

Pima County
Department of Environmental Quality
Compliance and Enforcement
Overview

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Overview

- Compliance & Enforcement
- Types of Compliance Activities
- Inspections
- Inspection Process
- Enforcement Tools
- Enforcement Process

Compliance & Enforcement

- Compliance is the process of evaluating a facility to determine if they meet regulatory requirements
- Enforcement is the process of bringing a facility into compliance and deterring future violations
- Both compliance and enforcement ensure equitable treatment of the regulated community AND protection of public health and the environment

Types of Compliance Activities

- Inspections – physical evaluation at a facility
- Records review – evaluation of required records
- Reporting documents review – evaluation of required reports to be submitted by the facility (compliance certifications, permit deviations)

Types of Compliance Activities

- EPA terminology for compliance under the Clean Air Act:
 - Full Compliance Evaluation (FCE) a comprehensive evaluation of the compliance status of the facility – consists of both records review and inspection
 - Partial Compliance Evaluation (PCE) evaluates a specific aspect of a facility – consist of records review or inspection; may be for a specific emission unit or operation

Inspections

- Types of inspections
 - Compliance inspection – determine overall compliance
 - Complaint inspection – investigate compliance issues received from the public or facility's employees
 - Non-compliance inspection – determine if facility is now in compliance after a violation
 - Stack test – observe stack testing of emission units at a facility

Inspection Process

- Pre-inspection preparation by PDEQ staff
- Arrive at facility, present credentials (Pima County ID), make contact with facility representative
- Review “Notification of Inspection Rights”
- Conduct inspection
- Conduct exit interview identifying:
 - Records requested
 - Known deficiencies
 - Inspection report will be sent in 30 days

Inspection Process

- Unique issues encountered:
 - Confidential Business Information (CBI) – PDEQ evaluates the need for CBI and if information meets CBI criteria in statute. If CBI is obtained it is removed from the file and stored in the Enforcement Managers' office in a locked file cabinet. A note is made in the file of the existence of CBI
 - Denied entry – if staff is denied entry, they contact PDEQ management. An inspection warrant may be obtained pursuant to ARS § 49-488
 - Announced inspections – PDEQ generally conducts unannounced inspections. PDEQ may schedule an inspection if it is necessary to enter the site if the facility is unmanned, or schedule a test, or view a specific operation

Enforcement Tools

- Opportunity to Correct – minor deficiencies; non-appealable agency action
- Notice of Violation – substantial deficiencies or pattern of non-compliance; appealable agency action
- Order of Abatement – noncompliance requiring immediate action by the source to address substantial deficiencies; appealable agency action
- Injunctive Relief – order issued by a court

Notice of Violation

- Notice of Violations (NOV) alleges non-compliance
- NOVs contain:
 - The specific act constituting the violation
 - The requirement, permit condition or rule violated
 - How compliance can be achieved
 - Notice that the NOV may be appealed within 30 days
 - Offer to meet with PDEQ
- PDEQ requires response to an NOV

High Priority Violators

- EPA policy designates specific violations as “high priority”
- PDEQ must report high priority violators (HPV) to EPA
- Goal of federal policy is to ensure timely and appropriate enforcement nation wide
- EPA believes penalties are necessary for HPV
- EPA retains independent authority to pursue HPV if agency is “unable or unwilling” to adequately address violation

Enforcement Process

- Inspection/records review determines there is a deficiency
- PDEQ determines if the deficiency is significant or not
- Minor deficiencies are issued an Opportunity to Correct
- Significant deficiencies are issued a NOV

Enforcement Process

- NOV sent certified mail or hand delivered
- PDEQ may contact facility to notify them of NOV prior to issuing
- PDEQ discusses NOV with facility
- Facility responds to NOV
- PDEQ determines if response is adequate
- NOV is reviewed to determine if penalties are warranted (HPV requires penalties)

Enforcement Process

- PDEQ notifies facility if it is determined penalties are warranted
- PDEQ determines penalties based upon EPA civil penalty policy
- PDEQ notifies facility regarding penalty amount and provides facility with penalty worksheet, supporting documentation and Settlement Agreement for review
- Facility may request meeting or accept settlement offer, sign the agreement and remit penalty
- Settlement agreement is not filed in court per §49-471.01(16)

Enforcement Process

- Variables to enforcement process
 - Facility appeals NOV, matter goes to Pima County Air Quality Hearing Board
 - Facility and PDEQ can not agree on a penalty, a complaint is filed in court by PDEQ
 - EPA over files
 - Immediate health threat exists, PDEQ seeks a temporary restraining order from court

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