




Division of Enforcement

Guidance Memorandum

Subject: Civil Enforcement Manual, Chapters 2 through 4

To: Central Office Enforcement Managers, Regional Enforcement Managers, and Regional Enforcement Specialists (electronic distribution)

From: Jefferson D. Reynolds, Director
Division of Enforcement 

Date: November 22, 2016

Copies: James J. Golden, Regional Directors, Division Directors, Central Office Compliance Managers, Angela Jenkins, Cindy Berndt (electronic distribution)

Summary:

This guidance updates and supersedes Chapters 2 through 4 of the Civil Enforcement Manual which covers general compliance and enforcement procedures, the timely and appropriate policy for processing cases, and procedures for calculating civil charges.

Public comment on these updates was accepted from August 22, 2016 through October 21, 2016. This guidance is effective as of December 1, 2016. This guidance supersedes the current Chapters 2 through 4 of the DEQ Civil Enforcement Manual (Virginia Regulatory Town Hall ID: CEM-03, CEM-04, CEM-06, CEM-07, CEM-07A, and CEM-07BMemo).

A summary of the changes are as follows:

Chapter 2: General Enforcement Procedures

1. Removed the compliance procedures from the Enforcement Manual and created a separate Compliance Manual which describes the process for the issuance of a Notice of Alleged Violation.
2. The Compliance Manual and boiler plate documents referenced therein will continue to be located on the DEQ's Division of Enforcement webpage until a more appropriate place is identified.

Chapter 3: Timely and Appropriate policy for non HPV/SNC cases

1. Chapter 3, last updated in 1999, covered the procedures to process timely and appropriate enforcement actions that were designated as High Priority Violations or Significant Non-compliance. These procedures have been removed. Staff should now simply refer to the US EPA policy.
2. A timely and appropriate procedure for all other cases (Non HPV/ Non SNC), including a timeline, has been created. In addition, this chapter has been revised to capture the prioritization of cases based on limited resources to coincide with the Agency's risk based inspection strategy.

Chapter 4: Calculating Civil Charges

1. In order to consolidate the guidance, areas such as "compliance history," "culpability," "economic benefit," are now located in one section to be applied to all media. This change reduced Chapter 4 by about thirty pages.
2. Clarifications for calculating violations of Article 11 of the Va. Code, involving discharges of oil to state waters, land, and storm drains have been added.
 - a. New worksheets were added to provide guidance on the assessment of civil charges in this program.
3. Potential for harm categories had minor variations from one program to the next. New language has been included for consistency across all programs.
4. Programs are now organized alphabetically for easier navigation instead of being grouped by simply Air, Land, and Water.
5. Due the increasing demands on the resource, and since civil charges in the Groundwater Withdrawal Permitting program have not been reevaluated since 1992, an adjustment was made based on inflation and the resource protection challenges.

Electronic Copy:

An electronic copy of this guidance is available on the Department's website at: [Virginia DEQ - Enforcement – Laws, Regulations, & Guidance](#).

Contact Information:

Please contact the appropriate media Central Office Enforcement Manager with any questions regarding the application of this guidance to a specific case.

Disclaimer:

Guidance documents set forth presumptive operating procedures. They do not establish or affect legal rights or obligations, do not establish a binding norm, and are not determinative of the issues addressed. Decisions in individual cases will be made by applying the laws, regulations, and policies of the Commonwealth to case-specific facts. *See* Va. Code § 2.2-4001.