

# 6. Administrative Enforcement

Formal enforcement actions are usually initiated by the compliance and enforcement sections within the programs. Cases may come to the sections through notice of violations as described in Chapter 5, or through other means such as information about spills and fish kills, environmental emergency response incidents, or other violations in search of a remedy. Upon receipt of the notice of violation and referral package, or other information, a the Compliance and Enforcement Section supervisor will assign the matter to a case manager to evaluate potential enforcement actions. The case manager should always check the status of any previously issued notice of violations or other documented noncompliance after receiving the referral.

The case manager will also always review conference, conciliation and persuasion and compliance assistance actions that have been taken in attempts to resolve the noncompliance. The department strives to resolve instances of noncompliance through cooperative compliance assistance. It is essential this work be evaluated to ensure adequate information and opportunity has been provided to a person in violation. The length and level of these services may be shortened as needed to address time-critical situations.

In emergency situations, the department may take action as needed to end the emergency. This includes ordering responsible parties to take action, with the department taking those actions itself if the responsible party does not. The State has both the authority and the responsibility to pursue cost recovery from a responsible party when the State incurs expenses in responding to an environmental emergency response incident.

In non-emergency situations, several actions may be taken to achieve compliance, recover costs and assess penalties. In most cases, the initial action will be to offer the responsible parties the opportunity to enter into a settlement agreement with the department. Other enforcement instruments may also be used where they are more suited to the situation.

The department's internal Enforcement Coordination Committee, or ECC, was created to foster consistency of compliance and enforcement actions across the department and examine compliance and enforcement processes, policies and priorities. The ECC reviews all cases proposed for referral to the Attorney General's Office or a county prosecutor for litigation, as well as other enforcement matters, and ensures multi-media violations are being coordinated between the programs.

## Settlement Offer

A settlement offer is a letter to a responsible party and provides the party an opportunity to enter an agreement to settle violations. The letter usually describes the violation(s) and the relief the department is seeking, including work by the responsible party, other responsible party actions such as ceasing a polluting activity and payment of a penalty. Some programs refer to this offer as a penalty demand letter. This offer or letter identifies the legal authority granting the department the authority to seek civil penalties, if they are sought. These offers or letters are made in writing, mailed by certified mail, contain an offer to meet to discuss the terms of the settlement and provide a deadline for the responsible party to respond. A standard template settlement offer letter is in the [6.A Appendices](#). If the party responds positively, the case manager will draft a settlement agreement document. If a resolution cannot be achieved through a settlement agreement, the matter is usually referred to the Attorney General's Office for litigation.

## Settlement Agreement

A settlement agreement is a written, binding contract between the responsible party and the department. Department or Attorney General's Office legal counsel will be consulted in preparing this document. A settlement agreement describes the violations leading to the agreement, the specific actions the responsible party agrees to take and describes how the penalty will be handled, if applicable. In exchange, the department agrees to refrain from further enforcement action for the specified violations. The actions of the responsible party may include, as appropriate, remedial actions to mitigate the effects of the violations, preventive work or other commitment to avoid future violations, and payments of department costs, natural resources damages and penalties. Settlement agreements that include a schedule for the responsible party to pay penalties will be accompanied by a Confession of Judgment. A bilateral compliance agreement is a type of settlement agreement used for public drinking water systems.

## Administrative Order

In some instances, there are regulatory benefits in using administrative orders. A final administrative order carries the force of law. However, most orders can be appealed, and an appeal can result in a delay in compliance. In addition, damage payments, cost recovery and penalties are generally not part of orders except for the administrative penalty order.

Types of orders include:

- Boil water order (specific to drinking water supplies and cannot be appealed administratively).
- Stack test order (specific to air pollution sources).
- Abatement order.
- Cease and desist order.
- Abatement complaint
- Administrative penalty order.

Administrative orders state specific work to be completed according to a schedule that is part of the order. Orders may also be issued to revoke or suspend permits, registrations, certifications or licenses.

Final orders must be diligently tracked for compliance. If a responsible party fails to meet a requirement of an order, the party must be notified promptly. If the party cannot provide a rationale for the delay and a reasonable expectation of meeting the requirements of the order, the matter may be referred to the Attorney General's Office for litigation.

### Types of orders include the following:

- **Abatement Orders** - These orders are issued under specific authorities contained in various environmental statutes, and direct responsible parties to conduct certain activities to address violations. Abatement orders specify time frames for the work to be completed. Most abatement orders can be appealed to the commission administering the law involved or the department director if there is no commission for a law. The Administrative Hearings Commission provides hearing officer services to conduct hearings, and the hearing officer provides the commission or director with a draft finding of fact, conclusions of law and order for further consideration. The commission or director makes the final administrative decision on appeals of orders. Further appeals can be made by any party in the appeal through the judicial system.
- **Abatement Complaint** - This order is used to bring a violation before a commission for hearing.
- **Administrative Penalty Order** - This order notifies a responsible party the department is pursuing penalties related to a violation. This authority is present in several environmental statutes and provides a series of negotiation steps to establish a penalty to be paid.
- **Administrative Order on Consent** - This order is similar to other abatement or administrative orders except that in an order on consent the responsible party has agreed to accept the order without appealing it.

- **Boil Water Order** - This order is issued to a public drinking water supply if the department determines that an emergency exists which does or could endanger the public health and safety with regard to drinking water supplies. The department must notify local news media of this order. The department may also issue a boil water notice when there is a concern for the safety of a water system due to a pipeline rupture or similar event that has not reached the threshold of an emergency.
- **Cease and Desist Order** - This order is used to stop an on-going violation. A cessation order is a type of cease and desist order issued under the authority of the land reclamation law.
- **Forfeiture Order** - This order may be used by the department to recover funds, usually established through bonds, to complete remedial or reclamation work or closure of a landfill, or to upgrade pollution control equipment in case a responsible party is unable or unwilling to complete the work.
- **Show Cause Order** - This order is used to offer a violator the opportunity to provide evidence in opposition to the department's intended action of revoking a permit, license, certification or registration.
- **Stack Test Order** - This order may be issued when the department believes the composition of air emissions from a source are incorrectly characterized, when possible human health impacts are suspected, or when there is reason to suspect that emission rates are being under reported. This order has the force of law, and failure to complete the required testing can result in further legal sanctions. Testing in response to a stack test order must follow the same procedures as compliance or emission inventory testing. This includes submission of a test plan for approval, use of approved test methods, observation by department personnel, and final review and approval of test results. Local air agencies or department field offices may request stack test orders.
- **Revocation, Suspension and Denial of Approvals** - The department may remove a previously issued approval for cause. Usually the department documents a finding that the party is no longer capable of carrying out the responsibilities of the approval or the approved facility is not able to perform adequately. These approvals can be permits, licenses, certifications or registrations. The granting of the approval provides a property right in the person's ability to conduct an activity or perform certain services, and the removal of that approval is subject to appeal. The removal of some licenses or credentials require hearings as part of the revocation process.
- **Hazardous Substance Emergency Declaration** - The department may issue a verbal or written Hazardous Substance Emergency Declaration to a responsible party or spiller, under authority of Chapter 260.500 – 260.550 RSMo, based upon the department's on-site investigation of public safety, health and the environment related to a hazardous substance release. The declaration requires a responsible party or spiller to take certain actions to abate an environmental emergency. The declaration notes if the responsible party or spiller fails to take appropriate corrective actions to mitigate an environmental emergency, the department may take necessary actions to abate the emergency and subsequently seek cost recovery for resources expended.
- **Criminal Enforcement** - While most matters subject to enforcement are civil violations, there are occasional instances of knowing, intentional or negligent violations that are criminal in nature. If a staff member recognizes or suspects a case may have criminal aspects, environmental investigators and legal counsel are contacted and together they will address the potential criminal activity. Some environmental laws include specific provisions providing authority for the State to act on criminal matters, for example, knowingly and illegally dumping solid waste. Criminal violations are not subject to administrative actions but are managed through the judicial system.

## Citizen Suits

Several federal environmental protection statutes allow citizens to act directly to enforce the law through the federal courts. Citizen lawsuits may address violations of the federal law authorizing the action. These laws generally allow actions to address any violation of the law, from a private party exceeding a permit limit to an agency failing to complete a required rulemaking. State environmental protection statutes do not provide a parallel opportunity, although state courts provide relief to citizens through state authorities covering trespass, nuisance and other common law claims.

To use the citizen suit provisions, the citizen must provide a 60-day notice to the federal agency responsible for implementing the law. The state may also be provided a copy of the notice when the state implements the federal authority involved. Citizen suits are barred when the state or federal agency has initiated a lawsuit to address the violation, although the party making the notice has a right to intervene in the lawsuit. The state may also use the citizen suit provisions to bring a lawsuit in federal court to enforce a federal law.

When a notice of citizen suit is received, supervisors and managers should be advised so that an efficient course of action can be planned.

## **News Releases**

The Department may issue new releases when cases are referred to the Attorney General's Office. A template document is in the [6.A Forms Appendices](#).

## **Violation of Other Laws**

There are instances where compliance and enforcement staff will recognize potential violations of other laws not administered by the department. Information regarding these potential violations should be shared with supervisory and management staff who may refer the matter to the agency in charge of those matters.

# **6.1 Drinking Water**

In general, the Public Drinking Water Branch follows the Administrative Enforcement guidance outlined in this manual. Program-specific differences are detailed below. Administrative enforcement actions may be modified on a case-by-case basis at the discretion of the Public Drinking Water Branch's Compliance/ Enforcement Section.

## **Bilateral Compliance Agreement**

The Bilateral Compliance Agreement is an Environmental Protection Agency-sanctioned compliance tool that can be used as a first step in moving drinking water violators back into compliance. It is an informal signed agreement between the public water system and the department specifying a course of action to enable the water system to return to compliance under terms of a negotiated compliance schedule. A bilateral compliance agreement represents a contract between the two parties but does not include penalties. Generally, the compliance period is 12 months. Regional offices author and issue bilateral compliance agreements, although, in certain situations the Public Drinking Water Branch may assist or may actually negotiate the agreements.

Failure to sign the bilateral compliance agreement or failure to meet the terms of the agreement triggers referral of the case to Public Drinking Water Branch for formal enforcement, such as an administrative order, a formal settlement agreement, or referral to the Attorney General. Except for extenuating circumstances such as change in ownership, the department will not extend, renew, or offer a second bilateral compliance agreement for the same type of violation to a public water system. Regional office staff should develop firm justification and seek concurrence of the Public Drinking Water Branch's Compliance and Enforcement Section should such circumstances arise.

Additional details on the use of bilateral compliance agreements are included in Public Drinking Water Branch's Escalation Policy.

## **Boil Water Orders**

Section 640.130 of the Missouri Safe Drinking Water Act states, "...Whenever the Department of Natural Resources determines that an emergency exists which endangers or could be expected to endanger the public health and safety with regard to drinking water supplies, the Department of Natural Resources may, without notice or hearing, issue an [administrative] order reciting the existence of such a condition and requiring the person to take such action as will lessen or abate the danger."

This statement provides the necessary authority for issuing boil water orders.

Under emergency conditions as described above, the employees of each regional office may issue or require issuance of a boil water order at the discretion of the regional director. To do so, the regional director (or his representative) notifies the Public Drinking Water Branch, Division of Environmental Quality administration and the Director's Office through e-mail to outline the details and facts of the situation and issues a boil water order to the public water system. In some cases, the regional director may determine that the department should issue the news media notice (radio/television) for the public water system. The regional director (or their representative) should follow up the e-mail with a brief phone call to the Public Drinking Water Branch to ensure the information is received promptly.

Regional offices are responsible for notifying area media about boil orders issued in their region, unless the regional director (or their representative) determines the public water system can be relied upon to notify the media. Forms and specific instructions regarding issuance and rescission of boil orders can be found in the department's Operations Manual.

### **Drinking Water Abatement Orders**

An emergency situation that does or could endanger the public health and safety with regard to drinking water supplies may warrant issuance of an abatement order. Flagrant disregard to warnings or demands is also grounds for this action. The director of the Division of Environmental Quality has authority to issue abatement orders. Section 640.130, RSMo, provides the legal authority for Drinking Water abatement orders and 10 CSR 60-6.050 of the Public Drinking Water regulations includes detailed procedures and requirements.

### **Administrative Orders and Penalties as Applied to Technical, Managerial and Financial Capability Rules**

Administrative order provisions are addressed in two parts of the technical, managerial and financial capacity rules, subsection (3)(B)5. of the permits rule (10 CSR 60-3.010) and section (5) of the continuing operating authority rule (10 CSR 60-3.020). Both parts authorize the department to revoke the permit to dispense water for community water systems or non-transient non-community water systems, and the permits rule also authorizes the department to modify a permit. Under these provisions, a permit can be revoked or modified only for community water systems or non-transient non-community water systems against which an administrative order has been issued for significant noncompliance with state or federal requirements and at which at least one of the following three deficiencies exists:

- The water system has failed to establish a continuing operating authority as defined in the rule.
- The continuing operating authority does not have the necessary technical, managerial and financial capabilities to manage, operate, maintain, etc., a public water system.
- The water system is not making substantial progress toward compliance with mandates of the administrative order.

Each significant non-complier related administrative order should include a requirement (and milestones) for the water system to evaluate and establish continuing operating authority and technical, managerial and financial capabilities, as defined in the rule. The administrative order should also include a statement that the permit to dispense may be revoked or modified if the system fails to meet continuing operating authority and technical, managerial and financial requirements or fails to make substantial progress towards compliance with the administrative order.

## **6.2 Environmental Services**

The Environmental Services Program sends at least two cost recovery demand letters to the responsible party or spiller when seeking cost recovery for costs incurred in responding to an environmental emergency incident. The first demand letter requests payment to be made by the due date noted on an invoice showing the due payment. The timeframe given in the first demand letter is typically 45 days. If payment is not received by the invoiced due date, a second demand letter is issued to the responsible party or spiller. The timeframe given in the second demand letter is 15 days. Additional correspondence may follow the second demand letter if cost recovery is still pending.

## 6.3 Land Reclamation Industrial Minerals

The Land Reclamation Law provides some authorities for administrative enforcement that are related to specific findings during inspections, and these procedures are described in the Notice of Violation Chapter since they would occur at that stage of the process. Additional procedures are described here.

The Land Reclamation Commission issues all administrative enforcement actions other than those assigned to employees (and described in the Notice of Violation Chapter). The commission issues formal complaints, permit revocations, administrative penalty assessments and bond forfeitures. The commission also serves as the formal appeal reviewing body. A formal appeal of any enforcement action is decided by the commission following a hearing. The commission may refer matters to the Attorney General's Office to seek injunctions or other relief.

### Formal Complaint

A formal complaint is issued by the program director if the operator has not abated the notice of violation within the time period specified or has not paid a penalty within 90 days of receiving the assessment by the Land Reclamation Commission. The program director will prepare the formal complaint for presentation to the Land Reclamation Commission.

The formal complaint and Land Reclamation Commission notice shall be sent via certified mail to the operator under cover letter from the program director. These items must be included:

- A brief history of the permitting and mining activities associated with the operator.
- A detailing of the violation(s) found by the inspection staff.
- A citation of the rule 10 CSR 40-10.070(3)(A), (B) and (C).
- A recommendation by the program director that sufficient attempts to resolve the situation have not been successful and that the violation constitute adequate grounds to seek permit revocation and bond forfeiture.

The formal complaint is accompanied by a notice from the Land Reclamation Commission informing the operator of the formal complaint and notifying the operator of rights to a hearing.

### Permit Revocation

The Land Reclamation Commission has the right to temporarily suspend or permanently revoke a permit for:

- Failure to take corrective actions as directed by the commission within 90 days.
- Insolvency, failure in business, bankruptcy, or has proved an inability to comply with the regulatory program and permit.
- The operator's failure to replace a surety bond.
- The operator's failure to pay an administrative penalty within 90 days of assessment by the commission. If the operator requests a hearing the commission must render a decision in writing and notify the operator of that decision.

### Bond Forfeiture

The commission may forfeit the operator's performance bonding following the commission's revocation of the surface mining permit.

### Appeals and Hearings

Once an enforcement action has been issued, an operator has a right to appeal. The operator that is in possession of a valid permit has 15 days after receipt of a notice of violation, assessment or associated action to appeal that action.

An informal conference is held after a written request is received by the Land Reclamation Program within the 15 day time period. There will not be an official record of the meeting, but it is recorded so that the director can give full attention to the meeting, and not be distracted with note taking. This also provides a verbatim record to refer to when later formulating a decision. There usually will not be attorneys present.

The operator has the opportunity to contest either the fact of the violation, the assessment, or both items. The program director listens to testimony by the staff, the inspector, penalty assessment officer and others who have pertinent information to present. The operator will also present evidence as well as be allowed to question the staff on their presentations. The program director will question any and all parties present concerning the facts of the case.

The program director has 30 days to render a decision. The director may confirm, modify or vacate the notice of violation, or raise, lower or confirm the proposed assessment. The director's decision will be sent in writing to the operator via certified mail.

The operator may request a formal hearing within 15 days of receipt of a formal complaint. When a request for a hearing is received, the commission will use the Administrative Hearings Commission as the hearing officer to conduct the hearing. All hearings are a matter of record and considered contested cases. A professional court reporter will be present to take notes, produce a formal record, document evidence and swear in witnesses. The record is a verbatim record. It does not summarize. Attorneys are usually present. The commission staff will usually be represented by the Attorney General's Office. The permittee may or may not have an attorney. Individuals are allowed to represent themselves while a corporation must be represented by an attorney. All procedures of standard law as outlined in the Missouri Rules of Civil Procedure and Chapter 536, RSMo, are followed.

The commission makes the final decision on an appeal and notifies the operator of its decision by certified mail. All final orders of the commission are subject to judicial review, which is not available until all administrative remedies are exhausted as provided by Chapter 536, RSMo.

## **Coal**

The Land Reclamation Law provides some authorities for administrative enforcement related to specific findings during inspections. These procedures are described in the Notice of Violation section since they would occur at that stage of the process. Additional procedures are described here.

The Land Reclamation Commission issues all administrative enforcement actions other than those assigned to employees (and described in the Notice of Violation section). The commission issues civil penalty assessments, show cause orders, permit revocations, bond forfeitures and individual civil penalties. The commission authorizes employees to pursue injunctions and criminal actions on individual matters as it deems appropriate. The commission also serves as the formal appeal reviewing body. A formal appeal of any enforcement action is decided by the commission following a hearing.

### **Individual Civil Penalty Assessment**

An individual civil penalty is issued if the inspector can document any individual willfully and knowingly violates a condition of a permit, or fails or refuses to comply with any Cessation Order or judicial order. Proof should demonstrate a willful and knowing intent beyond a reasonable doubt.

Individual civil penalties are limited in their applicability to corporate directors, officers or agents. Service to these people of all enforcement actions and orders will enhance the possibility of proving willful and knowing actions. Penalties are assigned in a manner similar to the assignment of civil penalties assessed for enforcement actions, which is discussed in the next section.

### **Revocation and Forfeiture**

The Land Reclamation Commission has the authority, if warranted, to suspend or revoke a permit and forfeit the associated bonds, depending on the criteria surrounding the case. If the commission determines that a permit should be revoked or suspended, the commission must issue a show cause order. A show cause order requires the permittee to show cause why the permit and right to mine should not be revoked or suspended.

A permit shall be subject to suspension or revocation if:

- The permittee has failed to abate a notice of delinquent reclamation within the prescribed time.
- The permittee has failed to abate a cessation order within the prescribed time.
- The permittee has become insolvent, failed in business, has been subject to various actions related to bankruptcy or court judgments and the permittee cannot prove the ability to continue to operate in compliance with the regulatory program.

- Any other permit issued to the permittee has been revoked and the reclamation plan for the revoked permit has not been completed or if the reclamation plan for the revoked permit has been completed, the person to which the revoked permit had been issued has not reimbursed the reclamation fund the full cost of completing the reclamation on the revoked permit.
- The permittee has failed to comply with a consent order entered into with the Land Reclamation Commission to correct the underlying causes of a show-cause order; or, has failed to abate a notice of delinquent reclamation within an extended time period set by the Land Reclamation Commission.

Additionally, when a pattern of violations exists and the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions, a show cause order is issued. Willful violations are committed by a person who intends the result that actually occurs. An unwarranted failure to comply means failure to prevent the violation or to abate it after it occurred because of indifference, lack of diligence or lack of reasonable care.

The commission may determine that a pattern of violations exists if two or more inspections of the permit area in any 12 month period produce a violation of the same or related requirements. Furthermore, the commission shall promptly review the history of violations if any three or more inspections in any 12 month period produce a violation of the same or related requirements. When determining if a pattern of violations exists, the regulatory authority should review the violations to determine:

- If they are willful or due to unwarranted failure to comply.
- If they are isolated departures from lawful conduct.
- The number of violations cited on more than one occasion of different requirements of the regulatory authority.

If the commission determines that a pattern of violations exists, then an order to show cause should be issued to the permittee. The permittee will then have the opportunity to come before the commission in a formal hearing to show cause why the permit(s) should not be revoked or suspended. If the permittee chooses not to respond to the show cause order, then the regulatory authority will make its decision based on the facts contained within the show cause order.

### **Appeals and Hearings**

Once an enforcement action has been issued, the permittee has appeal rights. The permittee has 30 days after receipt of an enforcement action, assessment or some associated action to appeal the action.

The first appeal that any permittee makes to the commission for any enforcement action must be an appeal to the director of the Land Reclamation Program. Usually the first appeal step of a permittee is a request for a conference to discuss the violation. This type of appeal is called an informal conference. In the informal conference, the permittee will meet with the director and discuss the enforcement action, assessment, or both. There will not be an official record of the meeting, but it is recorded so the director can give full attention to the meeting, and not be distracted with note taking. This also provides a verbatim record to refer to when later formulating a decision. There usually will not be attorneys present.

During the informal conference, the inspector, the assessment officer who made the assessment, or other persons with pertinent information will present the facts surrounding the enforcement action. The permittee will then have an opportunity to present the other side of the story. Discussion between both parties may then occur. The person running the meeting will ask questions, as well as the Land Reclamation Program staff present. The idea is to get as much information as possible on the issue so the director can make the best decision possible. Both parties have the ability to present slides and other evidence to substantiate their commentary.

The director or designate then has 45 days to render a decision. The decision can be to confirm the violation as is, vacate the notice of violation, adjust the penalty points up or down, or offer a settlement agreement. The decision will be in writing and forwarded to the permittee and incorporated in the regulatory authority's files.

Once a decision to confirm the violation, vacate the notice of violation, or adjust the penalty points up or down is rendered, the permittee has 30 days to accept the decision or appeal it. Failure to appeal the decision within the required time frames is considered to be acceptance. If the decision is to offer a

settlement agreement, the permittee has 30 days to accept the settlement offer or appeal it. If the permittee fails to take one of these steps within the required time frame, the original notice of violation and proposed penalty will be presented to the commission as uncontested. If the permittee appeals, a formal hearing is scheduled. A permittee has the right to seek a formal hearing with or without an informal conference. By law, the record of the informal conference cannot be used as evidence in a formal hearing.

In a formal hearing, a professional court reporter will be present to take notes, produce a formal record, document evidence and swear in witnesses. The record is a verbatim record. It does not summarize. Attorneys are usually present. The commission staff will have a member of the Attorney General's Office providing representation. The permittee may or may not have an attorney. Individuals are allowed to represent themselves while a corporation must be represented by an attorney. All procedures of standard law as outlined in the Missouri Rules of Civil Procedure and Chapter 536, RSMo, are followed.

There are several types of formal hearings. These include:

- Hearings for assessments,
- Hearings for the enforcement action,
- Hearings for temporary relief from a notice of violation or cessation order that ceases operations of a permittee, and
- An on-site hearing is required either in connection with the request by the permittee for temporary relief or when inaction that requires the cessation of mining will continue in effect for a longer period than 30 days.

## **Metallic Minerals**

The Metallic Minerals Waste Management Act provides some authorities for administrative enforcement related to specific findings during inspections, and these procedures are described in the Notice of Violation Chapter since they would occur at that stage of the process. Additional procedures are described here.

### **Formal Complaint**

If the operator fails to comply with the abatement terms specified in a notice of violation, as amended by the director, in the time prescribed, the director shall cause to have issued and served upon the person complained against a formal complaint which shall specify the rule or regulation, conditions of the permit or the provision of sections 444.350 to 444.380 of which the person is alleged to be in violation, a statement of the manner in, and the extent to, which the person is alleged to be in violation and the penalty to be assessed. The person complained against may, within 15 days of receipt of the complaint, request a hearing before the director. Such hearing shall be conducted in accordance with the provisions of section 444.377.

After due consideration of the hearing record, or upon failure of the operator to request a hearing by the date specified in the complaint, the director shall issue and enter such final order and make such final determination as he deems appropriate under the circumstances. Included in such order and determination may be the revocation of any permit and an order to cease and desist operations. The director shall immediately notify the respondent of his decision in writing by certified mail.

Any final order or determination or other final action shall be in writing. The director shall not issue any permit to any person who has had a metallic minerals waste management permit revoked until the violation that caused the revocation is corrected to the satisfaction of the director.

### **Cessation Order**

When, on the basis of any inspection, the director or any authorized representative of the director, determines that any condition or practices exist, or that any permittee is in violation of any requirement of the law, regulation, or any permit provision, which condition, practice or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause, significant, imminent environmental harm to land, air or water resources, the director or any authorized representative shall immediately order a cessation of mining and metallic minerals waste disposal activity or the portion of such activity relevant to the condition, practice or violation.

Such cessation order shall remain in effect until the director or any authorized representative determines that the condition, practice or violation has been abated, or until modified, vacated, or terminated by the director. Where the director, or any authorized representative, finds that the ordered cessation of mining and metallic minerals waste disposal activity, or any portion of such activity, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the director or authorized agent shall, in addition to the cessation order, impose affirmative obligations on the operator requiring the operator to take whatever steps deemed necessary to abate the imminent danger or the significant environmental harm.

## 6.4 Solid Waste

In addition to the general guidance regarding administrative enforcement, the Solid Waste Management Program enforcement activities usually, although not always, begin after the Compliance and Enforcement Section Chief concurs with the issuance of a notice of violation, and once all of the items listed in the 5A Appendices – Solid Waste Management Program’s Enforcement Referral Checklist are received by the Compliance and Enforcement Section or otherwise sufficiently addressed. Solid Waste Management Program’s enforcement procedure usually is as follows:

A Compliance and Enforcement Section supervisor will assign the case to a case manager, who will normally have 30 days to review the case, compare the central office files with the regional office files, and evaluate the enforcement action recommended by the regional offices. Any differences should be discussed and attempts made to reach consensus. However, the Solid Waste Management Program’s Compliance and Enforcement staff are responsible for the final decision regarding the type of enforcement action taken. If the case has also been referred to another program within the Division of Environmental Quality, Solid Waste Management Program staff will coordinate with that program. It is extremely important referrals to more than one program be made concurrently, and each program is informed of the other program(s) to which the referral is being made. The programs involved will determine which program will be the lead program for the case. All actions will be thoroughly coordinated and concurred upon throughout the enforcement process for multi-media cases.

Occasionally, a case may be returned to the regional office with a written explanation about why, after further review, enforcement action is not appropriate at the time and with a recommendation for future action. The need for the return of a case can be avoided by first conducting a thorough investigation, communicating thoroughly with the responsible party during the investigation, and providing the Compliance and Enforcement Section Chief with complete information about the case in the notice of violation concurrence email.

Note: The Solid Waste Management Program prefers the use of notice of violation concurrences by e-mail as they allow for faster review times and provide the Solid Waste Management Program staff the ability to address concerns prior to an enforcement referral packet being developed and forwarded to the Solid Waste Management Program.

Compliance and Enforcement staff will strive to update the regional offices regarding the status of enforcement cases by telephone, e-mail, enforcement tracking system, and copies of case correspondence. Regional office staff should always take the initiative to contact Compliance and Enforcement staff if they are uncertain about the status of a case and need to interact with the responsible party.

**Conference, Conciliation and Persuasion** – Conference, conciliation and persuasion may be continued by the Solid Waste Management Program if staff believe compliance can be achieved through means other than formal enforcement action. This may include more telephone calls, meetings, or voluntary settlements. Scrap tire dumps may require extensive conference, conciliation and persuasion due to the limited management options for scrap tires.

**Civil Penalty Assessment** - The purpose of a civil penalty assessment is to provide for fair and uniform determinations of penalties appropriate to the significance and duration of the violation(s). Compliance and Enforcement employees will, if appropriate, calculate civil penalties for a case when payment of penalties is requested, or the case is being referred to the Attorney General's Office. When calculating penalties, the economic benefit to the violator is also considered, as well as good-faith efforts to comply, willfulness, and history of noncompliance. The general process utilized for calculating civil penalties is discussed in Chapter 8. Discussions with regional office staff familiar with the case may be held in conjunction with developing a penalty calculation. Regional office input is encouraged and may be provided to the Compliance and Enforcement Section chief(s) via the, the notice of violation concurrence e-mail, the enforcement referral packet, or verbally by telephone or in person.

**Penalty Demand Letter** - The Solid Waste Management Program prefers to settle cases with the violator rather than referring the matter to the Attorney General's Office or the county prosecutor. An offer to negotiate in good faith to settle the case is tendered to the violator in a penalty demand letter, if requesting penalties for the violation, or a demand letter if no penalties are involved.

**Settlement Agreement** - A settlement agreement is a legally enforceable document that enables the Department, the Attorney General's Office, and the responsible party to resolve violations without filing suit and going to trial. Most settlement agreements contain paid, suspended, or stipulated penalties for noncompliance. The penalties are negotiated between the violator and the Department. In addition, a settlement may describe corrective actions the responsible party has agreed to perform and will routinely contain provisions for the responsible party to refrain from future violations of the Missouri Solid Waste Management Law and Regulations.

**Administrative Orders** – These consist of CDOs, abatement orders, and permit suspensions or revocations, and may be issued when corrective actions requested by a regional office have not been completed. Occasionally, suspension of a permit may be necessary until the violations have been abated, especially if the violations are severe, or continued operations cause an environmental threat or public nuisance or will interfere with corrective actions. All administrative orders are appealable, as discussed in the administrative enforcement general guidance.

**Permit Suspension** - An administrative order suspending a solid waste operating permit or a scrap tire processor permit may be issued for blatant and repeated violation(s) or if the facility consistently displays an unwillingness to comply. This type of order normally contains a compliance schedule for corrective actions needed before the permit can be reinstated. Scrap tire hauler permits may be suspended (or revoked) by a letter from the director of the Division of Environmental Quality.

**Permit Revocation** - An administrative order revoking a solid waste operating permit or a scrap tire processor permit may be issued in some situations. The decision to revoke a permit is made on a case-by-case basis.

**Administrative Penalties** – These may be assessed under certain conditions as provided for in the law and regulations. If a violator has not complied with regional efforts at CC&P, administrative penalties may be levied at the discretion of the department director.

**Administrative Penalty Assessment** - The purpose of an administrative penalty assessment is to provide for fair and uniform determinations of penalties appropriate to the nature and duration of the violation(s). In assessing penalties, the objectives of the Department are to provide a deterrent to noncompliance and to achieve swift resolution of environmental problems. Compliance and Enforcement staff calculate administrative penalties, however, administrative penalty calculations should be discussed with regional office employees who are familiar with the case. The Missouri Solid Waste Management Regulations, 10 CSR 80-2.040, contain information and requirements for administrative penalties.

**Enforcement Appeals Procedure** - §260.235, RSMo, provides that "any person aggrieved by a forfeiture of any financial assurance instrument, civil or administrative penalty, or denial, suspension or revocation of a permit required by §260.205 or a modification to a permit issued under §260.205 or any disapproval of the plan required by §260.220, may within 30 of notice of such action, request a hearing." The hearing is conducted according to the procedures set forth in Chapter 536, RSMo. The decision of the Department becomes final 30 days after delivery or registered mailing of a copy to the person. Such decisions may be appealed to the administrative hearing commission; however, such appeals are usually heard by the circuit court pursuant to §§536.100 through .140, RSMo. The MSWML&R contain no provisions for appealing suspensions or revocations of scrap tire processor permits. Therefore, a person wishing to appeal such suspension or revocation may do so according to the provisions of §536.150, RSMo.

**Tracking** – Regardless of the enforcement instrument or tool used to address documented violations, all cases will be tracked by Compliance and Enforcement staff until all requirements are met, penalties are paid, and compliance is achieved.

## 6.5 Water

The Water Pollution Control Program has successfully used an assortment of administrative actions to achieve compliance without costly and protracted litigation. Administrative actions are an important enforcement tool and usually precede litigation, our most compelling option in obtaining compliance.

The Missouri Clean Water Law, Chapter 644, RSMo, specifically outlines several options for administrative actions. The options historically provided under the law include: the issuance of abatement orders and abatement complaints (Section 644.056.3), issuance of permit denials (Section 644.051.3), and requiring the filing or posting of a bond as a condition of issuance of a construction permit (Section 644.051.12) or a variance (Section 644.061). More recently the Missouri Clean Water Law and regulations have added a provision for the assessment of administrative penalties (644.079).

**Abatement Orders and Permit Denials** are often issued as a joint action provisions, that allow the recipient of the administrative action to file an appeal within a 30 day period of issuance. The 30 day period, not clearly described in the Clean Water Law, is clearly defined in regulation 10 CSR 206.020(5) as being within 30 days of the parties' being served with the order or denial.

**Abatement Complaints** are rarely used because they require immediate use of a hearing unless there is an appeal.

**Abatement Orders** do not require a hearing and if an abatement order is appealed, the appeal is typically resolved by compliance with its terms or by an agreement between the party and the Department of Natural Resources and subsequently accepted by the Clean Water Commission.

**Abatement Orders on Consent** are negotiated abatement orders that are signed by the responsible party and the Water Protection Program. Abatement order on consent save time because, as part of the negotiation, the responsible party waives its right to appeal the order.

**Construction Bonds** are rarely used because special circumstances must exist. Due to financial factors, the bond is usually is a certificate of deposit rather than a true bond. This has provided resolution of some significant water pollution concerns.

**Permit Modifications** the Water Protection Program has modified National Pollutant Discharge Elimination System permits with special conditions or the permit may be issued for a shorter time period, with the regulated party informed that failure to comply with the permit, will result in enforcement action and the permit not being reissued.

**Administrative Penalties** authority is established in Section 644.076 and 10 CSR 20-3.010 establishes the procedures for assessment.

**Settlement Agreements** The most significant of the informal administrative actions relates to the Missouri Clean Water Commission Adopted Guidelines for responding to fish kills and short term discharges. Under these guidelines and in accordance with the Cooperative Agreement between Missouri Department of Natural Resources and Missouri Department of Conservation, the responsible party is presented with a proposal to settle the matter out of court. The department must offer to meet and discuss the terms of the agreement and negotiate in good faith. The resulting agreements are legally binding contracts and contain penalties and damages for the act and provide assurances the violations will not occur again. If the party refuses to enter into such an agreement a referral to the Attorney General's Office is sought. Referrals may be either by the department director or by the Clean Water Commission. Timeliness would dictate the method.

## **6.A Forms**

[Notice of Violation](#)

[Referral to Enforcement](#)

[Settlement Offer Letter Template](#)

[Administrative Order on Consent Template](#)

[News Release for Settlement Agreement Template](#)