

ENVIRONMENTAL QUALITY

CHAPTER 38

PUBLIC WATER AND SEWAGE SYSTEM REQUIREMENTS

Subchapter 6

Administrative Enforcement Procedures

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Subchapter 6

Administrative Enforcement Procedures

17.38.601 PURPOSE (1) This subchapter implements 75-6-103, MCA, which requires rules establishing administrative enforcement procedures and administrative penalties authorized under the Public Water Supply Act, Title 75, chapter 6, part 1, MCA. These rules are to be applied in accordance with the enforcement policies and procedures adopted by the department for water quality related laws and programs administered by the department. (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1101, 1998 MAR p. 2754, Eff. 10/9/98.)

17.38.602 DEFINITIONS Unless the context clearly states otherwise, the following definitions, in addition to those in 75-6-102, MCA, and ARM 17.38.202 apply throughout this subchapter.

(1) "Act" means Title 75, chapter 6, part 1, MCA.

(2) "Class I violation" means a violation of the act or regulations requiring an immediate action or response by a person because of the health risk involved. These violations include, but are not limited to, the following:

(a) failure to act in the best interest of public health in an emergency situation, including, but not limited to, disease outbreaks, spills, tampering and treatment facility failures;

(b) failure to provide continuous disinfection when continuous disinfection has been required by the department; and

(c) failure to respond to nitrate, total coliform, turbidity, or other MCL violations that pose an acute risk to public health, including check sampling, and public notification.

(3) "Class II violation" means any violation determined by the department not to be a Class I violation.

(4) "Consent order" means a legally binding agreement signed by a person and the director or designee, whereby correction of recorded violations may be scheduled and penalties may be established for failure to comply within the time scheduled for compliance. Penalties for recorded past violations may also be included in the agreement.

(5) "Designee" means an employee of the department who has been authorized by the director to issue orders under this subchapter.

(6) "Director" means the director of the department.

(7) "Fees" means the annual assessment of fees for public water supply systems and fees assessed for the review of plans and specifications submitted to the department, as provided by 75-6-108, MCA.

(8) "Final order" means an order of the department issued or in force pursuant to 75-6-109, MCA, the recipient of which has failed to exercise within 30 days its right to a hearing before the board or has waived such right, or has exercised such right to a hearing, following which the board has issued a final order either affirming or modifying the department's order.

(9) "Order" means a written direction issued by the department to a person to take an action or series of actions to comply with a provision of the act or rules implementing the act, within a time established under the order and which may include a penalty assessment.

(10) "Person" is defined in 75-6-102, MCA, and includes a certified operator or any authorized agents of or contractors to any entity defined as a person.

(11) "Violation letter" means a letter sent by the department pursuant to 75-6-110(2), MCA, to notify persons that they are in violation of the act, rules implementing the act, a condition of approval, or an order of the department, and to describe the actions and a timetable necessary to return to compliance. A violation letter does not constitute a final action by the department and does not create a right to a contested case appeal. (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1102, 1998 MAR p. 2754, Eff. 10/9/98; AMD, 2003 MAR p. 2291, Eff. 10/17/03.)

17.38.603 ENFORCEMENT PROCEDURES (1) Administrative enforcement under this subchapter encourages progressive enforcement from an initial enforcement response, such as a written or oral communication, through optional follow-up or additional enforcement actions. The initial administrative enforcement action taken will be determined according to the following criteria:

(a) unless the violation represents an imminent threat to human health, safety, or welfare or to the environment, or is a Class I violation, the department shall first send a violation letter, pursuant to 75-6-110(2), MCA, prior to initiating an administrative enforcement action under this rule;

(b) the department may respond to a Class I violation or a violation that represents an imminent threat to human health, safety, or welfare or to the environment, by issuing an order in lieu of a violation letter;

(c) if a person fails to comply with the compliance requirements or schedule specified in a violation letter, the department may respond by issuing an order.

(2) Orders under this subchapter may include, but are not limited to, the following requirements or conditions:

(a) that the existing public water supply or sewage system be repaired or modified;

(b) that treatment be installed or improved;

(c) that the source of water supply be changed;

- (d) that no additional service connections be made to the public water supply or sewage system;
- (e) that the public water supply or sewage system conduct monitoring and reporting;
- (f) that a report concerning the condition and operation of the public water supply or sewage system be submitted to the department;
- (g) that maps, design reports, plans and specifications required by ARM 17.38.101 be submitted to the department;
- (h) that corrective measures be implemented to eliminate a violation or exceedence of an MCL;
- (i) that any commencement or continued construction, alteration, extension or operation of the public water supply or sewage system be halted until all written approvals or fees required by statute or rule are obtained;
- (j) that activities be conducted to prevent or remove a source of pollution from a place that will cause pollution of a public water supply system or of state water used for domestic purposes;
- (k) that public notification be given as specified by rule or order; and
- (l) that the public water supply or sewage system retain a certified operator in accordance with Title 37, chapter 42, MCA.

(3) The provisions of this subchapter do not limit the authority of the department to bring a judicial action, which may include the assessment of penalties and injunctive relief, prior to initiating an administrative action under this subchapter. The judicial action may be criminal or civil. (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1103, 1998 MAR p. 2754, Eff. 10/9/98; AMD, 2003 MAR p. 2291, Eff. 10/17/03.)

Rules 17.38.604 and 17.38.605 reserved

17.38.606 ADMINISTRATIVE PENALTIES (REPEALED) (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1106, 1998 MAR p. 2754, Eff. 10/9/98; AMD, 2000 MAR p. 2698, Eff. 10/6/00; REP, 2006 MAR p. 1139, Eff. 5/5/06.)

17.38.607 SUSPENDED PENALTIES (1) Prior to issuing an NOV and order that is to include administrative penalties, the department director or designee may consider suspending a portion of the administrative penalties when deemed appropriate. In evaluating the appropriateness of suspended penalties, the department director or designee shall consider the following criteria:

- (a) timeliness in response to violation;
- (b) history of past violations;
- (c) cooperative efforts toward compliance;
- (d) severity of violation and relative risk to human health; and
- (e) other extenuating circumstances.

(2) Whenever the director or designee determines that suspended penalties are appropriate, then written documentation will be provided stating the basis for the determination using the criteria listed in (1)(a) through (e).

(3) Penalties suspended under this provision will be deemed waived if the violator complies with all provisions of the administrative order and remains in compliance for a period of one year from the date of compliance with the administrative order. (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1107, 1998 MAR p. 2754, Eff. 10/9/98.)

