



P O L I C Y

Section: Administration

**Subject: Enforcement Penalty for Self-Reported
Violations**

Approved By: DENR Secretary

Eff. Date: Sept 1, 1995
Revised: July 10, 2000
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Background

The former Department of Environment, Health, and Natural Resources (DEHNR), now the Department of Environment and Natural Resources (DENR), issued a policy statement, effective September 1, 1995, with the intent of enhancing environmental self-regulation and at the recommendation of the Pollution Prevention Advisory Committee. This statement is not intended nor should it be interpreted to be a rule as defined in the Administrative Procedures Act. It is a non-binding interpretive statement within the delegated enforcement authority of the Department that also sets forth criteria and guidelines to be used by the Department staff in settlement of enforcement cases. It does not confer any legal rights. This policy does not apply to resource damage assessments, costs associated with clean-up efforts, or costs incurred in response to an environmental emergency. The Department intends to evaluate result of its use over the year following adoption.

Purpose

- A. Environmental protection is enhanced if deficiencies are identified and corrected as soon as possible. The regulated community is often in the best position to

rapidly identify deficiencies, promptly correct them, and with suitable advice and approval, to develop and implement a corrective action plan to ensure that the “root cause” has been addressed and the public health and the environment are protected.

- B. Currently, some members of the regulated community may perceive that internal environmental audit reports and deficiencies identified in those reports may be used against them by regulatory agencies and third parties. As a result, some audit findings and recommendations may not be comprehensive, candidly reported, or performed at all.
- C. The Department believes that the public interest and environmental protection would be best served by providing meaningful incentives to the regulated community to promptly identify and correct deficiencies in environmental compliance and protection. This policy aims to maximize incentives for regulated persons or entities who make good faith efforts to comply with environmental regulations to use comprehensive and candid environmental audits; to disclose the results of those audits as fully as possible; and to remedy deficiencies discovered in such audits as promptly as is feasible and in a manner that protects human health and the environment.

Policy

A. Conditions for penalty waiver

Each division within the Department will not seek administrative or civil penalties, beyond the economic benefit of any noncompliance, or initiate criminal investigations, for deficiencies identified in audits or by compliance systems, when the division finds in its sole discretion that all of the following conditions are present:

1. The deficiency was not due to a lack of good faith efforts to understand or comply with applicable environmental, health or safety laws, or a lack of good faith efforts to correct past deficiencies.
2. The deficiency was not done knowingly and willfully.
3. The deficiency did not cause a significant harm to the environment or risk to public health.
4. The regulated person or entity voluntarily and promptly notifies the Department of the deficiency before the Department learns of it and completely discloses the deficiency to the Department in writing. (A disclosure is not considered to be “voluntary” if (i) that disclosure is required by law, regulation or permit and if (ii) self-monitoring for such deficiency is required of a facility or part of a facility),
5. The regulated person or entity, upon discovery of the deficiency, takes immediate and effective action under appropriate technical supervision to cease or remediate any continuing violation, avoid repeated violations, and remediate the deficiency or where appropriate, agrees in writing with the Department to take those steps needed to address the deficiency in a manner that is acceptable to the Department.

B. Conditions for penalty reduction

In those cases where any of the above conditions have not been met, the Department may consider the nature and extent of any internal audit or compliance system in deciding the appropriate enforcement response and may elect to mitigate any civil penalties based on a showing that one or more conditions have been met.

C. Recovery of economic benefit

In all cases, the Department may seek to recover any economic benefit afforded to the regulated person or entity from the deficiency in the same manner as if the Department undertook an enforcement action.

D. Burden of persuasion; documentation

In all cases, the regulated person or entity seeking penalty waiver or reduction must provide sufficient documentation to the Department to prove eligibility for the application of this policy, and must bear the burden of persuasion that waiver or reduction is appropriate and that there has been no economic benefit from the deficiency. The Department will not request copies of audit reports themselves in connection with administration of the policy. However, a regulated person or entity who cannot otherwise demonstrate the nature and extent of its audit practices may wish to produce audit reports voluntarily for that purpose.

