

### CHAPTER 3 APPROPRIATE, CONSISTENT & TIMELY ENFORCEMENT

This chapter describes the enforcement procedures to help ensure an appropriate, timely, and consistent response to alleged noncompliance. The Department of Environmental Quality (DEQ) has a statewide presence with enforcement staff in the Richmond central office and in six regional offices. The Division of Enforcement collaborates with federal, state and local officials in a comprehensive strategy to thoroughly respond to alleged violations of environmental statutes, regulations, and permit requirements in a manner consistent with the [Agency's mission, values, and goals](#).

Through the use of administrative, civil, and criminal enforcement actions, the DEQ enforcement staff selects the most appropriate enforcement method for each action. Each enforcement action begins with an evaluation of the least adversarial method appropriate to the alleged violation. An appropriate enforcement action addresses each alleged violation and the enforcement response is proportionate to the alleged violation. An enforcement response that is appropriate to the alleged violation deters similar noncompliance by the Responsible Party and throughout the regulated community.

A consistent enforcement program means that members of the regulated community should expect similar responses to comparable alleged violations, given similar impacts on human health and the environment, regardless of where in the Commonwealth the violation occurs. The DEQ recognizes that each enforcement action is fact-specific, and it is unlikely that two enforcement actions will be entirely similar.<sup>1</sup> While consistency is an important factor in an enforcement program, it does not mean a strict adherence to past decisions that may no longer be appropriate for a variety of reasons. Active enforcement actions are closely monitored and coordinated with Responsible Parties to ensure a full return to compliance.

The DEQ chooses to resolve alleged noncompliance in most cases through an administrative process with the consent of the responsible party that will result in a judicially enforceable document referred to as a consent order. The DEQ strives to address and resolve all cases in a timely fashion, considering the nature of the case and the availability of resources. The Enforcement Response Timeline sets forth benchmarks for case processing across all programs, unless the case involves a High Priority Violation or an issue of Significant Noncompliance.<sup>2</sup> DEQ will endeavor to process all cases in accordance with the Enforcement Response Timeline; however, certain cases may take longer to resolve due to the complexity of

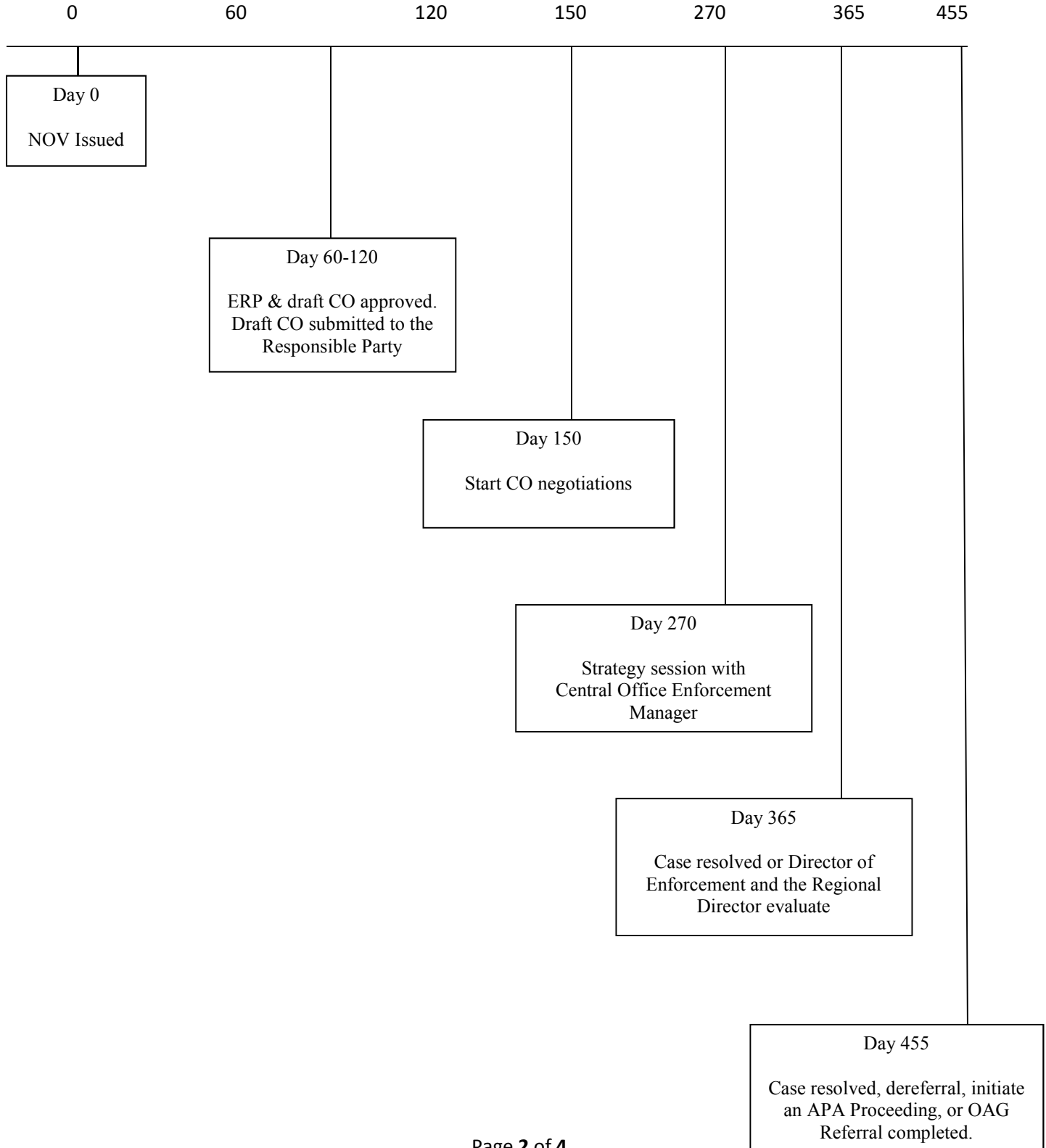
---

<sup>1</sup> Staff should reference various tools, e.g. Compliance Auditing System, or consult with appropriate program staff for assistance in determining the priority level for an enforcement action.

<sup>2</sup> The DEQ follows the policies of the [United States Environmental Protection Agency](#) to ensure timely and appropriate responses to alleged violations of environmental laws in those cases involving an issue of Significant Noncompliance (SNC) in Resource Conservation and Recovery Act (RCRA) and Clean Water Act (CWA), and a High Priority Violation (HPV) in the Clean Air Act (CAA). Each program has its own specific criteria for making this determination.

the issues involved. Emergency situations or cases presenting an imminent and substantial threat to human health or the environment should be processed on an expedited basis.

### Enforcement Response Timeline



#### Day 0

- Day zero represents the date the Notice of Violation (NOV) was issued and when the alleged violations were referred to the Division of Enforcement for resolution.

#### Day 60 – 120

- Day 60 through 120 represents the time allotted for enforcement staff to prepare and receive concurrence for the Enforcement Recommendation Plan (ERP) and a draft Consent Order (CO), and submit the Consent Order to the Responsible Party for review and comment.

#### Day 150

- It is expected that after giving the Responsible Party adequate time to review the draft consent order, negotiations should begin no later than day 150 ( 30 days after the draft consent order was issued). In the event negotiations are not actively underway, enforcement staff should remind the Responsible Party of other administrative options to resolve any impasse or to resolve the case.<sup>3</sup>

#### Day 270

- At day 270 (after four months of negotiation) enforcement staff schedules a strategy session with the Central Office Enforcement Manager to provide an update of the negotiations and discuss a plan/schedule for moving the case towards resolution.

#### Day 365

- A goal is to resolve all cases within 365 days of referral. If the case has not been resolved within 365 days of referral, the Director of Enforcement and the Regional Director should evaluate whether the enforcement action should be elevated to Central Office for resolution.

#### Day 455

- If a case has not been resolved by day 455, the Director of Enforcement and the Regional Director should evaluate whether the case specific facts warrant the start of an Administrative Process Act (APA) proceeding, seeking assistance from the United States Environmental Protection Agency or another federal agency, preparing a referral to the Office of the Attorney General (OAG), or administratively closing the case.

---

<sup>3</sup> The Responsible Party may request the [Process of Early Dispute Resolution](#) or proceed with an informal conference or consultation proceeding unless the Responsible Party and the agency consent to waive such a conference or proceeding to go directly to a formal hearing. [Va. Code § 2.2-4019\(A\)](#). See Chapter 4.

## Case Prioritization

Due to limited staffing resources and time available to meet the goals of the Enforcement Response Timeline, enforcement staff should prioritize their case load based on the severity of the violations and the extent of any potential or actual harm to human health and the environment as well the willfulness or culpability of the responsible party.<sup>4</sup> It is anticipated that enforcement staff will more effectively protect human health and the environment when those cases that have a serious potential or actual harm to human health the environment, and/or those cases with a high level of culpability, utilize the bulk of his or her time.

Low priority cases usually present little or no risk of potential or actual harm to human health or the environment or are minor deviations from regulatory requirements, and/or where the responsible party's culpability is low/moderate.

Medium priority cases usually present some risk of potential or actual harm to human health or the environment or are moderate deviations from regulatory requirements, and/or where the responsible party's culpability is moderate/serious.

High priority cases usually present a substantial risk of potential or actual harm to human health or the environment or are significant deviations from regulatory requirements, and/or where the responsible party's culpability is serious/high.<sup>5</sup>

**Case Priority Matrix**

Harm & Severity of the violation	<b>Serious</b>	<i>High</i>	<i>High</i>	<i>High</i>	<i>High</i>
	<b>Moderate</b>	<i>Medium</i>	<i>Medium</i>	<i>Medium</i>	<i>High</i>
	<b>Marginal</b>	<i>Low</i>	<i>Low</i>	<i>Medium</i>	<i>Medium</i>
		<b>Low</b>	<b>Moderate</b>	<b>Serious</b>	<b>High</b>
Degree of Culpability					

<sup>4</sup> For information on how to determine the severity of the violation or the extent of any potential or actual harm to the environment as well the willfulness or culpability of the responsible party please refer to Chapter Four of the Enforcement Manual.

<sup>5</sup> Cases that involve a High Priority Violation in the Air Program or are considered in Significant Noncompliance in the Hazardous Waste Program and Water Program are always classified as high priority cases and should be processed according to the US EPA Timely & Appropriate policy.