

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF POLICY AND COMMUNICATIONS**

**DOCUMENT NUMBER**           012-0840-001

**TITLE:**                       POLICY TO ENCOURAGE VOLUNTARY COMPLIANCE BY MEANS OF ENVIRONMENTAL COMPLIANCE AUDITS AND IMPLEMENTATION OF COMPLIANCE MANAGEMENT SYSTEMS

**AUTHORITY:**               The Air Pollution Control Act, 35 P.S. §§4001 et seq.  
  
The Solid Waste Management Act, 35 P.S. §§6018.101 et seq.  
  
The Clean Streams Law, 35 P.S. §§691.1 et seq.  
  
The Storage Tank and Spill Prevention Act, 35 P.S. §§6021.101 et seq.  
  
The Hazardous Sites Cleanup Act, 35 P.S. §§6020.101 et seq.  
  
The Safe Drinking Water Act, 35 P.S. §§721.1 et seq.  
  
The Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. §§4000.1 et seq.  
  
The Infectious and Chemotherapeutic Waste Law, 35 P.S. §§6019.1 et seq.  
  
The Surface Mining Conservation and Reclamation Act, 52 P.S. §§1396.1 et seq.  
  
The Noncoal Surface Mining Conservation and Reclamation Act, 52 P.S. §§3301 et seq.  
  
The Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. §§1406.1 et seq.  
  
The Coal Refuse Disposal Act, 52 P.S. §§30.52 et seq.  
  
The Pennsylvania Sewage Facilities Act, 35 P.S. §§750.1 et seq.  
  
The Dam Safety and Encroachments Act, 32 P.S. §§679.101 et seq.  
  
The Radiation Protection Act, 35 P.S. §§7110.101 et seq.  
  
The LowLevel Radioactive Waste Disposal Act, 35 P.S. §§7130.101 et seq.  
  
The Radon Certification Act, 63 P.S. §§20001 et seq.

**POLICY:**                   The Department will follow a departmentwide policy to encourage voluntary compliance of applicable environmental requirements by means of environmental compliance audits and Compliance Management Systems.

**PURPOSE:**                The Department wants to promote voluntary compliance with environmental requirements because the protection of the environment and the public health and safety rests principally on the public's voluntary compliance with

environmental laws. Voluntary compliance begins with an awareness of environmental problems and is often achieved through the use of regular environmental selfevaluations which includes voluntary environmental compliance audits and the establishment of a Compliance Management System. To promote voluntary compliance the Department will provide meaningful and concrete incentives to encourage companies and individuals to perform voluntary environmental compliance audits and to establish Compliance Management Systems.

A major disincentive to undertaking environmental selfevaluations is the threat of civil and criminal sanctions. To remove this disincentive, under the policy the Department will provide limited immunity from certain enforcement actions including civil penalties for companies or individuals who conduct voluntary environmental compliance audits, or other selfassessments of their activities pursuant to a Compliance Management System, disclose conditions to the Department and act reasonably and diligently to correct or eliminate the violations of the environmental requirements.

The public's confidence in the Department's administration of environmental programs is enhanced by prompt disclosure and correction of violations of environmental requirements. Prompt disclosure allows the public and the Department to evaluate whether actions to correct the violations are reasonable and diligently pursued.

**APPLICABILITY:**

The policy applies to the Department's enforcement activities under the statutes listed above under Authority. The Department believes that the policy is necessary and proper for the effective enforcement of the statutes and will lead to greater compliance within environmental requirements. The policy applies to disclosures which occur after the effective date of this policy. It is the responsibility of the person seeking the benefit of this policy to establish to the Department's satisfaction that the elements of the policy have been met.

**DISCLAIMER:**

The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements, including statutory or regulatory requirements which mandate enforcement actions including minimum civil penalty amounts.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in this policy that weight or deference. The policy merely announces the rules that DEP intends to apply in the future to achieve compliance under the statutes listed above under the authority. This document establishes the framework, within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

**PAGE LENGTH:**

8 pages, including attachments.

**LOCATION:**

Volume 1, Tab 7.

## **DEFINITIONS:**

Compliance Management System: That portion of an Environmental Management System having at least the following elements:

- (1) An environmental policy requiring conduct of operations in compliance with environmental requirements.
- (2) Incentives to encourage employees to ensure compliance.
- (3) A clear definition of responsibility for compliance for each facility or operation.
- (4) Adequate resources dedicated to compliance assurance activities.
- (5) Training for employees with responsibilities related to compliance operations.
- (6) Systematically implemented procedures for bringing about compliance at each facility or operation.
- (7) Regular facility or operations-specific reviews of compliance.
- (8) A mechanism to ensure prompt action to correct noncompliance and address the underlying cause.
- (9) Effective management oversight of compliance and compliance correction.
- (10) A regular management review of compliance performance and management systems to identify needed improvements including a review of pollution prevention opportunities.

The term also includes a management system meeting the International Standards Organization (ISO) 14000 Standards.

Environmental Requirements: Legally enforceable obligations including those in environmental laws and regulations and those in permits or licenses issued under the environmental laws and regulations.

Department: Department of Environmental Protection.

Environmental Compliance Audit: A systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements as defined by the United States Environmental Protection Agency in its 1986 Policy on Environmental Auditing at 51 Federal Register 25004. The term also includes procedures approved by the Department for small businesses.

Environmental Management System: That part of the overall management system which includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining the environmental policy.

Environmental Policy: Statement by the organization of its intentions and principles in relation to its overall environmental performance which provides a framework for action and for the setting of its environmental objectives and targets.

Pollution Prevention: Source reduction and other practices that reduce or eliminate the creation of the pollutants through increased efficiencies in the use of raw materials, energy, water or other resources, or protection of natural resources by conservation.

Person: A natural person, partnership, association or corporation, or an agency, instrumentality or entity of Federal or State government.

## **I. MAIN BODY**

To encourage companies and individuals to perform environmental selfevaluations, the Department will follow the following rules when considering whether to pursue certain enforcement actions including civil and criminal penalties.

### **A. GENERAL RULE CIVIL**

1. The Department will not assess a civil penalty, except as provided in paragraph 5, or suspend or revoke a license, permit or other Department authorization for violations of environmental requirements which are voluntarily discovered and disclosed following an environmental compliance audit or other selfassessment conducted pursuant to a Compliance Management System if:
  - (1) disclosure to the Department is made promptly after the information or knowledge concerning the violation is discovered;
  - (2) reasonable action is promptly initiated and diligently pursued to correct or eliminate the violation pursuant to a compliance schedule; and
  - (3) the person making the disclosure provides a full written description of the condition including a compliance schedule to address the violation and cooperates with the Department regarding its investigation of the disclosed condition.
2. For disclosures concerning permitted operations, the Department may under appropriate circumstances add the compliance schedule as a permit condition depending upon nature of the action to correct or eliminate the violation and the length of time needed to implement it.
3. Upon receipt of a disclosure meeting the requirements of this policy, the Department will, if requested, provide the person with a letter which acknowledges receipt of the disclosure and indicates that the Department will not pursue civil or criminal sanctions provided the violations are corrected in accordance with the requirements of the policy and compliance schedule.
4. The Department will not request or use an environmental audit report to initiate a civil or criminal investigation of an entity. For example, the Department will not request an environmental audit report during routine inspections. If the Department has independently identified a violation, the Department may seek any information relevant to evaluating the violations and determining liability or extent of harm.
5. The Department retains the authority to assess a civil penalty to collect any economic benefit that may have been realized as a result of noncompliance with environmental requirements.

### **B. GENERAL RULE CRIMINAL**

As a general rule the Department does not have the ultimate authority to decide whether to pursue criminal actions. The Office of Attorney General has this authority. In some situations the Department has received delegation from the Office of Attorney General to initiate summary criminal actions. The Department also has the authority to refer matters to the Office of Attorney General for investigation.

The Department will not exercise this limited authority (to initiate summary criminal actions, or to refer matters to the Attorney General for investigation) if a person makes a disclosure of a violation of an environmental requirement uncovered in an environmental compliance audit or other selfassessment conducted pursuant to a Compliance Management System which meets the following requirements:

- (1) disclosure to the Department is made promptly after the information or knowledge concerning the violation is discovered;
- (2) reasonable action is promptly initiated and diligently pursued to correct or eliminate the violations pursuant to a compliance schedule; and
- (3) the person making the disclosure provides a full written description of the condition including a compliance schedule to address the violation and cooperates with the Department regarding its investigation of the disclosed condition.

#### **C. VOLUNTARY DISCOVERY**

The violation must be discovered voluntarily and not through a monitoring sampling or auditing procedure that is required. Discovery is voluntary if:

- (1) It arises out of an environmental compliance audit or other selfassessment conducted pursuant to a Compliance Management System that was instituted in the absence of an administrative, civil or criminal investigation or enforcement action; and
- (2) It is not otherwise required by an environmental law, regulation, permit, license, order or other legal requirement or process.
- (3) It identified violations that were not previously known to the Department.

The Department retains the authority to order either a different corrective action or a different compliance schedule. The Department will not, however, assess civil penalties or suspend or revoke a license, permit or other Department authorization for violations which are voluntarily discovered and disclosed under this policy.

#### **D. EXCEPTIONS**

There are a few exceptions to the rules set forth above. These rules are not applicable if any of the following exist:

- (1) The discovery was not voluntary within meaning of Section C.
- (2) The violation was committed intentionally or knowingly by the person making the disclosure.
- (3) Action is not promptly initiated and diligently pursued to correct or eliminate the violation.
- (4) Significant environmental harm or a significant public health effect was caused by the violation.
- (5) Repeated violations reveal a pattern of conduct or condition which should have been addressed earlier.

(6) The violation or disclosure involved fraud.

**E. RELATIONSHIP TO REGULATORY AUTHORITY**

The Department's authority to regulate facilities and activities and to require the collection, development, maintenance and reporting of documents, communications, reports, and other information is not affected by this policy.

**F. RELATIONSHIP TO FEDERAL LAW**

This policy shall not prevent the Department from pursuing enforcement actions specifically required by the federal government as a condition to receiving and maintaining program delegation or primacy.

**G. RELATIONSHIP TO COMPLIANCE HISTORY REVIEW**

For purposes of compliance history review which examines an applicant's compliance history as part of a permit application review procedures, a violation of an environmental requirement will be considered as being corrected to the satisfaction of the Department if the violation is voluntarily discovered and disclosed and otherwise meets the requirements of this policy.

**H. PUBLIC ACCESS TO INFORMATION**

Information concerning violations of environmental requirements, which are voluntarily discovered and disclosed, will be available to the public as a public record except for information which otherwise is confidential under the statutes identified in the Authority section of the policy. The information will be maintained in the Department's files and will be available upon request of an interested person.