



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

MITT ROMNEY  
Governor

KERRY HEALEY  
Lieutenant Governor

ELLEN ROY HERZFELDER  
Secretary

ROBERT W. GOLLEDGE, Jr.  
Commissioner

**POLICY ON COMPLIANCE INCENTIVES  
FOR HOMEOWNERS  
(HOMEOWNER POLICY)  
POLICY ENF-03.001**

**I. INTRODUCTION**

**A. PURPOSE AND INTENT**

This policy is intended to recognize the unique circumstances that exist where the Department of Environmental Protection (“Department” or “DEP”) regulates certain activities of Homeowners.<sup>1</sup>

**B. APPLICABILITY AND LEGAL EFFECT**

This policy applies to all administrative enforcement actions addressing violations by Homeowners as defined in this policy. This policy applies to all such actions commenced after the effective date of this policy, and to all cases pending after its effective date with respect to penalty mitigation in which agreement in principle has not yet been reached with the Homeowner on the amount of an administrative penalty.

This policy supplements the Enforcement Response Guidance (ERG), and should be read in conjunction with it. It is intended solely as guidance for DEP managers and staff in the exercise of enforcement authority under the Civil Administrative Penalties Act, MGL c.21A, §16 and 310 CMR 5.00. This policy may not be applied to settlements of claims for stipulated or suspended penalties resulting from violations of consent orders or other settlement agreement requirements. This policy does not constitute final agency action, and is not “Regulations” as that term is used in MGL c. 30A. This policy may not be relied upon to create rights, duties, obligations or defenses, implied or otherwise, enforceable at law or in equity, by any person in

<sup>1</sup> As with all DEP policies, and in accordance with consistent and longstanding agency practice, whether DEP decides to extend the incentives and benefits outlined in this policy to a particular homeowner is solely within DEP's discretion.

This information is available in alternate format. Call April McCabe, ADA Coordinator at 1-617-556-1171. TDD Service - 1-800-298-2207.

litigation with the Department.

## II. DEFINITIONS

For the purposes of this policy, the following definition applies. Some terms used in this policy may also be more fully discussed in the ERG.

“Homeowner” means:

- a. an individual,
- b. who owns and resides at (though does not need to be primary residence) a 1-4 family residence (which may be a condominium unit or manufactured house), or is a residential tenant,
- c. where such residential property is the location of the violation, and
- d. the violation stems from residential (not business) activities or omissions.

The residence may be jointly owned. For the purposes of this definition, a realty trust or company, rental company, corporation, partnership or other such business entity is not considered a Homeowner, except that certain non-business trusts that own the property that is the primary residence of the trust beneficiary may be considered Homeowners.

## III. ADMINISTRATIVE PENALTY CALCULATION AND MITIGATION

DEP will consider the assessment of a penalty against a homeowner consistent with those assessed against other regulated entities for violations of the same or similar requirements. DEP will not mitigate or waive an administrative penalty simply because the regulated entity is a Homeowner. However, the Department will consider the unique circumstances of the Homeowner relative to other violators. DEP may exercise its discretion under M.G.L. Chapter 21A, § 16, to mitigate administrative penalties in cases involving Homeowners. Where DEP considers a penalty to be an appropriate response, DEP will consider the following:

- 1) DEP staff should first calculate all upward adjustments to the penalty base numbers on the basis of all facts known about the violations. DEP will then calculate any downward adjustments based on relevant facts to mitigate the penalty and arrive at an appropriate final penalty amount.<sup>2</sup>
- 2) Even where a Homeowner has not claimed financial constraints, and regardless of how noncompliance was detected, DEP may suspend or waive some, or up to all of the administrative penalty, provided that all of the following conditions are satisfied within the terms of an administrative consent order:
  - a) Homeowner agrees to return to compliance promptly, and remedy any adverse impacts of noncompliance within a reasonable period of time; and
  - b) Noncompliance has **not** caused **significant harm** to public health, safety, or the

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<sup>2</sup> These generally applicable principles are established in the ERG, Section III.C.3 and should be followed in all cases.

environment, or otherwise presented a significant threat<sup>3</sup>; and

- c) Noncompliance does not involve criminal conduct; and
- d) Homeowner has not been involved in a higher level enforcement action, as that term is defined in ERG Section II, for violations of the same or similar environmental requirements within five (5) years of the current noncompliance.

3) If a Homeowner does not satisfy all of the conditions for mitigation described above, DEP will not suspend or waive the entire penalty, but may mitigate a portion of the penalty consistent with the degree to which the conditions are satisfied, and with the factors set forth in G.L. c.21A, §16, as they relate to the facts of the specific case.

4) If a Homeowner claims an inability to pay a penalty, or otherwise raises financial constraints, the burden is on the Homeowner to demonstrate why such constraints result in an inability to pay a full penalty or significantly impede his or her ability to comply or perform a remedial measure.

#### **IV. SETTING DEADLINES FOR RETURNING TO COMPLIANCE**

In setting deadlines for actions required for a Homeowner to return to compliance, cease polluting and implement any necessary emergency measures, DEP will establish reasonable deadlines consistent with those imposed on other regulated entities for violations of the same or similar nature.

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<sup>3</sup> Consideration of this condition particularly benefits from review at the RERC, and explicit discussion of this factor is encouraged in that forum.