

§349-O. Conditions of discovery

The incentives established in section 349-N apply to a violation of an environmental requirement only if: [PL 2011, c. 304, Pt. A, §1 (NEW).]

1. Systematic discovery. The violation was discovered through:

A. An environmental audit program; or [PL 2011, c. 304, Pt. A, §1 (NEW).]

B. A compliance management system that demonstrates the regulated entity's due diligence in preventing, detecting and correcting violations. The regulated entity shall notify the department when it has a compliance management system in place and shall make available to the department upon request a copy of the system components. The regulated entity shall provide accurate and complete documentation to the department describing how its compliance management system meets the criteria specified in section 349-M, subsection 1 and how the regulated entity discovered the violation through its compliance management system. The department may require the regulated entity to make publicly available a description of its compliance management system; [PL 2011, c. 304, Pt. A, §1 (NEW).]

[PL 2011, c. 304, Pt. A, §1 (NEW).]

2. Voluntary discovery. The violation was discovered by the regulated entity. Incentives under section 349-N do not apply to violations discovered through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order or consent agreement, including:

A. Emissions violations detected through a continuous emissions monitor or an alternative monitor established in a permit where any such monitoring is required; [PL 2011, c. 304, Pt. A, §1 (NEW).]

B. Violations of National Pollutant Discharge Elimination System discharge limits established under the federal Clean Water Act, 33 United States Code, Section 1342 (2010) detected through required sampling or monitoring; [PL 2011, c. 304, Pt. A, §1 (NEW).]

C. Violations discovered through a compliance audit required to be performed by the terms of a consent order or settlement agreement, unless the audit is a component of agreement terms to implement a comprehensive environmental management system; and [PL 2011, c. 304, Pt. A, §1 (NEW).]

D. Violations discovered by a department inspection; [PL 2011, c. 304, Pt. A, §1 (NEW).]
[PL 2011, c. 304, Pt. A, §1 (NEW).]

3. Prompt disclosure. The regulated entity fully discloses the specific violation in writing to the department within 21 days after the entity discovered that the violation has, or may have, occurred, unless the amount of time to report the violation is otherwise prescribed in statute, rule or order. The time at which the regulated entity discovers that a violation has, or may have, occurred begins when a person authorized to speak on behalf of the regulated entity has an objectively reasonable basis for believing that a violation has, or may have, occurred. Persons authorized to speak on behalf of the regulated entity must be listed in the management audit by position title. The department's response to a violation disclosed by a regulated entity under this subsection must be made in writing to the regulated entity within 3 months of the disclosure of the violation by the entity; [PL 2011, c. 304, Pt. A, §1 (NEW).]

4. Discovery and disclosure independent of government or 3rd-party plaintiff. The regulated entity discovers and discloses to the department the potential violation prior to:

A. The commencement of an inspection or investigation related to the violation. If the department determines that the regulated entity did not know that it was under investigation and the department

determines that the entity is otherwise acting in good faith, the department may determine that the requirements of this paragraph are met; [PL 2011, c. 304, Pt. A, §1 (NEW).]

B. The regulated entity's receipt of notice that it is the subject of a lawsuit; [PL 2011, c. 304, Pt. A, §1 (NEW).]

C. The filing of a complaint by a 3rd party; [PL 2011, c. 304, Pt. A, §1 (NEW).]

D. The reporting of the violation to the department or other state agency by an employee other than the person authorized to speak on behalf of the regulated entity under subsection 3; or [PL 2011, c. 304, Pt. A, §1 (NEW).]

E. The imminent disclosure of the violation by a regulatory agency. [PL 2011, c. 304, Pt. A, §1 (NEW).]

For regulated entities that own or operate multiple facilities, the fact that one facility is the subject of an investigation, inspection, information request or 3rd-party complaint does not preclude the department from exercising its discretion to apply the regulated entity's compliance management system to other facilities owned or operated by that regulated entity; [PL 2011, c. 304, Pt. A, §1 (NEW).]

5. Correction and remediation. The regulated entity corrects the violation within 60 days from the date of discovery, unless the amount of time to correct is otherwise prescribed in statute, rule or order, certifies in writing to the department that the violation has been corrected and takes appropriate measures as determined by the department to remedy any environmental or human harm due to the violation. The department retains the authority to order an entity to correct a violation within a specific time period shorter than 60 days whenever correction in a shorter period of time is feasible and necessary to protect public health and the environment adequately. If more than 60 days will be needed to correct the violation, the regulated entity shall so notify the department in writing before the 60-day period has passed. To satisfy conditions of this subsection and subsection 6, the department may require a regulated entity to enter into a publicly available written agreement, administrative consent order or judicial consent decree as a condition of obtaining relief under this subchapter, particularly when compliance or remedial measures are complex or a lengthy schedule for attaining and maintaining compliance or remediating harm is required; [PL 2011, c. 304, Pt. A, §1 (NEW).]

6. Prevent recurrence. The regulated entity agrees in writing to take steps to prevent a recurrence of the violation, which may include improvements to its environmental audit program or compliance management system; [PL 2011, c. 304, Pt. A, §1 (NEW).]

7. No repeat violations. The specific violation, or a closely related violation, has not occurred within the past 3 years at the same facility and has not occurred within the past 5 years as part of a pattern at multiple facilities owned or operated by the same regulated entity. For the purposes of this subsection, a violation or closely related violation is any violation previously identified in a judicial or administrative order, a consent agreement or order, a complaint, letter of warning or notice of violation, a conviction or plea agreement or any act or omission for which the regulated entity has previously received penalty mitigation from the United States Environmental Protection Agency or the department; [PL 2011, c. 304, Pt. A, §1 (NEW).]

8. Other violations excluded. The violation did not result in serious actual harm, or present an imminent and substantial endangerment, to human health or the environment, did not violate the specific terms of any judicial or administrative order or consent agreement or was not a knowing, intentional or reckless violation; and [PL 2011, c. 304, Pt. A, §1 (NEW).]

9. Cooperation. The regulated entity cooperates as requested by the department and provides such information requested by the department to determine the applicability of this subchapter.

[PL 2011, c. 304, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 304, Pt. A, §1 (NEW).

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