

CHAPTER 66**ENFORCEMENT PROCEDURES**

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6600 JURISDICTION AND DELEGATION OF AUTHORITY

- 6600.1 In every case in which a hearing is requested or is required pursuant to the Act or pursuant to this Subtitle, the hearing authority of the Director is delegated to the authorized hearing body(ies) for the Department which shall have jurisdiction to hear and render a final decision in the case.
- 6600.2 The contested case provisions of the D.C. Administrative Procedures Act, D.C. Code Section 1-1509, as supplemented by this chapter shall govern all cases in which a hearing is requested or otherwise required by the Act or this Subtitle.
- 6600.3 The Director or his or her designee, shall be authorized to pursue enforcement actions through:
- (a) The issuance of notices of violation pursuant to §6601, proposed compliance orders and proposed cease and desist orders pursuant to §6602, and notices of intention to suspend, deny or revoke a license or certification pursuant to §6603;
 - (b) The development and presentation of cases before an authorized hearing body; and
 - (c) The issuance of immediate cease and desist orders and compliance orders pursuant to §6606.
- 6600.4 The Director or his or her designee shall be authorized to issue summary suspension orders pursuant to §6607.

6601 NOTICE OF VIOLATION OR THREATENED VIOLATION

- 6601.1 Any enforcement action under the Act or pursuant to this Subtitle shall be commenced with a written notice of violation or threatened violation issued to any person deemed appropriate by the Director, except as provided in §§6603 and 6606.2.

- 6601.2 The notice of violation or threatened violation shall:
- (a) Clearly identify the violation or threatened violation by citing the specific regulations(s);
 - (b) May require the Respondent (as defined in § 7099.1) to take the corrective measures the Director considers reasonable and necessary; and
 - (c) If corrective measures are required, shall allow a reasonable time for performance of necessary corrective measures, consistent with the likelihood for harm and the need to protect health, safety, life, property and the environment.
- 6601.3 A Directive issued pursuant to § 6301.4 may serve as a notice of violation or threatened violation, provided it meets the requirements of this section.
- 6601.4 A notice of violation or threatened violation shall be served by personal service on a Respondent or his or her authorized agent or by certified mail, return receipt requested. If the person fails or refuses to accept certified mail, the notice of violation or threatened violation may be served by regular first class mail; provided that:
- (a) The notice of violation is sent to the last known address of the person being served or if applicable, the addressee(s) on a notification form or other official correspondence submitted to the Department; and
 - (b) The accuracy of the address is verified.
- 6601.5 If a Respondent objects to a notice of violation or threatened notice of violation on the grounds that the action directed, is not necessary or appropriate from a technical, engineering, geophysical, or other scientific perspective, the Respondent shall file a written statement including the grounds for his or her objection within fifteen (15) calendar days of service of the notice, or any other longer time period as the Director may specify.
- 6602 PROPOSED COMPLIANCE ORDER OR PROPOSED CEASE AND DESIST ORDER**
- 6602.1 If the Respondent upon whom a notice of violation or threatened violation has been served, fails to comply with the corrective measures required in the notice, the Director or his or her designee, may issue a proposed compliance order or a proposed cease and desist order to the Respondent.
- 6602.2 A proposed compliance order or proposed cease and desist order shall:
- (a) Include a statement of the facts, the nature of alleged violations including citation of the specific regulation(s) involved, and the legal grounds for relief;
 - (b) Allow a reasonable time for compliance with the order consistent with the likelihood for harm and the need to protect health, safety, life, property, and the environment;

- (c) Advise the Respondent that he or she has a right to a hearing and to legal representation;
- (d) Inform the Respondent of any scheduled hearing date or the actions which the Respondent must take to obtain a hearing and the consequences of failure to comply with the proposed order or request a hearing;
- (e) Set forth the action or actions which the Respondent must take or the activity or activities which the Respondent must cease in order to comply with the order; and
- (f) State the amount of any penalties to be assessed for failure to comply with the order.

6602.3 A proposed compliance order, proposed cease and desist order, a summons or accompanying instructions shall be served by one of the following methods:

- (a) Personal service on the named Respondent or the Respondent's authorized agent for service;
- (b) Delivering to the last known home or business address of the named Respondent and leaving it with a person over the age of eighteen (18) years residing or employed therein; or
- (c) Mailing, via United States Postal Service first class, certified, postage prepaid to the last known home or business address of the named Respondent or the Respondent's agent; or
- (d) Any other means set forth in D.C. Law 8-242.

6602.4 A proposed compliance order, proposed cease and desist order, a summons or accompanying instructions shall state whether the Respondent is required to file an answer thereto, the time within which to respond, and the form of response required.

6603 NOTICE OF SUSPENSION, REVOCATION OR DENIAL OF A LICENSE OR CERTIFICATION

6603.1 An action to suspend, revoke, or refuse to issue, renew, or restore a license or certification provided for in §7(a) of the Act and Chapter 65 of this Subtitle shall be initiated by a notice of proposed suspension, revocation or denial in accordance with this section in lieu of a notice of violation pursuant to §6601.

6603.2 The notice of proposed suspension, revocation or denial shall be in writing and shall include the following:

- (a) The name and address of the applicant for or holder of the license or certification;
- (b) A statement of the proposed action;
- (c) A statement of the reasons for the proposed action in compliance with the requirements of §8 of the Act; and
- (d) Notice that the Respondent has a right to a hearing at the time and place stated, and is required to file an answer.

6604 SETTLEMENT AGREEMENTS AND CONSENT COMPLIANCE ORDERS

- 6604.1 At any time during the course of the proceedings, the parties to the proceeding may enter into a settlement agreement or consent compliance order. A settlement agreement or consent compliance order shall set forth each of the agreements made, actions to be taken by either party and any agreed-upon fines or penalties and shall indicate that the agreement may not be appealed.
- 6604.2 A settlement agreement shall be effective when signed by the parties thereto and shall not require the signature of an Administrative Law Judge (ALJ).
- 6604.3 A settlement agreement may be submitted to an ALJ for approval.
- 6604.4 A consent compliance order shall be effective when signed by the parties to the case and by an ALJ, and shall have the force and effect of any final order. There shall be no right of appeal from a consent compliance order.

6605 HEARINGS AND ISSUANCE OF FINAL ORDER

- 6605.1 Once a hearing is requested, motions practice, pre-hearing discovery, and the conduct of the hearing shall be in accordance with the D.C. Administrative Procedures Act and Department hearing procedures.
- 6605.2 The Petitioner (as defined in § 7099.1) shall have the burden of going forward with and of proving that the violation occurred as set forth in the proposed compliance or cease and desist order, and that the proposed civil penalty, revocation or suspension, as the case may be, is appropriate.
- 6605.3 Following the establishment of a *prima facie* case, the Respondent shall have the burden of presenting and of going forward with any defense to the allegations set forth in the petition. Each matter of controversy shall be determined by the AU upon a preponderance of the evidence.
- 6605.4 If a Respondent does not appear for the scheduled hearing, and no continuance has been granted, the ALJ may receive evidence and hear testimony and may render a decision on the basis of evidence before it.
- 6605.5 The ALJ shall inform the parties of an action taken under this section.

- 6605.6 A decision of the ALJ shall be supported by and in accordance with substantial, reliable, and probative evidence pursuant to D.C. Code §1-1509(e) (1992 Repl. Vol.).
- 6605.7 The ALJ's decision and order shall include findings of fact and conclusions of law.
- 6605.8 A final compliance order shall also set forth the following:
- (a) The action or actions which must be taken by the Respondent to correct a violation or threatened violation of the Act or regulations issued under the Act, and may include the following:
 - (1) Perform testing, studies, investigations, monitoring;
 - (2) Perform comprehensive site assessment;
 - (3) Upgrade tanks, remove tanks, install leak detection systems, repair or replace tank systems, close tanks;
 - (4) Prepare corrective action plans;
 - (5) Implement remediation or corrective action plan; or
 - (6) Maintain and submit records.
 - (b) The amount of any civil penalties to be imposed, as authorized by §§ 10(d) through (g) of the Act;
 - (c) Authorization for the Director to enter on property to undertake assessment and corrective action, if the Respondent fails or refuses to comply with an order requiring the Respondent to perform a site assessment or corrective action within the time period set forth in the order; and
 - (d) Any applicable appeal rights.
- 6605.9 A final order suspending, revoking or denying a license or certification shall state clearly the action taken the reasons for the action, and any applicable appeal rights.

6606 IMMEDIATE COMPLIANCE ORDERS, IMMEDIATE CEASE AND DESIST ORDERS

- 6606.1 The Director, or his or her designee, may issue an immediate compliance order or an immediate cease and desist order to require a person to correct a situation which immediately threatens health or the environment or to restrain any person from engaging in any unauthorized activity that immediately endangers or causes damage to public health or the environment.
- 6606.2 When an immediate compliance order, or immediate cease and desist order, is

authorized under this section, it shall not be necessary to first issue a notice of violation or proposed compliance order pursuant to §6601 or 6602 or to provide reasonable notice and an opportunity for a hearing pursuant to §6602.

- 6606.3 An immediate compliance order or immediate cease and desist order issued pursuant to this section shall be served in the same manner as a proposed compliance order or proposed cease and desist order is served pursuant to §6602.4.
- 6606.4 An immediate compliance order or immediate cease and desist order shall:
- (a) Include a statement of the nature of the situation or violation;
 - (b) Take effect at the time and on the date signed;
 - (c) Identify the action or actions to be taken or ceased; and
 - (d) Include a statement advising the Respondent that he or she has a right to request a hearing before an ALJ within the OAD within seventy-two (72) hours of service of the order upon him or her, and that if a hearing is not requested within that time period, the order will become final.
- 6606.5 A hearing request shall not stay the effective date of the order.
- 6606.6 If a hearing is requested, the hearing shall be held within fifteen (15) days from the date that the hearing request is received by OAD and the ALJ shall issue a decision, including findings of fact and conclusions of law, no later than fifteen (15) days after the hearing.
- 6606.7 Any situation or activity, related to underground storage tanks regulated by this Subtitle, that is conducted in violation of these regulations or that endangers or causes damage to public health or the environment shall warrant a prohibition on delivery of product through issuance of an immediate cease and desist order, including but not limited to:
- (a) An accumulation of toxic, flammable or explosive vapors in a structure, sewer or excavation;
 - (b) Floating free product on surface or ground water;
 - (c) Potential for migration of release to surface waters or other sensitive environmental receptors;
 - (d) An open pit or excavation that is not secured properly during or left in place after corrective action;
 - (e) Anything which may cause potential exposure of humans, plants or animals to hazardous substances; or

- (f) Missing or inoperable spill prevention, overfill protection, release detection, or corrosion protection required equipment or material.

6607 SUMMARY SUSPENSION OR RESTRICTION OF LICENSE OR CERTIFICATION

- 6607.1 If the Director, determines during or after an investigation, that the conduct of any business or individual who installs, removes, or tests an underground storage tank presents an imminent danger to the health or safety of the residents of the District, the Director or designee may summarily suspend or restrict the license of the business or the certificate of the individual, without a hearing.
- 6607.2 At the time of the summary suspension or restriction, the Director shall provide the licensee or certificate holder with a written notice stating the action that is being taken, the basis for the action, and the right to request a hearing within seventy-two (72) hours after service of the notice.
- 6607.3 The notice shall be served in the same manner as a proposed compliance order pursuant to §6602.4.
- 6607.4 If a hearing is timely requested, the hearing shall be held before an ALJ of the OAD within fifteen (15) days of the request and a decision shall be issued within fifteen (15) days after the hearing.

6608 PENALTIES

- 6608.1 Penalties for failure to comply with a final compliance order, a final cease and desist order, or a final suspension, revocation or denial order shall be in accordance with D.C. Code §§ 8-113.09(d) through (g).

6609 APPEALS

- 6609.1 Any person adversely affected or aggrieved by a final compliance order, cease and desist order or other administrative order issued pursuant to this chapter and §10 of the Act may appeal the action by filing a petition for review in the D.C. Court of Appeals.
- 6609.2 The appeal shall be filed in conformity with the rules of the District of Columbia Court of Appeals.
- 6609.3 The filing of a petition for review shall not in itself stay enforcement of the final order or decision.

6610 CIVIL INFRACTIONS

- 6610.1 In any instance where a civil fine, penalty or fee has been established pursuant to the "Civil Infractions Act" (D.C. Law 6-42, D.C. Code § 2-1801.01 *et seq.*) and the "Civil Infractions Regulations" (16 DCMR § 3651) promulgated pursuant thereto, the civil fine, penalty or fee may be imposed as an alternative sanction to

the penalties set forth in D.C. Code §§ 8-113.09(d) through (g).

6610.2 Where civil infraction fines are the only penalties pursued in a particular case, the Civil Infractions Regulations shall govern the proceedings in lieu of Departmental hearing procedures or Chapter 66 Enforcement Procedures.

6610.3 A civil infractions case may be consolidated for hearing together with another case against the same responsible party in which a proposed compliance order or proposed cease and desist order has been issued.

6611 COURT ACTION IN LIEU OF COMPLIANCE ORDER OR CEASE AND DESIST ORDER

6611.1 After a notice of violation has been issued and the time for compliance has expired, the Director, in his or her discretion, may, institute a court action for injunctive relief, damages, civil penalties, or recovery of any corrective action costs incurred by the District government pursuant to §10(b) of the Act, in lieu of proceeding through the administrative process to issue a proposed compliance order or proposed cease and desist order.

6611.2 In order to require a person to correct a situation which immediately threatens health or the environment or to restrain any person from engaging in any unauthorized activity that immediately endangers or causes damage to public health or the environment, the Director may, in his or her discretion, seek a temporary restraining order in court in lieu of seeking an immediate compliance order or cease and desist order.