From: Sygo, Jim (DEQ)
Sent: Thursday, November 12, 2015 10:35 AM
To: Hess, Elmer (OAG)
Cc: Mikulec, Allison (OAG)
Subject: Requested Information for Drinking Water Audit
Attachments: Flint LCR 11_9_15.pdf; Compliance and Enforcement Policy 04-003 Final (10-12-15).pdf

Elmer and Allison,
In response to our meeting today I am providing the following information:

I have attached the letter sent to the City of Flint regarding their certifications of the Tier 1 sites.
I have also attached our current Compliance and Enforcement Policy. This copy is the final copy but a signed copy is on our Intranet.

Instructions to residents at Flint. Contact Stephen Busch 517-643-2314.
First 6 month sample- population used, sample selected, results received, final report prepared. Contact Mike Prysbe 517-290-8817
Second 6 month sample- same thing. Contact Mike Prysbe 517-290-8817
Virginia Tech results. Marc Edwards Can be contacted through Virginia Tech.
Hurley detailed results. Contact Linda Dykema 617-335-8566

Other phone numbers requeste
Liane Shekter-Smith 517-284-6543
Richard Benzie 517-284-6512

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING DISTRICT OFFICE

RICK SNYDER
GOVERNOR

DAN WYANT
DIRECTOR

November 9, 2015

Mr. Michael Glasgow
Utilities Administrator
City of Flint
4500 North Dort Highway
Flint, Michigan 48505

WSSN: #2310

Dear Mr. Glasgow:

SUBJECT: Water Supply – City of Flint (City) – Compliance Communication
Lead and Copper Rule Compliance Sampling Sites

The City community water system is subject to the requirements of the Michigan Safe Drinking Water Act, 1976 Public Act 399, as amended (Act 399). According to Department of Environmental Quality (DEQ) records, City reports submitted to the DEQ regarding Lead and Copper Rule (LCR) compliance monitoring information have been certified by the City that all LCR compliance monitoring since 1992 has been conducted at sampling sites meeting the Tier 1 criteria listed under subrule 1c of administrative rule 710a (R325.10710a).

The City's recent efforts to electronically convert customer service line information and statements by some of the City's certified operators conflict with the information provided in the City's LCR compliance monitoring certification reports.

Therefore, the DEQ is hereby requesting the City provide additional information and documentation regarding all 324 historic LCR compliance sampling sites.

As of November 3, 2015, the City's electronic database of customer service connections listed 10,895 records of converted customer service connection index cards. The City has recently indicated it has a total of 29,072 customer service connections, leaving approximately 18,177 records left to be converted. These digital records include a listing of the service line material.

The DEQ has obtained a copy of these 10,895 digital records and cross referenced them with the addresses for the City's 324 historic LCR compliance monitoring sites. However, only 46 of the 324 sites were able to be matched at the current time. Of these 46 sites, only 6 sites contained information confirming the Tier 1 site criteria based on having lead service line materials. 14 sites were listed as having no available information (n/a), and require additional documentation to justify being designated as a Tier 1 sample site having a lead service line. The remaining 26 cross referenced sites were listed as having copper service line materials which directly conflicts with the City's LCR reports certifying these sites as Tier 1 based on the criteria of having a lead service line. The City needs to provide additional information to the DEQ demonstrating these sites meet the Tier 1 site criteria or we will assume they do not.

The City's remaining 278 historic LCR compliance sampling sites must also be reviewed and will require additional documentation to justify being designated as Tier 1 sample sites.

Our office has provided the enclosed table that lists all 324 of the City's historic LCR compliance monitoring sites, when each site was utilized, the City's certification information for each site, and information cross referenced from the City's customer service line database. The City can use the far right column in this table, labeled *Justification of Lead Service Line and Tier 1 Criteria*, to summarize the City's justification for certifying these sites as Tier 1 and having a lead service line. Any supporting documentation regarding the justification for each site needs to be provided as separate attachments.

As a reminder, in accordance with subrule 1 of administrative rule 710a (R325.10710a), by January 1, 1992, the City was to have completed a materials evaluation of its distribution system to identify a pool of targeted sampling sites from which all first draw samples are collected. This evaluation was required to include information from:

- Special Monitoring for Corrosivity Characteristics

- All plumbing codes, permits, and records in the files of the building department or departments that indicate the plumbing materials installed within publically and privately owned structures connected to the water distribution system.

- All inspections and records of the distribution system indicating material composition of customer service connections.

- Water quality information that indicates locations which may be particularly susceptible to high lead or copper concentrations.

The completed table and all supporting documentation must be provided to our office as soon as possible, but by no later than December 30, 2015, prior to the next LCR compliance monitoring period.

Please contact me at 517-290-8817 or prysbym@michigan.gov at your earliest convenience to discuss this matter in more detail.

Sincerely,

Michael Prysby

Michael F. Prysby, P.E.
District Engineer
Lansing District Office
Office of Drinking Water and
Municipal Assistance

cc: Mr. Robert Bisnick, City of Flint
Mr. Brent Wright, City of Flint
Mr. Howard Kroft, City of Flint
Ms. Natasha Henderson, City of Flint
Mr. Jim Sygo, Chief Deputy Director, DEQ
Mr. Stephen Busch, DEQ
Mr. Adam Rosenthal, DEQ

DEPARTMENT OF ENVIRONMENTAL QUALITY
POLICY AND PROCEDURE

Subject: Compliance and Enforcement   Number: 04-003

Original Effective Date: May 30, 2001
Revised Date: October 12, 2015
Reformatted Date:

Category: ☒ Internal/Administrative ☐ External/Non-Interpretive ☐ External/Interpretive
Type: ☐ Policy ☐ Procedure ☒ Policy and Procedure

A Department of Environmental Quality (DEQ) Policy and Procedure cannot establish regulatory requirements for parties outside of the DEQ. This document provides direction to DEQ staff regarding the implementation of rules and laws administered by the DEQ. It is merely explanatory; does not affect the rights of or procedures and practices available to the public; and does not have the force and effect of law. DEQ staff shall follow the directions contained in this document.

ISSUE:

An important tool the DEQ has in meeting its mission is its compliance monitoring and enforcement activities. These activities include on-site inspections; off-site observations or surveillance; review and analysis of records self-reported, supplied, or maintained by regulated entities; documenting information and compliance determinations; reporting; monitoring (i.e., sampling and analysis); informal and formal compliance notifications; and escalated enforcement activities. The purpose of this policy and procedure is to assure that the DEQ effectively identifies and investigates potential violations of the statutes, rules, permits, licenses, and judicial and administrative orders that it administers, and that the identified violations are responded to in a timely, consistent, and effective manner.

The DEQ has three divisions and three offices (hereinafter “divisions”) that have regulatory program responsibilities. These divisions administer numerous state and delegated federal environmental programs that require ongoing compliance and enforcement activities and, on occasion, the initiation of escalated enforcement actions.

This policy and procedure establishes some basic principles applicable to the DEQ’s compliance and enforcement programs. It also provides guidance and direction for divisions in key areas to have consistent departmental processes and procedures to ensure a reliable, predictable, and effective compliance and enforcement program.

It is important to view enforcement as one of the tools available to achieve compliance. Enforcement in and of itself is not a goal – compliance is the goal.

POLICY:

1. **<u>Compliance and enforcement actions must be timely</u>:** To be most effective, an action must occur promptly after the violation takes place or is discovered. A timely action not only sends a clear message to violators, but also limits the environmental harm that a given violation may cause.

2. **<u>Compliance and enforcement actions must be appropriate to the violations alleged</u>:** In deciding which compliance and enforcement action is the most appropriate response for a violation, consideration needs to be given to a number of factors. These factors include, but are not limited to, the violation's affect on program integrity; commitments associated with programs authorized or delegated by the federal government; the severity and duration of the violation; any public health risk or resource damage caused by the violation; the compliance history of the violator; and the willfulness, negligence, and recalcitrance of the violator.

3. **<u>Compliance and enforcement actions must be consistent for like violations</u>:** Compliance and enforcement actions of the DEQ must not be construed as arbitrary, capricious, or as an abuse of discretion. To this end, it is important that compliance and enforcement actions be consistent and fair. Like violations of a given statute, rule, permit, or license should end in a similar result where the circumstances are the same or comparable. However, consistency does not mean identical and often no two cases are exactly alike.

   A consistent compliance and enforcement program provides the regulated community with the benefit of knowing what to expect from the DEQ when violations occur. A consistent approach also ensures a level playing field for all regulated entities. Cases requiring an action that differs, or appears to differ, from past actions for like or similar violations need to be documented with material facts that account for the difference in the level of action taken. In most instances, the procedures set forth below will be followed; however, it is impossible to articulate every reason or possibility where it may be appropriate to use a different procedure that is within the scope of the DEQ's discretion.

4. **<u>Compliance and enforcement actions in response to repeat or continuing violations must be progressive in nature</u>:** To ensure that violations are resolved as promptly and efficiently as possible, the DEQ will use a progressive compliance program. Failure to comply with previous compliance and enforcement actions must subject the violator to a progressively stronger enforcement response.

5. **<u>Compliance and enforcement actions must be responsive to division program priorities and needs</u>:** Compliance and enforcement actions should ensure that program and regulatory responsibilities are successfully carried out. Compliance and enforcement should not be considered a program unto itself, but should reflect larger program priorities that are set forth in annual work plans, or otherwise identified by the division.

<u>COMPLIANCE ASSISTANCE</u>:

Although this policy and procedure sets standards for carrying out compliance and enforcement responsibilities, it does not lessen each division's responsibility to foster compliance through compliance assistance activities. The DEQ believes that compliance assistance, compliance evaluation, and enforcement have a justified place in DEQ efforts. By coordinating compliance assistance with compliance monitoring and enforcement, the goal of protecting and enhancing Michigan's environmental quality and public health should be met.

Compliance assistance is information or assistance provided by DEQ staff to help the regulated community comply with legally mandated environmental regulations. The information or assistance may be in the form of workshops, webinars, videos, publications, compliance evaluations, phone calls, written communications, and meetings. These activities can increase the understanding of the regulations, streamline compliance with regulations, lay out the available options to compliance, and decrease the costs associated with the requirements of compliance.

IMPLEMENTATION OF POLICY:

This policy identifies some basic elements that must be contained in each division's compliance and enforcement program. These elements are listed in sections, in the order they would normally occur, in the compliance and enforcement process. The sections are as follows:

1. Compliance Evaluations
2. Compliance and Enforcement Process
3. Settlement Issues
4. Compliance Tracking, Measurement, and Coordination
5. Coordination and Management of Multimedia Cases

Divisions shall develop and implement necessary policies, procedures, and guidance for each section of this policy. Divisions have the leeway to tailor their compliance and enforcement program to meet the needs of the statutory requirements it is charged with administering; however, this policy sets forth the minimum standards that must be met for each section. It is expected that adherence to the standards will result in a timely resolution and prompt return to compliance.

Periodically, DEQ management will find it necessary to provide direction on how this policy applies to given situations, provide details on initiatives, or set priorities. Divisions shall ensure that these directives are maintained with this policy and that appropriate changes are made to division programs, policies, and procedures to implement the directives. Revisions to this policy shall be implemented by the divisions within 12 months of the effective date of the revision, unless an earlier implementation is required by DEQ management. Utilizing this guidance and direction, each division is to revise its own compliance and enforcement processes, procedures, documents, and associated nomenclature to meet its specific regulatory needs. If there is a discrepancy between department and division policy, department policy shall take precedence until revisions are made to division policy.

TABLE OF CONTENTS

SECTION 1: COMPLIANCE EVALUATIONS

The success of a strong compliance and enforcement process is judged by the degree to which violations are detected and by the timeliness of achieving compliance. Based on the information obtained from compliance monitoring and evaluations, the DEQ is in the best position to determine what actions will have the greatest impact in ensuring that the environment and public health are protected. Every regulated entity the DEQ oversees could benefit from frequent contact with the DEQ. With frequent contact, the DEQ could offer timely compliance assistance and solve problems before they become significant compliance or escalated enforcement issues. However, the DEQ does not have the resources to provide that level of oversight. Therefore, compliance monitoring and evaluation efforts must be planned to ensure the maximum impact on maintaining a strong rate of compliance.

A. SETTING COMPLIANCE EVALUATION PRIORITIES

A compliance evaluation is any effort designed to determine the compliance status of a regulated entity with Michigan's environmental requirements or applicable pollution control limits. Compliance evaluations include, but are not limited to, inspections; reviews of records self-reported, submitted, or maintained by regulatory entities; sample collection and analysis; the review, analysis, and documentation of information, data or samples; observations; maps; photos; videos; digital images; and permit and license application reviews.

Compliance evaluation priorities should be set to provide for the best use of limited resources. In setting compliance evaluation priorities, the following factors should be considered:

1. Resources are available for follow-up actions or escalated enforcement
2. DEQ planning targets and division program needs
3. Violations with a high potential for public health impact, environmental harm, or resource damage are the highest priority of the DEQ
4. Geographic and program balance
5. Statutory requirements, including Part 13, Permits, and Part 15, Enforcement, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA)
6. Grant and delegated and authorized program requirements
7. Compliance history
8. Special enforcement initiatives

A list of planned compliance evaluations shall be prepared annually, if applicable. Procedures should ensure that all regulated entities are evaluated on a set frequency and that scheduled evaluations are consistent with program priorities and targets.

B. EVALUATION PROCEDURES

Compliance evaluation procedures shall establish the criteria for conducting evaluations and must address the following issues:

1. Evaluation types
2. The situation in which each type of evaluation is to be used
3. The statutory or program foundation for the evaluation
4. The intended scope of the evaluation
5. Anticipated staff resources necessary to perform the evaluation
6. Any forms or checklists associated with the evaluation
7. Any special equipment or supplies needed to perform the evaluation
8. The final report format of the evaluation

As appropriate, the procedure must also cover such issues as:

Pre-Evaluation

- Gaining access to sites
- File reviews of previous evaluation reports and pertinent information
- Review of applicable legal requirements, performance standards, and enforceable documents that are to be evaluated
- How and when to make site contacts
- How to obtain pertinent outreach materials such as publications, forms, inspection brochures, DEQ workshop brochures, list of DEQ webinars, and videos. All of this information is available from the DEQ Internet. Contact the Office of Environmental Assistance, if needed.
- Identify upcoming deadlines such as permit renewals, consent orders, report submittals, and compliance deadlines for new requirements or standards

Evaluation

- Sampling procedures
- Evidence collection
- Photographic and video documentation
- Chain-of-custody requirements
- Review of records required to be maintained
- Completion of required forms, reports, and checklists

Post-Evaluation

- Post-evaluation consultation with the site contact to summarize the initial findings
- Identification and a request for any additional information needed for a final determination
- Site compliance status determination

- File documentation
- Database documentation
- Written notification of inspection results to the site contact
- When and what type of follow-up evaluations are needed
- If compliance communication was verbal, summarize it in an e-mail to the site contact within three business days
- Document the compliance assistance activities provided

SECTION 2: COMPLIANCE AND ENFORCEMENT PROCESS

The DEQ's standard environmental compliance and enforcement process may be defined as a progressive sequence of actions taken to assess and compel compliance with environmental statutes and regulations (See Figure 1 on page 12). Although the compliance and enforcement process is progressive, the DEQ may initiate or take action at any point in the process as the facts and circumstances warrant, in conjunction with the authority provided by the applicable statutes and regulations, or as required by an applicable enforcement response policy for a federally-delegated program.

The compliance and enforcement process is initiated when the first compliance communication is issued by the DEQ. The process provides reasonable opportunities to resolve violations in a consistent and progressively-escalated manner. Although some circumstances may require immediate escalation, there is a general presumption that the process will start at the lowest stage. However, specific factors or circumstances, such as the seriousness of the violation, threat to human health and the environment, resources damaged or impaired, previous compliance history, agency program needs, or an applicable federal enforcement response policy for a delegated program, may all serve to escalate the initial level of enforcement action.

Each division shall have written compliance and enforcement procedures that:

1. Incorporate the nomenclature, and compliance and enforcement process, described below
2. Identify staff roles, responsibilities, and authorities
3. Specify how violations will be identified and prioritized for action
4. Establish time frames for response
5. Establish appropriate responses to violations
6. Establish criteria for referral of cases for escalated enforcement
7. Provide for a pre-referral screening of potential enforcement cases, and preparation of a referral package, prior to a referral for escalated enforcement
8. Provide for the referral of criminal violations to the Department of Natural Resources, Law Enforcement Division, Environmental Investigation Section (EIS), and referrals of other violations through division enforcement staff to the Department of Attorney General (DAG) for an administrative or civil action
9. Provide guidance to staff on when and under what conditions a violation should be considered for referral for criminal action, versus being referred for administrative or civil

enforcement, or when and under what conditions a parallel proceeding should be considered

10. Describe how division management will provide appropriate oversight and review

To facilitate a reliable, predictable, and effective department-wide compliance and enforcement program, all divisions shall incorporate the DEQ compliance and enforcement process and nomenclature described below within their written compliance and enforcement procedures.

A. NOMENCLATURE

- Compliance Communication (discretionary):

  A Compliance Communication is an informal means of communication used by DEQ staff via telephone, e-mail, letter, or in person to communicate to a regulated entity that there are compliance issues or violations that need attention. A Compliance Communication is used to address violations or issues that are relatively minor in nature, few in number, and can be resolved promptly with limited DEQ oversight. (See Attachment 1 for an example.) Go to http://inside.michigan.gov/deq | Work Resources | Forms and Templates | Department-Wide | Program/Category: Enforcement | Compliance Communication. All verbal communications identifying violations shall be documented by a follow-up written correspondence or a note to the file. DEQ form EQ0118, titled “Staff Report,” may be used to document verbal compliance communications. Go to http://inside.michigan.gov/deq | Work Resources | Forms and Templates | Department-Wide | Program/Category: Enforcement | EQ0118.

Other situations when a Compliance Communication may be appropriate is to engage with a regulated entity where no previous contact has been made or there has been a significant lapse in time since the last communication. This correspondence, in whatever form it takes, if documented in the file, can be an important piece of an enforcement case to demonstrate that the DEQ made a good faith effort to assist a regulated entity to return to compliance before pursuing subsequent enforcement actions. In this instance, it is used to build a case against a noncompliant entity.

Compliance Communications should be documented in writing in the DEQ’s files and will:

- Be specifically identified as a “Compliance Communication”
- Include a brief description of the compliance issue(s) or violation(s) and a specified date for compliance;
- Include a summary of any compliance assistance provided or instructions given by DEQ staff to the regulated entity; and
- Be signed and dated by the DEQ staff person who provided the communication.

➢ Violation Notice[1]:

A Violation Notice is a formal means of notifying the regulated entity of a significant or priority violation, or when previous attempts to gain voluntary compliance have failed to correct the compliance issue or violation (see Attachment 2). Go to: http://inside.michigan.gov/deq | Work Resources | Forms and Templates | Department-Wide | Program/Category: Enforcement | Violation Notice.

The Violation Notice formally notifies the regulated entity of the violation and provides the DEQ with a means for tracking its resolution. The Violation Notice places the regulated entity on notice that a violation(s) has been identified and provides the regulated entity with an opportunity to correct the violation in a timely manner. If the regulated entity fails to comply with a Violation Notice, the DEQ may escalate the enforcement action. This notice is another important piece toward building an enforcement case if escalation becomes necessary.

The Violation Notice, at a minimum, will:

- Reference any previous Compliance Communication(s) (if appropriate);
- Identify the legal authority under which the compliance evaluation was conducted, the type of compliance evaluation performed, or what was evaluated (i.e., inspection, record review, etc.), and the scope of the evaluation (e.g., evaluation of compliance with the statute, administrative rules, permit, license, or administrative or judicial order by specific reference[s]);
- Clearly indicate any limitations on the scope of the evaluation (e.g., that the inspection was limited to a portion of the facility; that only a financial assurance record review was conducted; that the evaluation of monitoring results was from a specific time period [e.g., one date to another, or from a certain calendar year or years]);
- Describe the method(s) used to discover the violation;
- Describe in narrative form what provisions of the law, rule, permit, license, and/or order were violated, with a reference to the specific statute or rule citation, and/or the specific permit, license, or order provision;
- Describe the act or omission that created the violation, the location of the facility or site where the violation was observed, and the nature and extent of the violation;
- Cite the date(s) or approximate period of time during which the violation occurred and whether the violation is ongoing;
- Specify the action(s) necessary to return the regulated entity to compliance or request submittal of a compliance program and schedule to promptly resolve the violation(s); if a compliance program is requested, it must be reviewed and a

[1] The "Violation Notice" has historically been called a "Letter of Warning," Notice of Violation," "Notice Letter," Notice of Noncompliance," or "Letter of Violation" in various DEQ divisions. "Violation Notice" is used for this notification in the interest of consistent nomenclature across the DEQ divisions.

response to the regulated entity shall be provided indicating whether or not the program and schedule are acceptable;
- Provide the regulated entity with an opportunity to submit factual information to refute the DEQ's findings;
- Specify a deadline for response, if appropriate; and
- Be signed by a supervisor or other DEQ staff person designated by the division.

The Violation Notice should be written in an informative manner and should not be overly formalistic, accusatory, or threatening.

If a sufficient response to the Violation Notice is received and the violation has been, or is being, corrected in a timely manner, no further enforcement action is usually necessary. However, some federal enforcement response policies for delegated programs require that certain types of violations be referred for escalated enforcement for the assessment of a monetary penalty even if the violation had already been corrected.

➢ Second Violation Notice (discretionary):

Failure to adequately and timely respond to the first Violation Notice or failure to respond at all may result in either issuance of a Second Violation Notice (see Attachment 3) or initiation of an escalated enforcement proceeding. Go to http://inside.michigan.gov/deq | Work Resources | Forms and Templates | Department-Wide | Program/Category: Enforcement | Second Violation Notice.

If a Second Violation Notice is issued, at a minimum, it will:

- Reference the first Violation Notice and any Compliance Communication(s);
- Advise of failure to respond or adequately respond to the first Violation Notice;
- Reiterate the action(s) necessary to be undertaken to return to compliance or again request submittal of a compliance program and schedule to promptly address the violation(s);
- Identify any additional violations discovered since issuance of the first Violation Notice and describe the action(s) that need to be undertaken to return to compliance or request submittal of a compliance program and schedule to promptly address the violation(s);
- Specify a deadline for response;
- Specify the potential consequences for violating the law, rule, permit, license, or order and/or for not taking appropriate action(s) to resolve or address the violation(s); and
- Be signed by a supervisor or other DEQ staff person designated by the division.

Each division's compliance and enforcement procedures should include guidance that enables a trained employee to determine under what circumstances it is appropriate to send out a Second Violation Notice.

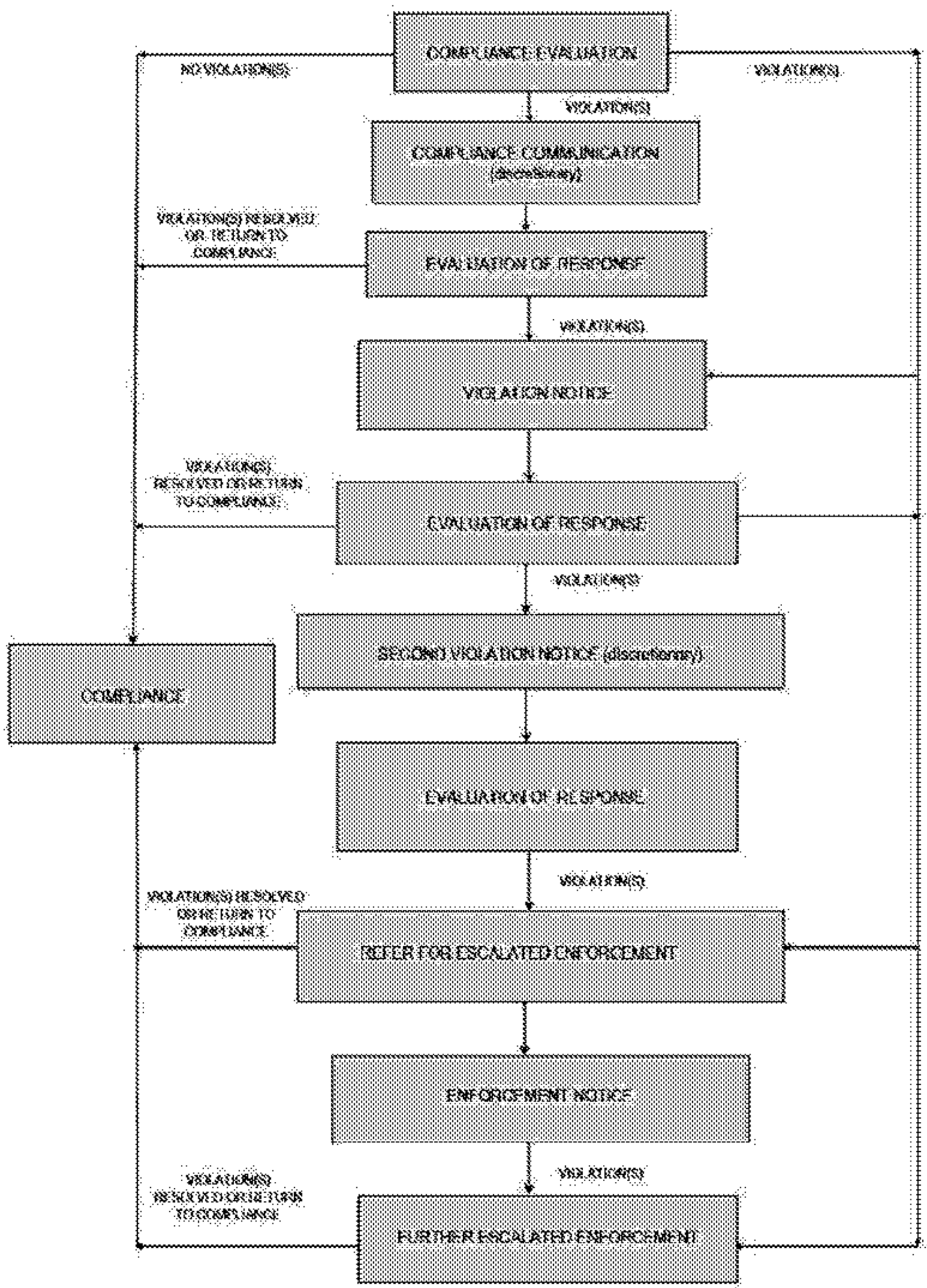
➢ Enforcement Notice:

A regulated entity is referred for escalated enforcement because preceding administrative actions have been unsuccessful; however, seriousness of the violation, resources damaged or impaired, previous compliance history, agency program needs, or the applicable federal enforcement response policy for a delegated program may also result in a referral for escalated enforcement.

After a case has been referred, a formal Enforcement Notice (see Attachment 4) should be sent to the violator. Go to http://inside.michigan.gov/deq | Work Resources | Forms and Templates | Department-Wide | Program/Category: Enforcement | Enforcement Notice. At a minimum, the Enforcement Notice will:

- Advise that the case has been referred for escalated enforcement;
- Reference any previously issued Violation Notice(s) and Compliance Communication(s);
- Specify the nature of the unresolved violation(s);
- Provide the violator with a final opportunity to: (1) demonstrate compliance; (2) present factual information in writing that should be considered regarding the violations; or, if appropriate, (3) meet and discuss options for satisfactorily resolving the violation(s);
- Specify a deadline for a response to the Enforcement Notice;
- Specify the consequences for failure to adequately respond and/or resolve or address the violations;
- Be signed by the supervisor of the enforcement section or unit or other DEQ staff person designated by the division; and
- A draft administrative consent order to resolve the violations may be sent with the Enforcement Notice. Optionally, the consent order may be sent to the violator following the final opportunity to demonstrate compliance and meeting to discuss the resolution of the violation(s).

B. Figure 1 – STANDARD COMPLIANCE AND ENFORCEMENT PROCESS



Notes:
1. At each evaluation point, staff determines if the facts and circumstances warrant pursuing further enforcement.
2. Cases that are referred for criminal prosecution are not subject to this process.

C. VIOLATION RESPONSE

The compliance and enforcement procedures of each division should provide guidance that enables the DEQ employee evaluating compliance of the regulated entity to determine an appropriate response to an identified violation. The procedure should focus on significant or high-priority violations, or classes of violations, that occur in the program being administered. Violations are to be evaluated using factors such as:

1. Frequency and duration of the violation;
2. Extent or deviation of the violation from the regulatory requirement (magnitude of the violation);
3. Harm, or the threat of harm, to public health, the environment, or the integrity of the regulatory program; and/or
4. Compliance history of the violator.

For divisions that administer delegated or authorized federal programs, and for which the United States Environmental Protection Agency (U.S. EPA) has developed compliance and enforcement policy and guidance, the divisions shall reference and adopt that policy and guidance consistent with applicable federal statutes and regulations, cooperative agreements, grant contracts, memoranda of understanding, work plan commitments, etc.

D. CRIMINAL VIOLATIONS

DEQ staff will encounter situations where indications show that a crime may have been committed and a criminal investigation and prosecution may be warranted. Potential or suspected criminal violations shall be referred to the EIS in accordance with DEQ Policy and Procedure No. 09-002, Referrals of Matters to the Attorney General or the Office of Criminal Investigations. Each division's compliance and enforcement procedures shall ensure that criminal investigations referred to the EIS are properly communicated in accordance with the division's referral procedures for criminal cases. A division's compliance and enforcement procedures should also ensure that referrals for criminal investigation are evaluated and/or discussed in accordance with DEQ Policy and Procedure No. 04-004, Parallel Proceedings, and DEQ Policy and Procedure No. 04-005, District Enforcement Review Discussions.

The DEQ and EIS shall develop and maintain a priority system for conducting and completing criminal investigations. In setting priorities, the EIS shall work cooperatively with divisions to ensure that division program priorities are met.

E. REFERRALS TO THE ATTORNEY GENERAL

DEQ staff works closely with DAG staff in situations where the DEQ requires legal advice or representation. In order to make the most efficient use of staff time, divisions shall establish clear lines of communication and authority for discussing and referring matters to the DAG. These procedures shall be consistent with DEQ Policy and Procedure No. 09-002.

SECTION 3: SETTLEMENT ISSUES

A. CIVIL PENALTIES

In addressing violations, it is necessary to consider whether the violations alleged warrant fines and penalties. This determination needs to be made early in the compliance and enforcement process. The application of penalties needs to be consistent and documented. Penalties are to be calculated based on the factual elements of each case and are intended to eliminate any economic benefit gained from the violation and to create deterrence from future violations. The procedures for penalty calculations shall address the following issues:

1. Criteria for determining when a penalty is appropriate;
2. Criteria for determining the penalty amount;
3. Criteria for the calculation, review, and approval of proposed penalties; and
4. Standard procedures for documenting penalty calculations.

Generally, penalties should be considered when one or more of these conditions exist:

1. The violation exceeds a set threshold or an agreement the DEQ has made with the U.S. EPA through the program planning process or delegation agreement;
2. The violation results in harm or impairment of the environment or public health;
3. Failure to receive a penalty could negatively impact the integrity of the regulatory program;
4. The violation is willful;
5. The violation is due to negligence;
6. The violation is in direct disregard to a directive of the DEQ;
7. Compliance efforts to resolve the violation have not been successful and escalated enforcement was needed; and/or
8. The violation is of an Administrative Consent Order, a Unilateral Director's Order, or a Judicial Order.

The division chief must be apprised of all proposed penalties being sought in negotiated settlements in their division. Each division may establish a threshold amount and the timing and manner for providing the apprisal to the division chief. The Chief Deputy Director must approve all negotiated settlements with a proposed penalty of $100,000 or more. See Attachment 5 for the Chief Deputy Director's briefing report for a proposed penalty. Go to http://inside.michigan.gov/deq | Work Resources | Forms and Templates | Department-Wide | Program/Category: Enforcement | Briefing Report.

When a proposed penalty is in excess of $20,000, it is best practice to present the proposed penalty to the regulated entity in a face-to-face meeting, generally after agreement on the other compliance issues has been reached. This practice does not apply to the assessment of administrative fines specified and authorized by statute or penalties in consent orders; however, the recommended procedure is to follow up this type of fine assessment with a face-to-face meeting.

Penalty calculation procedures should be specific to each division and consider the following factors:

1. The magnitude and duration of the violation;
2. The impact, or potential for impact, that the violation poses to the environment, public health, or program integrity; and
3. The monetary benefit to the violator gained by the violation (i.e., economic benefit). The penalty should at a minimum, recoup any significant savings or competitive advantage the violator gained by the failure to comply with the requirements.

The penalty procedure shall include a penalty matrix that staff can use to calculate penalties. Divisions that administer programs with different statutory maximum penalty amounts may need to develop penalty guidance and matrices for each program.

EXAMPLE PENALTY MATRIX

DEGREE OF HARM TO THE ENVIRONMENT/PUBLIC HEALTH			
VIOLATION MAGNITUDE	HIGH IMPACT PENALTY RANGE $25,000 TO $16,000 HIGH MAGNITUDE	MEDIUM IMPACT PENALTY RANGE $20,000 TO $10,500 HIGH MAGNITUDE	LOW IMPACT PENALTY RANGE $14,500 TO $8,000 HIGH MAGNITUDE
	HIGH IMPACT PENALTY RANGE $20,000 TO $10,500 MEDIUM MAGNITUDE	MEDIUM IMPACT PENALTY RANGE $15,000 TO $5,000 MEDIUM MAGNITUDE	LOW IMPACT PENALTY RANGE $9,500 TO $2,500 MEDIUM MAGNITUDE
	HIGH IMPACT PENALTY RANGE $14,500 TO $8,000 LOW MAGNITUDE	MEDIUM IMPACT PENALTY RANGE $9,500 TO $2,500 LOW MAGNITUDE	LOW IMPACT PENALTY RANGE $4,000 TO $500 LOW MAGNITUDE

Each violation will be compared to the matrix and assessed the appropriate penalty amount. If a violation were for multiple days, the assessed penalty can be multiplied by the number of days of violation.

Multiple days of violation can be addressed by creating a second matrix that sets a penalty amount for the duration of violations and adding that daily amount to the base penalty amount for days of violation after the first or by other alternative means.

The calculated penalty amount may be adjusted up or down with justification, but should remain in the established penalty range. Factors that would warrant penalty adjustment include:

1. Compliance history (upward adjustment for violators with a history of noncompliance);
2. Recalcitrance of the violator (upward adjustment);
3. Willfulness of the violator (upward adjustment);
4. Strength of the case (downward adjustment for cases with litigation risk);
5. The violation is of the terms of an Administrative or Judicial Order and is not addressed by agreed-to stipulated penalties; and
6. The violation resulted in serious impact or an imminent and substantial endangerment to public health or the environment (upward adjustment).

The final calculated proposed penalty should be sufficient enough to eliminate any substantial economic benefit that would give a violator a clear advantage over its business competitors. Divisions should use the final calculated proposed penalty to begin settlement negotiations. In all cases, the proposed penalty should be reasonable so as to facilitate prompt resolution of the violation and provide for improvements to environmental protection. The negotiated or final penalty assessed should be justified by the circumstances and should be able to withstand scrutiny when similar circumstances arise.

B. STIPULATED PENALTIES

Stipulated penalties are specified in settlement agreements and address potential future violations of certain terms of the settlement agreement. Stipulated penalties may be applied for failures to meet scheduled dates to perform specified actions or to meet environmental performance criteria or other requirements established in the agreement. The amount and terms of stipulated penalties are specified in settlement agreements and can be collected if the terms of the agreement are violated.

The primary goal of stipulated penalties is to act as a deterrent to violating the terms and conditions of the settlement agreement. To have this effect, stipulated penalties must be established at an amount high enough to represent a true penalty for not complying with the agreement.

Persons violating the terms and conditions of a settlement agreement are, by definition, “repeat offenders” and should be subject to penalties that are higher on a per-diem basis than any initial civil penalties that may have been imposed. Stipulated penalties for particularly egregious violations may even be considerably higher. Any clearly definable event in a settlement agreement may be established in the agreement as subject to stipulated penalties. Stipulated penalties are most useful in ensuring that activities specified in a settlement agreement are proceeding on schedule and that interim progress toward a final goal is being made. Settlement agreement language for stipulated penalties must be clearly written to require specific performance milestones by specific dates. Automatic provisions for having stipulated penalties accrue and payable to the state should be clearly incorporated into the settlement document. Settlement documents are to be clearly written to avoid disputes regarding the application of stipulated penalties. The final amount of stipulated penalties to be assessed may be subject to negotiation.

C. ADMINISTRATIVE PENALTIES

If a division has authority to issue administrative penalties, they shall have procedures for determining the penalty amount, assessing the penalty, and the collection of the penalty.

D. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

When requested, the DEQ may consider the use of a supplemental environmental project (SEP) as a part of a settlement agreement.

As a part of the settlement agreement with the DEQ, the alleged violator may request to incorporate a SEP, underwritten by the alleged violator, in lieu of payment of a portion of the monetary penalty. SEPs are neither required by, nor prohibited by, regulations administered by the DEQ.

A SEP shall be developed in accordance with DEQ Policy and Procedure No. 04-002, Supplemental Environmental Projects for Penalty Mitigation.

E. JUDICIAL VS. ADMINISTRATIVE ORDERS

Sometimes it is necessary to settle violations by the entry of a settlement agreement. The following guidance is provided to assist divisions in determining which type of agreement, judicial or administrative, to enter.

A settlement agreement is a legally enforceable document that binds the DEQ and a regulated entity for the purpose of resolving the alleged violation(s) of laws or regulations administered by the DEQ. A settlement agreement usually contains provisions requiring the regulated entity to correct the violation, take steps to ensure the violation is not repeated, repair environmental damage and/or pay a monetary compensatory damage amount, or pay a penalty to deter future noncompliance. A settlement agreement may be in the form of a

Judicial Order (court-approved consent decree) or an Administrative Consent Order (an agreement without the involvement of the court).

Because of the additional work required by staff of the DEQ and the DAG with a Judicial Order, Administrative Consent Orders should be used for the vast majority of settlement agreements. An advantage to a Judicial Order is that it provides an additional tool to ensure compliance with the settlement agreement. As a result, if one of the following three situations occurs, then a judicial settlement may be appropriate.

1. Settlements that will have a high degree of public concern.

   Examples are:

   a) when public input from citizens, legislators, public officials, environmental groups, or others rise to the level where it may significantly impact compliance with the terms and conditions of a settlement and the oversight of a court is needed; or

   b) when there is a major disagreement with the U.S. EPA over fines, penalties, or other corrective actions for particular violations.

2. Settlements that will be complex, financially significant, or otherwise unusual.

   Factors to be considered in determining if this situation exists include:

   a) a multi-year corrective project or extensive remediation program attributable to the lengthy duration and/or magnitude of the violation(s);

   b) a complex or unusually large SEP;

   c) an uncommonly large fine, penalty, or financial assurance or expenditure;

   d) an uncommonly large number of violations;

   e) a recent history (within the past five years) of noncompliance with the laws, regulations, or previous settlements; and

   f) when facts are present to reasonably expect that the violator does not have the wherewithal or the intent to comply with a settlement agreement, notwithstanding the violator's indications to the contrary.

   If more than one of the items listed above are being considered or are factors in the settlement negotiations, then a judicial settlement is probably appropriate as an added tool to ensure compliance with the settlement agreement.

3. When the alleged violator requests a judicial settlement and the DEQ agrees.

   There may be instances in which the violator seeks a judicial settlement in lieu of an Administrative Order. If the violator articulates a good reason as to why a judicial settlement should be pursued in lieu of an Administrative Order, then barring a significant impact on the compliance program, it should be pursued judicially.

When a settlement agreement involves a "Covenant Not to Sue" and/or contribution protection, the DAG has final approval under the law as to whether to pursue a matter in court.

Once both parties agree that a judicial settlement is the appropriate mechanism for the settlement agreement, unless a matter has already been filed in court, then staff should follow the steps outlined in DEQ Policy and Procedure No. 09-002. An enforcement lawsuit that has been filed prior to any contemplated or anticipated settlement should be settled judicially rather than administratively, if a settlement is subsequently reached.

F. PUBLIC COMMUNICATION OUTREACH

Public communication efforts include tools such as press releases, social media posts, and outreach to the Associated Press, television networks, or professional/industrial associations. They can be an effective method to inform the regulated community and the public of DEQ compliance efforts and to serve as a deterrent for illegal environmental activity. To ensure that noteworthy compliance actions initiated by the DEQ, with or without DAG involvement, are publicized, divisions are to take into account the criteria listed below when evaluating whether or not the action warrants public outreach. Meeting one criterion alone may not necessarily justify outreach. A final decision will be made by the DEQ Public Information Officer (PIO).

1. The violation created a known public health threat or long-term damage to the environment.
2. The person knowingly violated the law and/or deliberately disregarded a direction/order given by DEQ staff.
3. The violation was the focus of significant local attention.
4. The resolution of the violation resulted from a decision by a judge or jury trial.
5. The violation was a felony.
6. There is involvement of the DAG (should be limited to major involvement, not just signing a document as to form).
7. The DEQ action is a Cease and Desist Order.
8. The violation resulted in arrests, filing of major civil suits, or settlements with substantial penalties, recovered costs, or restitution for damages (not just a Violation Notice).
9. The violation and subsequent DEQ action has the potential to serve as a deterrent to an identified sector that has the likelihood of the same violation and/or will serve to educate the public in a significant way.

A violation such as failure to obtain a permit or license, when a permit or license would have been issued if applied for, may not be sufficient alone to warrant public outreach (except where the violator willfully failed to seek a permit or license).

During settlement discussions, the regulated entity should be advised early on that the DEQ may issue a story. The content of the story is non-negotiable.

To assist the DEQ PIO in processing requests for public outreach, division staff should:

a) Send an e-mail to the Communications Office with all pertinent facts:
   - Violation(s);
   - Name of violator;
   - Location of offense;
   - How the communication effort meets one or more of the above criteria;
   - Unique or interesting facts about the case;
   - Duration of offense;
   - Amount of fines/penalties/jail time; and
   - Response activities to be performed to achieve compliance.

b) Obtain approval as directed in the DEQ Guidelines for Media and Legislative Responses document available at http://inside.michigan.gov/deq | Work Resources | Forms and Templates | Department-Wide | Program/Category: Communications | EQ0117.

c) Reach out in a timely fashion. The sooner the Communications Office knows about a potential story, the better. Depending on the case and the enforcement action, the best outreach may take place immediately after action is taken, while other actions may be best told as part of a broader narrative with a less-strict time line. The Communications Office can provide guidance on timing, but needs to be informed prior to enforcement actions to be able to help.

This can be accomplished by directly contacting the Communications Office or reaching out through your division's member on the Communications Outreach Team.

G. <u>SETTLEMENT NEGOTIATIONS</u>

Legislators and/or their aides shall not be present in the discussion of settlement negotiations. DEQ staff can, and are encouraged to, meet with legislators to discuss background or technical issues. If a legislator is expected to attend a negotiation meeting, contact the DEQ's Deputy Director, Policy and Legislative Affairs, and the DEQ's Legislative Liaison to find out what their issues are so they can be addressed without them being present in the meeting. Legislative contacts should be handled in accordance with EQ0117, DEQ Guidelines for Media and Legislative Responses.

SECTION 4: COMPLIANCE TRACKING, MEASUREMENT, AND COORDINATION

A. COMPLIANCE TRACKING

Each division shall have an electronic database for the tracking of compliance activities. The database must enable a division to track the following information for each entity evaluated for compliance.

Evaluations
- Dates conducted
- Types of evaluations conducted
- Compliance status at each evaluation

Compliance Activities
- Dates compliance actions taken
- Types of compliance actions taken
- Status of each compliance action

The tracking system should also allow divisions to produce the compliance measures report identified in the next section of this policy.

B. COMPLIANCE MEASUREMENT

It is important that the DEQ is able to assess the effectiveness of its compliance and enforcement programs. It is also important that this information be readily available to the public. Divisions shall develop measurements that demonstrate program achievement and assist in program management. Measurements should also allow divisions to determine rates of compliance as required by the DEQ's planning process.

Divisions shall develop reports required under federal authority, as prescribed by state statute, including appropriations, bill reporting, boilerplate, and any other metric reporting requirements.

C. COMPLIANCE COORDINATION

It is important that compliance and enforcement staff within each division effectively communicate and work in a cooperative manner. This can be accomplished through consistent meetings between regulatory divisions who will assign a representative to attend these meetings. The representatives are the divisions' compliance and enforcement section and unit chief(s) or enforcement staff designated by the division chief.

The purpose of the compliance and enforcement (C&E) meetings is to:

1. Champion the DEQ's compliance and enforcement efforts and processes;
2. Provide for the exchange of compliance and enforcement ideas, views, and experiences among the DEQ's program divisions;
3. Foster cooperation and coordination in compliance and enforcement activities; and
4. Develop recommendations to DEQ management on compliance and enforcement issues.

The C&E meetings will routinely consider the following items:

1. Multi-division/multimedia case coordination.
2. Coordination of civil and criminal enforcement actions.
3. Review of judicial/administrative case decisions that may have an impact on the DEQ's compliance and enforcement processes.
4. Receive case reviews of important cases that divisions are processing or have completed.
5. Identify/recommend special training needs of compliance and enforcement staff.
6. Develop methods to provide coordinated tracking and reporting of compliance and enforcement activities.
7. Coordination of DEQ interaction with the U.S. EPA on compliance and enforcement issues.
8. Receive information on new laws and rules that impact compliance and enforcement activities.
9. Develop and/or share tools that assist in the DEQ's compliance and enforcement activities.
10. Tracking the disbursement of costs, damages, and penalties in the DEQ's accounting system.
11. Evaluation of DEQ and U.S. EPA compliance and enforcement policies and procedures.

Each compliance and enforcement representative is responsible to ensure that compliance and enforcement staff in their division, as well as division management, are kept informed about the information shared at the C&E meetings.

When possible, the C&E meetings will be held monthly. It is important that the information discussed at the monthly C&E meetings be shared with Lansing central and district office staff with compliance monitoring responsibilities. To facilitate this communication, the following shall apply:

1. Each field operations supervisor (FOS) has an open invitation to attend the C&E meetings. Attendance is optional, based on approval of the division chief.
2. The FOS and division's section supervisors will receive any updates on meetings and issues covered at C&E meetings, as applicable, from their respective C&E chief or designated enforcement staff.

3. When C&E meetings have agenda items that are relevant to the FOS, those items will be grouped and given a specific time so that the FOS can make appropriate plans to attend the meeting for these items.
4. The FOS, collectively or singularly, can request to have items placed on the C&E meeting agenda.
5. FOS attendance at C&E meetings will only be required when their involvement is essential to completing an assignment or developing policy.

Even though this process should further the communication between the Lansing central office, district office, and enforcement staff, personal contact and informal interaction among staff is essential. Accordingly, division chiefs are to promote effective communication among staff within and between the DEQ divisions.

SECTION 5: COORDINATION AND MANAGEMENT OF MULTIMEDIA CASES

DEQ staff often initiate or become involved in enforcement actions that may include violations of various provisions of the NREPA or other statutes administered by the DEQ. Communication and coordination between the DEQ divisions and other agencies, such as the U.S. EPA, the U.S. Department of the Interior's Bureau of Land Management, and the U.S. Forestry Service, should occur early in the process to ensure that all violations are appropriately addressed and to avoid potential claim splitting.

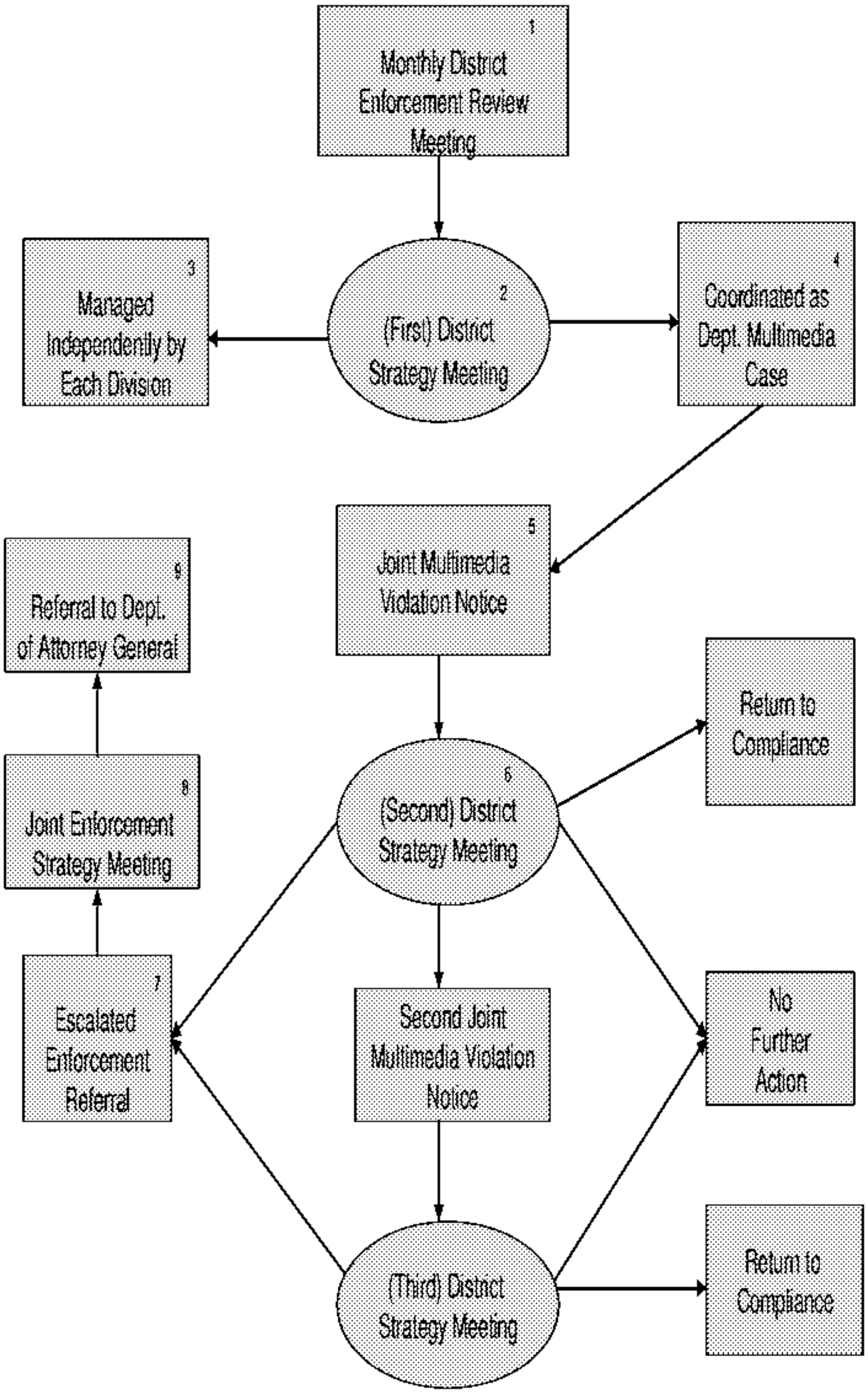
Multimedia enforcement constitutes a comprehensive approach to case development and enforcement usually against a single facility where all of the processes at that facility are inspected and examined as a whole to determine compliance with all environmental statutes. There are many benefits to conducting multimedia enforcement efforts. Environmental contamination is, by nature, unconstrained by statutory boundaries so effective coordination and communication between divisions are critical. Multimedia enforcement can result in:

- **Improved detection and resolution of environmental violations.** Cross-statutory inspections and analysis of violations afford the most-effective method of identifying the extent of environmental problems. This leads to comprehensive enforcement activities.
- **Achievement of optimal enforcement results.** Multimedia enforcement actions increase the potential for achieving broad environmental benefits as part of an overall settlement. In addition, penalties will more accurately reflect the full extent of the gravity of harm and economic benefit gained by noncompliance. A penalty that reflects the full range of violations also provides an increased opportunity for SEP proposals.
- **More effective enforcement.** Targeting facilities or companies with significant, pervasive violations can eliminate the root cause of an environmental problem. This may not be possible through an enforcement action brought pursuant to one statutory authority.
- **More efficient use of resources.** Multimedia actions reduce and streamline the resource burden otherwise required by the numerous single statute cases brought to resolve a complex environmental problem.

- **Fundamentally change the regulated community's perceptions and behavior regarding environmental compliance.** Broad-based actions and subsequent results can assist the regulated community's meaningful implementation of environmental management systems. Furthermore, publicity of far-reaching multimedia cases can assist in general deterrence.

The existence of multiple violations involving different provisions of the NREPA administered by more than one division does not automatically require that a case be managed as a multimedia case. The facts and circumstances of each case will be different and each case must be analyzed and discussed internally between the divisions before deciding on a course of action or strategy.

Following is a flowchart illustrating DEQ's coordination and management of multimedia cases (see footnotes on following pages). This process is intended to foster communication and coordination between divisions that will result in more effective multimedia enforcement.


1
Monthly District Enforcement Review Meeting
2
(First) District Strategy Meeting
3
Managed Independently by Each Division
4
Coordinated as Dept. Multimedia Case
5
Joint Multimedia Violation Notice
9
Referral to Dept. of Attorney General
Return to Compliance
8
Joint Enforcement Strategy Meeting
6
(Second) District Strategy Meeting
7
Escalated Enforcement Referral
Second Joint Multimedia Violation Notice
No Further Action
(Third) District Strategy Meeting
Return to Compliance

Footnotes to Flowchart:

1. **Monthly District Enforcement Review Meeting**
DEQ Policy and Procedure No. 04-005 requires the District Coordinator (DC) to schedule and chair monthly district enforcement review meetings. During these meetings, it is the DC's responsibility to ensure that all high-priority and significant new violations, new enforcement case referrals, and the status of any ongoing multimedia enforcement cases are discussed. There should also be discussion and agreement on which cases, if any, are to be scheduled for a district strategy meeting. The DC is responsible for scheduling the district strategy meetings and, in doing so, should allow each division sufficient time to discuss the facts of the case with their respective C&E unit/section and FOS prior to the meeting.

The EIS Officer assigned to the district office, or their assigned representative, will attend each monthly enforcement review meeting. At these meetings, the EIS Officer will provide a status update for each pending district criminal case and discuss any district criminal cases that have been initiated by the EIS, unless the matter is confidential.

District supervisors, or their assigned representative, will attend the monthly district enforcement review meetings and discuss any new significant or high-priority violations, new enforcement case referrals, and the status of any cases that have violations of different statutes administered by other divisions where their division is the lead.

2. **(First) District Strategy Meeting**
For each case with violations of different statutes administered by multiple program divisions, the DC and appropriate district supervisors should discuss and agree upon the relative priority of the case for all divisions involved and an appropriate course of action; strategy for case development or resolution, including a schedule for completing any necessary activities; and a lead division. This discussion should be scheduled separate from the monthly district enforcement review meetings.

District supervisors should consult with their respective C&E unit/section and FOS prior to agreeing to a course of action or strategy regarding a potential multimedia enforcement case so that they can represent their respective division's position on the case. Once a strategy or course of action is agreed to, each district supervisor is responsible for ensuring that their staff completes any necessary activities according to the agreed upon schedule.

The DC should attempt to resolve any dispute or disagreement about a case's priority, enforcement strategy, or schedule through discussions with the appropriate division FOS, C&E chief(s), and district supervisor(s), as appropriate. If further efforts to resolve the dispute or disagreement are necessary, the DC may escalate the matter to the Chief Deputy Director for final resolution.

3. **Managed Independently by Each Division**
If it is concluded at the district strategy meeting that a case with violations of different statutes administered by multiple program divisions will be managed independently (or continue to be managed independently) by each respective division, district supervisors still have an obligation to regularly communicate with the DC and the other divisions regarding the status of their respective case. This can be accomplished at the monthly district enforcement review meeting. If the facts and circumstances significantly change in a case, it is the district supervisor's responsibility to schedule interim enforcement strategy discussions with the other district supervisors and the DC to reaffirm the course of action and/or strategy. Prior to interim enforcement strategy discussions, it is each district supervisor's responsibility to consult with their respective C&E unit/section and FOS as appropriate.

4. **Coordinated as Department Multimedia Case**
If it is decided at the district strategy discussions that a case will be developed and coordinated as a department multimedia case, the district supervisor of the lead division will be responsible for periodically following up with the DC and other district supervisor(s) to ensure that the case is proceeding according to the agreed upon strategy and/or schedule. Interim strategy discussions between the DC and applicable district supervisors should be scheduled as necessary, and as the facts and status of the case warrant.

   District supervisors are responsible for ensuring that their portion of the case is progressing according to the agreed-upon schedule for case development or resolution.

5. **Joint Multimedia Violation Notice**
If a case will be managed as a DEQ multimedia case, a multimedia violation notice should be sent to the regulated entity specifying the violations identified by each division. These violations may be identified as a result of a joint multimedia inspection or evaluations performed in follow up to an initial single media inspection. Each division has the responsibility of identifying the issues and violations that should be included in the violation notice and should consult with their respective C&E unit/section or FOS as appropriate.

   Each division is responsible for evaluating the sufficiency of any response received to the multimedia violation notice and for providing comments to the lead division in a timely manner.

6. **(Second) District Strategy Meeting**
After receiving comments from each division regarding the sufficiency of any response to the multimedia violation notice, the lead division will convene another district strategy meeting to discuss and agree upon a course of action or strategy, roles and responsibilities, and an implementation schedule. District supervisors should consult with their respective C&E unit/section and FOS prior to agreeing to any course of action or strategy.

District supervisors are responsible for ensuring that their staff completes any necessary activities identified during the strategy meeting according to the agreed upon schedule.

The DC should attempt to resolve any dispute or disagreement about a case's priority, enforcement strategy, or schedule through discussions with the appropriate division FOS, C&E chief(s), and district supervisor(s) as appropriate. If further efforts to resolve the dispute or disagreement are necessary, the DC will elevate the matter to the Chief Deputy Director for final resolution.

7. **Escalated Enforcement Referral**
If it becomes necessary to refer a multimedia case for escalated administrative or civil enforcement, each district supervisor is responsible for completing an enforcement referral and providing it to the DC, their division FOS, and C&E section/unit chief within the time frame established at the district strategy meeting. Upon receipt of the necessary referrals, the DC will prepare a memorandum addressed to the Chief Deputy Director that identifies the case's relative priority, identifies the lead division coordinating the case development, provides recommendations for each division, and summarizes the relevant case issues. The case should be identified as a multimedia enforcement case in the subject line of the memorandum, and a copy of each division's enforcement referral should be attached. A copy of the memorandum and attachments should also be provided to the appropriate C&E chiefs, FOS, assistant division chiefs, and division chiefs, as applicable.

8. **Joint Enforcement Strategy Meeting**
Upon receipt of the multimedia referral memorandum for escalated civil or administrative enforcement from a DC, the Chief Deputy Director will schedule a strategy meeting with the appropriate C&E chiefs, district supervisors, and the DC to discuss and agree upon an appropriate enforcement strategy, with associated deadlines, and to assign a division to be the lead for coordinating enforcement matters between divisions and the DAG as necessary.

District Supervisors shall ensure that their staff provides any necessary support for the multimedia case after it has been referred regardless of which division is assigned as the lead for coordinating enforcement matters and as necessary to meet the established deadlines.

The C&E chief for the lead division is responsible for ensuring that the case proceeds according to the agreed-upon deadlines established in the enforcement strategy meeting and scheduling interim strategy meetings as necessary. The Chief Deputy Director will facilitate and oversee this process as necessary. Any dispute or disagreement about the decisions made at the joint enforcement strategy meeting should be resolved by the Chief Deputy Director in discussions with the appropriate division C&E chief(s), DC, and district supervisor(s) as appropriate.

9. **Referral to the DAG**
The C&E chief (or the assigned enforcement staff) for the lead division will be responsible for preparing the referral to the DAG in accordance with DEQ Policy and Procedure No. 09-002. The other C&E chiefs shall provide the necessary staff support to ensure that their violations and issues are appropriately addressed and included in the referral, any subsequent settlement documents, or litigation. After a case has been referred to the DAG, and as necessary thereafter, the lead division's C&E chief is responsible for ensuring that there is effective coordination and communication between the divisions.

Approved: Dan Wyant

Dan Wyant, Director

ATTACHMENT 1
Compliance Communication

[To be printed on DEQ letterhead]

[Date]

[Mr./Ms. Person and/or Facility Name]
[Address]
[City, Township, Village], Michigan [ZIP Code]

Dear Mr./Ms. _______:

SUBJECT: Compliance Communication

The Compliance Communication should:

- Be specifically identified as a "Compliance Communication"
- Include a brief description of the compliance issue or violation(s) and a specified date for compliance
- Include a summary of any instructions or directives given by DEQ staff to the regulated entity

We anticipate and appreciate your cooperation in resolving this matter. If you have any questions, please feel free to contact me.

Sincerely,

ATTACHMENT 2
Violation Notice

[To be printed on DEQ letterhead]

[Date]

[Mr./Ms. Person and/or Facility Name]
[Address]
[City, Township, Village], Michigan [ZIP Code]

Dear Mr./Ms. _______:

SUBJECT: Violation Notice

The Violation Notice should:

- Reference any previous DEQ Compliance Communications (if appropriate);
- Describe the method used to discover the violation;
- Identify the legal authority under which the compliance evaluation was conducted, the type of compliance evaluation performed or what was evaluated, and clearly indicate any limitations on the scope of the evaluation (if any);
- Describe in narrative form what provisions of the law, rule, permit, or license were violated with a reference to the specific law or rule citation or specific permit or license provision also noted;
- Describe the act or omission that created the violation;
- Cite the date(s) that the violation occurred or specify the period of time during which the violation occurred, and whether the violation is ongoing;
- Specify the action(s) that needs to be undertaken to return the regulated entity to compliance or request submittal of a compliance program to address the violation(s);
- Provide the regulated entity with an opportunity to submit factual information to refute the DEQ's findings; and
- Specify a deadline for response.

We anticipate and appreciate your cooperation in resolving this matter. If you have any questions, please feel free to contact me.

Sincerely,

ATTACHMENT 3
Second Violation Notice

[To be printed on DEQ letterhead]

[Date]

[Mr./Ms. Person and/or Facility Name]
[Address]
[City, Township, Village], Michigan [ZIP Code]

Dear Mr./Ms. _______:

SUBJECT: Second Violation Notice

The second Violation Notice should:

- Reference the first Violation Notice;
- Advise of the failure to adequately respond to the first Violation Notice;
- Reiterate the action(s) that needs to be undertaken to return to compliance, identify deficiencies in the initial submittal that require a modification to the compliance program, or again request submittal of a compliance program to address the violation(s);
- Identify any additional violations noted since issuance of the first Violation Notice and describe the action(s) that need to be undertaken to return to compliance or request submittal of a compliance program to address the additional violation(s);
- Specify a deadline for response;
- Specify the potential consequences for violating the law, rule, permit, license, or order and/or for not taking appropriate action(s) to resolve or address the violation(s); and
- Be signed by a supervisor or other DEQ staff person designated by the division/office.

Please be advised that issuance of this Violation Notice does not preclude or limit the DEQ's ability to initiate any other enforcement action under state or federal law as appropriate.

If you have any questions, please feel free to contact me at the telephone number listed below or by e-mail at __________@michigan.gov.

Sincerely,

ATTACHMENT 4
Enforcement Notice

[To be printed on DEQ letterhead]

CERTIFIED MAIL

ENFORCEMENT NOTICE

In the matter of:

[Facility Name or Regulated Entity]
[Address]
[City, Township, Village], Michigan [ZIP Code]

ATTENTION: [Owner/Operator], [Title]

The Enforcement Notice should follow this format and:

- Advise that the case has been referred for escalated enforcement.
- Reference any previously issued Violation Notices.
- Specify the nature of the unresolved violation(s).
- Provide the violator with a final opportunity to: (1) demonstrate compliance; (2) present factual information in writing that should be considered regarding the violation(s); (3) enter into an administrative consent order to resolve the violations(s); or, if appropriate, (4) meet and discuss options for satisfactorily resolving the violation(s).
- Specify a deadline for response.
- Be signed by a supervisor or other DEQ staff person designated by the division/office.
- A draft administrative consent order to resolve the violation(s) may be sent with the Enforcement Notice. Optionally, the administrative consent order may be sent to the violator following the final opportunity to demonstrate compliance and meeting to discuss the resolution of the violation(s).

Be advised that failure to timely and adequately resolve or address the violation(s) cited in this Enforcement Notice may result in further enforcement proceedings including, but not limited to, referral of the matter to the Department of Attorney General for commencement of civil litigation. Be further advised that this Enforcement Notice does not preclude or limit the Department of Environmental Quality's ability to initiate any other enforcement action under state or federal law as appropriate.

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY

By: ________________________________
[staff name/title]
[division/office name]

Date: ________________________________

ATTACHMENT 5

BRIEFING REPORT
PROPOSED PENALTY
[Respondent Name]
[Respondent Address]

ATTORNEY-CLIENT PRIVILEGE

Request

Pursuant to Section 3.A. of Department of Environmental Quality (DEQ) Policy and Procedure No. 04-003, Compliance and Enforcement, the Chief Deputy Director must be consulted when a civil penalty in excess of $100,000 is to be proposed by a DEQ division or office during negotiation of a settlement agreement.

The **[division/office name]** (**[division/office acronym]**) seeks authorization to propose a settlement amount of $**[ ]** in lieu of a civil fine during negotiation of a settlement agreement in the form of a **[type of settlement agreement, e.g., Consent Order, Consent Judgment, etc.]** to be entered with **[respondent name]** (**[respondent acronym]**) to resolve alleged violations of **[identify statute, e.g., Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA)]**, and the administrative rules promulgated thereunder **[if applicable, also add a reference to any applicable permit, license, or other authorization or enforceable agreement]**. The settlement agreement provides for a compliance program and schedule to address the alleged violations, payment of the settlement amount, reimbursement of the costs of surveillance and enforcement, and stipulated penalties for future violations of the terms and conditions of the settlement agreement **[Revise this sentence, as necessary, to identify any other major settlement provisions, e.g., reimbursement of future costs, supplemental environmental project, environmental restoration, etc.]**.

The costs of surveillance and enforcement are $**[ ]** to date. The **[division/office acronym]** intends to offer **[respondent acronym]** the opportunity to propose a supplemental environmental project to mitigate a portion of the proposed settlement amount. The **[respondent acronym]** further intends to make a downward adjustment of the amount proposed above by as much as **[up to the amount allowable by applicable penalty policy]** percent if the **[respondent acronym]** makes a prompt, good faith effort to comply during settlement negotiations.

Background/Facts

The settlement agreement resolves violations alleged in the **[**Violation Notice (VN) **OR** Violation Notices (VNs)**]** issued to the **[respondent acronym]** on **[insert date(s)]**. This enforcement action was initiated by the Enforcement Notice issued to the **[respondent acronym]** on **[insert date]** (attached). The violations alleged include: (1) **[Insert numbered list of alleged violations of the statute and any applicable rules, permit, license, or other authorization or enforceable agreement]**. **[Identify any potential harm to human health or the environment or any harm to the regulatory program resulting from the violations.]**

The settlement agreement provides for a compliance program and schedule of implementation to **[insert brief narrative of the compliance activities to be performed to achieve compliance]**.

The **[division/office acronym]** is working with Assistant Attorney General **[attorney name]** on this matter.

Analysis

The proposed penalty was calculated consistent with the DEQ and **[division/office acronym]** penalty policies **[OR FOR DELEGATED PROGRAMS:** DEQ and **[division/office acronym]** penalty policies and the applicable United States Environmental Protection Agency penalty policy**]**. Daily penalties for continuing violations were capped at the **[number of days]**-day maximum provided for under the **[identify applicable penalty policy]**. **[Identify any upward or downward adjustment factors, i.e., aggravating or mitigating circumstances that were considered and describe any economic benefit gained by the violations.]**

Recommendation

The **[division/office acronym]** recommends that the above settlement amount be presented to **[respondent acronym]** during negotiations and that the **[division/office acronym]** proceed to resolve the alleged violations by entry of the settlement agreement.

Staff Contacts

If you have any questions or require additional information, please contact **[division/office chief name]**, Chief, **[division/office acronym]**, at **[phone number]** or **[e-mail address]**; or you may contact **[enforcement section/unit chief name]**, Chief, Enforcement **[**Section **OR** Unit**]**, **[division/office acronym]**, at **[phone number]** or **[e-mail address]**.

Prepared by: **[staff name and title]**
[section/unit name]
[division/office name]
Department of Environmental Quality
[date]

Attachment

Approved:

____
[division/office chief name], Chief
[division/office name]

____

Approved:

____
Jim Sygo, Chief Deputy Director

____
Date

cc: **[Attorney name]**, Assistant Attorney General, Department of Attorney General

From: Elmer R. Hess [ehess@audgen.michigan.gov]
Sent: Thursday, November 12, 2015 11:09 AM
To: Sygo, Jim (DEQ)
Subject: RE: Requested Information for Drinking Water Audit

Thank you sir.

From: Sygo, Jim (DEQ) [mailto:SygoJ@michigan.gov]
Sent: Thursday, November 12, 2015 10:35 AM
To: Elmer R. Hess <ehess@audgen.michigan.gov>
Cc: Allison M. Mikulec <amikulec@audgen.michigan.gov>
Subject: Requested Information for Drinking Water Audit

Elmer and Allison,
In response to our meeting today I am providing the following information:

I have attached the letter sent to the City of Flint regarding their certifications of the Tier 1 sites.
I have also attached our current Compliance and Enforcement Policy. This copy is the final copy but a signed copy is on our Intranet.

Instructions to residents at Flint. Contact Stephen Busch 517-643-2314.
First 6 month sample- population used, sample selected, results received, final report prepared. Contact Mike Prysbe 517-290-8817
Second 6 month sample- same thing. Contact Mike Prysbe 517-290-8817
Virginia Tech results. Marc Edwards Can be contacted through Virginia Tech.
Hurley detailed results. Contact Linda Dykema 617-335-8566

Other phone numbers requeste
Liane Shekter-Smith 517-284-6543
Richard Benzie 517-284-6512

From: Shekter Smith, Liane (DEQ)
Sent: Tuesday, November 24, 2015 1:44 PM
To: Hess, Elmer (OAG)
Cc: Sygo, Jim (DEQ);Devereaux, Tracy Jo (DEQ)
Subject: RE: VA Tech sampling protocol
Attachments: 11-23-2015 Flint Drinking Water Events Timeline.docx

As requested, the timeline is attached.

All of the attachments cited in the timeline are available on DEQ's Sharepoint. Do you know if you have access? Please let me know if the following link works for you.

http://inside.michigan.gov/deq/officesdivisions/odwma/Flint%20Timeline/Forms/AllItems.aspx?InitialTabId=Ribbon%2EDocument&VisibilityContext=WSSTabPersistence

We expect this to be a "living" document and intend to update it as necessary.

There is another document that we prepared that I will be forwarding to you yet this afternoon.

Liane

From: Elmer R. Hess [mailto:ehess@audgen.michigan.gov]
Sent: Tuesday, November 24, 2015 11:53 AM
To: Shekter Smith, Liane (DEQ)
Subject: Re: VA Tech sampling protocol

Good morning Ms. Liane,

I am writing to follow-up our meeting from last Friday to request the time-line that you had mentioned during our conversation. Can you forward that to us? This will be very helpful in our review.

Thank you for your assistance,

Elmer Hess, Jr.

From: Shekter Smith, Liane (DEQ) <SHEKTERL@michigan.gov>
Sent: Friday, November 20, 2015 5:35:24 PM
To: Elmer R. Hess; Brandon M. McAndrew
Cc: Sygo, Jim (DEQ)
Subject: VA Tech sampling protocol

As requested. The attached document was forwarded to me as the VA Tech protocol.

As a reminder, this sampling protocol is not for compliance sampling purposes, but more for an exposure assessment.

Liane

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
FLINT DRINKING WATER EVENTS TIMELINE

Date	Event	Attachment
Pre-1967	Flint Water Treatment Plant in operation using Flint River for drinking water	1
Post-1967	Flint switched to Detroit Water and Sewerage Department for drinking water	None
January 2006	Discussions regarding Karegnondi Water Authority, *Preliminary Long-Term Water Supply for Genesee County*	2
June 25, 2009 September 2009	*Lake Huron Water Supply Study Karegnondi Water Authority* Executive Summary and Preliminary Engineering Report	3
March 2013	*Analysis of the Flint River as a Permanent Water Supply for the City of Flint*; Prepared for: City of Flint dated July 2011	4
April 2013	Flint notifies Detroit Water and Sewerage Department of contract discontinuation and joins the Karegnondi Water Authority	5
April 2013	Detroit Water and Sewerage Department sets termination of Flint water service contract to April 17, 2014	6
June 2013	Flint notifies the Department of Environmental Quality of intent to operate Flint Water Treatment Plant full time using Flint River for drinking water	7
April 2014	The Michigan Department of Environmental Quality issues Flint Water Treatment Plant construction permits for full time operation enhancements W141025 and W141026	9
May 2014	Flint stops purchasing Detroit Water and Sewerage Department water. Starts using the City of Flint Water Treatment Plant and Flint River for drinking water	10
August 2014	Flint *E. coli* bacteria violation, Localized System Boil Water Advisory	11
September 2014	Disinfection Byproducts compliance communication; the Michigan Department of Environmental Quality requests preemptive Operational Evaluation	12
September 2014	Flint Total Coliform Bacteria violation, Localized System Boil Water Advisory	13

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
FLINT DRINKING WATER EVENTS TIMELINE

Date	Event	Attachment
October 2014	General Motors announces decision to stop using Flint River as source for production water	14
December 2014	Disinfection Byproducts quarterly violation begins	15
December 31, 2015	1st 6-month round of lead and copper monitoring ends. Results due from Flint to Michigan Department of Environmental Quality on January 10, 2015	None
January 21, 2015	City of Flint Public Meeting regarding disinfection byproducts and bacteria	17
February 26, 2015	E-mail from United States Environmental Protection Agency to Michigan Department of Environmental Quality regarding elevated lead sample	18
February 27, 2015	E-mail from United States Environmental Protection Agency to Michigan Department of Environmental Quality inquiring about Optimized Corrosion Control Treatment	19
February 27, 2015	Michigan Department of Environmental Quality response to United States Environmental Protection Agency email with statement regarding optimized corrosion control program	20
March 5, 2015	2nd Disinfection Byproducts quarterly violation notice	21
March 30, 2015	Michigan Department of Environmental Quality notifies Flint of Lead/Copper Monitoring Results.	16
April 3, 2015	Long Term 2 Enhanced Surface Water Treatment Rule Letter	22
April 6, 2015	Flint proposes installation of Granular Activated Carbon Filter media to reduce disinfection byproducts	23
April 23, 2015	United States Environmental Protection Agency e-mail to Michigan Department of Environmental Quality regarding corrosion control treatment	24
April 24, 2015 May 1, 2015	Michigan Department of Environmental Quality responds to United States Environmental Protection Agency regarding corrosion control treatment	25

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
FLINT DRINKING WATER EVENTS TIMELINE

Date	Event	Attachment
April 27, 2015	United States Environmental Protection Agency provided bottles to 212 Browning for lead/copper analyses	26
May 6, 2015	Lead service line replaced at 212 Browning. United States Environmental Protection Agency on-site	27
May 28, 2015	Internal United States Environmental Protection Agency e-mail regarding results at 212 Browning	29
June 9, 2015	3rd Disinfection Byproducts quarterly violation notice	30
June 10, 2015	Semi-Annual Conference call with United States Environmental Protection Agency	31
June 30, 2015	E-mail from United States Environmental Protection Agency scheduling conference call on July 21, 2015 regarding elevated lead result and concerns regarding corrosion control	32
June 30, 2015	2nd 6-month round of lead and copper monitoring ends. Results due from Flint to Michigan Department of Environmental Quality on July 10, 2015	None
July 9, 2015	Michigan Department of Environmental Quality informed that United States Environmental Protection Agency draft internal memo is on ACLU website	33
July 14, 2015	Michigan Department of Environmental Quality issues construction permit to Flint for Granular Activated Carbon filter media W151055	34
July 21, 2015	Conference call with United States Environmental Protection Agency (Lead and Copper Rule implementation and Flint) during which it informs Michigan Department of Environmental Quality its interpretation of Lead and Copper Rule	35
July 24, 2015	Michigan Department of Environmental Quality e-mail and draft letter 90th percentile lead determination = 11 parts per billion and City of Flint requirement to add corrosion control treatment	36

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY FLINT DRINKING WATER EVENTS TIMELINE

Date	Event	Attachment
July 28, 2015	**Michigan Department of Environmental Quality received blood lead level information from Michigan Department of Health and Human Services indicating that results since the switch to the Flint River are consistent with past years seasonal variations**	**37**
August 4, 2015	**Meeting with city representatives at Governor's office**	**38**
August 17, 2015	**Michigan Department of Environmental Quality notifies Flint of lead/copper monitoring results and requires City to install corrosion control treatment**	**39**
August 23, 2015	**Michigan Department of Environmental Quality notified by an external party that a water quality study was about to begin in Flint**	**40**
September 2, 2015	**Disinfection Byproducts return to compliance**	**43**
September 11, 2015	**United States Environmental Protection Agency e-mail confirming that Michigan Department of Environmental Quality was never sent the draft June 24, 2015 memo**	**44**
September 21, 2015	**Meeting with Congressional representatives, legislators, United States Environmental Protection Agency and Michigan Department of Environmental Quality to discuss issues with water quality in Flint**	**45**
September 22, 2015	**Meeting/Conference call with Michigan Department of Health and Human Services, Genesee County Health Department, and Michigan Department of Environmental Quality to discuss lead education/outreach**	**46**
September 24, 2015	**Hurley Children's Hospital data reveals elevated blood lead levels in Flint children**	**47**
September 24, 2015	**Michigan Department of Health and Human Services response affirms State blood lead level data is more comprehensive than Hurley Hospital data**	**None**

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
FLINT DRINKING WATER EVENTS TIMELINE

Date	Event	Attachment
September 25, 2015	Flint issues Lead Advisory regarding drinking water	48
October 1, 2015	State Chief Medical Officer confirms Hurley blood lead level data	None
October 1, 2015	Genesee County Health Department issues “Do Not Drink” Advisory	49
October 2, 2015	Michigan Department of Environmental Quality and Michigan Department of Health and Human Services press conference. Governor’s Flint Action Plan announced.	50
October 2, 2015	Genesee County Health Department school screening water samples collected for lead analysis	51
October 8, 2015	Governor Press Conference: Flint to reconnect to Great Lakes Water Authority/Detroit Water and Sewerage Department	52
October 15, 2015	State Legislature authorizes a $9 million to assist the City of Flint to pay for the return to the Detroit water system and to fund staff at schools to gauge lead exposure	None
October 16, 2015	First weekly coordination meeting held between the City of Flint and state agencies	None
October 16, 2015	Michigan Department of Environmental Quality meets with Flint Schools Superintendent and Genesee County Health Department	None
October 16, 2015	Flint switches back to Detroit Water and Sewerage Department for water	53
October 21, 2015	Governor Snyder announces formation of Flint Water Task Force to complete an After-Action Review	None
October 28, 2015	Michigan Department of Environmental Quality issues construction permit for additional corrosion control treatment W151104	54
October 30, 2015	Michigan Department of Environmental Quality letter to Flint regarding corrosion control treatment operation	55

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
FLINT DRINKING WATER EVENTS TIMELINE

Date	Event	Attachment
November 3, 2015	United States Environmental Protection Agency Memorandum regarding "Lead and Copper Rule Requirements for Optimal Corrosion Control Treatment for Large Drinking Water Systems"	56
November 4, 2015	United States Environmental Protection Agency Memorandum regarding "Transmittal of Final Report – High Lead at Three Residences in Flint, Michigan"	57
Mid-Late 2016	Planned connection to Karegnondi Water Authority (Lake Huron water to Flint Water Treatment Plant)	None