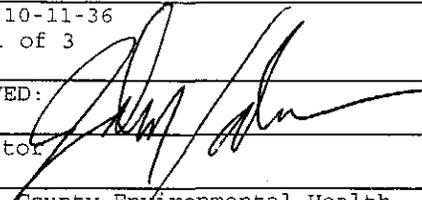


Maricopa County Environmental Services Department Policy and Procedure	DPPN: 10-11-36 Page 1 of 3	Last Review 8/11
	APPROVED: 	
Initiating Department: Office of the Director		Issue Date 10/17/11
Subject: Legal Enforcement of the Maricopa County Environmental Health Code		Next Review 7/13

I. PURPOSE

To define and establish procedures for legal enforcement actions within the Maricopa County Environmental Services Department (Department) for noncompliance pursuant to county, state and federal regulations.

II. REFERENCES

Maricopa County Environmental Health Code (MCEHC)
Chapter I: General Provisions
Arizona Revised Statutes (A.R.S.)
A.R.S. Title 36 - Public Health and Safety
Chapter 1: State and Local Boards and Department of Health;
Chapter 6: Public Health Control
A.R.S. Title 41 - State Government
Chapter 6: Administrative Procedure
A.R.S. Title 49 - The Environment
Chapter 2: Water Quality Control
A.R.S. Title 13 - Criminal Code
Chapter 7: Sentencing and Imprisonment
Chapter 8: Restitution and Fines

III. APPLICABILITY

This policy and procedure applies to all Department personnel.

IV. POLICY

Legal enforcement, permitted and non-permitted, is implemented to eliminate situations of potential harm to public health based on observations made during citizen complaint investigations and field inspections.

This policy provides hyperlinks in reference to enforcement actions including all pertinent information in accordance with A.R.S. and MCEHC. It is within the discretion of the Director to apply any of the following enforcement actions:

Notice of Violation and Demand for Compliance (NOV) - Pursuant to A.R.S. § 36-183.04. Notice of violation; civil penalties; administrative hearings is when a violation of a sanitary ordinance or regulation is identified of which the Department may issue an NOV. The NOV shall outline with reasonable specificity, the nature of the violation(s), demand(s) and deadline(s) for compliance and the penalty which may be assessed for each violation if compliance is not met. The NOV shall also state that a hearing may be requested within 15 days after service of the NOV. Unless compliance is met within the stated deadline or a hearing request is submitted, the Director may issue a Compliance Order as described in this policy.

Notice to Appear and Complaint (Citation) - Pursuant MCEHC Chapter I, Regulation 8: Notice to Appear and Regulation 11: Violation, a criminal citation may be issued for any violation of the MCEHC. A citation may be issued when written notification fails to achieve compliance; when immediate enforcement action is necessary or to mobile food vendors or special event participants for violations of the MCEHC without prior written or verbal notice. A person who holds a valid permit and is in violation of the MCEHC is guilty of a class 3 misdemeanor. A person who does not hold a valid permit and is in violation is guilty of a class 2 misdemeanor per A.R.S. §36-183.03, §36-183.06, §36-183.07 and §36-191. A.R.S. §13-707 and §13-802 refer to individual sentencing and fines for misdemeanors and A.R.S. §13-803 for enterprises.

There are two types of citations written by field personnel applied by the Department. The "short form" citation is submitted directly to the Justice Court. The "long form" citation is routed to the Enforcement Program to be reviewed by the County Attorney's Office prior to submittal to the Justice Court.

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Cease and Desist Order (C&D) - Pursuant to A.R.S. § 36-601(B). Public nuisances dangerous to public, Chapter 6. Public Health Control and MCEHC Chapter I, Regulation 12: Cease and Desist; Abatement, when the Director has reasonable cause to believe that a person is maintaining a nuisance or engaging in any practice contrary to A.R.S. and/or MCEHC, the Director may issue a C&D. The C&D shall order discontinuation of the nuisance or practice that is found noncompliant of which the person may request a hearing within 15 days after service of the C&D.

Permit Suspension - Pursuant to MCEHC Chapter I, Regulation 7(a). Suspension and Revocation of Permits, Department personnel shall utilize suspension procedures when violations present an imminent health hazard at a permitted establishment. A motion to vacate a Notice of Suspension must be filed within 15 days of service of which the Director shall hear the motion within five (5) days. A suspension order shall remain effective for no more than 25 days of which another order and/or revocation may be issued when compliance is not met or if a motion to vacate has been filed.

Permit Revocation - Pursuant to MCEHC Chapter I, Regulation 7. Suspension and Revocation of Permits, permit revocation may be initiated for failure to correct violations within 25 days of a permit suspension and/or for other reasons described in MCEHC Chapter I, Regulation 7(b)(1). The Director shall notify the permit holder in writing listing specific reasons why the permit shall be revoked 20 days following service of notice unless the permit holder files a hearing request.

Variance Withdrawal - Variance withdrawal including the Bare Hand Contact Exemption may be initiated for any violation(s) in noncompliance with an approved Hazard Analysis Critical Control Point (HACCP) plan of a permitted establishment. The Director shall notify the permit holder in writing listing specific reasons why the variance shall be withdrawn 20 days following service of notice unless the permit holder files a hearing request.

Abatement of Nuisance - Pursuant to A.R.S. § 36-602(A). Abatement of nuisances, sources of filth and causes of sickness; civil penalty; property assessment; procedure and MCEHC Chapter I, Regulation 14, the Department may take action to abate or remove a nuisance such as a source of filth or a cause of sickness from a property. The Director shall issue an Assessment Statement to the property owner for costs associated with the abatement or removal. If the property owner does not pay the assessed costs within the time provided, the Director may issue a Notice and Claim Assessment Lien.

Compliance Orders - Pursuant to A.R.S. § 49-354. Enforcement; violation; classification; compliance orders; judicial review; injunctive relief; civil administrative penalties; civil penalties, the Director may issue a Compliance Order to enforce Public Drinking Water Systems rules and regulations. A Drinking Water Compliance Order shall provide for a civil penalty based on the population as listed in A.R.S. § 49-354. Enforcement; violation; classification; compliance orders; judicial review; injunctive relief; civil administrative penalties; civil penalties. A hearing may be requested within 30 days following service of notice of a Drinking Water Compliance Order.

Pursuant to A.R.S. § 49-354. Enforcement; violation; classification; compliance orders; judicial review; injunctive relief; civil administrative penalties; civil penalties, the Director may issue a Compliance Order for failure to comply with an NOV issuance. A Compliance Order shall impose a civil penalty of up to \$750.00 per violation by an individual and up to \$5,000.00 per violation by an enterprise. The Compliance Order shall be consistent with the terms of the NOV. An appeal to the Director may be requested within 15 days following service of notice of a Compliance Order.

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Injunctive Relief; Consent Decree; Civil Penalties - Pursuant to A.R.S. § 36-183.05. Violations; injunctive relief; civil penalties; consent decrees. If the Director has reasonable cause to believe that a person is violating any sanitary ordinance, regulation or order, the Director through the County Attorney's Office may file an action with the Superior Court for appropriate relief necessary to enjoin the person from further violations; to compel compliance with a Nuisance Abatement Order or a Compliance Order to include collection of civil penalties assessed under that order; or for civil penalties up to \$1,000.00 per day up to \$10,000.00 for each violation.

V. PROCEDURES

A. Legal Action Request (LAR) Form

1. To initiate legal enforcement, the Department shall submit a LAR form and all supporting documentation through their Division to obtain all required signatures. Supporting documentation may include photographs, correspondence, files, videos, witness statements, internal reports, records and/or scientific test results.
2. The LAR form and any supporting documentation must be submitted to the Enforcement Program for review of which an appropriate enforcement action shall be determined.
3. Enforcement shall prepare the enforcement document and present it to the Director or his or her designee for final approval and signature.

B. Service of Notices

1. All enforcement documents must be served to the owner/operator and are deemed served from the date of which it has been served in-person and/or the date of mailing in accordance with MCEHC Chapter I, Regulation 7(b)(5). Service of Notices

C. Recording Documents

1. The Department may record with the Maricopa County Recorder's Office any enforcement document. If recorded, the document shall be recorded on the property where the violation took place.
2. With the exception of Notice and Claim Assessment Liens, enforcement documents that are recorded shall serve solely as notice to current and future lien holders on the property.

D. Penalty Calculations

1. For any enforcement action that requires a referral to court, penalties shall be calculated by the Department at the maximum rate allowed by law per A.R.S. § 49-354. Enforcement; violation; classification; compliance orders; judicial review; injunctive relief; civil administrative penalties; civil penalties and A.R.S. § 36-183.05. Violations; injunctive relief; civil penalties; consent decrees.

E. Enforcement Hearings

1. All hearing requests shall be submitted to the Department in writing and must include the name of the business and owner, the cause number on the enforcement action being contested and a brief summary of the reason for the request.
2. For all contested cases within the exception of suspensions, the Department shall provide notice at least 20 days prior to the hearing date.
3. Drinking Water Compliance Order hearings shall be conducted pursuant to A.R.S. §41 Article 10: Uniform Hearings Procedures. All other hearings shall be conducted pursuant to A.R.S. § 41-1061 Article 6: Adjudicative Proceedings.

DISTRIBUTION:

Office of the Director
Quality & Compliance Division
Business Operations Division
Environmental Health Division
Vector Control Division
Water & Waste Management Division