

Colorado Water Quality Control Division

**WATER QUALITY
ENFORCEMENT**

Policy No: WQE-9
Initiated By: _____
Approved By: David H. [Signature]
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Policies & Procedures

PUBLIC NOTIFICATION ON

ADMINISTRATIVE ENFORCEMENT ACTIONS

Purpose:

This policy is to clarify the Division process for public involvement in administrative enforcement actions.

The formal enforcement process for violation of "the Colorado Water Quality Control Act, C.R.S. 25-8-101 (1989) or any order, permit or control regulation issued under that Act consists of two primary phases. The first phase focuses on the validity of the "alleged" violations by the discharger and the second phase focuses on the appropriate penalty for the violations established in the first phase. Each phase has procedural rules to be followed for formal hearings and appeals. This policy will not address those procedures as the rules and regulations speak for themselves. This policy will therefore primarily address procedures that the Division will follow for notification so as to allow public comment and public participation in the process, as may be allowed by state law. An added benefit resulting from this process will be that comments/concerns of interested parties may be factored into final resolutions.

An informal but very critical part in the process is that of settlement negotiations. It is during this informal process that historically a majority of all enforcement actions are resolved without proceeding to formal hearing. This policy will therefore also address this process.

Policy/
Procedure:

Division Issuance of an Enforcement Action- Phase 1

At the time of Division issuance of an enforcement action pursuant to Sections 602 (Notice of Alleged Violations), 605 (Cease and Desist Orders) and 606 (Clean-up Orders), a Public Notice ("PN") of the action will be given in the Division monthly newsletter in compliance with Section 25-8-302. This publication will constitute commencement of a 30 day public comment period. Copies of the actual enforcement action will be available upon written request to the Division, at a cost per page as specified in Department policy, and available at the Division for inspection. Comments received will be considered by the Division and will alert the Division to third party interest.

It is important to understand that the preceding PN does not affect the statutory time frames provided or required relative to the recipient of the enforcement action.

Settlement Negotiations- Phase 2a

Settlement negotiations will continue to be a central practice in resolving enforcement actions. The Division, however, will attempt to be aware of third parties that may be interested in specific enforcement actions, as will occur through comments during the initial Public Notice. Public response to public noticed Division actions will be one central means by which the Division may gain that knowledge. Where the Division is aware of a third party, the Division at a minimum will attempt to meet with the third party to understand their concerns and issues so that the Division may consider them in settlement negotiations. It may be possible in some situations for the third party to participate directly in settlement negotiations, thus minimizing the likelihood of a request for judicial review of a final agency action. Should the subject of the Division enforcement action be opposed to direct third party participation in settlement negotiations, the Division will honor this position but with the understanding that the likelihood of successful settlement without judicial review is greatly reduced.

Imposition of Penalties- Phase 2b

Pursuant to section 25-8-608(2), "...penalties shall be determined by the executive director or his designee...". Imposition of penalty occurs when the Executive Director of the CDPHE or their designee signs the Order for Civil Penalty. Accompanying this document and signed by the Director of WQCD is either 1) a Settlement Agreement and Stipulated Order which has been signed by the discharger or their legal representative, or 2) a Petition for Imposition of Civil Penalties where agreement cannot be reached.

At the time the WQCD Director signs the Settlement Agreement or Petition for Imposition of Civil Penalties, a 30 day PN of the action will be given in a newspaper of statewide circulation. The PN will provide a concise summary of the action, with the actual document being available upon written request to the Division, at a cost per page as specified in Department policy, and also available at the Division for inspection. If comments are received, the Division will consider them and recommend a final action to the Executive Director of the CDPHE or their designee. Upon final action by the Executive Director or the designee, notice of the action will be provided to third parties who participated in the process. Such notification will provide timely notification for the parties to seek such administrative reconsideration of the final agency action, as may be provided at 25-8-403 or elsewhere in law.

This policy does not effect any rights conferred under the citizen suit or other provisions of the Clean Water Act. However, this policy is subject to all relevant federal and state statutes, rules and regulations. This policy is also subject to all rules of confidentiality.