

Renewing, Denying or Revoking Wastewater Management Permits and Land Site Approvals

This memo is an outline of the process that will be implemented for cases where non-compliance activities impact IDEM's discretion to renew, deny or revoke wastewater management permits issued under 327 IAC 7.

The idea of creating a simplified process for staff to determine the consequences of non-compliance activities was initiated last year when we realized the degree of inconsistency of enforcement as administered by the SDOH in previous years. Meetings to discuss this concern have been held with input from the Water Enforcement Section, OE, Inspection Section, OWM and occasionally, a member of OLC. As you know, a recent evaluation of this issued by OLC, focused on the impact of pending enforcement proceedings at the time when permits are due for renewal.

Following is a narrative description of the results of this idea to standardize the sometimes complicated task of determining when non-compliance activities warrant an impact on the permit and how to proceed when administering the impact. This summary will be considered a proposed operation procedure to follow for the wastewater management program compliance monitoring and enforcement activities.

All activities conducted as allowed by state regulation and issued permits must be scrutinized to assure that permittees comply with established requirements. Enforcing the compliance of rules, statues and permits results in the problem of what to do with the offenders. When this decision is unsupported by standards, discrepancies exist regarding the weighing of factors associated with the observed violation. A lack of standards results in the potential for ambiguity to exist throughout the state due to having many individuals completing the same task of compliance monitoring. In order to accomplish developing and implementing a standard system, the following was recognized:

- a system recognizing major and minor types of violations must be established
- all provisions of 327 IAC 7 scrutinized for compliance must be categorized
- the use of the system must be accepted by OE
- initially, the use of the system will result in increased enforcement activity
- compliance will improve over time due to permittee increased awareness of IDEM's compliance monitoring/enforcement process
- use of the system will streamline the entire process of compliance monitoring and enforcement.

**Three pathways of enforcement have been chosen based on a point system; Major violation = 10 points
Minor violation = 2.5 points**

1. >50 points

Inspection, compliance monitoring --->repeat violator or one criminal violation (environmentally related)**_denial, revocation, enforcement referral, 1yr. probation from Reauthorization**

2. 11.50--49 points

Inspection, compliance monitoring _repeat violator, _issue a WONC and request operational plan or make referral for enforcement and wait for conclusion of proceedings **_issue permit after case has been settled**

3. 2.5--11 points

Inspection, compliance monitoring _minor violation _issue a WONC **_no delay of processing permit renewal**

Inspection forms are being developed to incorporate quick reference to categorical violations. Our new tracking system will allow for maintenance of non-compliance records for each hauler.

In order to recognize the four separate permits and approvals issued by this program, it is proposed to have four areas upon which points can be accumulated.

These are:

1. business permit
2. vehicle license
3. land application approvals
4. storage facility approvals

It is proposed that when a permittee accumulates in excess of 50 points in areas two, three or four, the points in excess of 50 will roll over to the business permit. The following tables detail the categorical classification for each rule in the four areas of permitting activities.

BUSINESS

ARTICLE 327 IAC 7	MAJOR	MINOR
327 IAC 7-2-1	ALL	
327 IAC 7-2-4	ALL	
327 IAC 7-2-5	(2)&(3)	(1)&(2)
327 IAC 7-3-1	(5)	(1-4),&(6)
327 IAC 7-3-2	ALL	
327 IAC 7-3-3	(a),(b),(d),(e),(f)	(c)
327 IAC 7-5-1	ALL	
327 IAC 7-5-2	ALL	
327 IAC 7-5-3	ALL	

VEHICLE

ARTICLE 327 IAC 7 RULE	MAJOR	MINOR
327 IAC 7-4-1	ALL	
327 IAC 7-4-5	(3)	(1)&(2)
327 IAC 7-4-6	a(1),b(1&6)	a(2-5),b(2-5&7,8), c(1-7), d(1-3)
327 IAC 7-4-7	ALL	
327 IAC 7-4-8		ALL

LAND APPLICATION

ARTICLE 327 IAC 7 RULE	MAJOR	MINOR
327 IAC 7-6-1	ALL	
327 IAC 7-6-4	4(4,5,6&7)	4(1,2&3*)
327 IAC 7-6-5	5(3)	5(1,2,4&5)**
327 IAC 7-6-6	ALL***	
327 IAC 7-6-8	8(1,2,3,4,5,8,9,10)	8(6&7)
327 IAC 7-6-11	ALL	
327 IAC 7-6-12	ALL	

* only when the site is in use

** 10 percent variance

*** 10 percent variance depending on circumstances

STORAGE

ARTICLE 327 IAC 7 RULE	MAJOR	MINOR
327 IAC 7-7-1	ALL	
327 IAC 7-7-4	4(1),2(A-E)**** 2(I), 3(E)	2(F&H) 3(A-D)
327 IAC 7-7-5(a)	ALL	
327 IAC 7-7-5(b)	(b(2,3,5&6) (c(1&2)	(b(1,4,7&8)
327 IAC 7-7-6	ALL	

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Common Question:

1. Does more than one spot dump observed on the same day and site constitute multiple violations?

We will generally cite an operator once per day / per site for observed violations. The permittee will be informed of the violations within 48 hours of the inspections. If, when we return to the site and find additional spot dump, it would constitute another spot dumping violation. These violation apply only to the site where the violations are observed. This concept is supported by the fact that each site approval is issued individually. An operator may have two sites and will be allowed to accumulate 50 points for each site.

2. How far back do we look into compliance? How long do points accumulate?
 - a. Permit renewal considerations will be limited to points accumulated during the previous permitting period.
 - b. Revocations and / or suspensions may consider points accumulated during the current and previous permit period.
3. Will the points be removed from the cumulative total after finalizing an enforcement action?

Points will not be deleted from the cumulative total when enforcement actions are finalized. This extends from the fact that 327 IAC 7-1-4 gives OWM the mandate of considering the compliance history of permittee before renewing a permit, land application site or storage facility approval, prior to issuance. Additional violations will jeopardize their business permit or having access to sites (permit or approval revocation). For purpose of administering the program, as was designed, staff believe that paying a civil penalty does not constitute the privilege of having the slate wiped clean of previous offenses. Keep in mind that the impact of violations is negated on an annual basis for permit renewal considerations.

Implementation of the Point Based Compliance System

In testing the process on the three recent enforcement cases, the results (effect on permit and degree of enforcement priority), based on number and type of violations (point system), coincided with how we treated the cases prior to the point system.

The Land Use Section intends to use this system on a trial basis during 1996 and 1997. It is anticipated that many adjustments will be dictated by the continual improvement process