

Overview of the Enforcement Process



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Quality

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Introduction

This information is to help you better understand DEQ's enforcement process. As a person who has received a Notice of Violation, Assessment of Civil Penalty and/or Department Order (Notice/Order), we want you to be adequately prepared to meet with DEQ staff to resolve this matter as efficiently and painlessly as possible. It is DEQ's underlying goal to assist you in returning to full compliance. The following are answers to questions most frequently asked by people involved in the enforcement process:

What is a Notice of Violation, Assessment of Civil Penalty and/or Department Order?

The Notice/Order initiates a formal administrative enforcement process. It outlines DEQ's finding of facts, identifies the laws or regulations DEQ believes were violated, invites you to request an informal discussion, and gives you information about how to appeal. If you accept DEQ's findings, the case will be closed once you perform the actions required by the Order, if any, and pay the penalty.

I have been working with regional inspectors and staff to correct this problem - why is DEQ taking an enforcement action?

DEQ takes enforcement actions and assesses civil penalties to create consistency and predictability in enforcement, to deter future noncompliance, and to eliminate economic incentives for not complying with environmental laws. In some cases, DEQ initiates and follows through with an enforcement action if the alleged violation has not been corrected within a reasonable period of time. DEQ may also initiate enforcement because of the importance of the violation identified or if the violation created a threat to public health or the environment.

How is the penalty amount determined?

The exhibit(s) attached to the Notice/Order shows how your penalty was calculated. The penalty was calculated using a formula set forth in Oregon's Administrative Rules (OARs) Chapter 340, Division 012. The amount of the civil penalty reflects the type of alleged violator and violation(s) and the severity, frequency, and duration of the alleged violation(s). Other factors considered are the history of compliance or

noncompliance with environmental laws, degree of negligence, and the economic benefit gained through noncompliance.

What is an informal discussion and what can I do to prepare for it?

The informal discussion is a voluntary meeting you may request with DEQ staff. The Notice/Order you received contains all of the known issues of regulatory concern and provides the basis for discussion. It's important that you be fully prepared to present any information that contradicts the alleged facts or that will help DEQ staff make fair and sound decisions about whether a settlement recommendation is possible. Toward that end, you should also be prepared to report any actions you are taking or planning to take to correct the situation.

Who will attend the informal discussion?

Typically, an [Environmental Law Specialist](#) and the regional inspector involved with the matter will represent DEQ. You will likely want to bring people most familiar with the issues and who can represent you well. You may consult with or bring an attorney if you wish.

What can I expect to happen at the informal discussion and what may result?

You can expect a fair and objective evaluation of the facts and circumstances surrounding the alleged violations. DEQ encourages you to present whatever new or mitigating information you have that will shed light on the issues. Also, DEQ's enforcement staff may ask questions to help you elaborate on the issues. After the informal discussion, DEQ staff will make recommendations to DEQ Administration on what steps should be taken to conclude the action. There are three possible outcomes:

- DEQ determines that the event was not a violation and the action is dismissed;
- DEQ determines that the violation or penalty calculation should be re-alleged according to new facts or mitigating information, and offers to settle the action by entering into a Mutual Agreement and Order;

- There is disagreement on the violation and/or other issues that make settlement impossible, in which case you are entitled to a contested-case hearing where the Department must prove that the violations occurred.

What is a Mutual Agreement and Order?

A Mutual Agreement and Order (MAO) is a legally-binding enforceable document that sets out settlement terms on which you and DEQ agree. Often, the MAO provides that the Department agrees to reduce the penalty to reflect facts based on new information. Sometimes the purpose of the MAO is to provide a payment plan. The MAO may also change the actions or deadlines set forth in an Order. In signing a MAO, you waive your right to appeal, but obtain the benefit of the agreement you have reached with DEQ and avoid the additional time and potential legal costs associated with the appeal processes. Once the MAO is signed by the parties, the penalty and/or order becomes final.

What if I do not settle?

If you are not able to reach a settlement with DEQ, you are entitled to a contested case hearing. The hearing will be conducted by one of several administrative law judges available through by the Oregon Central Hearings Panel. These judges are not employees of DEQ and are instructed to render neutral and objective findings of fact. At the hearing, DEQ must prove that, more likely than not, the allegations on which DEQ based its case are true and the assessed penalty is supported by law. In most cases DEQ will proceed with the penalty as initially calculated in the Notice/Order. The hearing is a semi-formal proceeding and you will be given an opportunity to present evidence and cross-examine witnesses.

Where do the civil penalties go?

Penalty money received is deposited in Oregon's General Fund or otherwise dispersed according to state law. As provided by state statute, only DEQ's underground storage tank and spill programs receive any portion of the penalty collected in those programs.

What is my incentive to comply if DEQ will proceed with a civil penalty assessment anyway?

DEQ assesses penalties to deter continued or repeated noncompliance and to create a regulatory environment that is fair to those who reach compliance on their own initiative. For reasons of consistency, DEQ rarely withdraws an action in a case where it has determined that enforcement was needed. However continued

noncompliance may lead to additional penalties. Also, if you demonstrate good faith efforts to promptly correct the alleged violation, DEQ will favorably consider these actions when calculating any penalty reduction. Other mitigating factors that may reduce the penalty amount include measures taken to prevent recurrence, exceptional pollution prevention, and, in penalties over \$2,000, a Supplemental Environmental Project.

What is a Supplemental Environmental Project?

A [Supplemental Environmental Project](#) (SEP) is an environmental enhancement project which, upon agreement with DEQ, you could perform as part of a penalty reduction. SEPs are considered only for penalties amounting to over \$2,000. The SEP cannot be something you are already required to do by law or something that is financially self-serving. SEPs that result in pollution prevention are especially favored. A SEP directive was likely included in the documents sent to you and defines the factors DEQ will consider in evaluating whether an SEP proposal is acceptable for settlement.

Who should I contact if I have questions?

The last paragraph of the cover letter to the Notice/Order gives you a phone number for the [Environmental Law Specialist](#) who will handle your action for DEQ. This person will answer other questions about the enforcement process and will represent DEQ at the informal discussion and at the contested case hearing (if there is one). You may continue to contact the DEQ inspector with whom you have been in prior contact. The inspector will be better able to assist you with technical issues.

Alternative formats

Alternative formats (Braille, large type) of this document can be made available. Contact DEQ's Office of Communications & Outreach, Portland, at (503) 229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696.

