 20
APPENDIX III: Settlement Memo 21

Iowa Department of Natural Resources

Enforcement Management System

Introduction

The Iowa Department of Natural Resources (Iowa DNR) uses this Enforcement Management System (EMS) to outline the process by which the various regulatory programs in the Environmental Services Division (ESD) of the Iowa DNR pursue compliance with chapters 455B, 455D, 459, 459A, and 459B of the Iowa Code and the rules promulgated thereunder. The general objective of the EMS is to protect the public health and environment of the State of Iowa through enforcement of the environmental regulatory requirements in a timely, consistent and fair manner. This enforcement seeks to:

- Obtain prompt compliance with statutory and regulatory requirements;
- Pose a deterrent to actions that delay or prevent prompt compliance;
- Provide an incentive for timely and responsible compliance behavior; and,
- Ensure that persons who comply with environmental requirements are not placed at a competitive disadvantage.

The EMS includes compliance monitoring and enforcement procedures to be used by all regulatory programs within Iowa DNR's ESD.

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Roles

Effective enforcement requires team work; and Iowa DNR has established the following roles in its ESD enforcement program:

A. Enforcement Coordinator

Each environmental program within Iowa DNR's ESD has an Enforcement Coordinator. The role of the Enforcement Coordinator is to ensure that:

- there is consistent enforcement of Iowa DNR's laws and rules across the state;
- formal enforcement action is taken against the most egregious violators; and
- penalties and corrective actions are consistent and equitable.

The Enforcement Coordinator is responsible for deciding which cases move forward to formal enforcement action and decide what penalties are considered consistent and equitable based on:

- established priorities and thresholds; and
- advice and concurrence of the field offices, central office, Legal Services Bureau, and/or the Attorney General's office.

B. Environmental Specialist

Environmental Specialists are responsible for the day-to-day inspections of regulated entities within their respective program and/or part of the state. They serve as the primary contact with those entities and prepare enforcement referrals to the Legal Services Bureau when appropriate. As part of the enforcement referral process, the Environmental Specialist will:

- complete the referral summary and request a referral meeting;
- complete the referral package; and
- be available for questions as the referral moves through the process.

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C. Environmental Specialist Senior
The Environmental Specialist Senior performs roles similar to the Environmental Specialist. In addition, he or she should be available to provide technical advice or conduct reviews for other staff within their program/field office.

D. Supervisor
A Supervisor manages the day-to-day affairs of a field office or central office program area. The Supervisors should assist their staff as necessary in the enforcement process and be available for discussion and provide input as new situations or problems arise.

E. Field Services and Compliance Bureau Chief / Legal Services Bureau Chief
In addition to their other duties, the Field Services and Compliance Bureau Chief and the Legal Services Bureau Chief should:

- facilitate communication on enforcement matters; and
- participate in enforcement discussions when requested by other enforcement staff.

In addition, the Legal Services Bureau Chief assigns enforcement cases to Attorneys on the legal staff, reviews proposed orders and litigation reports, and tracks the progress of each case.

F. Attorney
The Attorney drafts the enforcement documents in each case and handles all legal issues that arise. The Attorney takes the lead in settlement discussions, if any, and prepares for administrative hearings or trials when appropriate. The Attorney will normally be a member of the Iowa DNR Legal Services Bureau (DNR Attorney). However, if referral to the Attorney General's office is appropriate, the Attorney will be an Assistant Attorney General.

G. Division Director of the Environmental Law Division, Iowa Attorney General's Office (Division Director)
The Division Director will review each enforcement referral to determine if the case merits referral to the Iowa Attorney General's office. In addition, this individual will work with the Legal Services Bureau Chief on resolving significant legal issues that may arise in the State of Iowa's environmental enforcement program.

Compliance Monitoring and Evaluation

Compliance with Iowa's environmental laws and rules is primarily monitored through either investigations or record reviews. Investigations are performed as part of normal planned activities (e.g., permitted facilities, other regulated facilities, noncompliance follow-ups) or in response to complaints or releases. There are many forms of record reviews, including: reports required by rule or permit; permit application information; and self-reported information. In addition, follow-up compliance monitoring of enforcement orders may involve both investigations and record reviews.

A. Investigations
In most cases, Environmental Specialists (normally located in the field) shall investigate citizen complaints, self-reported violations and work requests from central office programs within fourteen (14) days after assignment by a Supervisor or Environmental Specialist Senior. These investigations are in addition to conducting scheduled inspections at regulated facilities. If additional information is necessary to make a determination regarding the investigation or potential violations, the Environmental Specialist could have an informal meeting with the regulated facility or could issue a Letter of Inquiry (LOI). The purpose of the LOI is to allow the regulated facility the opportunity to present information to Iowa DNR to assist in the determination of compliance at the facility.

B. Notices of Violation and Letters of Noncompliance
Within thirty (30) days after confirming a violation(s) has taken place, the Environmental Specialist writes and mails either a Letter of Noncompliance (LNC) or a Notice of Violation (NOV) to the violator. An investigation may be complete, but the violation may not be known without gathering additional information (e.g., analysis of

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samples taken, additional information from the facility). The Iowa DNR will use the term "confirmation date" to be the date upon which the additional information became available.

A LNC may be used to address violation of a less significant nature, such as a single incident of late reporting. A LNC may be used in situations where no environmental harm or threat to human health or safety has occurred or is imminent, the regulated facility is not a repeat offender, or where the violation is insignificant. The LNC may provide suggestions for a regulated facility to return to compliance. A NOV may be used for more significant violations or when a regulated facility has failed to return to compliance. A NOV may be used in situations where actual or threatened environmental harm has occurred, the regulated facility is a repeat offender, or the corrective action is deemed an emergency. All NOVs and LNCs are tracked by the field offices and/or central office programs.

If there is no actionable violation found, that finding shall be documented to the file and no further action is needed. In most instances, if a violator receives a LNC or a NOV and returns to compliance in a timely manner, no further action will take place. The Environmental Specialist shall document the compliance (e.g., reinspection or report from violator) in the appropriate file. Typically, for a return to compliance to be considered timely, the violator must abate the violation within ninety (90) days after receipt of the NOV or other similar letter.

For some violations, the Environmental Specialist should consider escalated enforcement even if timely compliance is achieved. Examples would include violations causing serious environmental impact, having regulatory significance, or resulting in significant economic benefit of noncompliance. If these violations occur, the Environmental Specialist shall follow the procedure set forth below.

Criteria for Escalated Enforcement

Once an Environmental Specialist determines that a violator has failed to return to compliance in a timely manner (or if significant violations have occurred), the Environmental Specialist shall immediately determine if the violation meets one or more of Iowa DNR's Enforcement Priorities. If the Environmental Specialist determines that a violation(s) does not meet one or more Enforcement Priorities, in most cases the Environmental Specialist shall monitor the violator's progress in reaching compliance. This may require additional site visits to the violator's facility and/or additional technical assistance. If the violator achieves compliance, the Environmental Specialist shall document the compliance (e.g., reinspection or report from violator) in the appropriate file. If the violator fails to reach compliance after these additional efforts, the Environmental Specialist should reconsider the referral option (i.e., it is possible that this case now meets an Enforcement Priority). There may be situations that warrant further enforcement that do not meet the Enforcement Priorities.

If the Environmental Specialist believes that a violation(s) meets one or more of Iowa DNR's Enforcement Priorities, the Environmental Specialist will prepare a summary of the proposed enforcement referral and submit it to his/her Supervisor and appropriate Enforcement Coordinator. A meeting date to discuss the enforcement referral is then set. This meeting shall occur within ten (10) days after the Environmental Specialist determines that a violation(s) meets one or more Enforcement Priorities. This meeting will usually be conducted by conference call and will include the Environmental Specialist, the Environmental Specialist's Supervisor, and the Enforcement Coordinator of the relevant program area; in some situations the meeting is conducted through an email exchange. Others may also be invited to this meeting, including other Supervisors (either field or central office) who have involvement in this matter.

At this meeting, the Environmental Specialist will present a summary of the case and outline the violation history, the aspects of the proposed referral that meet an Enforcement Priority, the recommendation of the type of action to be taken (e.g., Administrative Consent Order, Administrative [unilateral] Order or referral to the Attorney General's office), and the penalty recommendation. The Environmental Specialist's Supervisor may provide additional supporting comments. The Enforcement Coordinator will comment on whether the proposed referral meets an Enforcement Priority, is comparable to other referrals received before, and if the penalty

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recommendation is appropriate based on similar actions taken by Iowa DNR. The individuals at this meeting shall attempt to reach consensus on whether to proceed to referral, but if consensus is not reached, the Enforcement Coordinator's decision is final. *Note: a decision may be made to recommend referral even if the violation(s) does not meet an Enforcement Priority*.

If a decision to move to referral is made, the Environmental Specialist will be directed to prepare and submit a complete Referral Package within ten (10) days after the decision is made. If a decision is made not to refer, the Environmental Specialist shall monitor the violator's progress in reaching compliance. A violator should be provided no more than ninety (90) days to demonstrate compliance. During this time period the Environmental Specialist shall conduct additional site visits to the violator's facility and/or provide additional technical assistance. If the violator achieves compliance, the Environmental Specialist shall document the compliance (e.g., reinspection or report from violator) in the appropriate file and complete the Enforcement Determination worksheet. If the violator fails to reach compliance after these additional efforts, the Environmental Specialist will be directed to prepare a new referral summary and schedule another meeting within ten (10) days after making this final determination of non-compliance. A decision to refer should be strongly considered at this time.

The Referral Process

If a decision to refer has been made, the next step is for the Environmental Specialist to prepare a Referral Package. The Referral Package shall include the following elements:

- Identification of the violator, including status (individual, corporation, etc.) and registered agent and/or attorney for the violator;
- Location (address, city, county, township) of the facility or violations;
- Description of the facility (i.e., what it processes or manufactures, types of equipment, etc.);
- If the violator is an individual, a description of the property in question, including the local address and legal description from the appropriate county office;
- Citations to statutory and rule provisions violated, with factual statement of the act or omission that constituted each violation;
- Chronology of the events leading up to and including the cited violations, including copies of:
    - Complaint forms;
    - Field notes;
    - Inspection reports;
    - NOVs, LNCs, and other enforcement documents;
    - Phone logs;
    - Correspondence between violator and Iowa DNR;
    - Affected permits and amendments to those permits;
    - Permit applications or permit modification applications;
    - Photos or videotapes;
    - Sample results;
    - Chain of custody documents;
    - Reports from other law enforcement agencies;
    - Return receipts from any service or certified mail;
    - Other service documents;
    - E-mails concerning the matter; and
    - Lab reports.

- Chronology of the past history with the violator, if any exists. This would include copies of:
    - Complaint forms;
    - Field notes;
    - Inspection reports;
    - NOVs, LNCs, and other enforcement documents;

- Previous administrative orders and/or referrals to the Attorney General's office;
- Phone logs;
- Correspondence between violator and Iowa DNR;
- Photos or videotapes;
- Sample and lab results; and
- Chain of custody documents.

- If known, the violator's position regarding the violations;
- Preliminary penalty recommendation, including discussion and analysis of the factors in 567 Iowa Administrative Code (IAC) chapter 10, including:
    - Economic benefit of noncompliance – description of information used to calculate the economic benefit, including the benefit for not complying (avoided costs) and the benefit for delaying compliance (delayed costs). This should include any supporting documentation justifying the economic benefit estimate (e.g., landfill costs, preparation costs, etc.);
    - Gravity – discussion of the effects and impact of the violations on the environment (actual or threatened); size of the facility; degree ambient standards were exceeded; repeated violations and/or violations of administrative orders; and threats to the integrity of the regulatory program;
    - Culpability – the degree of intent or negligence involved in committing the violations and a description of efforts made by the violator to avoid or correct the violations;
    - Other relevant factors; and
    - Mitigating or aggravating factors – description of actions or events that would increase or decrease the penalty.
    - See Section Administrative Penalties for a discussion of how Iowa DNR calculates administrative penalties.
- Recommendation of the type of enforcement to be taken (i.e., Administrative Consent Order, Administrative [unilateral] Order or referral to the Attorney General's office) and specific reasons to support the recommendation.
- Detailed description of the technical remedy that is sought through enforcement.

To assist in this effort, Iowa DNR has created a Referral Template to use in putting together the Referral Package. The amount of detail to be included in each Referral Package should be discussed by the Environmental Specialist, his/her Supervisor, and, if necessary, the Enforcement Coordinator. The completed Referral Package shall be reviewed by the Environmental Specialist's Supervisor within five (5) days after receipt. Once approved, the Environmental Specialist (or designee) shall send the Referral Package to the Enforcement Coordinator, the Legal Services Bureau Chief, and the Division Director via e-mail. Others may also receive this package, depending on the specific facts of the case. In the e-mail, the Environmental Specialist (or designee) should state clearly that the appropriate Enforcement Coordinator has approved the referral. That will be the Legal Services Bureau Chief's prompt to assign this case to a DNR Attorney.

Referral to Legal

Within five (5) days after receipt of the Referral Package, the Legal Services Bureau Chief will assign the enforcement case to a DNR Attorney. The version of the Referral Package received by the Legal Services Bureau Chief will be an electronic version. This version may not contain all the documents related to the case. Those documents are normally sent in regular mail and take a few extra days to arrive. Nevertheless, the Legal Services Bureau Chief will move forward with assignment, knowing that the DNR Attorney may not have all the information necessary to proceed with the case. After assigning a DNR Attorney to the case, the Legal Services Bureau Chief will forward the electronic version of the Referral Package (and notice of case assignment) to the DNR Attorney, all Supervisors in the ESD, and the Division Director. The purpose of sending the Referral Package to other ESD Supervisors is to solicit information about the violator that may not have been known by the Environmental Specialist, Supervisor, or Enforcement Coordinator (e.g., issues or concerns about the violator in another program area). This is an opportunity for the other ESD Supervisors to provide that information to Legal.

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Upon assignment the DNR Attorney will commence work on the referral. If during the process of working on the referral, the DNR Attorney determines that the Referral Package is missing documentation, the DNR Attorney will notify the Environmental Specialist and the Environmental Specialist will provide the documentation within ten (10) days after notice from the DNR Attorney. The DNR Attorney will draft the appropriate legal document (e.g., enforcement order or Litigation Report) within ninety (90) days of receiving the Attorney General's Division Director's decision regarding the referral, as referenced in the following paragraph. The Legal Services Bureau Chief may grant an extension beyond the ninety (90) days.

Soon after receiving the Referral Package, the Division Director will review the package to determine if the case merits referral to the Iowa Attorney General's office. The Division Director will notify the Legal Services Bureau Chief and the DNR Attorney assigned to the case of the decision made by the Division Director.

Types of Administrative/Civil Enforcement

There are three major types of escalated administrative/civil enforcement taken by Iowa DNR ESD:

- Administrative Consent Orders
- Administrative [unilateral] Orders
- Referrals to the Iowa Attorney General's office.

Administrative orders (either consent or unilateral) are used only to resolve civil violations, never criminal violations. They may be used when Iowa DNR assesses penalties of not more than $10,000 for violations of Iowa Code chapters 455B, 455D, 459, 459A and 459B or rules, permits, or orders adopted or issued under those chapters. See Iowa Code section 455B.109. Referrals to the Attorney General's office should occur for the reasons noted below. An additional enforcement option, referral to US EPA, is used on occasion and is also described below. A Bilateral Compliance Agreement is used only for Water Supply and an explanation of this agreement is provided in Appendix I.

As noted above, when a DNR Attorney receives a Referral Package, it will contain a recommendation on the type of enforcement to take in the case. The presumption is that this recommendation will be the appropriate enforcement response, unless the DNR Attorney (and Legal Services Bureau Chief) can demonstrate that another enforcement action is more appropriate. If Legal recommends another course of action, the DNR Attorney shall schedule a meeting with the Environmental Specialist, Supervisor, Enforcement Coordinator, and Legal Services Bureau Chief to discuss this matter and attempt to reach consensus on the appropriate enforcement response. If consensus is not reached, the decision of the Enforcement Coordinator is final. Also, as noted above, if the Division Director indicates that a case is appropriate for referral to the Iowa Attorney General's office, that recommendation should be considered and, if accepted, a Litigation Report prepared by the DNR Attorney.

In addition, the DNR Attorney will review the penalty recommendation contained within the Referral Package. If the DNR Attorney has recommendations on changes to that penalty calculation, the DNR Attorney will contact the Environmental Specialist, Supervisor and Enforcement Coordinator. The parties will attempt to reach consensus on the proper penalty calculation. If consensus is not reached, the decision of the Enforcement Coordinator is final.

In all cases, the penalty shall be set forth on the document entitled Penalty Calculation form. An example of the Penalty Calculation form is provided in Appendix II. The Penalty Calculation form will be filled out by the DNR Attorney and sent to the Environmental Specialist, the Supervisor, and the Enforcement Coordinator for review and approval. After approval of the Penalty Calculation the penalty amount on the Penalty Calculation form shall be the penalty amount placed in the Administrative Order or Administrative Consent Order. This Penalty Calculation form shall be in both the legal and program enforcement files.

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A. Administrative Consent Order

Administrative Consent Orders involve negotiations between Iowa DNR and the violator to reach agreement on the content of the orders. Administrative Consent Orders should be used when both Iowa DNR and the violator are interested in reaching a settlement agreeable to both the violator and Iowa DNR. Iowa DNR staff can use Administrative Consent Orders when schedules of compliance or remedies need to be negotiated with a company. These orders may also contain stipulated penalties to address potential future violations. Supplemental Environmental Projects can also be agreed upon as part of these settlements. By signing the Administrative Consent Order, the violator waives its right to seek a contested case hearing/judicial review of the order under chapter 17A of the Iowa Code.

If a decision is made to pursue an Administrative Consent Order with the violator, the DNR Attorney will draft the order and send the draft to the Enforcement Coordinator, Environmental Specialist and Supervisor for a ten (10) day review period. After receiving comments, the DNR Attorney shall make all necessary changes and send the draft to the Legal Services Bureau Chief for review. The draft shall be sent to the Legal Services Bureau Chief within ninety (90) days after receiving the Attorney General's Division Administrator's decision that the case does not warrant referral to the Attorney General's Office. Within ten (10) days after receipt of the comments from the Legal Services Bureau Chief, the DNR Attorney shall send the Administrative Consent Order to the violator (i.e., an "invitation to negotiate"). In the invitation, the DNR Attorney will inform the violator that it must notify the DNR Attorney within fourteen (14) days regarding its willingness to negotiate a settlement of this matter. If the violator refuses to negotiate, the DNR Attorney shall discuss other enforcement options with the Environmental Specialist, Supervisor, Enforcement Coordinator, and Legal Services Bureau Chief. If the violator notifies the DNR Attorney that it wishes to negotiate, then settlement discussions shall take place for a time period not to exceed one-hundred twenty (120) days. If settlement occurs, then the DNR Attorney shall draft the final terms and conditions of the order and send to the violator for signature within ten (10) days after reaching settlement. If settlement is not reached, then the DNR Attorney shall discuss other enforcement options with the Environmental Specialist, Supervisor, Enforcement Coordinator, and Legal Services Bureau Chief.

Once the DNR Attorney receives a signed Administrative Consent Order, the DNR Attorney shall immediately send the order to the Director for signature (or have the Legal Services Bureau Chief deliver to the Director for signature). The Director of Iowa DNR will sign the Administrative Consent Order within five (5) days after receipt. The Environmental Specialist shall document compliance with the order in the appropriate file. See Section Monitoring Compliance with Administrative Consent Orders and Administrative Orders.

B. Referral to the Iowa Attorney General's office

Iowa DNR staff should refer civil cases to the Attorney General's office when the potential penalty exceeds the $10,000 limit set out in Iowa Code section 455B.109. In addition, Iowa DNR staff can refer a violator to the Attorney General's office if the violator has exhibited a history of recalcitrance, is not expected to negotiate an Administrative Consent Order, or has violated previous Iowa DNR orders. Other factors to consider in making an Attorney General referral recommendation include, but are not limited to, the gravity of the violations, the need for temporary or permanent injunctive relief, presence of multi-media violations, violation of an earlier judicial consent order or judgment, and possible bankruptcy. In addition, if Iowa DNR and the violator fail to negotiate a settlement administratively, the case may be referred to the Attorney General's Office for civil action.

Iowa DNR staff must seek approval from the Environmental Protection Commission (EPC) before referring a case to the Attorney General's office. However, the Attorney General does have independent authority to commence civil or criminal proceedings pursuant to section 455B.112 of the Iowa Code.

The DNR Attorney shall notify the violator as soon as the determination has been made to seek referral. In the communication, the DNR attorney shall inform the violator of the proposed referral. After a decision is made to refer a case to the Iowa Attorney General for civil enforcement action, the DNR Attorney will draft a Litigation Report and send the report to the Enforcement Coordinator, Environmental Specialist and Supervisor for a ten

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(10) day review period. After receiving comments, the DNR Attorney shall make all necessary changes and send the draft to the Legal Services Bureau Chief for review. The draft shall be sent to the Legal Services Bureau Chief within ninety (90) days after receiving the Attorney General's Division Administrator's decision that the case should be referred to the Attorney General's Office. Within ten (10) days after receipt of the comments from the Legal Services Bureau Chief, the DNR Attorney shall send the final version of the Litigation Report to the Legal Services Bureau Chief and Division Director. The Legal Services Bureau Chief will prepare an agenda item for the upcoming EPC meeting to ensure that the case will be heard at that time. The DNR Attorney will once again notify the violator of the date of the EPC meeting, provide a copy of the public Litigation Report to the violator and either provide a specific appointment time or inform the violator that a time to speak before the EPC regarding the proposed referral may be requested. Prior to the time of the next EPC meeting the EPC members will be provided a copy of the Litigation Report and agenda item.

At the EPC meeting, the EPC will discuss the merits of referring the case to the Attorney General's office. The DNR Attorney will provide information in support of referral and will be prepared to answer questions from the EPC members. Field Services staff will attend the meeting at the request of the DNR Attorney. If it requested time, the violator will be able to also present information to the EPC (usually information in opposition to the referral). If the EPC votes to refer, then the Legal Services Bureau Chief will send a letter informing the Division Director of that decision within seven (7) days after the EPC meeting. Accompanying this letter will be supporting documentation from Iowa DNR's enforcement file. If the EPC votes not to refer then the DNR Attorney will discuss other enforcement options with the Environmental Specialist, Supervisor, Enforcement Coordinator, and Legal Services Bureau Chief. Of course, the Iowa Attorney General may use his/her independent authority to pursue this matter pursuant to section 455B.112 of the Iowa Code.

C. Administrative Order

Administrative Orders are actions by Iowa DNR and are issued without negotiations with the violator. They are signed only by Iowa DNR. They may require a violator to perform certain actions, usually within certain time frames. In addition, Administrative Orders usually include the requirement to pay an administrative penalty. These orders are subject to a contested case hearing/judicial review under chapter 17A of the Iowa Code. Iowa DNR staff should recommend the use of Administrative Orders only in limited instances. For example, Administrative Orders are appropriate if immediate emergency action is needed to abate violations directly impacting human health and the environment.

If a decision is made to prepare an Administrative Order, the DNR Attorney will draft the order and send the draft to the Enforcement Coordinator, Environmental Specialist and Supervisor for a ten (10) day review period. After receiving comments, the DNR Attorney shall make all necessary changes and send the draft to the Legal Services Bureau Chief for review. The draft shall be sent to the Legal Services Bureau Chief within ninety (90) days after receiving the Attorney General's Division Administrator's decision that the case does not warrant referral to the Attorney General's Office. Within ten (10) days after receipt of the comments from the Legal Services Bureau Chief, the DNR Attorney shall send the Administrative Order to the Director for signature (or have the Legal Services Bureau Chief deliver to the Director for signature). The Director of Iowa DNR will sign the Administrative Order within five (5) days after receipt.

Within three (3) days after receiving the signed Administrative Order from the Director, the Legal Services Bureau will send the order to the violator. If the violator complies with the terms of the Administrative Order, the Environmental Specialist shall document compliance with the order in the appropriate file. See Section Monitoring Compliance with Administrative Consent Orders and Administrative Orders.

If the violator wishes to appeal this Administrative Order, he/she will file a Notice of Appeal with the Iowa DNR. At that point, the DNR Attorney may attempt to settle this appeal with the violator. Any settlement discussions shall take place within ninety (90) days after receipt of the Notice of Appeal. If settlement is not achieved within that

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time frame, the DNR Attorney will set that appeal for administrative hearing. If a case is set for hearing, Iowa DNR will comply with the schedule set by the administrative law judge and/or the EPC. See 561 IAC chapter 7.

D. Referrals to US EPA

Iowa DNR may refer violations of federal regulatory programs to the US EPA without following the procedures outlined above. Enforcement staff may also choose to make the enforcement recommendation for a US EPA referral at any stage of the proceedings, or even before they are begun. Typically, Iowa DNR, the Division Director, and US EPA staff will discuss referral before any formal decision is made. Also, US EPA staff may want to review state program files before concurring with a referral recommendation.

Criminal Enforcement

Iowa DNR enforcement staff may determine that some violations warrant more significant penalties than allowed for administrative or civil enforcement. These would include cases where the Environmental Specialist suspects fraud or falsification of records by the violator, a violator who knowingly commits an illegal act, or where the violator has a history of committing significant environmental violations. Once an Environmental Specialist identifies a case as being potentially criminal, the Environmental Specialist should discuss the case with the Supervisor, Enforcement Coordinator, Field Services and Compliance Bureau Chief, and Legal Services Bureau Chief. This communication can take place electronically, by phone, or in person. This dialogue should occur immediately, as it is imperative that criminal investigations take place as soon as possible to ensure the preservation of evidence.

If consensus is reached on recommending a criminal investigation of the matter, the Environmental Specialist shall contact the appropriate authorities for possible criminal investigation and prosecution.

Administrative Penalties

The primary purpose of a penalty assessment is to maximize compliance with regulatory programs both in its application to individual violators and the regulated public in general. This purpose can be served most effectively by a fair and equitable policy which is consistently applied, establishes clear and predictable consequences to non-compliance, does not allow violators to gain an economic benefit or competitive advantage from non-compliance or delayed compliance, encourages respect for regulatory authority, recognizes good faith mitigating factors, deters future and ongoing violations through imposition of financial incentives and disincentives and encourages timely and efficient resolution of regulatory disputes.

Iowa Code section 455B.109(1) and 567 IAC chapter 10 set out that Iowa DNR's administrative penalties shall be determined from evaluation of the following relevant factors: (1) economic benefit associated with the violation, (2) gravity of the violation, (3) the culpability of the violator, (4) the maximum penalty authorized for that violation under Iowa Code chapter 455B, (5) aggravating or mitigating factors and (6) other relevant factors. As set out in both statute and rule, Iowa DNR is limited to a penalty assessment of $10,000 per order. Therefore, Iowa DNR should refer to the Iowa Attorney General those enforcement matters where the penalty assessment is greater than this amount.

A. Relevant Factors

As set out above, the relevant factors in calculating an administrative penalty include the economic benefit associated with the violation, the gravity of the violation, the culpability of the violator, the maximum penalty authorized for that violation under Iowa Code chapter 455B, aggravating or mitigating factors and other relevant factors. An administrative penalty is determined using the following equation:

Penalty Amount = Economic Benefit + Gravity + Culpability +/- Adjustment to Penalty

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1. Economic Benefit Assessment

Economic benefit represents the financial or other economic benefit or advantage the violator has gained due to delayed or avoided costs of compliance, partial compliance or failure to comply. 567 IAC 10.3(2) requires that, in assessing an administrative penalty, "[t]he actual or reasonably estimated economic benefit shall always be assessed." Reasonable estimates of economic benefit should be made where clear data are not available. 567 IAC 10.2(1). The different kinds of economic benefit are discussed below.

When an Environmental Specialist is preparing the referral document, he or she shall break down the economic benefit section into costs avoided and costs delayed. If one or the other is not applicable in the specific situation, the Environmental Specialist shall state that the delayed or avoided costs analysis is not applicable. If the Environmental Specialist believes the economic benefit is zero, he or she must provide a detailed explanation as to how the calculation of zero was determined.

Each Field Office Supervisor will verify that the referral document contains a breakdown and analysis of avoided and delayed costs. The Enforcement Coordinator will ensure that the referral document is not sent to Legal unless it contains the breakdown and analysis of avoided and delayed costs. If a referral is forwarded to Legal without the avoided and delayed costs, the referral will be returned to the field office for further analysis.

There may some situations where the entire economic benefit is not collected and in those situations DNR shall document the case specific rationale and mitigating circumstances that resulted in the full economic benefit not being collected. A further explanation of some of the factors that could result in the economic benefit not being collected is provided in Paragraph 7 "Other Relevant Factors" below. In certain situations the economic benefit will be a de minimis amount where the magnitude of the economic benefit is likely to be small and substantially disproportionate resources would be necessary to collect the economic benefit. In situations where the economic benefit is de minimis it may not be collected.

a. Avoidance Costs

Avoidance costs are those which the violator has likely saved due to noncompliance or partial noncompliance and which will not be incurred by taking corrective action. Avoided costs are those that have been permanently avoided and will not be incurred by compliance with the order. Compliance costs may represent avoided capital and service related costs and costs associated with the expenditure of time and resources which have been avoided or cannot be incurred by taking some corrective action as the result of a violation. Examples might include costs saved due to (1) failure to conduct periodic monitoring, testing and sampling or other periodic regulatory action such as failure to maintain records over a period of time; (2) failure to properly operate or maintain existing control equipment; and (3) avoidance of operation and maintenance expenses for equipment that was not installed.

b. Delayed Compliance Costs

Delayed compliance costs are those that must be incurred in order to remedy a violation and which have been delayed due to non-compliance or partial non-compliance. Delayed costs are the costs of compliance that have been delayed but will have either been performed or be performed under the terms of the order. This economic benefit represents the value of money earned on the total cost of full compliance over the period of delayed compliance. The period of non-compliance shall be calculated beginning with the earliest compliance date unless the Iowa DNR has granted a written compliance extension which expressly acknowledges the extension is based on a good cause finding excusing the failure to comply. Iowa DNR's failure to respond to a request for extension shall not be considered a grant of an extension for purposes of penalty assessment.

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2. Gravity Assessment

The gravity of a violation takes into consideration the following factors: (1) actual or threatened harm to the environment or the public health and safety; (2) involvement of toxic or hazardous substances or potential long-term effects of the violation; (3) the degree to which ambient or source-specific standards are exceeded; (4) state and federal program priorities, size of facility, and other pertinent factors; (5) whether the violation is repeated and whether it violates an administrative or court order; (6) whether the type of violation threatens the integrity of a regulatory program; and (7) expenses or efforts by Iowa DNR in detecting, documenting, or responding to a violation. 567 IAC 10.2(2).

In assessing gravity, Iowa DNR staff should consider the amount of a pollutant that has been released or could have been released, the toxicity of the pollutant, the sensitivity of the environment, the proximity of actual or potential routes of human exposure and exposure receptors, the length of time of exposure, and the potential for explosive, fire and other safety hazards. This assessment should also include whether the violation threatens the integrity of a regulatory program. Examples would include the failure to maintain financial assurance to cover liability for releases of contaminants, failure to conduct leak detection or monitor pollution control equipment, failure to report and respond to suspected or actual releases of contaminants, or failure to maintain accurate records. Gravity also takes into account the extent of deviation from a regulatory standard. Factors to consider include the duration of time over which there has been non-compliance, the delay in reaching compliance and the degree to which the violator has partially satisfied a regulatory standard.

567 IAC 10.3(2) allows the Iowa DNR to assess up to $3,000 for the gravity portion of the penalty. This is a per day, per violation penalty limit; thus, any gravity calculation above $3,000 must include multiple days of a violation or multiple violations.

3. Culpability Assessment

Culpability takes into account the degree of intent or negligence of the violator in committing the violation. Factors under 567 IAC 10.2(3) include whether the case involves false reporting of required information or tampering with monitoring devices. It also includes whether the violator has taken remedial measures or mitigated the harm caused by the violation. Under 567 IAC 10.3(2), the Iowa DNR may assess up to $3,000 for the culpability portion of the penalty. This is a per day, per violation penalty limit; thus, any culpability calculation above $3,000 must include multiple days of a violation or multiple violations.

4. Maximum Penalty Authorized under Iowa Code chapter 455B

The penalty provisions of Iowa Code chapter 455B establish different maximum penalties for different categories of violations, for example: $500 per day for flood plain and water rights (455B.279); $1,000 for hazardous condition notification (455B.386); $5,000 per day for solid waste (455B.307), wastewater and drinking water (455B.191), and underground tanks (455B.477); and $10,000 per day for air pollution (455B.146).

5. Minimum Assessment

567 IAC 10.3(1) sets out that "[n]o penalty may be assessed unless the cumulative amount is $50 or more."

6. Mitigation and Aggravation Adjustment

Pursuant to 567 IAC 10.3(2), Iowa DNR in its discretion may take into account aggravating or mitigating factors to increase or decrease the penalty by up to $1,000. Factors to consider include the extent to which the violator has taken remedial measures to mitigate the harm caused by the violation or the violator's history of violations, non-compliance and/or remedial actions.

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7. Other Relevant Factors

567 IAC 10.2(6) allows the Iowa DNR to consider other relevant factors which arise from the circumstances of each case. Examples of relevant factors could include the ability to pay; litigation risks; and facts unknown at the time of the initial referral. If a party claims an inability to pay, the Iowa DNR will review applicable documents in assessing the inability to pay claim. If the inability to pay claim is verified the Iowa DNR shall provide documentation in the file to justify any reduction in penalty due to an inability to pay. There may also be situations where the penalty will be reduced based on litigation risks, such as costs of litigation, reliability or availability of witnesses, uncertain legal arguments or troublesome facts, and the development of new case law. It is likely the relevant factors would be reviewed later in the process with the assistance of legal. The initial referral should include all relevant factors known at the time of referral.

8. Multiple Violation Assessment

If multiple violations are being evaluated, Iowa DNR may apply the penalty assessment under this rule for each violation or may consider one or more violations as a group for purposes of applying the penalty assessment.

E. Other Considerations

There are some miscellaneous items to discuss with respect to administrative penalties. These include documentation of penalty reduction, stipulated penalties, and collection of past due penalty amounts.

1. Documentation of Penalty Reduction

If during negotiations involving an Administrative Consent Order or in settling an Administrative Order, Iowa DNR agrees to reduce the original penalty amount, the attorney assigned to the case shall document the rationale or justification for such penalty reduction in a Settlement Memo. The Settlement Memo must be included in the file at the conclusion of the case. An example of the Settlement Memo is provided in Appendix III. All penalty reductions shall be calculated in a manner that is consistent with the above penalty process.

2. Stipulated Penalties

Stipulated penalties for future violations may be incorporated into an Administrative Consent Order or in settlement of an Administrative Order, provided the stipulated penalty provision complies with 567 IAC chapter 10 and preserves the right of the Iowa DNR and the State of Iowa to pursue, in lieu of the stipulated penalties, all other administrative and judicial enforcement remedies for any future violations. In no event shall the stipulated penalties assessed under an Administrative Consent Order or settlement of an Administrative Order, when added to the originally assessed penalties under the order, exceed the $10,000 maximum established in Iowa Code section 455B.109.

3. Collection of Unpaid Penalties

Iowa DNR entered into an Iowa Code chapter 28 Agreement with the Department of Revenue in May 2005, to provide additional means of collecting penalties. The agreement between the Iowa DNR and the Department of Revenue states that the Department of Revenue will attempt to collect the penalties and will retain 15% of all penalties collected on behalf of the Iowa DNR. This 28E Agreement was chosen because of the particular statutory collection powers available to the Department of Revenue. An overdue penalty amount may be forwarded to the Department of Revenue for collections at any time, based upon the recommendation of the assigned DNR Attorney. In addition to the overdue penalty, the Department of Revenue will collect interest on the overdue penalty in the amount of 1.5% per month. The Iowa DNR calculates the amount of interest due at the time of referral to the Department of Revenue and provides that information with the referral of the overdue penalty. The Department of Revenue provides the Legal Services Bureau a monthly report that documents the penalty monies collected by Revenue that month. The Department of Revenue may return a referral of an unpaid penalty if the Department of Revenue deems it uncollectible after several attempts have been made to collect the penalty.

ED_001851B_00017880-00014

4. Debt Forgiveness Procedure

If Iowa DNR or the Department of Revenue deems an administrative penalty as uncollectible, Iowa DNR shall amend the administrative order or administrative consent order to indicate that all or a portion of the administrative penalty has been removed. The amendment shall include the following information: 1) explanation of the attempts that have been made to collect the debt and 2) reasoning for the removal of the debt. The penalty may be deemed uncollectible if the any of the following has occurred:

Reason	Explanation
Department of Revenue deems the debt uncollectible	Department of Revenue will make attempts to collect debt and in some cases after failed attempts to collect the debt will deem it uncollectible and return it to Iowa DNR.
The debtor cannot be located	All reasonable steps to locate a debtor will be made but if after a year the debtor cannot be located the debt may be forgiven.
The debtor is deceased	If the debtor is deceased and there are no assets in the estate from which the debt could be collected, the debt may be forgiven.
No assets for the foreseeable future	If the debtor does not and will not, for the foreseeable future, own or have the right to own assets from which the debt could be collected, the debt may be forgiven.
Uncollectible debt for the foreseeable future	If the Iowa DNR is and will be, for the foreseeable future, unable to collect the debt from the debtor, the debt may be forgiven.
Defunct corporation	If the debtor is a corporation which is not, and for the foreseeable future will not be, engaged in any income-producing activity or is no longer incorporated, and has no assets from which the debt could be collected, the debt may be forgiven.

Supplemental Environmental Projects (SEPs)

Iowa DNR may offer or the violator may propose a SEP as part of the settlement of an Administrative Consent Order. Whether to allow or accept a SEP is entirely within the discretion of Iowa DNR as a litigation settlement option. The practice of utilizing SEPs as settlement options shall not be interpreted to grant any right of entitlement or expectation interest in utilizing a SEP as part of a penalty assessment.

Monitoring Compliance with Administrative Consent Orders and Administrative Orders

Monitoring compliance with signed Administrative Consent Orders and Administrative Orders is the primary responsibility of the Environmental Specialist. The DNR Attorney assigned to the case will track payment of the administrative penalty, but any other requirements contained within the order (e.g., compliance schedule) are the responsibility of the Environmental Specialist to track. This also includes tracking whether stipulated penalties become due for failure to meet requirements of an order. If stipulated penalties become due, the Environmental Specialist shall contact the DNR Attorney for appropriate follow-up.

The Environmental Specialist shall maintain documentation in the facility file of compliance with the order (e.g., injunctive relief). The DNR Attorney shall provide the Environmental Specialist with a copy of the check sent by the violator, or with other evidence that the penalty has been paid, to satisfy the penalty portion of the order. In addition, as set out above, these enforcement files shall contain both the original penalty calculation and the justification for any penalty reductions in a manner that is calculated and consistent with the penalty process described above.

ED_001851B_00017880-00015

Reporting

Numerous reports are generated during the enforcement process. On a monthly basis, the Legal Services Bureau Chief provides the Supervisors with a status report of each open case in their regions. In addition, the Legal Services Bureau provides the EPC monthly reports on the following:

- List of Unpaid Administrative Penalties;
- Cases Referred to the Attorney General's office (and current status);
- Appealed cases (and current status);
- Penalties paid the previous month (including penalties collected by the Department of Revenue); and
- New enforcement actions taken the previous month.

The reports to the EPC are also located on Iowa DNR's website for public review

Enforcement Priorities

Animal Feeding Operations

1. **Fish kill/acute water quality degradation**. Manure spills and/or discharges that result in destruction of aquatic life, including fish, are a top priority.

2. **Serious water quality degradation**. Release of pollutants may result in degradation of an aquatic resource without an obvious fish kill, but the effect may be impaired use and enjoyment of the water resource or chronic pollution harming aquatic life.[1]

3. **Discharges of pollutants to state waters not authorized by an NPDES permit.** This priority would include discharges from large or mediums CAFOs (open lots or confinements) to waters of the state, not authorized under conditions of an NDPES permit issued by the DNR. This would include large and medium CAFOs that have a documented discharge contrary to and/or without the required permit. An impact on water quality is documented.

4. **Unauthorized construction**. Construction of AFO structures (including open lots) without, or contrary to, a permit or other required documentation is also a DNR priority. Proper compliance with AFO siting and construction requirements are essential elements of the AFO program, which helps keep pollutants out of streams.

5. **Significant violations of NPDES permit and/or conditions in the permit.** Violations of a significant nature and/or repeated violations of operating or reporting requirements.

6. **Failure to submit MMP updates**. MMPs are the cornerstone of the animal feeding program. The MMP helps ensure that any proposed or current confinement feeding operation over 500 animal units has adequate land to use the manure nutrients it produces.

7. **Failure to obtain proper manure application certification.** The manure applicator certification program is an important component of the animal feeding operation regulations. The program ensures that manure is transported and applied properly.

[1]All discharges to a water of the state shall be referred to Legal Services so that permanent remedies can be placed in an enforceable compliance plan or administrative order; a penalty may or may not be included in the referral and enforceable document. If the field office deems that the violation does not merit an enforcement action, the Environmental Specialist shall include a justification document for such a request.

ED_001851B_00017880-00016

Air Quality

1. **Asbestos violations**. Asbestos violations at schools, hospitals and community centers are a top priority. Because these facilities gather large groups of people in enclosed spaces for significant periods during a day, the DNR is focusing resources to ensure these facilities meet state asbestos removal requirements.

2. **Major source and/or repeat air quality violations**. Violations meeting at least one of these criteria are a DNR priority:
   a. At a major source, the violation relates to the pollutant for which the source is considered major (for example, particulate matter, sulfur dioxide).
   b. Violation affects minor source status at a synthetic minor source.
   c. Chronic or repeat violations.
   d. Violations that are an immediate threat to health or the environment.

Solid Waste

1. **Trade Waste**. It is a DNR priority to eliminate improper disposal of trade wastes, including open burning. Trade wastes are made up of waste resulting from trade, business, industry or commercial venture. Proper disposal will eliminate burning of these wastes, which helps improve or maintain air and water quality.
   a. Priority will be given to these complaints
   b. Priority has been given in referral thresholds
   c. Enforcement action should be publicized
   d. Violations need to be documented through photographic evidence.
   e. Document cleanups by requiring submission of landfill or salvage yard receipts

2. **Construction and demolition wastes**. Another DNR priority is to ensure compliance with proper disposal of construction and demolition wastes by businesses. Construction and demolition debris is responsible for 16 percent, or 450,000 tons, of material landfilled in Iowa each year. This debris consists of materials such as wood, insulation, concrete, asphalt, brick, drywall, metal and shingles. Improper disposal can cause air and water pollution.
   a. Priority will be given to these complaints
   b. Priority has been given in referral thresholds
   c. Enforcement action should be publicized
   d. Violations need to be documented through photographic evidence
   e. Document cleanups by requiring submission of landfill or salvage yard receipts

Underground Storage Tanks

1. **Failure to report a suspected release**. Priority will be given to responsible parties that fail to timely report a release or suspected release or fail to take corrective action upon learning of such potential or actual release. Prompt report of a release can reduce or halt the spread of contamination.

2. **Operating USTs without an approved financial responsibility mechanism**. The ownership and responsibility for USTs requires demonstrated financial responsibility to ensure adequate resources in the event of a leak. Maintaining proper financial responsibility and providing proper notification can reduce liability and allow insurance coverage in the event of a leak.

3. **Permanent closure of UST systems**. Proper closure of USTs no longer in use helps minimize potential contamination and may reveal the necessity for remediation, which is best addressed at the time of removal of a system.

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4. **UST operation and maintenance violations**. To reduce contamination, responsible parties must follow laws and rules regarding the operation and maintenance of USTs. Failure to comply with these laws and rules can result in increased risks of releases and the failure to respond to a release once it occurs.

Leaking Underground Storage Tanks

1. **Free product assessment**. Responsible parties are required to initiate free product assessment and interim recovery upon discovery of a release. They must then submit an assessment plan to the DNR. Priority will be given to failure to implement a DNR approved active recovery system. Note: "free product" refers to a regulated substance that is present in a non-aqueous phase liquid (for example, liquid not dissolved in water).

2. **Corrective action design report**. Where a site has been classified as high risk, the responsible party must timely submit a corrective action design report, complete a Tier 3 work plan, or participate in DNR corrective action design meetings.

3. **Remediation assessment**. Failure to implement a remediation assessment or work plan is a DNR priority. Special priority consideration will be given to sites with known impacts to high risk receptors, such as plastic water lines, sewer lines or wells.

4. **Risk based tiered site assessment**. Failure to initiate and complete a risk based tiered site assessment is another priority. Special priority consideration will be given to sites with "historical" contamination, recent releases or where no prior site assessment has been completed.

5. **Tiered assessment report**. The DNR also focuses on parties that fail to complete and obtain approval of a tiered assessment report. Priority consideration will be given to those situations where assessment deficiencies are such that a reliable risk classification cannot be made.

Contaminated Sites

1. **Site assessment**. The highest enforcement priority for the section is requiring a site assessment when the DNR possesses evidence of contamination at a site above standards. During this assessment, the extent of contamination is detailed and potential exposure pathways are identified.

2. **Site cleanup**. Potentially unsafe exposures may exist at sites with contaminated soils or groundwater. Cleanup actions are needed to protect human health and the environment.

Water Supply

In some cases a public water supply would not be referred based solely on the following violations. There would be an intermediate step of the Bilateral Compliance Agreement (BCA) to require steps to address the violations. The BCA is part of an operation permit and can be appealed within 30 days, after which time it is a final agency action. Milestone due dates would be established for achieving compliance. It would then be upon failure to comply with the BCA that would elevate the violations below for referral.

1. **Failure to meet the conditions of a BCA.** The system has demonstrated violation of health based standards and has not met the requirements agreed to in the BCA.

2. Acute maximum contaminant level (MCL), treatment technique (TT) or maximum residual disinfectant level (MRDL) violations and lead action level exceedances. An acute MCL, TT or MRDL violation or lead action level exceedance indicates an immediate threat to health and human safety.

3. **Failure to monitor violations**. By failing to monitor a drinking water supply, health and human safety are at risk. If a water supply does not monitor, there is no information on whether or not the supply is safe.

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4. **In-progress construction without a permit**. It is essential that there is a permit prior to construction of a water supply. A construction permit ensures that the construction standards are being met to protect health and human safety.

5. **Cumulative non-acute MCL, TT, and MRDL violations and multiple confirmed coliform bacteria compliance samples**. Ongoing violations of a non-acute MCL, TT, and MRDL violations and multiple confirmed coliform bacteria compliance samples indicate a long-term threat to health and human safety.

6. **Operator certification compliance**. The purpose of the water operator certification program is to ensure that water and wastewater system operators have sufficient knowledge and experience to properly operate the systems, and in turn protect health and human safety and the environment. Failure to have a certified operator is a long-term threat to health and human safety.

7. **Operation of a public water supply without a valid operation permit.** All public water supply systems are required to have a valid operation permit.

Wastewater

1. Unauthorized discharge of a pollutant to a water of the state or water of the United States.

2. **Significant wastewater effluent violations**. These violations occur when a wastewater treatment facility significantly exceeds its monthly average permit limits. For example, if a wastewater treatment facility exceeds its monthly average permit limit for a pollutant by any amount during four out of six months or by greater than the Technical Review Criteria for that pollutant during two out of six months, DNR will consider that facility to have significant effluent violations.

3. Failure to comply with compliance schedules in Administrative Order or NPDES permit.

4. **Failure to obtain or renew an NPDES permit**. The discharge of any pollutant from a point source into a navigable water is prohibited unless authorized by an NPDES permit.

5. **Failure to obtain an operator in charge (ORC).** Facility has not obtained a properly certified operator in a timely manner. For example, after notifying the DNR regarding a vacant ORC, the facility must submit the certification compliance plan form (542-3120) and comply with the agreed upon schedule. Failure to comply with the compliance plan will result in administrative enforcement action.

6. **Failure to submit a complete discharge monitoring report (DMR).** Enforcement should be considered when the facility fails to submit a DMR for three consecutive monthly reporting periods or two consecutive quarterly reporting periods. Other instances of intermittent non submittals of DMRs over a period of time should also be considered.

Storm Water

1. **Discharge without a permit or in violation of a permit.** Permit coverage was not obtained prior to site activities resulting in a pollutant being discharged to a water of the United States or a discharge in violation of a permit.

2. **Failure to complete a Storm Water Pollution Prevention Plan (SWPPP)**. A SWPPP is a fundamental requirement of a storm water permit and shall identify potential sources of pollution, describes practices to reduce pollutants, and assure compliance with permit conditions (when properly designed and implemented).

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3. **Substantial failure to implement or maintain Best Management Practices (BMP)** - Failure to install and/or maintain BMPs resulting in documented environmental harm.

4. **Substantial failure to perform required monitoring. -** Failure to conduct weekly inspections or similar monitoring activities in conjunction with documented environmental harm.

5. **Substantial failure to implement the MS4 requirements.** Failure to implement storm water permit programs as required by conditions of the permit in a timely manner.

Flood Plain Management/Dam Safety

1. **Construction without a permit.** Construction activities in the floodplain without first obtaining a Floodplain permit.

2. **Floodway obstructions.** Floodway obstructions (bridges, fill, buildings, etc.) where the obstruction increases flood risk for high and maximum damage potential uses (buildings, storage tanks, etc.) located upstream or on the opposite stream overbank.

3. **Dangerous Dams.** Dams that constitute a threat of loss of life or damage to existing high or maximum damage potential uses.

4. **High and maximum damage potential**. High and maximum damage potential to buildings including AFO's and uses that are non-compliant with the relevant MPL criteria.

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APPENDIX I: Bilateral Compliance Agreements

DNR's Water Supply Operations Section (WSOS) implements the DNR's Water Supply Program. This state program, which has been delegated primacy authority for the implementation of the Safe Drinking Water Act in Iowa, uses a bilateral enforcement agreement as one of the first tools in formal enforcement. The public water supply system (PWS) that is in violation is issued a notice of violation (NOV). The NOV is in effect until the system has met the return to compliance criteria for the NOV. Depending upon the type and number of previous unresolved violations, the PWS is then issued a bilateral compliance agreement (BCA). The BCA is included in a revised water supply operation permit (permit). The BCA includes specific steps and timelines that the system must meet in order to eventually return to compliance. Depending upon the complexity of the solutions, the initial BCA may be written to require a single step such as a new sampling period or the submittal of a proposal. Upon review and approval of the proposal by the WSOS, subsequent compliance schedules with future due dates for the next required steps will be incorporated into the BCA for the PWS.

The BCA is usually discussed with the PWS before it is issued, so that the timeline milestones are reasonable. The permit can be appealed by the permittee within a thirty day time period. If the permit is not appealed, the permit is legally binding. If the PWS does not comply with the requirements outlined in the BCA, enforcement escalates to an administrative order. The BCA has been used for twenty years in Iowa as the main enforcement tool for systems with repeated violations.

EPA requires that all NOVs be reported to the federal database and requires systems to take timely action to return all violations to compliance. The BCA is one of the tools considered to be an addressing action for a violation. This means that the state is requiring the system to take appropriate action to address the violation. The other addressing tools include administrative orders and referral of the system to the Attorney General to initiate a civil or criminal case, and ultimately a return to compliance. The state program is required by EPA to take formal addressing action against systems that do not return to compliance within specified timeframes. The use of the BCA has allowed the DNR's Water Supply Program to focus on activities needed at the PWS to abate the violations in a timely manner and avoid the need for further enforcement action.

If EPA determines that the state program is not taking appropriate action on a timely manner, EPA may intervene and take its own formal enforcement action against a violating PWS.

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APPENDIX II: Penalty Calculation Form

PENALTY CALCULATION

Case Name: _____

Field Office/Central Office Specialist: _____

Attorney: _____ Date Prepared: _____

Penalty Amount = Economic Benefit + Gravity + Culpability +/- Adjustment to Penalty

TOTAL PENALTY: _____

A. Economic Benefit: _____

Avoided Costs: _____

Description of Calculations: _____

Delayed Costs: _____

Description of Calculations: _____

B. Gravity: _____

Description of Calculations: _____

C. Culpability: _____

Description of Calculations: _____

D. Other Factors (Adjustment to Penalty): _____

1. Mitigating or Aggravating Factors (+/- $1000) _____

Description of Calculations: _____

2. Ability to Pay _____

Description of Calculations: _____

3. Litigation Risks _____

Description of Calculations: _____

4. New facts discovered after referral _____

Description of Calculations: _____

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APPENDIX III: Settlement Memo

Settlement Memo

Case Name: _____

Field Office/Central Office Specialist: _____

Attorney: _____

Administrative Order/Consent Order Number: _____ Original Penalty in Offer: _____

Date of Administrative Order/Consent Order: _____ Final Settlement Penalty: _____

Reasoning for Difference in the Penalty: _____

TOTAL PENALTY: _____

E. Economic Benefit: _____

Avoided Costs: _____

Description of Calculations: _____

Delayed Costs: _____

Description of Calculations: _____

F. Gravity: _____

Description of Calculations: _____

G. Culpability: _____

Description of Calculations: _____

H. Other Factors (Adjustment to Penalty): _____

5. Mitigating or Aggravating Factors (+/- $1000) _____

Description of Calculations: _____

6. Ability to Pay _____

Description of Calculations: _____

7. Litigation Risks _____

Description of Calculations: _____

8. New facts discovered after referral _____

Description of Calculations: _____

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