

## 2. Enforcement Process

The department is charged with implementing several federal and state laws to protect the environment and the health and welfare of Missouri's citizens. This manual contains the various tools the department uses to address violations of laws and regulations through a process of assistance and enforcement. The process escalates, if necessary in order to achieve compliance. Those in violation of the law typically receive many opportunities to correct problems and the department's staff are committed to work through these problems and develop mutually satisfactory resolutions to the extent possible. This manual mirrors other department practices of providing information on regulatory requirements and opportunity for anyone in violation to make corrections to reach compliance. Where those opportunities are not taken, the department will proceed in a timely manner to use stronger measures to solve the problem. Some situations may require immediate action for the protection of citizens, workers, and the environment.

Inspectors, complaint investigators, emergency responders, data reviewers, and other department staff will on occasion discover violations of laws, regulations, permits, or other requirements administered by the department. At that point, it becomes the department's responsibility to address the situation.

The department's aim is to ensure the administration of equitable and consistent enforcement actions for violations of these requirements, and that those enforcement actions are prompt, uniform, impartial and effective. The goal of enforcement in non-emergency situations is to educate regulated parties about noncompliance, correct violations, prevent recurrence, and to prepare regulated parties to perform adequately in the future. The enforcement process benefits the state, its businesses, and its people by solving problems that pose health, environmental, or economic risks to its citizens. It also benefits those regulated by environmental laws by reaching prompt resolution of violations so that environmental liabilities are not compounded and a level playing field among competitors is established.

These procedures outline the general order of the usual steps taken for progressive enforcement. An individual case will be subject to periodic review throughout the process to ensure it is managed in the best possible way. One or more steps may be bypassed or accelerated as approved by supervisors and management. In addition, procedures followed by field offices or programs may vary from this general description. Those procedures are detailed in the program-specific subsections and are based on the media-specific authorities applicable to each type of problem. Communication between the field and program staff is essential to implementing a consistent program, and should be conducted as often as needed to carry out compliance and enforcement responsibilities.

Activities conducted by the department work together to achieve environmental protection and regulatory compliance through a progressive process. The goal is to obtain voluntary and complete compliance as quickly and efficiently as possible. Technical assistance is provided to assist regulated entities, both through on-site visits and other communication with department staff.

Inspections and investigations to determine compliance are conducted, giving the department the opportunity to teach and assist on compliance matters as a major component. When the department identifies violations, the following factors will be evaluated:

- The seriousness and significance of any environmental or public health impact (including the probability and extent of potential impacts).
- The culpability of the responsible party through:
  1. Knowledge of the requirements, including through certifications, training, etc.
  2. Documentation of previous assistance or violations.
  3. Evidence of willfulness or negligence.
- Fairness or consistency with similar situations or cases and preventing a violator from realizing an economic advantage.
- The responsiveness of the party to any actions required by the department.

This evaluation may result in departmental enforcement action. Normally, the general process outlined below will be followed, however; variations to this may occur:

1. The department will first use conference, conciliation, and persuasion, or CC&P, to try to address the situation, and will continue to use aspects of this throughout the process, especially if the violations are minor. If compliance is not achieved, proceed to step 2.
2. The department will issue a Letter of Warning, or LOW, or other documentation that serves the same purpose: to report the violation, offer to meet and provide assistance, and outline the steps required to return to compliance. The LOW also states that failure to comply will result in the department issuing a Notice of Violation, or NOV. If compliance is not achieved, proceed to step 3.
3. The department will issue an NOV. Generally this action automatically refers the matter to the appropriate program's Compliance and Enforcement Section for their management.

The first two processes should generally not exceed more than 90 days. The time frame may be extended if the field office and the program agree to extend the initial compliance period more than 90 days.

Compliance and enforcement actions are typically not initiated based on a finding made during an environmental assistance visit, or EAV. If an acute violation is found during one of these visits, action must be taken. If a minor noncompliance issue is discovered during an environmental assistance visit, the regional staff or the regulating program will address these issues (see program-specific information for details).

As stated above, the department will use CC&P to the extent possible throughout the compliance and enforcement process, but this may be significantly shortened, or skipped, if warranted by the situation.

A follow-up site visit will be conducted to verify compliance, and documentation stating such will be communicated to the responsible party in writing and copied to the regional and central office files.

### **Conditions Imminently or Immediately Threatening Human Health or the Environment**

If a violation presents an imminent or immediate threat, immediate action must be taken to address the threat. Actions taken to end the threat may not address all aspects of noncompliance. Additional work may be needed to abate other continuing non-emergency violations, achieve environmental restoration, establish pollution prevention against future violations, recover costs, and assess penalties. While this work will generally occur after the immediate threat is resolved, none of these activities will be shortchanged in the process of ending the initial threat.

### **Non-Emergency Noncompliance**

Violations by facilities or operations that have no previous serious violations are usually issued an LOW. This action may be tailored to reflect the specific violation being addressed, such as a letter of nonpayment in the case of a past due fee. The LOW step may be skipped if the department is required to respond to a particular type of violation in a given way. LOWs have specific contents, deadlines, and follow-up requirements and are described in [Chapter 4](#).

If a violation is not resolved with an LOW, an NOV will be issued. NOV's may also be the first step of enforcement in certain matters, such as high priority violations, or if regulations require certain violations to be handled with an NOV. Like LOWs, NOV's and their transmittal letters contain specific contents, deadlines, and follow-up requirements. The issuance of an NOV will usually mark the transition of a matter from the field office to a program's compliance and enforcement staff.

Once the matter is referred to a central office program for enforcement, the settlement offer is usually the first enforcement tool utilized. During the settlement offer stage, the department provides the violator the opportunity to avoid elevated enforcement action by agreeing to certain conditions. The settlement offer proposes the conditions that would provide a remedy for the violation, a commitment from the responsible party that certain compliance actions will follow, and an equitable resolution regarding penalties in most cases. In some instances, it will also address recovery of the department's costs to the extent possible. Settlement offers may be modified to address the specific aspects of a violation. Settlement offer letters are described in [Chapter 6](#).

If a violation is not resolved at the settlement offer stage, the case will be evaluated for referral to the Attorney General's Office for litigation. This process is described in [Chapter 7](#).

### **Selection of Remedies**

The department may vary from this order of procedures as needed to achieve an effective resolution of a violation. Changes may include the selection of alternative enforcement tools or seek other remedies not listed here (some are described in Chapter 6). In addition, the department may initiate investigations of potential criminal activity at any point in this process. Those investigations and any criminal enforcement actions would proceed independently of civil matters.

### **Coordination Among Programs**

In order for the department to work in an efficient manner with regulated entities, all affected programs will strive to address all violations at a specific facility or operation at the same time, if possible. This includes violations of different media and multiple laws administered by the department. In general, staff are expected to coordinate internally and address all of the violations at a facility or operation in the same time frame so the facility may achieve comprehensive environmental compliance. Actions in one media may be accelerated to avoid delaying the remedy in another media. If however, one program is able to achieve a resolution and compliance at the program level, while another program is unable to reach resolution and recommends referral to the Attorney General's Office, the case may be split. One program may settle acknowledging to the party responsible that another program will pursue elevated enforcement action.

Before communicating with regulated parties by phone or mail, department enforcement staff should find out if staff from other parts of the department are currently communicating with that party to address violations. If so, staff will share information and documentation about the violations in order that communications with the regulated party contain all necessary information from the department. This coordination is to be done even if the CC&P process has not been completed in one area of regulatory jurisdiction. In that way, the communication will provide opportunity for the regulated party to resolve the full range of violations. In such instances, one program will take the lead and provide one point of contact for the various compliance matters. The lead program is responsible for communicating with all other involved programs on all program-specific technical issues and the proposed resolution before offers or responses to the responsible party are communicated.

## **2.1 Hazardous Waste**

The department's regional offices and the Hazardous Waste Program conduct inspections under the authority of Missouri's Hazardous Waste Management Law.

The department also has authority to conduct inspections of underground storage tanks under the Missouri Clean Water Law. The Hazardous Waste Program enforces compliance with these laws and their associated regulations, except the U.S. Environmental Protection Agency enforces the polychlorinated biphenyl requirements under the Toxic Substances Control Act.

Violations of the Missouri Hazardous Waste Management Law and Regulations; Sections 260.350 through 260.552, RSMo, and 10 CSR 25, or Missouri Clean Water Law and Regulations; Sections 319.100 through 319.139, RSMo, and 10 CSR 20 will be cause for the department to initiate conference, conciliation and persuasion and an appropriate enforcement response.

The Hazardous Waste Program enforcement process is similar to other programs in the Division of Environmental Quality. The process described below starts at the regional office level and escalating to central office level based on the severity of the violation and actions of the responsible party. For hazardous waste violations, Class II, Class I, high priority and acute are defined below, with specific descriptions of enforcement protocol. For underground storage tanks, significant operational compliance violations are those involving release prevention (spill, overflow and cathodic protection) and release detection. These types of violations are major deviations from the regulations as well as major potentials for harm.

The Hazardous Waste Program's Compliance and Enforcement Section will keep the appropriate regional office apprised of any follow-up enforcement action taken on referred cases. The section will communicate through telephone conversations, e-mail messages and copies of correspondence. The Compliance and Enforcement Section will copy all correspondence to the regional office with the exception of confidential information. The inspector will review the correspondence to keep informed of the status of the case.

The Hazardous Waste Program does not implement settlement offers as described in the non-emergency noncompliance section above. Rather, settlement offers are used after compliance is gained and are usually provided to officially close the case, noting the penalty paid, penalty suspended and if there are any contingencies to the settlement.

### **2.1.1. Regional Office Activities**

Prior to initiating enforcement action, the inspector must assess and document the environmental risk of a violation. Knowledge of the risk associated with a violation is needed for the Hazardous Waste Program to decide on appropriate remedial action and an appropriate penalty for the violation. If more information is needed for a complete assessment, the inspector must take the necessary action to obtain this information. In the interim, the inspector will consider and handle the violation based on known environmental or public health impacts.

#### **Types of Hazardous Waste Inspection Violations**

During the inspection, the inspector will discuss the findings, encourage correction of the violations and provide compliance assistance such as fact sheets or other guidance. The inspector will provide their business card at the beginning of the inspection.

#### **No Violations**

When the regional office conducts a hazardous waste inspection and finds no violations, the inspector will send a letter to the facility within 15 days and send a copy to the program. For small quantity generators the inspector should use the automated inspection report developed by the Hazardous Waste Program to create the letter. No further action from the regional office or facility is required.

#### **Only Class II Violations**

Class II violations do not meet the definition of a High Priority violation or Class I violation. They are violations that probably do not endanger public health or the environment. See [Operations Manual 3.2.11](#) for examples. The inspector will not require documentation proving compliance for inspections with only Class II violations.

For a small quantity generator, the inspector will use the automated inspection report developed by the Hazardous Waste Program during the inspection to create the letter, the list of observations, and the list of actions that the generator should take to correct the violations. The inspector will print the list of actions the generator should take to correct the violations. The inspector will provide the list to the facility representative at the end of the inspection. All three items will be sent to the small quantity generator within 15 days of the inspection.

For a large quantity generator, the inspector will provide the generator with a copy of the checklist (by mail if the facility does not have a photocopy machine available). The inspector will send the checklist with a cover letter within 15 days of the inspection.

## **Class I Violations**

Class I violations are deviations from laws, regulations, permit conditions, administrative orders, consent agreements, or court decrees that could result in the hazardous waste generator not sending hazardous waste to an authorized facility, not preventing releases of hazardous waste or constituents, or not performing emergency cleanup operations or other corrective actions for releases. See [Operations Manual 3.2.11](#) for examples. The inspector will require documentation proving compliance for inspections with Class I violations.

For a small quantity generator, the inspector will use the automated inspection report developed by the Hazardous Waste Program during the inspection to create the letter of warning (see [Section 4.3 Letter of Warning, Hazardous Waste Program](#)), the list of observations and the list of actions that the generator should take to correct the violations. The inspector will print the list of actions and provide it to the facility representative at the end of the inspection. In the exit conference, the inspector will tell the facility representative that if the Class I violations continue for more than 30 days it will result in issuance of a notice of violation. All three items will be sent to the small quantity generator within 15 days of the inspection.

For a large quantity generator, the inspector will provide the generator with a copy of the checklist (by mail if the facility does not have a photocopy machine available). The checklist will include enough detail to support enforcement action, including legal action. In the exit conference, the inspector will tell the facility representative that if the Class I violations continue for more than 30 days it will result in issuance of a notice of violation. The inspector will send the checklist with a letter of warning within 15 days of the inspection. The letter of warning will include direction for correcting each violation.

The letter of warning will require a response within 30 days from the inspection. The inspector will evaluate the facility's response to the letter of warning. If the response documents a return to compliance, the inspector will send a return-to-compliance letter to the facility. No further action is warranted.

For those facilities that have not returned to compliance or adequately responded, the inspector will call the facility representative who is responsible for compliance. The inspector will ask the facility representative if he or she received the letter of warning, tell the facility representative that a notice of violation will be issued because of inadequate response and will ask if the facility representative has any questions about the content of the letter of warning. The inspector will issue a notice of violation, thus referring the case to the Hazardous Waste Program.

## **Acute or High Priority Violations**

Acute violations are imminently or immediately harmful to human health or the environment. High priority violations cause actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous constituents. See [Operations Manual 3.2.11](#) for examples. Both types of violations are major deviations from the regulations. If the facility has acute or high priority violations, the inspector will immediately determine any actions needed to protect human health and the environment and encourage quick correction of the violations. Upon issuance of a notice of violation, the Hazardous Waste Program will take the lead in follow-up activities, including enforcement actions.

For a small quantity generator, the inspector will use the automated inspection report developed by the Hazardous Waste Program during the inspection to create the notice of violation (see [Section 5.3](#)), the list of observations, the list of actions that the generator should take to correct the violations and the letter to convey these documents. The inspector will print the list of actions and provide it to the facility representative at the end of the inspection. In the exit conference, the inspector will tell the facility representative that he or she will discuss the violations with the Hazardous Waste Enforcement Unit chief to verify their findings and a notice of violation is likely to be issued. The notice of violation should not be handed out during the inspection. For Acute violations, the notice of violation, the list of observations, the list of actions that the generator should take to correct the violations and the letter items will be sent to the small quantity generator immediately. For high priority violations, these documents will be sent to the small quantity generator within 15 days of the inspection.

For a large quantity generator, the inspector will provide the generator with a copy of the checklist (by mail if the facility does not have a photocopy machine available). The checklist will include enough detail to support enforcement action, including legal action. In the exit conference, the inspector will tell the facility

representative that he or she will discuss the violations with the Hazardous Waste Enforcement Unit chief to verify their findings and a notice of violation is likely to be issued. For acute violations, the notice of violation, the list of observations, the list of actions that the generator should take to correct the violations and the letter items will be sent to the large quantity generator immediately. For high priority violations, these documents will be sent to the large quantity generator within 15 days of the inspection.

The inspector will provide copies of the documents to the Hazardous Waste Program.

If acute violations are found during environmental assistance visits, the inspector will inform the facility that a full-scale compliance inspection is starting and will follow the directions above.

### **Hazardous Waste Program Activities**

The Hazardous Waste Program's Compliance and Enforcement Section enforces laws and regulations pertaining to hazardous waste, underground storage tanks and polychlorinated biphenyls.

Hazardous waste enforcement procedures begin when a notice of violation is issued, and at that point, the files are held confidential until the case is resolved. The Hazardous Waste Program's Compliance and Enforcement Section will notify the appropriate regional office and the program's file room manager so that the files may be closed.

The case managers will check with the remaining environmental programs to see if violations of their regulations warrant further action. Staff will document telephone contacts with facility representatives through telephone logs, memos or e-mail messages, which are placed in the facility file. Hazardous waste case managers will send a copy to the appropriate regional office. Case managers will document telephone calls, correspondence and other actions in the appropriate databases.

Enforcement of the Hazardous Waste Management laws and regulations will proceed according to the diagram on the following page.

When a facility is referred, the Compliance and Enforcement Section will contact the facility by telephone and in writing. During the telephone call, the case manager will identify and speak to the appropriate facility contact. The case manager will ask the facility representative if he or she received the notice of violation, if the facility representative has any questions about the content of the notice of violation, what actions the facility has taken to correct the violations and when the violations will be corrected. The case manager will also tell the facility representative that correspondence will follow.

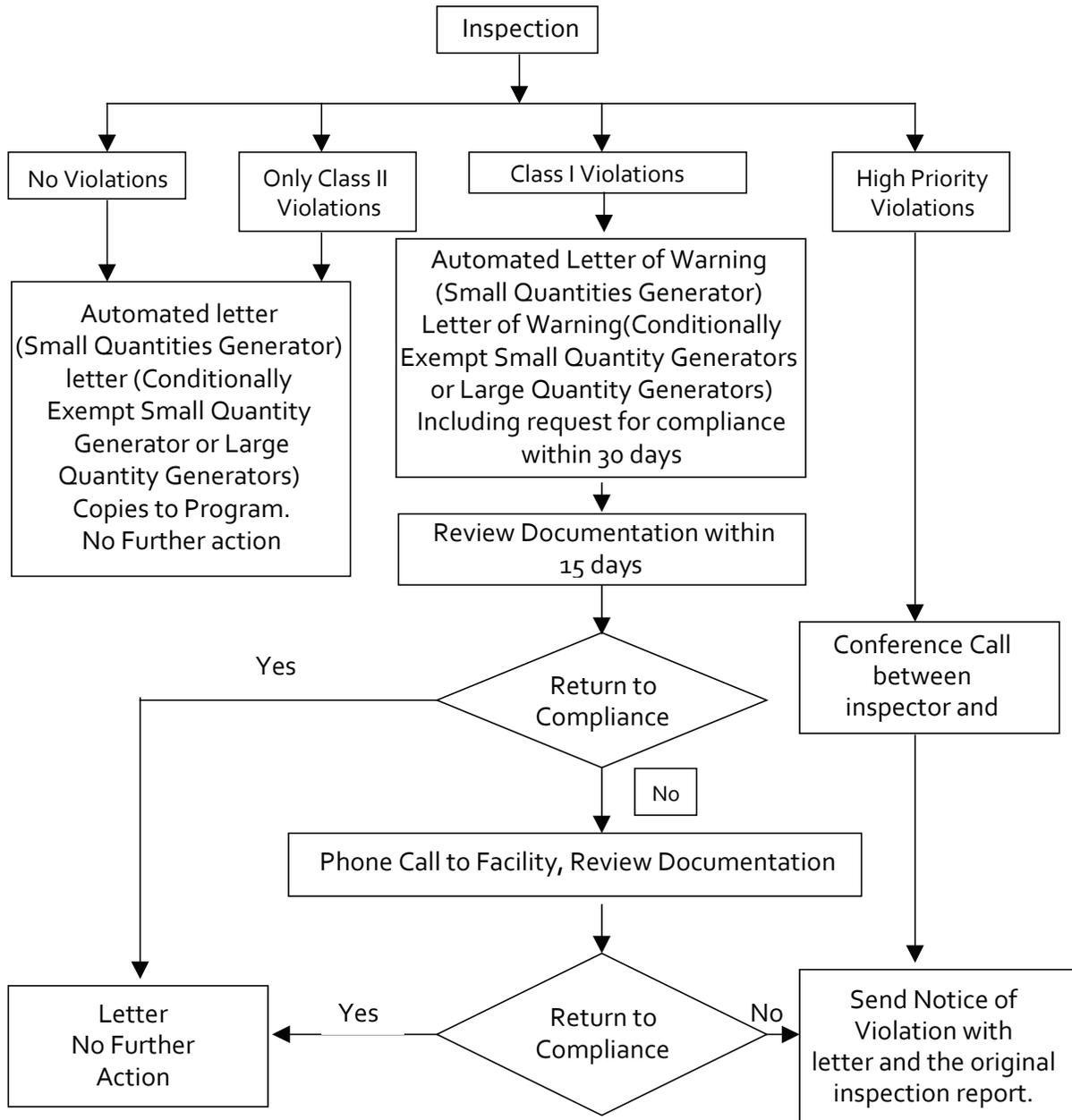
The Compliance and Enforcement Section letter will reiterate the uncorrected violations, ask for demonstration that the violations have been resolved and note that the facility must respond within 30 days. After the facility provides a response, the case managers will review for accuracy and completeness before resolving the violations. If the facility has resolved all issues, a return-to-compliance letter will be sent noting penalty expectations. The Compliance and Enforcement Section will then pursue a penalty. Please see [Penalty Steps](#).

For unresolved violations, the case manager will send a second letter with a notice of violation. The facility has 15 days to respond to the notice of violation. If the facility responds and has resolved all issues, the case manager will send a return-to-compliance letter noting penalty expectations. See [Penalty Steps](#) on the next page. For unresolved violations, calculate the penalty and follow [Section 7.3 Referral to the Attorney General's Office, Hazardous Waste Program](#).

Acute Violations - Under Section 260.420, RSMo., the department director may directly refer such emergencies to the Attorney General's Office. Because of the emergency nature, all action relating to such referrals should concentrate on helping the Attorney General's Office take action to stop the emergency. Pertinent information should be presented and prioritized on that basis. When a facility is referred, the case manager will immediately contact the facility by telephone. During the telephone call, the case manager will identify and speak to the appropriate facility contact. The case manager will ask the facility representative if he or she received the notice of violation, if the facility representative has any questions about the content of the notice of violation, what actions the facility has taken to correct the violations and when the violations will be corrected. The case manager will also tell the facility representative that correspondence will follow. The case manager should document the phone call with a follow-up letter then proceed with referral to the Attorney General's Office.

The following flow chart depicts the normal process of hazardous waste inspection and followup.

## Hazardous Waste Inspection and Followup Flow Chart



Authority for implementation of the program is provided under the Missouri Safe Drinking Water Law (Sections 640.100 - 640.140, RSMo) and the Missouri Safe Drinking Water Regulations (10 CSR 60-1.010 through 10 CSR 60-16.030).

## 2.2 Drinking Water - Public Drinking Water Branch

The mission of the Public Drinking Water Branch is to ensure that all public water systems provide safe and adequate drinking water to the public. The primary goals of the branch are:

- To ensure water systems are operated and maintained to protect public health and the water dispensed does not contain chemical, radiological, or microbiological contamination in excess of maximum contaminant levels or action levels.
- To ensure the construction, modification and operation of water systems are capable of producing drinking water within safe drinking water standards and of meeting treatment technique requirements.
- To ensure public water systems comply with all established statutory and regulatory requirements for safe drinking water.

Authority for implementation of the program is provided under the Missouri Safe Drinking Water Law (Sections 640.100 - 640.140, RSMo) and the Missouri Safe Drinking Water Regulations (10 CSR 60-1.010 through 10 CSR 60-16.030).

### Inspections of Public Water Systems

Regional office employees inspect public water systems on a priority basis following the annual public drinking water work plans. The purpose of the inspection is to improve water systems through elimination of unsatisfactory sanitary features, secure improvement of operation and maintenance, determine the compliance status of the systems, notify and resolve compliance problems; and promote a greater local interest in the water system and the production and distribution of safe drinking water to the public.

Statutory authority for conducting inspections is provided in Section 640.100.4, RSMo, which states, "The department of natural resources shall establish and maintain an inventory of public water supplies and conduct sanitary surveys of public water systems. Such record shall be available for public inspection during regular business hours." and in Section 640.120.5, RSMo, which states, "Duly authorized representatives of the department of natural resources, with prior notice, may enter at reasonable times upon any private or public property to inspect and investigate conditions relating to the construction, maintenance and operation of a public water supply, and take samples for analysis. If the director or his representative has probable cause to believe that a public water supply system is located on any premises, he shall be granted entry for the purpose of inspection and sample collection. Should entry be denied, a suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any judge or associate circuit judge having jurisdiction to any representative of the department to enable him to make such inspections."

Detailed policy and procedures for conducting public water system inspections and sanitary surveys are provided in the department's [Operations Manual](#).

### Enforcement

The Public Drinking Water Branch has authority to use enforcement referrals and litigation against public water system violators if CC&P and other provisions fail. The Public Drinking Water Branch, however, prefers to return violators to compliance through CC&P, bilateral compliance agreements, or negotiated settlements before considering more formal enforcement actions. The exception is Acute violations that pose an immediate threat to the health of consumers that may require issuance of boil water orders or emergency abatement orders to avert the threat to public health and ensure timely compliance.

Detailed enforcement policy and procedures are provided throughout this document.

## 2.3 Water Pollution Control Branch

### Enforcement Process and Inspections and Investigations

The purpose of each inspection or investigation is to determine the characteristics of facility operations or site conditions, and to assess the status of compliance. The Water Pollution Control Branch recognizes a variety of situations and facilities, and a comprehensive evaluation is not needed each time staff responds to an event or evaluates a facility or site. In many circumstances, a less comprehensive evaluation of a site or facility will fulfill the “need to know” requirements of the Department and represents an effective and efficient approach to environmental evaluations. Staff may exercise a flexible approach to the environmental evaluation activity.

This flexibility can be described in general considerations related to the overall inspection process and in more specific considerations related to

- The complexity of the facility or site.
- The information that is needed for decision-making about the compliance status of the facility or site.

#### General Considerations

The inspector, exercising professional judgment and discretion, needs to make sufficient observations and collect appropriate samples to determine facility or site characteristics and assess compliance status.

An inspector should always be prepared for the situation that may be encountered in the field. This requires prior review of appropriate file and other background materials to the extent information is available and there is time for review. However, not all situations require detailed review of the entire file, permit conditions, other reference documents, and discussions with others familiar with the facility or site, and similar preparations.

An inspector should be prepared to conduct field observations and analyses of water quality and collect samples in every circumstance. Therefore, prior to the field activity, the inspector should prepare field testing and sampling equipment for the variety of situations that may be encountered, gather needed supplies, forms, containers, preservatives, etc. A sampling plan should be developed to guide the actual sampling and the sample handling and transport that may follow in accord with [Chapter 4](#) of the Field Services Operations manual and Environmental Services Program standard operating procedures. The inspector verifies that the equipment is operating correctly.

As a general approach, inspections and investigations should be unannounced. If an unannounced inspection or investigation is likely to cause it to be impossible to conduct or incomplete, then the facility representative should be contacted in order to allow access and the collection of necessary information.

A critical part of every inspection or investigation is determining effects on environmental quality that result from the discharge or controlled activity. Therefore, every inspection or investigation should include an observation of the surface water receiving the water contaminants. If the receiving stream is visually impacted, the inspector should conduct the appropriate field observations and analyses and collect grab samples.

Evaluation of infiltration and inflow and inspection of sanitary sewer overflows are important components of the overall assessment of compliance at a municipality. Guidance has been issued that addresses considerations and procedures that relate to sanitary sewer overflows inspections. Sanitary Sewer Overflows inspection guidance and related considerations were transmitted via memoranda dated Feb. 21, 2008 and April 4, 2007. This link is to those documents, and the documents are also available on internal network drives at T:\\_Permitting Documents\SSOs.

The degree of complexity and thoroughness of inspection reports should match the nature of the inspection or investigation that was conducted. Refer to the [Operations Manual](#) for specific, detailed direction on preparing inspection reports. As a general comment, all inspection reports should be written in clear, concise language at an appropriate level for the intended audience, normally the facility representative. Inspection report writers should avoid the use of numerous acronyms and jargon. To the extent possible, offices are encouraged to develop and use standard format inspection report documents that will facilitate report writing, decrease report preparation times and minimize unnecessary and confusing wording.

Exit interviews should be conducted following the inspection and should convey findings and any needed actions to the facility representative before the inspector leaves the facility or site, unless the facility representative is not present. The inspection report should be completed and sent to the facility representative within two weeks of the inspection or investigation. If sampling was done as part of the inspection and the report of sample analysis has not been received from the Environmental Services Program, the inspection report should be sent to the facility representative noting that the sample results will be forwarded when available.

### **Facility or Site Considerations**

There are several types of inspection or investigation activities that are keyed to the complexity of the facility or site (e.g. land disturbance or land application) or to the information needed to determine compliance.) These are described below.

#### **Class 1 Inspection**

A Class 1 inspection is an on-site or at-location visual observation of one or more components of a facility or characteristics of a controlled site. Water pollution complaint investigations and field responses for water pollution incidents or emergencies, including spills and fish kills, are considered Class 1 inspections. Class 1 inspections are also performed as an initial visit to a previously unknown facility or site, a determination of compliance with permit requirements (e.g., schedule milestone), or a follow-up to a more comprehensive inspection, Notice of Violation or other enforcement action.

Contact with the facility representative is encouraged if the person is available at the site. It may include grab sampling of the effluent if the inspector determines or strongly suspects that a violation seems to be occurring. It always includes visual observations of the receiving stream and assessing the effects that water contaminants may be producing, including collection of upstream and downstream samples if appropriate. It requires a brief inspection report to the facility representative describing what facility components or site features were observed and what was found, including a statement about the appearance of the receiving stream. It does require the initiation of follow-up actions and contact with the owner and operator if noncompliance is determined, including the issuance of letters of warning or notices of violation where warranted (see [Chapter 4](#) for criteria for issuing letters of warning and [Chapter 5](#) for criteria for issuing notices of violations).

Class 1 inspections may serve as the routine inspection of facilities such as small domestic sewage plants or lagoons serving subdivisions, mobile home parks, commercial or industrial facilities with only domestic type wastewater, resorts and campgrounds. If the Class 1 inspection is serving as the routine inspection of a small facility, then review of pertinent file materials should be included as part of the inspection process and if applicable complete [Sludge Handling Checklist](#) for wastewater treatment facilities.

A surveillance visit is a form of Class 1 inspection. Surveillance is defined as a brief visit to, or a field observation of, a facility or site in order to make a compliance determination. Surveillance is described as an activity to determine if a party has complied with recommendations of an inspection report, a letter of warning, a notice of violation or the requirements of a compliance schedule, if such determinations can be made with visual observations.

### **Class 2 Inspection**

A Class 2 inspection is an on-site observation of facility components or site characteristics and immediate off-site effects. It is the routine inspection performed at municipal facilities serving populations less than 5000 people or population equivalents. Scheduled compliance inspections at municipalities may include SSO inspection components. It is the routine type of inspection for agricultural (non-CAFO), commercial and industrial facilities producing other than domestic-type wastewater, that are not classified as “major” facilities, or do not have other inspection requirements specified in statutory or regulatory provisions.

A Class 2 inspection involves:

- Review of pertinent file materials, including regulatory provisions, permits, previous inspection reports, enforcement documents, etc.
- Face-to-face communications with the facility representative.
- Visual observations of the receiving stream and assessing the effects that water contaminants may be producing, including collection of upstream and downstream samples if appropriate.

A Class 2 inspection may include:

- Sampling of the effluent consistent with permit limits and monitoring requirements (e.g. grab or composite sampling).
- If applicable complete [Sludge Handling Checklist](#) for wastewater treatment facilities.
- Scheduling a Class 4 sampling inspection in conjunction with a Class 2 inspection.

Appropriate inspection forms are to be completed and a written report provided to the facility representative. A descriptive comment about the appearance of the receiving stream should be included in the written report. Frequently, a cover letter or a follow-up letter will be needed to complete the reporting process. The initiation of follow-up actions is required if noncompliance is determined.

### **Class 3 Inspection**

A Class 3 inspection is a thorough evaluation and assessment of an environmental control facility or activity. As a cross-reference, Class 3 inspections for Water Pollution Control Branch are the type of inspections described in the Field Services Operations Manual, Chapter 3, Section 3.1 and Section 3.4.

A Class 3 inspection is the normal, routine inspection performed at municipal facilities serving populations of 5000 or more people or population equivalents. Scheduled compliance inspections at municipalities may include SSO inspection components. It is the routine type of inspection for agricultural, commercial and industrial facilities that are classified as “major” facilities, are otherwise complex in terms of waste streams, wastewater treatment processes, production processes and multiple environmental media requirements, or have comprehensive inspection requirements specified in statutory or regulatory provisions.

A Class 3 inspection includes:

- Review of file materials, permits, regulations, laws, etc.
- On-site visual observation of the facility or regulated activity,
- Review of appropriate facility records and observations of off-site effects.
- Observations of components such as production processes, waste streams, potable water plumbing and the potential for cross connections, or sewage collection systems.
- Evaluation of actual conditions as compared to design capacity of the facility.
- Effluent sampling consistent with permit limits and monitoring requirements unless there is a specific reason not to sample. (A Class 4 inspection conducted in the same time frame as the Class 3 inspection fulfills the sampling requirement.)

- Face-to-face communications with persons responsible for the facility are required.
- Visual observations of the receiving stream and assessing the effects that water contaminants may be producing, including collection of upstream and downstream samples if appropriate.
- A narrative report of inspection which details observations, deficiencies, and recommended improvements must be prepared and transmitted to the owner or responsible contact. A descriptive comment about the appearance of the receiving stream must be included in the written report. It results in the initiation of follow-up actions if noncompliance is determined.

The Class 3 inspection process has three major components: pre-inspection, at and on-site activities, and post-inspection.

During the pre-inspection component, the inspector will collect and organize the information and equipment needed to conduct the site inspection. The pre-inspection procedures generally involve:

- Collecting information about the facility (history, permitting and management).
- Identifying the goals of the inspection.
- Planning the sequence of activities during the inspection.
- Contact with staff in other regulatory programs, in particular air pollution control and hazardous waste, is encouraged to determine whether the facility or site has on-going or recent regulatory issues or activities in that media area.

The at and on-site inspection component includes:

- Off-site drive-by or reconnaissance of the facility.
- Site entry.
- Introductory briefing of responsible parties and outlining the intended inspection process.
- Facility records review and if applicable complete [Sludge Handling Checklist](#) for wastewater treatment facilities.
- Visual inspection of facility or site.
- Organizing exit comments.
- Exit briefing.

The post-inspection component involves the steps required to prepare and transmit the results of the inspection, including organizing information collected during the inspection, report writing and transmittal to all appropriate parties.

#### **Class 4 Inspection**

A Class 4 inspection is a specialized sample collection and evaluation activity. Commonly, staff of the Environmental Services Program conducts the Class 4 inspections. Regional staff may conduct Class 4 inspections with proper equipment and training. This could stand alone as a sample collection effort, or could be included as an accompaniment to Class 2 or 3 inspections. A report of sample analysis results is required. This report may include a description of sampling procedures and observations. These reports are to be prepared and distributed in accord with the Quality Assurance Project Plan for the sampling event. The report of sample results is provided to the facility representative with the inspection report if results are timely enough to achieve that, and separately if not. Follow-up actions based on the sample results are also included in the scope of a Class 4 inspection.

## **2.A Forms and Appendices**

[Return to Compliance Letter \(Word® Document\)](#)

[Enforcement Policy of the Wellhead Protection Section, Water Protection Program \(Word® Document\)](#)

[Enforcement Tools of the Wellhead Protection Section, Water Protection Program \(Word® Document\)](#)