

Commercial Passenger Vessel Program Enforcement Response Guide (Guide)

I. Authority

Alaska Statutes establish the Commercial Passenger Vessel (CPV) Environmental Compliance Program to support consistent environmental protection and regulatory oversight for commercial passenger vessels with overnight accommodations for 250 or more passengers (based on lower berth count). Together, these statutes provide the Department of Environmental Conservation (Department) with the authority to monitor vessel operations, verify compliance, and address violations of Alaska law, regulations, and the Large Commercial Passenger Vessel Wastewater Discharge General Permit.

This authority enables the Department to work proactively with vessel operators to prevent pollution, promote compliance, and protect human health and Alaska's waters. Enforcement tools, including civil penalties, are available to the Department when corrective actions are not timely, violations are repeated, or environmental risks warrant a stronger response.

AS 46.03.050 – Authority

The Department has jurisdiction to prevent, control, and abate pollution of the waters of the state.

AS 46.03.460 – Program Established

Establishes the CPV Environmental Compliance Program, including:

1. Terms and conditions for vessel discharges;
2. Independent verification of environmental compliance; and
3. A registration system that allows the Department to monitor and oversee discharges from commercial passenger vessels.

AS 46.03.760 – Civil Action for Pollution

Provides the State authority to pursue civil remedies when violations occur. Civil penalties are available under statute but are applied in a manner consistent with the Department's overall compliance-focused enforcement philosophy.

II. Purpose, Principles, and Measures

This Guide provides direction to CPV compliance and enforcement staff responsible for determining appropriate compliance communications and responses when violations of permits, CPV registration requirements, BMPs, or applicable state law are identified.

The Guide serves two primary purposes:

1. **To promote timely return to compliance** through appropriate, proportionate responses tailored to the nature and severity of the issue; and
2. **To ensure consistency and fairness** in how similar violations are addressed across vessels and operators.

This Guide addresses a broad range of potential violations but is not intended to catalog every scenario or prescribe a single mandatory response. Rather, it provides a structured framework to support sound professional judgment.

Enforcement responses described in this Guide are **recommended tools**, not mandatory steps. The Department retains enforcement discretion in all cases and may select the most appropriate response consistent with state law and program objectives.

The effectiveness of a response is measured by whether:

- The vessel returns to compliance as quickly as practicable;
- Future noncompliance is discouraged through clear expectations; and
- Comparable violations are addressed in a consistent and equitable manner.

When determining the appropriate response, staff consider:

- The degree of deviation from permit, registration, BMP, or legal requirements;
- The severity and potential impacts to human health or the environment;
- The duration and frequency of the violation;
- Compliance history, including prior efforts to correct issues;
- The deterrent effect needed to support compliance across the fleet; and
- Evidence of intent or knowing neglect, where applicable.

III. Timing and Compliance Response

The Department seeks to address compliance issues in a timely and practical manner, with the primary objective of achieving prompt corrective action and preventing environmental harm.

Corrective measures are expected to begin as soon as practicable after an issue is identified and should not be delayed pending formal enforcement correspondence. Early action by operators is viewed favorably and may influence the level of response selected.

While no fixed timeframe applies to all cases, the Department's general practice is to determine and initiate an appropriate response within approximately 60 days of identifying a violation, or to document the rationale where additional time is warranted.

Formal enforcement responses may be considered when noncompliance persists beyond a reasonable period, corrective actions are not implemented, or the nature of the violation warrants escalation.

IV. Compliance and Enforcement Responses

The Department uses a **graduated response framework**, beginning with informal compliance assistance whenever appropriate and escalating only as needed.

A. Informal Responses (Preferred When Effective)

Compliance Assistance

Includes phone calls, emails, meetings, or on-site discussions intended to notify operators of an issue and support prompt correction. These interactions are documented in EDMS and considered during future compliance evaluations.

Compliance Letter (CL)

Used to formally document a compliance concern that requires corrective action. CLs are appropriate for issues that pose minimal risk or are infrequent in nature.

Notice of Violation (NOV)

Used when a more serious issue is identified or when prior informal efforts have not resulted in timely compliance. An NOV documents the violation and expected corrective actions but is not an order.

B. Formal Responses (Used Selectively)

Formal enforcement tools are available when necessary and are generally reserved for serious violations, repeated noncompliance, or situations where informal efforts have not been effective. These tools include:

- Expedited Settlement Agreements
- Settlement Agreements
- Compliance Orders by Consent
- Compliance Orders
- Permit modification or revocation
- Civil actions and consent decrees
- Injunctive relief
- Criminal referrals (in cases involving evidence of negligence or intent)

Selection of a formal response is based on the specific facts of the case, risk to human health or the environment, compliance history, and level of cooperation.

V. Penalty Structure

Penalties are intended to encourage compliance, deter repeat violations, and maintain consistency across the regulated community, not to be punitive for their own sake.

Effluent exceedance penalties are assessed using a gravity-based approach modeled on EPA's Interim Clean Water Act Settlement Penalty Policy ("EPA's policy"). This approach reflects the significance of the violation while allowing consideration of mitigating factors.

Repeat exceedances of the same parameter within a season may result in an incremental penalty adjustment to encourage sustained compliance.

The Department may periodically adjust penalty values to reflect inflation or maintain effectiveness. Nothing in this Guide limits the Department’s discretion to tailor enforcement responses to the circumstances of a specific case.

Percent Exceedance of Fecal Coliform	Penalty
0-100%	\$2,500
101%-500%	\$3,750
501%-1,000%	\$5,000
1,001%-1,400%	\$7,500
1,400%+	\$10,000

Percent exceedance of Total Residual Chlorine, Ammonia, and Dissolved Copper	Penalty
1%-50%	\$3,000
51%-100%	\$4,000
101%-200%	\$7,000
201%-600%	\$12,500
601% +	\$16,000

Percent Exceedance of Total Suspended Solids and Biochemical Oxygen Demand (5 day)	Penalty
1%-50%	\$3,000
51%-100%	\$4,000
101%-200%	\$7,000
201%-600%	\$12,500
601% +	\$16,000

Standard Units above or below pH limit	Penalty
0-0.30	\$1,000
0.31-0.50	\$2,500
0.51-2.0	\$3,750
2.01-3.0	\$5,000
3.01-4.0	\$7,500
4.01 +	\$10,000

EPA’s policy and values are consistent with the Guide’s policy’s gravity component methodology (specifically, the policy’s gravity A factor, which relates to the significance of the violation). While the Department referred to EPA’s policy to update its penalty structure in a manner consistent with nationally accepted standards, the Department is not bound to EPA’s policy when pursuing enforcement actions for large vessel sampling exceedances.

The Department will add a 10% penalty on any recalcitrant violations within a season, meaning any time a vessel has a repeat exceedance of the same parameter within a season. For instance, if a vessel has a second pH exceedance within a season, the second violation will have 10% of the value from the table added to the penalty amount.

The Department reserves the right to adjust the penalty structure in the future to reflect inflation, maintain the deterrent effect of statutory civil monetary penalties, and promote compliance with Alaska law and regulations. Nothing herein is intended to limit or change the Department’s authority or discretion to determine appropriate enforcement actions in any specific case or to pursue civil action to the extent allowed under AS 46.03.

I. Notifications to Other Agencies

If potential violations are identified by CPV compliance and enforcement officers during inspections that are outside the scope of the General Permit (BMP or under AS 46.03.476) that information shall be conveyed to the relevant agency with regulatory authority related to the Department's observation (United States Coast Guard, EPA, DEC Spill Prevention and Response program, DEC Division of Air, or other programs or agencies under whose jurisdiction the information is relevant).

II. Records Management

All documentation including photographs, commercial passenger vessel submissions, inspection reports, Compliance Letters, Notices of Violation, and finalized orders are stored in the Department's Environmental Data Management System (EDMS) website.

III. Notice of Public Information Status

Reports and documents that statute mandates to be submitted are maintained as public records in EDMS. Public records are records, "regardless of format or physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved [or appropriate to preserve] for their informational value or as evidence of the organization or operation of the public agency." AS 40.25.220(3).

IV. Implementation

The following DEC positions have authority to initiate the compliance enforcement actions and communications described in this guide:

Director of Water (Director)
Compliance Program Manager (PMII)
Cruise Ship Program Manager (PMI)
Environmental Program Specialist III
Environmental Program Specialist II
Environmental Program Specialist I

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Table 1

Observation	Frequency	Range of Response(s)
Discharge violations		
Discharge without a permit	Any occurrence	Notice of Violation to Formal Enforcement
Sampling Violation	Any occurrence	Compliance Letter or Notice of Violation*
Unauthorized Discharge	Any occurrence	Notice of Violation or Formal Enforcement
Failure to comply		
Failure to take timely corrective action(s)	Infrequent or isolated	Compliance Letter
	Infrequent or isolated, severe deficiency with potential environmental harm	Compliance Letter or Notice of Violation
	Frequent	Compliance Letter or Notice of Violation
	Frequent or repeated violation (addressed in previous inspections or compliance assistance, evidence of environmental harm due to negligence, etc.)	Notice of Violation to Formal Enforcement
Failure to provide information when requested	Any occurrence	Notice of Violation to Formal Enforcement
Failure to operate with an approved QAPP	Any occurrence	Notice of Violation
Reporting Violations		
Failure to respond to Compliance Letter or NOV in a timely manner	Any occurrence	Phone call/email, Notice of Violation, Formal Enforcement
Failure to perform monthly sampling as required by General Permit	Any occurrence	Notice of Violation
Failure to submit End of Season report	Any occurrence	Compliance Letter
Failure to submit noncompliance notification	Infrequent or isolated	Compliance Letter
	Frequent	Notice of Violation
Reporting of false information	Evidence of negligence or tampering	ECU Referral
Late submittal of daily discharge logs, discharge monitoring reports (DMR's) or hourly GPS reporting	Infrequent or isolated	Compliance Letter
	Frequent	Compliance Letter to Notice of Violation
	Frequent due to negligence, repeated violation, etc.	Notice of Violation to Formal Enforcement
Record Keeping Violations		
Failure to maintain application documentation (VSSP, QAPP, Authorization to discharge)	Any occurrence	Compliance Letter
Failure to maintain discharge logs	Any occurrence	Notice of Violation
Failure of discharge logs to meet requirements outlined in 18 AAC 69	Any occurrence	Compliance Letter to Notice of Violation

*Compliance letter may be issued at the discretion of the department if the excursion is below a 5% exceedance and the operator is able to get a compliant sample within 24 hours. The attached penalty policy describes the penalty amounts associated with sampling violations to be followed based upon the parameter and level of exceedance.

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1. Acronyms

BMP	Best Management Practices Plan
CO	Compliance Order
COBC	Compliance Order by Consent
CPV	Commercial Passenger Vessel
CWA	Clean Water Act
DMR	Discharge Monitoring Report
ECU	Environmental Crimes Unit
EPA	Environmental Protection Agency
ESA	Expedited Settlement Agreement
DMR	Discharge Monitoring Report
ECU	Environmental Crimes Unit
EDMS	Environmental Data Management System
ERG	Enforcement Response Guide
NOV	Notice of Violation
QAPP	Quality Assurance Project Plan
SA	Settlement Agreement
TRO	Temporary Restraining Order
VGP	Vessel General Permit (issued by EPA)
VSSP	Vessel Specific Sampling Plan