

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Serving Maine People & Protecting Their Environment

SMALL BUSINESS COMPLIANCE INCENTIVES POLICY

I. INTRODUCTION

This document is the Maine Department of Environmental Protection's ("Department") policy creating compliance incentives for small businesses ("Policy"). This Policy outlines the conditions under which the Department expects to exercise its enforcement discretion, in cooperation and consultation with the Attorney General, to forego civil penalties against small businesses that correct certain violations discovered for the first time while voluntarily participating in the Department's Small Business Environmental Assistance Program. (see section III, defining violations that are excluded from this policy)

The Policy applies to all media programs in order to encourage small businesses to look for whole-facility approaches to environmental compliance. By educating, assisting, and bringing whole-facilities into compliance under this Policy, the Department will further enhance the quality of our natural environment and protect human health and safety. This Policy has been developed pursuant to 38 M.R.S.A. § 343-C(1), is effective immediately, and supersedes the Department's existing small business compliance incentive policy, "Enforcement Response Guidance for Treatment of Information Concerning Violation of Air Emission Laws Obtained Through the Department's Small Business Technical Assistance Program" dated April 14, 1995.

II. APPLICABILITY AND OPERATION

This Policy applies to small businesses that voluntarily take the initiative to identify and correct violations of environmental requirements by requesting compliance assistance from the Department through its SBTAP.¹ Generally, a violation of the terms and conditions of any existing license, permit, administrative consent agreement, consent order, or compliance condition issued by a court, the Board of Environmental Protection, or Department will not be subject to this Policy.

Under the terms of this Policy, a small business is a person, corporation, partnership, or other entity that employs 100 or fewer individuals company-wide. Only small businesses that voluntarily participate in the Department's SBTAP, and correct violations, are eligible for consideration under the provisions of this Policy. To receive civil penalty immunity:

1. The small business must have made a good faith effort to comply with applicable environmental requirements as demonstrated by voluntary participation in the Department's SBTAP, and the violation(s) must be discovered for the first time during voluntary participation in the SBTAP; and,

¹ This Policy does not affect the Department's right to recover response and mitigation costs resulting from actions taken under federal and state laws requiring corrective action, such as the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; Resource Conservation and Recovery Act, 42 U.S.C. § 6973; Safe Drinking Water Act, 42 U.S.C. § 300i; Maine's Underground Oil Storage Facilities and Ground Water Protection laws, 38 M.R.S.A. §§ 568, 568-A, & 569-A; Maine's Tire Stockpile Abatement Law, 38 M.R.S.A. §§ 1316-1316-F; Maine's Hazardous Matter Control laws, 38 M.R.S.A. §§ 1317-1319-H & 1319-J; and, Maine's Uncontrolled Hazardous Substance Sites laws, 38 M.R.S.A. §§ 1366-1368.

2. This is the small business' first violation of the identified requirement and the violation(s) must not have previously been the subject of a warning letter, notice of violation, or other notice or response by the Department or any other governmental agency. *(If the business has been subject to environmental enforcement actions for other violations, the Department may determine that application of the Policy is inappropriate given the business' history even if this is the first violation of a particular requirement.);* and,
3. The business must correct the violation within the shortest practicable period of time, and in all cases, within the correction periods established in this Policy. Correcting the violation includes remediating any environmental harm associated with the violation and initiating measures to prevent similar violations in the future.

Maximum Correction Periods

- a) Small businesses may take up to 90 days from the date of discovering a violation in connection with the SBTAP to correct the violation.
- b) Violations that the Department determines cannot be corrected within 90 days may be eligible for up to an additional 90 day period, so long as the business enters into a written agreement with the Department that identifies the additional correction period and any additional steps to be undertaken by the business to achieve compliance.
- c) A correction period may be extended for an additional period of up to 180 days where the small business corrects the violation by implementing pollution prevention measures and only if the Department determines that an extension of time is necessary. Such an extension must be incorporated into a written agreement.

- Table 1 -						
Small Business Compliance Incentives Timeline						
³	90 days	³	90 days more	³	180 days more	³
Discovery of Violation	Correction of violation (90 days total)		Possible extension of correction period (180 days total) (written agreement required)			Possible extension of correction period where pollution prevention is employed as the remedy (360 days total) (written agreement required)

III. VIOLATIONS AND CIRCUMSTANCES EXCLUDED FROM THIS POLICY

This Policy will not apply to the following violations and circumstances:

1. A violation that has resulted in significant environmental harm, or risk to human health; or,
2. A violation that may present an imminent and substantial endangerment to human health or safety, or the environment; or,

3. A violation that presents a significant human health or safety, or environmental threat (i.e., certain violations involving hazardous or toxic substances); or,
4. A knowing, intentional, or reckless violation that may constitute criminal conduct; or,
5. A violation that was not inadvertent; or,
6. A violation that the small business has failed to promptly and responsibly correct.

IV. NONCOMPLIANCE WITH POLICY TERMS

To ensure that this Policy is equitably applied and does not compromise public health, safety, or the environment:

1. Violations detected through federal, state, or local enforcement inspections, or reported to the Department or United States Environmental Protection Agency as required by applicable regulations, licenses, or permits, remain fully enforceable.
2. The Department will apply enforcement response policies for violations discovered during voluntary participation in the Department's SBTAP that are not corrected within the correction periods specified in this Policy. Under such circumstances, the Department will use its discretion in bringing an enforcement action by evaluating a small business' good-faith in attempting to correct a violation. The penalty in such actions may include the time period before and during the correction period. A business's good-faith efforts to correct violations detected during compliance assistance will be considered as a mitigating factor in determining the appropriate enforcement response or penalty in a subsequent enforcement action. The Policy does not limit the Department's discretion to use information on violations revealed during compliance assistance as evidence in subsequent enforcement actions.
3. The Department's actions in providing compliance assistance is not a legal defense in any enforcement action.

V. FORCE AND EFFECT

This policy outlines certain conditions under which the Department expects to exercise its enforcement discretion in determining appropriate enforcement responses and civil settlement penalties for violations by small businesses. This policy is to be used for settlement purposes and is not intended for use in judicial proceedings. To the extent that this policy differs from the terms of applicable enforcement response policies under media-specific programs, this document supersedes those policies. The policies and procedures in this document are an exercise of the Department's enforcement discretion, do not constitute rule-making by the Department, and may not be relied on to create any right or benefits, substantive or procedural, enforceable at law or equity, by any person. The Department has the right to take action that varies from the policies and procedures contained in this document if the Commissioner considers such action appropriate to protect the public interest.

EFFECTIVE: January 1, 1996
Amended: February 14, 1996
Reviewed: October 2, 2017