



Enforcement

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An Aquifer Protection Agency's enforcement authority comes from the CGS § 22a-354(p)(d), which establishes procedures for suspending or revoking permits, and CGS § 22a-354s, which establishes procedures from issuing orders to obtaining injunctive relief from a court of law.

An Agency's regulations serve to implement the statutes, and should address the procedures to be followed when pursuing a violation or investigating a potential violation. Section 14 of the Model provides this framework. The Agency should designate an individual or individuals as the duly authorized agent for enforcement purposes.

10.1 | Types of Violations

An enforcement action may be warranted when someone commits, takes part in, or assists in any of the following violations:

1. conducts or maintains any regulated activity without a registration or permit for that activity;
2. fails to comply with the terms, conditions or limitations placed on a registration or a permit;
3. exceeds the scope of regulated activities described in the registration or permit;
4. fails to comply with the best management practices or procedures described in the registration or permit;
5. violates the municipality's Aquifer Protection Area Regulations;
6. violates an order issued pursuant to CGS § 22a-354s.

A flow chart showing the steps in an enforcement action is provided at the end of this section.

10.2 | Investigation and Collection of Evidence

The Agency has the burden to prove that a violation has occurred or is occurring. Often, the Agency may need to investigate and document facts in order to adequately define the scope of a violation. Once the Agency obtains sufficient documentation to confirm that a violation exists, it may request the violator to provide further information such as surveys of existing and prior conditions, and analyses by qualified consultants of the scope and impacts of the violation.

There are a variety of tools that an Agency can use to develop evidence that a violation exists, including the following:

1. Aquifer Protection Agency Files

The first step in investigating a potential violation is to search the Agency's files to determine if a registration or a permit or other form of approval was issued; to ascertain to whom it was issued; and to determine the terms, conditions or limitations placed on a permit.

Other town files, such as those of the tax assessor's office and those of the Town Clerk's office, can assist in determining the ownership of the property.

The APA Inventory should be reviewed for sites that were identified as potential regulated facilities.

2. State Agencies and Water Companies

When pursuing a violation, it is appropriate for the Agency to communicate its findings with other regulatory agencies (municipal commissions and local officials, the Connecticut Department of Energy and Environmental Protection, the Connecticut Department of Public Health) and the affected water company. State agencies and water companies may have concurrent jurisdiction in the Aquifer Protection Area(s).

3. Maps

Maps may be used to determine the location and scope of the violation, and to determine the potential for environmental harm. These maps include, but are not limited to, the official zoning (or inland wetlands) map with the delineated aquifer protection area boundary, topographic maps, the town assessor's map, and water company maps.

4. Aerial Photographs

Aerial photographs taken before and after site alterations can be very useful in determining the scope of the violation and in determining the seriousness of the environmental harm or potential for environmental harm. Aerial photographs, however, are a specialized resource. The use of photographs or GIS layers of flyovers of the state in a legal proceeding requires expert testimony in order for a decision maker to draw conclusions about what is depicted, and where, as well as conclusions about the size and scale of what is

depicted. The Agency may have file photographs in a registration, a permit application, permit or previous violation file. Many municipal planning departments or tax assessor's offices have aerial photography or GIS layers of the municipality on file. The Department of Energy and Environmental Protection's Maps and Publication Sales office has complete sets of aerial photos for the state, which are taken about every five years. Originals are available for review in the office and copies are available for sale (contact DEEP Maps and Publication Sales at 860-424-3555).

5. Site Plans

Site plans submitted for registrations or permits show Aquifer Protection Area boundaries and property boundaries that may be useful in an enforcement action. Applications and site plans submitted by previous applicants for a particular property may be very useful as well. These items may exist in the files of the Agency, land use or building department or town clerk, and may include approved site plans, zoning special permits, building permits, or subdivision plans and maps.

6. Field Inspections

The Agency should contact the landowner, permittee, or his or her agent to request permission to inspect the property and to explain the problem and the reasons for the inspection.

It is important to remember that there are legal limitations on entry to property. Without permission from the landowner, a municipal official does not have authority to conduct an inspection on the landowner's property.

Note, however, that the APA registration and permit applications have standard language which gives permission to the agency or its duly authorized agent to make regular inspections of the facility and associated property, except a private residence, at reasonable hours.

When making field inspections, it is important to keep a field book for future reference. Field notes should be recorded at the time of the inspection and should include:

- a. the time and date of the inspection;
- b. the location of the violation;
- c. the reasons for the inspection;
- d. who was met at the site;

- e. summary of conversations at the site;
- f. what was seen (description of site conditions, problems, size of violation, an assessment of observed or potential impacts, etc.);
- g. weather conditions – present and past several days;
- h. names and phone numbers of any contractors working on the site;
- i. a record of the number of photographs taken, the location and compass direction in which they were taken, and a short description of what they depict;
- j. a diagram or drawing showing approximate location of areas of interest and/or problem areas (including reference points, distances, area estimates and specific vantage points of photographs taken).

The notes taken during the field inspections may be compiled into a report. A sample Aquifer Protection Inspection Report is provided in the Forms and Applications section of this manual.

In some instances, a violation can be viewed from an adjacent road or property. If the owner of the adjacent property cooperates and grants permission to be on his/her land, such a remote viewing may be acceptable for gathering necessary information.

7. Site Photographs

Photographs are an important component of field inspections. Once the photographs are printed, certain essential information should be written on the back of each photograph. This information should include at least the following:

- a. the time and date when the photograph was taken;
- b. the town name and street location;
- c. the property owner's or the violator's name;
- d. Aquifer Protection Agency's file reference;
- e. what the photograph shows (notes should be taken in field book and referred to in order to ensure proper descriptions and information);
- f. who took the photograph and recorded the information.

8. Personal Knowledge

An Agency may accept personal knowledge to help determine if a violation exists. Such information may be provided through sworn testimony at the Show Cause Hearing for an order, even if it is the personal knowledge of an Agency member.

9. Expert Knowledge

An Agency may need to obtain an expert to assist in proving a violation has occurred. The expert may be an individual within the Agency, such as the Town Engineer, or an Aquifer Protection Agent (who is a certified professional that has expert knowledge pertaining to the violation), water company agent or someone contracted specifically for his expert assessment of a set of facts and circumstances central to the enforcement case.

10.3 | Investigation Follow-up

Upon completion of the investigation, an investigation report should be prepared. If the agency or investigating official determines that no violation has occurred, then the file may be closed. If the agency or investigating official determines that a violation has occurred or is occurring, the report should include the information noted under sections above, as well as:

1. the name(s) of the inspector(s);
2. the exact name and address of the property owner;
3. the name and address of any contractor(s) involved in the violation;
4. the assessor's map reference for the property; and
5. the most current deed to the property.

A property owner can be identified through the town's land records. The tax assessor's office can usually provide the last known owner's name and address, although this may not be the current owner. The municipality's daybook should be consulted to obtain the name of any new property owner not yet recorded on the town's tax records. (Consult the Town Clerk's office for the location of the daybook.) The tax assessor's office can also provide the map number, block number, and lot number of the property involved in the violation.

It is important to obtain the most current deed to the property. The tax assessor's office can provide the volume and page number of the land records where the deed is located for the listed owner. The Town Clerk's office has on file all recorded deeds of properties located in the municipality. Property deeds, and accompanying plans and maps, provide a history of transactions and actions affecting the property (sale, subdivision, easements, liens, etc.).

If a corporation or limited liability company owns the property, or is responsible for the violation, the Office of the Secretary of State (860-509-6001) can provide information on the agent for service and the corporation's business address.

The Agency should also notify the Department of Energy and Environmental Protection if a violation involves a wastewater discharge, hazardous waste disposal, or commercial underground storage tank.

10.4 | Evaluation

Upon determining the existence of a violation, the Agency should evaluate:

1. the seriousness of the violation;
2. the seriousness of the environmental harm or potential for environmental harm; and
3. the best method to address the harm to the environmental resources, subject to the jurisdiction of the Aquifer Protection Agency.

It is important to remember that:

1. each violation is a separate and distinct offense; and
2. each day's continuance of a violation can be a separate and distinct offense.

10.5 | Enforcement Approaches

When pursuing a violation, there are several options that the Agency can follow. They range in increasing progressive degrees of formality, from a phone call, to a warning letter, to court action. *The Agency should tailor its enforcement approach to the magnitude of the violation.* It is important to note that a person may seek a registration or permit for a regulated activity that is under an enforcement action. The violator/applicant has the right to apply for a registration or permit.

The following are examples of enforcement approaches that may be taken:

1. Telephone call or personal contact by the duly authorized agent

2. The Warning Letter

The warning letter is an informal enforcement device. It informs the alleged violator of the potential violation taking place and provides an opportunity to address the issue before further action is taken.

3. Issuance of a Notice of Violation (NOV)

The NOV informs the violator that he or she is maintaining a condition that, unless addressed, may be treated formally by the Agency as a violation of the Aquifer Protection Area Act, the Agency's regulations, or a registration or permit issued by the Agency. *An NOV is not an administrative order; it is an informal enforcement device, like the warning letter.* The NOV provides the alleged violator with direction regarding how to come into compliance, and may further direct the alleged violator to certify correction of the alleged violation within a reasonable period of time. The issuance of an NOV requires follow-up by the Agency in order to be a meaningful enforcement device.

A sample NOV letter is provided at the end of this section.

4. Registration or permit revocation or suspension (CGS § 22a-354(p)(d))

An Agency may revoke or suspend a registration or permit if the registrant/permittee has not complied with registration or permit conditions or limitations, or has exceeded the scope of the work described in the registration/application as permitted by the Agency. The Agency is required to provide written notice to the registrant/permittee of the facts or conduct that warrant suspension or revocation. The Agency is also required to conduct a hearing at which the registrant/permittee is given an opportunity to show compliance with the requirements for retention of the registration or permit. The Agency must notify the registrant/permittee of its decision by certified mail, return receipt requested, within 15 days of the decision. In addition, the Agency must publish its decision in the local newspaper, and the decision is subject to appeal under CGS § 22a-354(q).

5. Cease and Desist order/Cease and Correct order (CGS § 22a-354s)

A Cease and Desist Order, or Cease and Correct order, is one of the Agency's strongest tools short of court action. An order must be written and is effective upon service upon the alleged violator. The Agency must send a copy of the order to any affected water company. The order should be issued in the case of a major or significant violation, even if the alleged violator intends to correct the violation. A Cease and Correct order may either order the activity that is in violation of the Agency's regulations to cease immediately, or the order may contain a description of a required remedial or corrective action that the Agency wants the alleged violator to undertake. The Agency is required to conduct a hearing within ten days of issuing the order, and, within ten days of completing the hearing, the Agency must notify the alleged violator of its decision. The decision may be to affirm, modify or dissolve the order. The details of the procedure involved with the issuance of a Cease and Desist or Cease and Correct order must be carefully attended to by the Agency. As a practical matter, it may be important to clearly state and set timetables in the order that carry through to final resolution of a violation.

6. Court action

An Aquifer Protection Agency should consider, after due consultation with the town attorney, taking court action if administrative approaches fail to resolve a violation. The town may be able to recoup fees and expenses,

in addition to injunctive relief awarded by the court ordering correction or removal of the violation. Court actions may take the following paths:

- a. court proceeding to enforce Cease and Desist Order or Cease and Correct Order (CGS § 22a-354s(a)) – the court may order injunctive relief and penalties, and the court may award attorneys' fees;
- b. court proceeding to stop illegal activity and/or correct a condition or facility without the Agency's first issuing a Cease and Desist order or Cease and Correct order (CGS § 22a-354s(b)) – impact of a violation is so severe that the Agency determines that an order is not sufficient. A court may order injunctive relief and penalties, and the court may also award attorneys' fees; or
- c. criminal enforcement action (CGS § 22a-354 s(c)) – requires willful and knowing violation. (Such actions are not initiated by the Agency; they require consultation with the town's attorney and formal action by the Office of the State's Attorney after referral.)

10.6 | Who Is Potentially Subject to Enforcement Action

The Aquifer Protection Area Regulations provide for Agencies or their duly authorized agents to take an enforcement action against any "person" who violates the Statute or local regulations. Such "person" is also subject to penalties as provided in CGS § 22a-354. A person is defined in state and municipal regulations as:

"any individual, firm, partnership, association, syndicate, company, trust, corporation, limited liability company, municipality, agency, political or administrative subdivision of the state, federal agencies as permitted by law, or other legal entity of any kind."

This broad definition of "person" means that an enforcement action can be taken, for example, against:

1. the owner of the property;
2. the facility operator or manager;
3. a contractor(s) working on the property; (When issuing orders or seeking penalties, the Agency should consider the nature of any violation and the role that a particular contractor may have played in the violation. Naming a contractor in an order where the contractor was a prime contributor to the violation can often motivate the contractor to promptly take corrective measures.);

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4. a tenant or lessee in possession of the property; and/or
5. any person who commits, takes part in, or assists in any violation of the Aquifer Protection Area Statute (CGS § 22a-354s).

10.7 | Recordkeeping

To keep track of enforcement proceedings, an Agency should establish a recordkeeping system that is easy to understand and maintain. The system should allow both active and closed files to be stored and retrieved easily. Since violations are specific to location, it might be helpful to use the same file system as that used by the municipality's tax collector.

In addition to a file system, each Agency should set up a procedure to monitor current violations. A logbook, a calendar, or a computer database are suitable tools for the monitoring procedure. It is not sufficient to rely on staff memory to ensure follow-through on violations. All enforcement proceedings information should be documented.

It is important to set timetables that carry through to final resolution of a violation. To ensure success, an enforcement action must be based on a properly developed and technically adequate documentary record.

10.8 | Hearing on Cease and Desist Order/ Cease and Correct Order

The burden of proof is on the enforcement officer or presenter and NOT on the alleged violator.

If a Cease and Desist Order or Cease and Correct Order is issued, a hearing must commence within ten (10) days after the issuance of the order. If the hearing is not held within ten (10) days, the order will lapse and be void. The purpose of this hearing is to allow the orderee (the recipient of the order) to answer the order, provide whatever rebuttal evidence and testimony respecting compliance that he wishes, and challenge the facts in the order.

The property owner, facility operator, contractor, and/or violator should be notified of the hearing by certified mail.

The hearing on an order differs from the public hearing associated with a permit application. The public may attend and observe this hearing but may not speak, and no prior publication of a legal notice is required. FOIA notice is required. Often, this hearing is referred to as a "Show Cause Hearing."

At least the following items must be entered into the record during the hearing:

1. a copy of the order or registration or permit and permit application;

2. a copy of the field book with field notes;
3. a copy of the investigation report;
4. copies of photographs;
5. statements or receipts that prove certified mailing;
6. other documents the Agency relied upon in issuing the order, such as maps and deeds;
7. testimony from the orderee responding to or rebutting issues raised by the Agency;
8. any expert testimony that challenges the order;
The Agency has the right to, and should, ask an expert for his credentials including but not limited to his:
 - a. education;
 - b. professional experience/certifications;
 - c. publications;
 - d. professional memberships;
 - e. prior expert witness experience; and
 - f. data collection methods/experience.
9. any evidence offered by staff, violator or witnesses (including Agency members) that responds to or rebuts issues raised by the Agency or orderee.

Evidence must be in the form of sworn testimony if personal knowledge was relied upon.

The Agency should make sure that the record demonstrates or contains adequate information regarding the Agency's authority and jurisdiction in the situation, and that the Agency followed statutory/regulatory procedures in the conduct of its enforcement proceedings.

Within ten (10) days of completion of the hearing, the orderee must be notified by certified mail that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn.

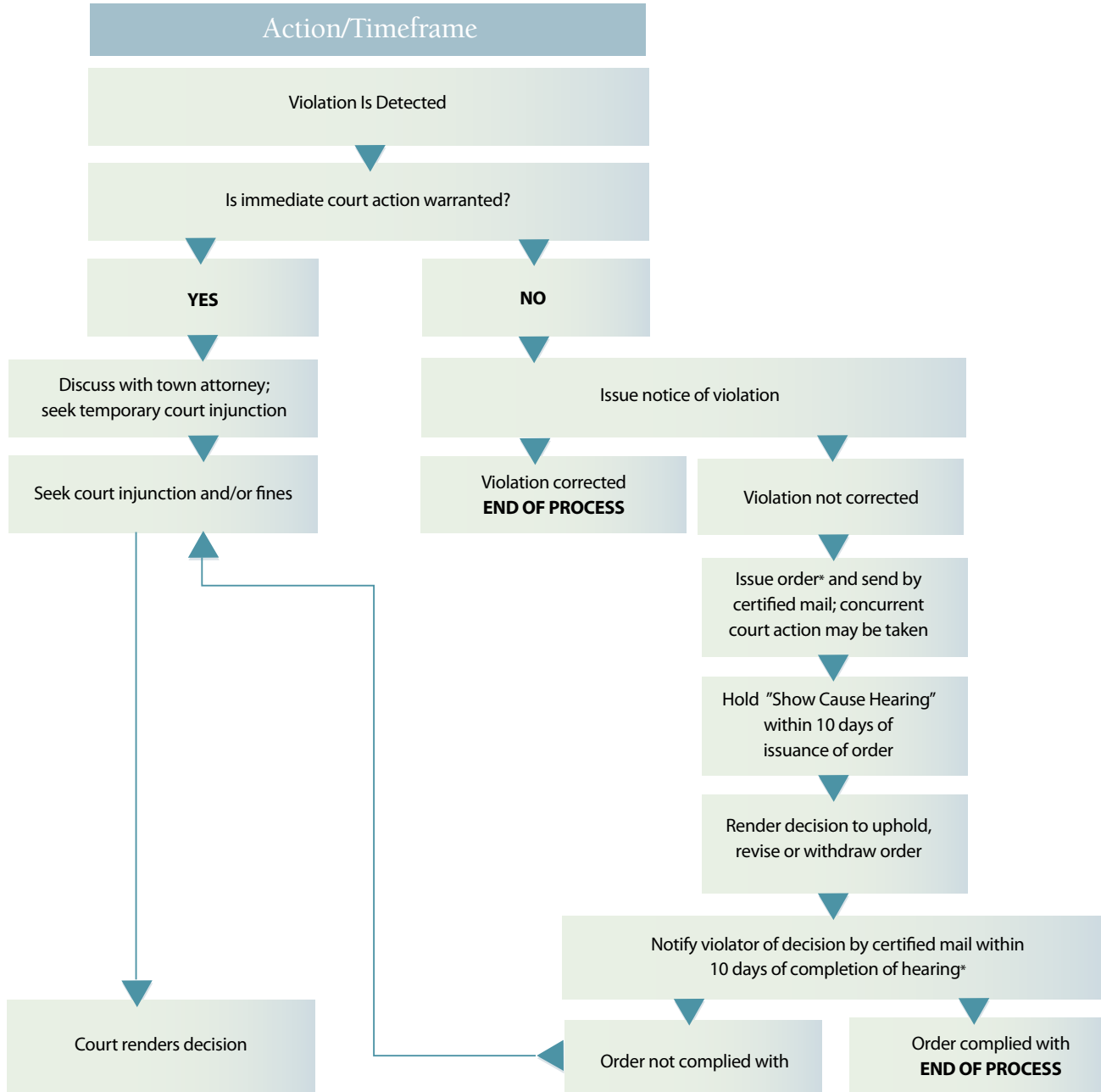
Although not required, it is good practice to publish a notice of the decision in the local newspaper.

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10.9 | Enforcement Flow Chart

[CGS § 22a-354s]

This flow chart is provided for convenience and to guide the Agency through the enforcement process.



* Although not required by statute, it is good practice to publish a notice of the decision in the newspaper.

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10.10 | Registration and Permit Revocation Flow Chart [CGS § 22a-354p(d)]



* For regulated activity exceeding the scope of a registration or a permit, additional enforcement action (e.g., an order, see “Enforcement Flow Chart” on previous page) may be initiated concurrently.

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10.11 | Notice of Violation

On letterhead if available

CERTIFIED MAIL | RETURN RECEIPT REQUESTED

[DATE]

[NAME and ADDRESS]

RE: NOTICE OF VIOLATION

[ADDRESS OF VIOLATION]

Town of [TOWN NAME]

Dear [NAME OF VIOLATOR]:

It has come to our attention that you are [DESCRIBE ACTIVITY BEING PERFORMED IN VIOLATION OF AQUIFER PROTECTION AREA REGULATIONS] at property located at [ADDRESS OF VIOLATION]. Such activity constitutes a regulated activity pursuant to section [NUMBER] of the [TOWN NAME] Aquifer Protection Agency. Connecticut General Statutes section 22a-354p requires that a registration/permit be obtained prior to conducting regulated activities affecting Aquifer Protection Areas. A review of our files indicates that no registration/permit was issued for the activity described above.

Accordingly, such work has been conducted in violation of the law.

You are directed to: [CHOOSE FROM OPTIONS BELOW]

1. immediately cease work in the aquifer protection area;
2. appear at the next regularly scheduled meeting of the Aquifer Protection Agency to discuss the unauthorized activity;
3. provide a written reply to this notice within thirty (30) days, explaining the nature of the work and why no registration/permit was obtained from the Aquifer Protection Agency;
4. file an application for a registration/permit to conduct the work.
5. [ANY OTHER REMEDIES THE AGENCY DEEMS APPROPRIATE]

The issuance of this Notice of Violation shall not delay or bar an action pursuant to Section 22a-354 of the General Statutes.

If you have any questions, please contact [NAME OF CHAIRMAN OR AGENT OR OTHER AGENCY CONTACT] at [PHONE NUMBER]. Your prompt cooperation is appreciated.

Sincerely,

[NAME OF CHAIRMAN]

[NAME OF AGENCY]

[TOWN NAME]

Cc: [ANY OTHER COMMISSIONS] or [PARTIES]