

Compliance Assistance and Enforcement Guide



COLORADO
Department of Public
Health & Environment

Air Pollution Control Division
Stationary Sources Program

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DISCLAIMER:

This Compliance Assistance and Enforcement Guide summarizes certain enforcement-related rules, rights, procedures, policies, and requirements applicable to the Colorado Air Pollution Control Division, Stationary Sources Program. The summaries are not exhaustive, should not replace independent research of appropriate issues, and do not represent legal advice. The summaries herein cannot be used to establish new standards or limits, are not binding on any party, and cannot be relied upon to create any rights enforceable by any party. The Division reserves the right to change this Compliance Assistance and Enforcement Guide at any time without public notice.

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I. INTRODUCTION

The Colorado Department of Public Health and Environment (CDPHE) Air Pollution Control Division (Division) is responsible for enforcing the State's air pollution laws and regulations. In carrying out this responsibility, the Division works with regulated entities (Sources) in proactively addressing Sources' compliance needs. The Division also performs traditional enforcement services, including facility site inspections. Regardless of the activity in which the Division is involved, the mission remains:

“. . . to provide our customers with excellent air quality management services that when taken together contribute to: the protection of public health; the protection of ecosystems; and, continual improvement of the air quality related aesthetic values such as odors and visibility.”

The Division performs many activities designed to drive environmental compliance. For example, the Division issues facility emission permits, provides guidance on regulatory matters, and works with other teams in developing compliance tools and resources. With respect to the Division's enforcement functions, the Division may, depending upon the results of its investigations, initiate an enforcement action. Those enforcement actions often provide opportunities for informal or formal resolution, with most actions resolved informally.

This Compliance Assistance and Enforcement Guide addresses both the Division's preventative and enforcement functions. The guide also notes how Division personnel may be reached, to answer any more specific inquiries.

II. DEFINITIONS

For purposes of this Compliance Assistance and Enforcement Guide, the following terms have the meanings described below:

- a. Act: The term Act refers to the Colorado Air Pollution Prevention and Control Act, set forth at §§ 25-7-101 *et seq.*, C.R.S.
- b. AGO: The term AGO means the Colorado Attorney General's Office.
- c. AQCC: The term AQCC refers to the Colorado Air Quality Control Commission, created by § 25-7-104, C.R.S.
- d. APEN: The term APEN means an Air Pollution Emissions Notice, as set forth in AQCC Regulation Number 3, Part A § II.
- e. BEN: The term BEN refers to the EPA computer model by which economic benefit penalties are calculated.

- f. CAA: The term CAA means the Clean Air Act, as set forth in 42 U.S.C.A §§ 7401 *et seq.*
- g. CDPHE: The term CDPHE means the Colorado Department of Public Health and Environment.
- h. Civil Penalty or Administrative Penalty: The terms civil administrative penalty and administrative penalty refer to a penalty of the type contemplated by § 25-7-122(1)(b), C.R.S., which is separate from any Economic Benefit Penalty or other penalty.
- i. Compliance Advisory (CA): The terms Compliance Advisory or CA refer to a document through which the Division notifies a Source of alleged violations, per § 25-7-115, C.R.S., generally as a part of the Division's informal resolution process.
- j. Compliance Order: The term Compliance Order refers to a Division order issued pursuant to § 25-7-115(3), C.R.S, within the formal resolution process.
- k. Compliance Order on Consent (COC): The terms Compliance Order on Consent or COC mean a Consent Order, mutually agreed upon by the Division and a Source, as a resolution to an action initiated within either the informal or formal resolution processes.
- l. Department of Justice (DOJ): The terms Department of Justice or DOJ refer to the Federal agency that prosecutes certain enforcement actions.
- m. Division: Refers to the Colorado Department of Public Health and Environment, Air Pollution Control Division.
- n. Economic Benefit Penalty: An Economic Benefit Penalty or Noncompliance Penalty is a penalty of the type addressed in § 25-7-115(3)(b), C.R.S. An economic benefit penalty takes into direct consideration a Source's economic benefit(s) associated with noncompliance.
- o. Environmental Protection Agency or EPA: The terms Environmental Protection Agency or EPA mean the Federal agency created following the enactment of the National Environmental Policy Act of 1969. EPA is responsible for administering certain aspects of the Clean Air Act.
- p. Early Settlement Agreement (ESA): The terms Early Settlement Agreement or ESA mean the settlement document utilized by the Division and Source to resolve certain informally or formally initiated enforcement actions.
- q. High Priority Violation (HPV): The terms High Priority Violation or HPV refers to violation(s) that meet one or more of the specific criteria as provided

in EPA's 1999 policy, "The Timely and Appropriate Enforcement Response to High Priority Violations."

- r. Injunctive Relief: The term Injunctive Relief refers to judicial relief requiring a person or entity to perform, or refrain from, a specific activity.
- s. Noncompliance Penalty: The term Noncompliance Penalty, also referred to as an Economic Benefit Penalty, means a penalty that takes into direct consideration a Source's economic benefit(s) associated with noncompliance, as addressed in § 25-7-115(3)(b), C.R.S.
- t. No Further Action Letter (NFA): The term No Further Action letter refers to a document through which the Division notifies a Source that no further action will be taken as a result of an alleged violation.
- u. Notice of Violation (NOV): The terms Notice of Violation or NOV refer to a document through which the Division notifies a Source of alleged violations, per § 25-7-115, C.R.S., generally as part of the Division's formal resolution process.
- v. SEP: The term SEP means a supplemental environmental project, as defined and described in the CDPHE SEP Policy. SEPs may mitigate an agreed component of a penalty, as part of the resolution of an enforcement action.
- w. State Implementation Plan (SIP): SIPs are instruments, defined in 42 U.S.C.A §7409, through which States demonstrate compliance with the Clean Air Act and related EPA rules.
- x. Source: The term Source means a regulated entity subject to a Division and/or EPA enforcement action.
- y. State: The term State, unless indicated otherwise, refers to the State of Colorado.
- z. Verbal Warning: The term Verbal Warning means the oral communication of a noncompliance event, generally from a Division inspector to a Source representative, to resolve a compliance issue without the initiation of either an informal or formal enforcement action.
- aa. Warning Letter: The term Warning Letter means the written communication of a noncompliance event, generally from a Division inspector to a Source representative, to resolve a compliance issue without the initiation of either an informal or formal enforcement action. Warning letters may also be used by the Division to close out formal or informal enforcement actions when a unilateral or bilateral order or agreement proves unnecessary.

III. Voluntary Compliance Tools and Resources

The Division recognizes that an effective system for achieving compliance with air pollution rules and regulations involves both preventative compliance assistance efforts and enforcement. If enforcement issues are avoided at the outset, environmental impacts and associated costs are avoided. Compliance is the ultimate objective.

The resources outlined below represent some of the tools designed to help avoid violations of air pollution standards. Some of these tools are available directly through the Division, while others are provided more directly by other groups within CDPHE, including the Sustainability Program within the Division of Environmental Health and Sustainability (Sustainability Program). The Division often works with the Sustainability Program, and other groups within CDPHE, in taking the appropriate steps to facilitate compliance. Should you have any questions regarding the resources described below, please feel free to contact the individuals listed in this Enforcement and Compliance Assistance and Enforcement Guide or other appropriate CDPHE personnel. For a current list of CDPHE personnel, please see the CDPHE telephone directory.

A. Environmental Management System

The Sustainability Program, and periodically the Division, advises regulated entities as to the design, implementation, and benefits that may be derived from an effective environmental management system (EMS). An EMS varies in complexity and scope, but every EMS should address environmental compliance through a comprehensive, systems-focused approach to management.

An EMS can involve certification through the International Organization for Standardization (ISO) or similar organizations. However, certification is not required to have a successful EMS. Companies may elect to integrate limited components of an ISO system into an existing management system, or may pursue full ISO certification. For more information, please see the ISO website at: <http://www.iso.org/iso/home.html>.

B. Environmental Leadership Program

The Environmental Leadership Program (ELP) is a voluntary program which recognizes Colorado entities that go beyond environmental regulations and reach toward the goal of sustainability. The ELP consists of three levels: Bronze, Silver and Gold. There is no fee for participation and members can receive state incentives. For more information, visit: <http://www.colorado.gov/cs/Satellite/CDPHE-DEHS/CBON/1251583700741>.

C. Permitting Assistance

An effective air pollution compliance program demands, as a threshold matter, that Sources secure all required air pollution permits. Most permits issued by the Division fall under the categories of either Construction (Emission) Permits, or CAA Title V Operating Permits. Other available permits include general permits, portable source, and open burning permits. The process for securing the required permit(s) depends, in part, on the nature of the business operation. For example, Oil and Gas Construction Permits are issued through the Division's Oil and Gas Team. Please see <https://www.colorado.gov/pacific/cdphe/air-permits> for more information regarding the categories of permits available through the APCD, the processes for securing those permits, and technical guidance that may assist in developing permit applications.

The Division appreciates that environmental compliance can be achieved only when permit requirements are fully understood and integrated into company operations. For that reason, both Division permitting and enforcement personnel are available to answer questions regarding permits, recordkeeping and other requirements. The Division also partners with the Sustainability Program to work with Sources in developing environmental management systems designed to track and assess compliance with permit terms.

D. Small Business Assistance Program and Small Business Ombudsman

i. Small Business Assistance Program

Section 507 of the 1990 amendments to the Clean Air Act, 42 U.S.C. § 7661f, mandates that EPA and the States establish and maintain small business assistance programs. Among other objectives, these programs are designed to facilitate compliance with the Clean Air Act and its implementing regulations, while addressing some of the compliance burdens that might fall disproportionately on small businesses. The Colorado Small Business Assistance Program (SBAP) serves Colorado businesses with less than 100 employees that release less than 50 tons per year of any single regulated pollutant, and less than 75 tons per year of combined regulated pollutants. Additional requirements must also be satisfied.

Services and resources provided to eligible small businesses by the SBAP include the following:

- Outreach activities and workshops at which certain new regulatory requirements are discussed;
- A resource library that includes fact sheets, commonly utilized forms and checklists, and air pollution guidance documents;
- Free and confidential on-site visits; and
- Telephone assistance.

Additional information regarding the SBAP and the services available may be obtained on the CDPHE website. If you have questions regarding SBAP eligibility, or other more specific inquiries, please contact a SBAP representative or the Small Business Ombudsman.

ii. Small Business Ombudsman

The Small Business Ombudsman is located separate from the Air Pollution Control Division, in the non-regulatory Sustainability Program at the Department. The physical separation allows the position to assist as an impartial representative to help address small businesses concerns with the environmental regulatory programs. The Ombudsman is available to attend compliance and enforcement meetings as an advocate for the small business and to help ensure adequate explanations of the proceedings are provided. Additional services available include assistance with permitting delays, questions with billing, regulatory compliance, and the enforcement process or concerns with the environmental programs. Most of these services are provided by phone and email, however, on-site consultations at the business, or meetings at the Department are also available as requested by the small business.

E. Environmental Audits

Voluntary Self-Evaluations

An environmental audit is an essential tool with which a Source may determine the extent to which it is achieving regulatory compliance. One common type of audit is a voluntary self-evaluation or “self audit”. As with less formal evaluations, audits of this type are designed to assess compliance with applicable environmental laws. The benefits of this particular audit may include penalty immunity for certain discovered violations and protections covering certain information and testimony that might otherwise be subject to production. These potential benefits exist to “encourage the regulated community to voluntarily identify environmental concerns and to address them expeditiously without fear of enforcement action by regulatory agencies.” § 25-1-114.6, C.R.S.

A Source that has discovered violations of environmental laws may be eligible to receive penalty immunity for a disclosed violation, if the requirements of § 25-1-114.5 and § 25-1-114.6, C.R.S. have been satisfied. The requirements and considerations include:

- Whether the violations at issue are disclosed “voluntarily.” Here, the elements of a “voluntary” disclosure include:
 - The disclosure is made promptly after knowledge of the violation is obtained;
 - The violations were discovered in the context of a voluntary self-evaluation (the term “voluntary self evaluation” is defined in § 13-25-126.5, C.R.S.);
 - The Source pursues compliance with due diligence and corrects the noncompliance within two years of completion of the self evaluation; this time period may be extended in certain instances;
 - The Source cooperates with the CDPHE division or agency investigating the compliance issues; and
 - The Source is not otherwise required to disclose the violation to a CDPHE division or agency under a specific permit condition or order.
- Whether the Source provides information supporting its claim of penalty immunity at the time the disclosure is made to the CDPHE division or agency;

- Whether the violations disclosed are not part of a “pattern of continuous or repeated violations,” as defined in § 25-1-114.5, C.R.S.;
- Whether the violations disclosed create an imminent and substantial endangerment of or result in serious harm to public health and the environment; and
- Whether the violations disclosed conferred an unfair or excessive economic benefit on the Source.

A Source that believes that the issuance of penalty immunity may be appropriate may submit a request for penalty immunity. See CDPHE’s [self audit website](#) for information regarding the application submission and a list of appropriate CDPHE contacts.

F. Enforcement Questions

The Division partners with agencies including EPA and county inspection agencies in carrying out its enforcement-related activities. These enforcement activities include both on-site inspections and reviews of compliance records and other information. Many of these enforcement activities are performed within the Division’s Field Services and Oil and Gas work groups. The enforcement activities, including the facility inspections, must be conducted consistent with Division commitments to EPA. Those commitments include performing regular and comprehensive inspections.

Although inspection and related activities are core functions of the Division’s enforcement groups, these groups also facilitate compliance through other means. For example, Division enforcement personnel routinely respond to questions from Source representatives and consultants. Additionally, Division enforcement personnel are often involved in the development of guidance and outreach documents, through which compliance issues are proactively addressed. Compliance-related questions may be directed either to an individual inspector or to a Division Field Services or Oil and Gas enforcement manager.

IV. ENFORCEMENT ACTIONS

The Division also utilizes traditional enforcement resources and tools in addressing violations of environmental laws and standards within the regulated community. It is a primary objective of the Division to respond to noncompliance matters equitably and consistently. The Division will, therefore, give appropriate consideration to factors such as the impact of an air pollution violation, the Source’s compliance history, and the Source’s response to the non-compliance issues.

Enforcement actions typically involve the assessment of penalties, and may necessitate commitments from a Source as to future compliance-related measures. Division penalties are designed to serve as a deterrent to future noncompliance by the Source, and within the regulated community. Where appropriate, the penalties may also address any economic benefit that a Source has realized as a result of the noncompliance. Additionally, the Division may require that a Source commit to performing certain actions, such as securing a permit within a prescribed time period, to more fully address its noncompliance issues. Division enforcement actions,

through which these penalty and compliance requirements are addressed, generally follow the informal resolution track discussed below.

The Division utilizes the collective experience and judgment of its enforcement personnel in addressing noncompliance issues, and fashioning an appropriate resolution. Division enforcement personnel perform this work while remaining steadfastly committed to the Division's larger objectives of protecting public health and the environment. The Division also recognizes and operates consistent with its compliance-related commitments to its enforcement partners at EPA.

a. State Enforcement-Related Authorities

The Division pursues its investigations and enforcement actions under several authorities, including the following:

1. Information Gathering

Section 25-7-111, C.R.S. (Administration of air quality control programs) empowers the Division to “conduct or cause to be conducted studies and research,” to “collect data,” to “enter and inspect any property,” and to otherwise secure information consistent with the rule's requirements and restrictions.

2. Emergency Situations

Sections 25-7-112 and 25-7-113, C.R.S. address the Division's authority in emergency situations. Section 25-7-112, C.R.S. concerns endangerments to public health, while § 25-7-113, C.R.S. concerns endangerments to public welfare. These statutes require the Division, in prescribed situations, to issue a cease and desist order to a person, requiring the immediate discontinuance of the activity or discharge at issue.

3. Enforcement Actions

Section 25-7-115, C.R.S. (Enforcement) describes the Division's basis for, and procedures relating to, the enforcement of Colorado's air pollution laws and regulations. This statute provides that the Division shall perform investigations of potential air pollution violations. Depending upon the results of its investigations and other circumstances of a particular case, the Division is further required to provide notification of an alleged violation and confer with the source regarding the alleged violation. Finally, if the Division determines that a violation has occurred, the statute requires the Division to issue a compliance order and assess a penalty, if appropriate. Penalty assessments and specific enforcement procedures are discussed separately below.

4. Penalties

As noted above, the Division assesses penalties in appropriate enforcement actions. The penalty assessed in a particular case may be one or more of several types, and of varying amounts. The type and amount of penalty assessed depends upon the nature of the violation and the compliance objective underlying the

penalty assessment. Important sources of the Division's penalty issuance authority are summarized below.

i. Civil Penalties

Section 25-7-122, C.R.S. addresses most penalties assessed by the Division. The statute provides that any person who violates any of the listed categories of requirements "shall be subject to a civil penalty of not more than fifteen thousand dollars per day for each of such violation."

The Act also provides, however, that certain types of violations are subject to lesser penalties or additional pre-assessment requirements. For example, penalties assessed for a violation of § 25-7-114.1, C.R.S. (APEN violations) may not exceed \$500. Open burning penalties issued under § 25-7-123, C.R.S. may not exceed \$500 per day for the first violation, \$1,000 per day for the second violation, and \$1,500 per day for the third violation for noncommercial violations, and \$10,000 per day for commercial violations. Also, the Division may not assess a penalty for a violation of the AQCC Regulation Number 1 opacity standard for violations of the Fugitive Particulate provisions in § III.D., but may address related violations of a fugitive dust control plan. See Regulation Number 1, § III.D.I.e.

Section 25-7-122, C.R.S. also provides that the Division shall consider various factors in arriving at the appropriate penalty, and in determining whether a deferral or suspension of some or the entire penalty is appropriate. Aggravating factors in the statute include:

- The violator's compliance history
- Good faith efforts on behalf of the violator to comply
- Payment by the violator of penalties assessed for the same violation
- Duration of the violation
- Economic benefit of noncompliance to the violator
- Impact on, or threat to, the public health or welfare or the environment as a result of the violation
- Malfeasance
- Whether legal and factual theories were advanced for purposes of delay

§ 25-7-122(2)(a), C.R.S.

Additionally, § 25-7-122, C.R.S. provides that the Division shall consider the following circumstances in determining if a reduction or elimination of civil penalties is appropriate:

- The voluntary and complete disclosure by the violator of such violation in a timely fashion after discovery of the noncompliance
- Full and prompt cooperation by the violator following disclosure of the violation including, when appropriate, entering into a legally enforceable commitment to undertake compliance and remedial efforts
- The existence and scope of a regularized and comprehensive environmental compliance program or an environmental audit program
- Substantial economic impact of a penalty on the violator
- Nonfeasance
- Other mitigating factors

§ 25-7-122(2)(b), C.R.S.

ii. Civil Noncompliance/Economic Benefit Penalties

Additionally, § 25-7-115, C.R.S. describes the situations in which the Division shall issue a Noncompliance Penalty, also referred to as an Economic Benefit Penalty. Subsection (5) of the statute requires violators of § 120(a)(2)(A) of the Clean Air Act to calculate the noncompliance penalty within 45 days of the issuance of a Compliance Order. Section 120(a)(2)(A) of the Clean Air Act concerns the failure to adhere to certain Federal limitations, standards, schedules or other requirements. Section 25-7-115, C.R.S. also describes the manner by which the violator is required to determine the economic benefit associated with the act of noncompliance.

iii. Criminal Penalties

Section 25-7-122.1, C.R.S. provides that the Division, upon discovery of a knowing violation, may request either the AGO or the district attorney to pursue criminal penalties against the violator. Section 18-1-501, C.R.S. defines the term “knowingly” for purposes of this statute. The activities covered by this statute include knowing violations of an emission control regulation of the commission, a SIP or permit, certain false statements, representations or certifications, and specified acts constituting knowing endangerment of another person.

b. Federal and State Enforcement Authority

Federal and State Clean Air Act enforcement authority overlaps in some areas and is separate and distinct in others. The Federal Government, through EPA or DOJ, may enforce federal rules and regulations. The Federal Government may also enforce state

regulations that have been included in the SIP. Conversely, the State may enforce state air pollution statutes and regulations. The State may also enforce federal regulations that have been delegated to the State and are included in the State's SIP.

Enforcement actions initiated by the Federal Government are subject to different procedures, penalties, and other rules than are described in this Enforcement Guide. For example, the federal government may pursue civil penalties of up to \$37,500 per day for each violation, separate from its right to pursue Injunctive Relief.

The EPA has delegated to the State of Colorado the authority to enforce a wide range of Federal statutes and regulations; however, the EPA retains certain oversight authority over the State. For example, the EPA monitors the enforcement actions pursued by the State with respect to the alleged violations at issue, the timeliness of the resolution, the penalties assessed, and otherwise as to the adequacy of a settlement. Certain violations are classified as High Priority Violations (HPV). HPVs are subject to specific resolution deadlines based on the date of discovery. Matters not timely resolved, are noted by EPA on its enforcement "Watch List." For more information on HPV enforcement, see EPA's workbook "[The Timely and Appropriate \(T&A\) Enforcement Response to High Priority Violations \(HPVs\)](#)." Additionally, EPA makes enforcement information available to the public through its Enforcement and Compliance History Online (ECHO).

The EPA also retains over-filing authority. That is, in certain cases, the EPA may elect to take over a particular enforcement action and pursue resolution through the Federal system.

c. State Enforcement Procedures

1. Alternatives Available

Division enforcement actions may be resolved informally or formally, or in some combination thereof, at the Division's discretion. The Division's informal resolution process is more expedited than the formal process, and typically results in the assessment of lesser penalties. The formal process, on the other hand, generally utilizes more of the legal mechanisms afforded by § 25-7-115, C.R.S. including the involvement of the AQCC and a Source's exercise of certain statutory appeal rights. Although the Division attempts to resolve the majority of enforcement actions informally, the formal process remains available to all sources. Both processes, and the documents utilized in each, are summarized below.

2. Informal Process: The Division provides an opportunity for the informal resolution of enforcement actions through the following steps and procedures:

i. **Verbal and Written Warnings**

In appropriate situations, and with supervisor approval, Division inspectors or other personnel may issue verbal or written warnings to Sources found to be out of compliance. The Division has discretion to

consider the issuance of a warning in situations involving a relatively minor violation that has been committed and resolved by a source without a significant history of similar noncompliance.

ii. Compliance Advisory Letter

The Division issues a Compliance Advisory letter to communicate alleged violations to a Source. A Compliance Advisory letter will contain background information including the name and location of the Source, the equipment and permit(s) at issue, and the date(s) of any inspection(s) preceding the enforcement action. The letter will also identify any alleged violations discovered by the Division and may include other issues requiring further investigation. Finally, the letter invites the Source to respond to Division allegations, submit additional information to a Division inspector, and schedule a meeting to discuss the alleged violations.

iii. Compliance Advisory Meeting

At the Compliance Advisory meeting, Source and Division personnel discuss the alleged violations in dispute, and any other relevant matters. Although this meeting is informal, Source representatives may include consultants and/or legal counsel, at the Source's election. The Division will be represented by its enforcement personnel and, in appropriate cases, by an attorney from the AGO. If a Source has questions regarding the Division's anticipated representation at a Compliance Advisory meeting, or otherwise in relation to the meeting, those questions may be directed to the Division inspector, Enforcement Supervisor, or Compliance Manager.

iv. Penalty Calculations:

Following the evaluation and determination of the specific alleged violations at issue, the Division performs a civil penalty calculation. The Division assesses penalties consistent with the factors and limitations contained in § 25-7-122, C.R.S. First, the Division arrives at an appropriate base penalty, considering the size of the Source and its enforcement history. Next, the Division increases the base penalty through an application of the § 25-7-122 aggravating factors, including the duration of the violations. Finally, the Division reduces the total penalty after considering § 25-7-122 mitigating factors, including the Source's voluntary cooperation in the informal resolution process. The remaining penalty must be less than the statutory penalty limitation of \$15,000 per day per violation.

Section 25-7-115, C.R.S. and EPA enforcement policies require the Division to assess noncompliance penalties in certain cases (e.g., HPV cases). In arriving at the appropriate noncompliance penalty, the Division will request that the Source perform the EPA-approved BEN analysis. For more information on EPA's BEN model, see EPA's [Penalty and Financial](#)

[Models website](#). The Division reviews the analysis and supporting documentation and either approves and incorporates the resulting penalty into the settlement document or denies the analysis and offers further guidance.

v. Enforcement Action Resolution

Following communications with the Source, the Division evaluates the facts and determines which, if any, violations to pursue. The Division then prepares a written settlement proposal that outlines the specific violations alleged, any requirements to return to compliance, and any associated penalty. The settlement proposal will generally take one of two forms. If the enforcement action involves relatively few, minor violations, each of which has been resolved, the Division may utilize an Early Settlement Agreement (ESA). In other matters that warrant more detailed documentation, the Division utilizes a Compliance Order on Consent (COC) (i.e., a COC is always required for HPV cases). Alternatively, if the Division determines that an enforcement action is appropriately resolved without the issuance of any penalty or future compliance requirements, it may elect to issue a No Further Action (NFA) Letter.

In delivering the settlement proposal to a Source, the Division will specify the duration of the settlement offer. If the Source does not accept the Division's settlement offer within the time period described by signing the settlement document provided by the Division, the offer is subject to potential adjustment. However, if the Source requires additional time to evaluate the settlement proposal, the Division may extend the duration of the offer for an appropriate period of time. Any such extension must be documented by the Division, in writing. In addressing any request for an extension, the Division will consider any case resolution deadlines and other appropriate factors. If a settlement cannot be reached, the Division will issue a unilateral Compliance Order (CO). The CO will also remind the Source of its § 25-7-115, C.R.S. appeal rights. It should be noted that the penalty assessment reflected in the CO, while consistent with § 25-7-122, C.R.S., will likely exceed any penalty assessment contained in an informal settlement proposal.

vi. Supplemental Environmental Projects

A Source may propose a Supplemental Environmental Project (SEP) as a means of mitigating some of the penalty assessed as part of settling an enforcement action. SEPs are projects undertaken by a Source without prior commitment or obligation. The project must, among other requirements, benefit either the public health or the environment beyond what is required of the Source by law. SEPs are either First Party, sometimes referred to as Internal SEPs, or Third-Party SEPs. A First-Party SEP refers to a project completed by a Source within its own facilities. These SEPs are less common, and additional requirements

apply. A Third-Party SEP refers to one in which the Source makes a donation to a third party (typically a local government or nonprofit organization) or performs the SEP for the benefit of a third party.

If a Source elects to propose a SEP, it will be asked to complete a Supplemental Environmental Projects (SEPs) Proposal/Agreement form. The Division will review the SEP applications submitted by a Source and, at its discretion, approve or deny the application. A SEP application is not considered approved unless and until a completed SEP Application/Agreement has been signed by the Source and the Division.

With respect to penalty mitigation, SEPs may not mitigate more than 80% of a penalty. Also, in cases in which the Source derives a benefit from the performance of the SEP, it will be required to expend an amount greater than the amount of the penalty being mitigated. Additionally, if a SEP is not completed satisfactorily, any remaining unmitigated portion of the penalty must be paid to CDPHE as an administrative penalty.

Additional information on SEP restrictions and requirements may be found on the CDPHE [SEP website](#).

3. Immediate Notice of Violation (INOV):

Division inspectors may also issue an Immediate Notice of Violation (INOV) for certain violations of AQCC Regulation No. 7. Specifically, Division inspectors will issue INOVs for open thief hatches and/or visible emissions from flares. The INOV process includes the following steps:

i. Issuance of INOV

A Division inspector may issue an INOV upon discovering an open thief hatch and/or visible emissions from a flare. The INOV gives specific details of the observed violation(s) and requests that the Source contact the inspector with a response and schedule an INOV conference within 30 days of issuance.

ii. INOV Meeting

At the INOV meeting, Source and Division personnel discuss the alleged violations in dispute, and any other relevant matters. Source representatives may include consultants and/or legal counsel, at the Source's election. The Division will be represented by its enforcement personnel and, in appropriate cases, by an attorney from the AGO. If a Source has questions regarding the Division's anticipated representation at an INOV meeting, or otherwise in relation to the meeting, those questions may be directed to the Division inspector, Enforcement Supervisor, or Compliance Manager.

iii. Penalty Calculation

In INOV cases, Division penalty calculation proceeds in a manner similar to that discussed above in 2.iv.

iv. Enforcement Action Resolution

Resolution of INOV cases proceeds in a manner similar to that discussed above in 2.v.

4. Formal Process:

The Division's formal enforcement action resolution process under § 25-7-115, C.R.S includes the following steps:

i. Issuance of Notice of Violation

The Division issues a Notice of Violation (NOV) to communicate alleged violations to a Source. As with the CA Letter, the NOV summarizes background information and lists the specific alleged violations at issue. The NOV will also establish the date and time for the NOV conference, described below.

ii. Notice of Violation Conference

At the NOV conference, the Division gathers and discusses the data, views, and arguments relating to the alleged violations as presented by the Source. The Division generally records these conferences. The Source may, at its election, also provide certain information to the Division in advance of the NOV conference. At the conclusion of the NOV conference, the Division will advise the Source of its appeal rights under § 25-7-115., C.R.S.

The Division is typically represented at an NOV conference by the inspector(s), an Enforcement Supervisor, the Division's Compliance Manager, and an attorney from the AGO. Questions regarding the Division's anticipated representation at an NOV conference, or otherwise in relation to the conference, may be directed to the Division inspector, Enforcement Supervisor, or Compliance Manager.

iii. Issuance of Compliance Order

After the NOV conference, the Division will consider the information presented to it. If the parties cannot reach a settlement of the alleged violations, the Division will then address these violations, if appropriate, through the issuance of a Compliance Order. The Compliance Order will describe the violations, as determined by the Division, and provide the corresponding penalty and any compliance requirements. The Compliance Order will also remind the Source of its § 25-7-115, C.R.S. appeal rights. It should be noted that the penalty assessment reflected in the Compliance Order, while consistent with § 25-7-122, C.R.S., will likely exceed any penalty assessment contained in an informal settlement proposal.

iv. Opportunity for Appeal

Section 25-7-115(4)(a)(I), C.R.S. provides that within 20 days after receipt of a Compliance Order, a Source may appeal the Order by filing a written petition with the AQCC. Hearings before the AQCC are governed by the AQCC Procedural Rules located at 5 CCR 1001-1.

v. Additional Procedural Options

As noted above, the Division may also address certain non-compliance matters through the Colorado District Courts, or by referring a matter to federal authorities. Additionally, the Division may respond to evidence of a knowing violation by initiating a criminal investigation or action consistent with § 25-7-122.1, C.R.S.