

Subject: DES- Fines, Penalties, Enforcement Related to Illicit Discharges

**FY 2019 Proposed Budget
Budget Work Session Follow-up**

3/29/2018

The following information is provided in response to a request made by John Vihstadt at the work session on 3/9/2018, regarding the following question:

Book page 308, web 866; ILLICIT DISCHARGES: The number of illicit discharge investigations has held steady at roughly 100/year for the past six years. How are the perpetrators of such discharges fined and sanctioned or prosecuted? What are the penalties and are they strong enough?

How are the perpetrators of such discharges fined and sanctioned or prosecuted?

Fire Marshals can issue Notices of Violation (NOV) or summons to Court to responsible parties that violate state code, and the criminal offenses are handled by the Office of the Commonwealth Attorney. DES staff may also issue an NOV to an individual who violates County Code Chapter 26.5 B and/or C. The NOV may include a written warning or assess a civil penalty as outlined in Chapter 26.9 B. Staff will also notify the Virginia Department of Environmental Quality (DEQ) about significant discharges to surface waters so they may intervene and conduct enforcement action when necessary.

Not all illicit discharges are the result of illegal or intentional activity. Non-stormwater discharges that are not authorized under the County's MS4 permit also fall into this category (e.g., sanitary sewer overflows). Additionally, responsible parties or sources of illicit discharges are not always identified. There are a significant number of first time offenses each year associated with the high level of development (construction and contracting activity) occurring throughout the County. In FY 2017, 35% of the NOV's issued included a civil penalty. In every case, penalties were paid and compliance was achieved.

What are the penalties and are they strong enough?

Chapter 26.9. B provides the amount of civil penalties, which range from \$100 to \$2,500 depending on the occurrence and severity of the violation. The amounts of the civil penalties were approved by the Board in 2010. Staff worked with the CAO to develop the amounts, which were based on recently enabled state legislation and existing civil penalties provided in state regulations (i.e., penalties for erosion and sediment control violations). State legislation at the time authorized fines of up to \$32,500 per day (based on the Federal Clean Water Act; the limits have since been increased even higher). However, staff recommended reasonable fine amounts (comparable to erosion

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and sediment control violations) to the Board for this enforcement mechanism, with the intention of addressing incidents that are not severe enough to warrant criminal enforcement and/or referral to Virginia DEQ for more intensive enforcement.

Increasing civil penalty amounts may provide a stronger deterrent for intentional and/or repeat offenses. This is not a given, however, in the same way that traffic fines are not an automatic deterrent to breaking traffic laws. As part of our periodic evaluation of our programs, staff plan to research fee structures and penalty provisions listed in current state regulations to evaluate whether to increase the civil penalty amounts.