

Division of Compliance Assistance

Standards for Applying Enforcement Discretion During Compliance Assistance Activities

The Department for Environmental Protection's Division of Compliance Assistance was established to offer assistance to entities governed by Kentucky's environmental requirements. The Division will provide this assistance through multiple venues such as: telephone calls, on-site visits, publications, and training events. The Division may also refer clients to outside sources that can provide additional assistance.

The very need for a compliance assistance services program is founded on the fact that not all regulated entities are in compliance. As a result, the Division of Compliance Assistance expects to encounter violations while providing compliance assistance.

It is not the desire of the Department for Environmental Protection to penalize anyone because they have sought assistance from the Division of Compliance Assistance. However, it is the responsibility of the Department to verify that violations are properly addressed in a timely manner and to ensure the protection of Kentucky's citizens and environment.

It will be the practice of the Department for Environmental Protection to exercise enforcement discretion and provide a regulated entity with a reasonable opportunity to correct violations disclosed or identified during a compliance assistance activity. These violations will not be referred for enforcement action or civil penalties under the following conditions*:

1. The violation was not identified by the Cabinet as a result of conducting an inspection, investigation, or records review;
2. The Cabinet's discovery of the violation was not imminent;
3. The violation had not been included as part of a citizen suit filed under state or federal law;
4. The violation was not reported to the Cabinet by a third party complaint;
5. The violation was not reported to the Cabinet by an employee who is not authorized to speak on behalf of the facility;
6. The violation was not criminal in nature; or
7. The violation has not posed an imminent threat to human health or the environment.

* The Department retains its right to exercise its full enforcement discretion on a case-by-case basis taking into consideration all appropriate factors.

Division of Compliance Assistance

Procedures For Addressing Violations Identified During Compliance Assistance Activities

The Division of Compliance Assistance will apply the following procedures when exercising enforcement discretion and providing a regulated entity with a reasonable opportunity to correct eligible violations:

1. The violation will be documented as part of the compliance assistance report; however the Division will not issue a Notice of Violation to the violator unless otherwise required by federal law.
2. The Division may use enforcement discretion to address minor problems that can be resolved quickly without executing a compliance implementation plan. The Division will ensure that issues handled in this manner are clearly documented in the Division's compliance assistance tracking system and in TEMPO.
3. The Division will work with the regulated entity to develop a compliance implementation plan to address violations that are not minor or will require more than two weeks to correct. This plan will include a description of the violation, will specify the process that will be implemented by the regulated entity to correct the violation and its effects, and will set a reasonable timetable to complete implementation.
4. After the Division and responsible party agree to the contents of a compliance implementation plan, it will be signed and dated by the Compliance Assistance Division Director and an authorized representative of the regulated entity.
5. Absent additional information the violations contained in the executed compliance implementation plan will not be referred to the Division of Air Quality, Waste Management, or Water for enforcement action or potential penalties as long as the responsible party performs its obligations as specified in the plan.
6. If a regulated entity does not implement the compliance implementation plan as executed, the Compliance Assistance Division Director may refer the matter to the Division of Air Quality, Waste Management, or Water.
7. An executed compliance implementation plan may be modified if the Compliance Assistance Division Director the regulated entity agree that changes are warranted. Modified plans must ensure resolution of the violation is still performed in a timely and appropriate manner.
8. If Division of Compliance Assistance staff and the regulated entity are unable to agree on an appropriate compliance implementation plan, the violation may be referred to the programmatic division of jurisdiction at the discretion of the Compliance Assistance Division Director. Prior to referring the violation, the Compliance Assistance Division Director will make good faith efforts to work with the regulated entity to see if an agreement can be reached.
9. At times, a regulated entity may wish to have the resolution of their violations addressed through an Agreed Order or court action rather than through a compliance implementation plan. In addition, The Department may require that a compliance implementation plan requiring a timeline greater than 1 year be incorporated into an Agreed Order. In these instances, the Division of Compliance Assistance will refer the violation to the Division of Enforcement for action and oversight. The Division of Enforcement may use its discretion to integrate performance penalties into the Agreed Order to ensure that long-term actions will be completed as specified.

The compliance implementation plan creates no legal rights or legal obligations. After the compliance implementation plan is executed the Division upon discovery of additional information may refer the matter to the Division of Air Quality, Waste Management, or Water. Fulfillment of the compliance implementation plan does not guarantee compliance with KRS Chapters, 146, 151, and 224 and the regulations promulgated pursuant thereto.