

Resolving Violations Under the PA Safe Drinking Water Act

The following is a refresher on resolving violations under the *PA Safe Drinking Water Act* (the “Act”). The PA Department of Environmental Protection (PADEP) is responsible for enforcing the Act. PADEP can determine violations from information garnered from various sources. Included among the sources, are:

1. Inspections that they conduct;
2. Review of self-monitoring information provided by permittees; and,
3. Information and complaints made by third parties.

When violations are identified by PADEP, it is common for a notice of violation (NOV) to be issued to the responsible party. An NOV is a formal notice of a PADEP-determined violation, which will state the basis for each violation, the requested action to be taken, and a deadline for the request action to be taken.

I have received calls from clients who have received NOV's requesting that I file an appeal of the NOV. My answer is that an NOV is not a final determination by PADEP, and as such, it is not appealable. The alleged violation cannot be appealed unless and until PADEP initiates an enforcement action based on the violations in the NOV. That usually does not happen if the receiving party performs the requested actions set forth in the NOV. Other actions to resolve violations include:

1. A consent order and agreement;
2. A consent decree;
3. A final permit;
4. A consent assessment of civil penalty; and/or a,
5. Other enforceable action.

Preceding any of the aforesaid actions should be an opportunity to negotiate with PADEP to resolve any alleged violations.

The Act also authorizes the assessment of civil and criminal penalties. Under the Act, PADEP is authorized to assess and collect civil penalties to the maximum of \$5,000 per day for each violation. The penalty may be assessed whether or not the violation is willful or negligent. An administrative conference is recommended, but not required, for civil penalty actions.

A criminal penalty can be assessed for violations of the Act or regulations, including summary offenses, and third- or second-degree misdemeanors. A pre-enforcement conference must be held between the violator and PADEP prior to any criminal proceedings. The criminal penalties range from a maximum per day of \$5,000 for a summary offense; a maximum of \$12,500 per day for a misdemeanor of the third degree; and a maximum per day of \$25,000 for a second-degree misdemeanor. Violations on separate days constitute separate violations. Penalties for criminal violations can also include jail time. For more information see the Safe Drinking Water Program Compliance Strategy, Document No. 383-0400-110, at <https://bit.ly/3PJkFj4>.

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