



Department of the Environment

MDE Enforcement Programs



**Robert M. Summers, Ph.D.
Acting Secretary
January 19, 2011**





Organization of MDE Enforcement Programs

? Four Principal MDE Regulatory Administrations:

- Air and Radiation Management Administration (ARMA)
- Water Management Administration (WMA)
- Land Management Administration (LMA)
- Science Services Administration (SSA)

? Enforcement is coordinated across programs by the MDE Enforcement Workgroup, consisting of Administration Directors, lead enforcement staff, the Office of the Attorney General and the Deputy Secretary

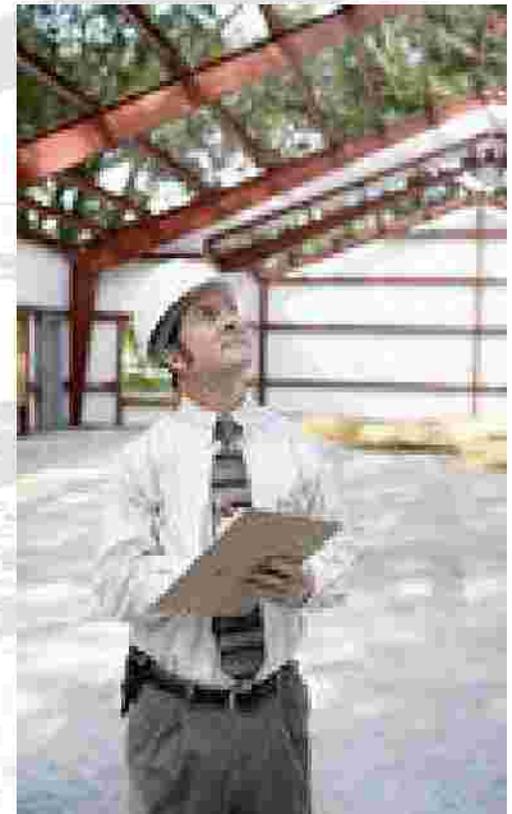




Inspection of Permitted Facilities

Goal: To protect Maryland's public health and environment using a timely, fair, consistent approach to enforcement of the State's environmental laws and regulations

- ? **MDE oversees 158,000 regulated entities**
- ? **MDE has 172 inspector positions**
- ? **MDE inspectors completed 124,000 inspections, audits and spot checks of 45,000 facilities in FY 2010**
- ? **Inspections prioritized based on:**
 - **Risk to public health and environment**
 - **Size of the facility**
 - **Compliance history**
 - **Location**





Administrative, Civil and Criminal Penalty Authority

- ? Each program has specific penalty authority
- ? Administrative penalties generally capped at \$50,000 or \$100,000 in a single action
- ? Penalty authority varies from program to program
 - Administrative Penalties: range from \$20 per violation per day to \$25,000 per violation
 - Civil Penalties: range from \$1,000 to \$25,000 per violation
 - Criminal Penalties: range from \$25 to \$50,000





MDE's Approach to Enforcement

Effective enforcement programs:

- ? Ensure timely return to compliance
- ? Deter future violations
- ? Eliminate any economic benefit to ensure level playing field
- ? Prioritize enforcement actions based on level of actual or potential harm





MDE's Approach to Enforcement

- ? **First Priority: Get non-compliant facility/site into compliance**
- ? **Enforcement responses vary depending on whether violation is significant or minor**
- ? **Significant violations always subject to penalties**
- ? **Enforcement responses to minor violations range from providing compliance assistance to penalty assessment**
- ? **Determining appropriate enforcement response done in consultation with OAG**





Standardized Enforcement Procedures

? Standardized operating procedures establish:

- factors for determining significant vs. minor violations
- timeframes for:
 - issuance of NOVs following identification of violation
 - follow up inspections to ensure return to compliance
 - referral of enforcement cases to OAG or ECU
- criteria for proceeding administratively, civilly, criminally

? Tracked for compliance through MDEStat process





Significant vs. Minor Violations

? Significant violations:

- have caused actual harm to public health or environment
- have potential to cause substantial adverse impact to public health or environment
- represent willful, chronic or recalcitrant behavior
- substantially deviate from regulatory requirements or terms of a settlement agreement
- warrant public notification
- warrant a penalty of more than \$50,000
- are not corrected within 60 days or as directed by MDE





Significant vs. Minor Violations

? Minor violations:

- are first-time violations
- pose minimal harm to public health and the environment
- are corrected promptly
- do not meet any of the significant violation criteria





How Penalties are Assessed

- ? **Always in consultation with OAG**
- ? **With consideration given to:**
 - **range of applicable penalty authority**
 - **elimination of any economic benefit**
 - **statutory penalty factors**
- ? **Seek settlement of cases first**
- ? **Final penalty assessment made by Administrative Law Judge (ALJ) or State or federal judge after evidentiary hearing**





Statutory Penalty Factors

- ? **Consideration of penalty factors required in administrative penalty assessments**
- ? **Not required, but always considered, in civil cases**
- ? **Factors:**
 - (1) **willfulness, knowledge, failure to exercise reasonable care**
 - (2) **actual harm to human health or the environment**
 - (3) **cost of cleanup and restoration of the environment**
 - (4) **nature and degree of injury/interference with general welfare, health, and property**





Statutory Penalty Factors

? Factors:

- (5) extent to which location of violation creates potential for harm to environment, human health, safety
- (6) available technology and reasonableness of controlling, reducing or eliminating violation
- (7) degree of hazard posed by the pollutant involved
- (8) extent to which violation is part of a recurrent pattern





How Penalties are Collected

? Penalties are collectible:

- **By agreement, if enforcement action is resolved through settlement agreement**
- **If assessed by a final administrative order from OAH**
- **If assessed by court order**

? Unpaid collectible penalties referred to State's Central Collection Unit for collection





Penalties Collected

Penalty Collection and Value of Supplemental Environmental Projects

Year	Penalties Collected	Value of SEPs
2007	\$2,248,131	\$3,600,000
2008	\$3,968,775	\$677,419
2009	\$6, 516,901	\$304,100
2010	\$5, 099,340	\$116,000

Detailed Annual MDE Enforcement Reports available at:

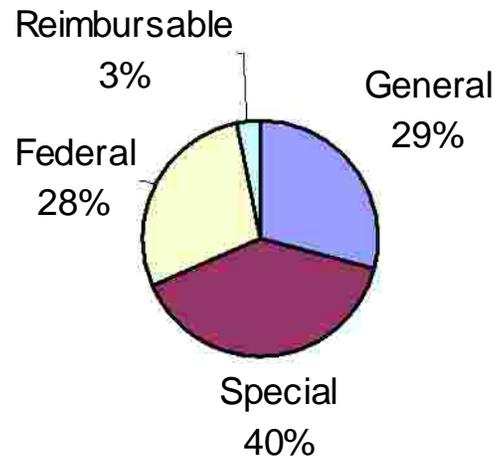
<http://www.mde.state.md.us/aboutmde/departmentalreports/pages/about/mde/reports/enforcementcomp.aspx>





Penalty Revenues Comprise a Portion of MDE's Special Funds

FY 2010 Actual Expenditures by Fund
\$122,197,680



■ General ■ Special ■ Federal ■ Reimbursable





Penalty Revenues as a Proportion of Special Funds

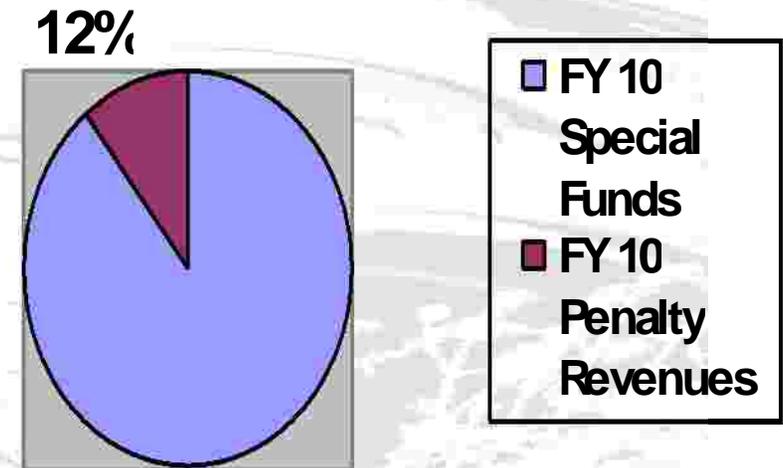
? Special Funds:

- Permit, License, Registration Fees
- Other Fees
- Recovered Costs
- Penalty Revenues

? Total FY10 Special Funds: \$42,123,768

? FY10 Penalty Revenues: \$5,099,340 (12%)

FY10 Special Funds and Penalty Revenues

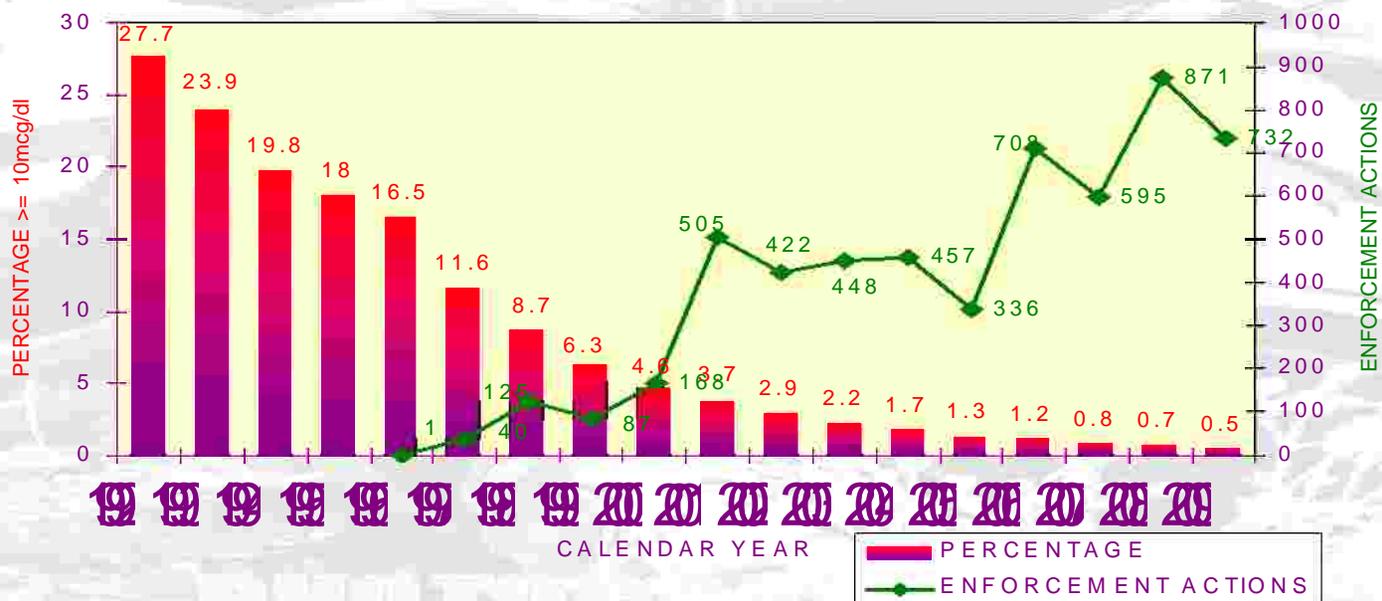




Recent Enforcement Initiatives

Initiative to Increase Compliance with Lead Paint Risk Reduction Act

BLOOD LEAD LEVELS AND ENFORCEMENT ACTIONS STATEWIDE 1992-2009

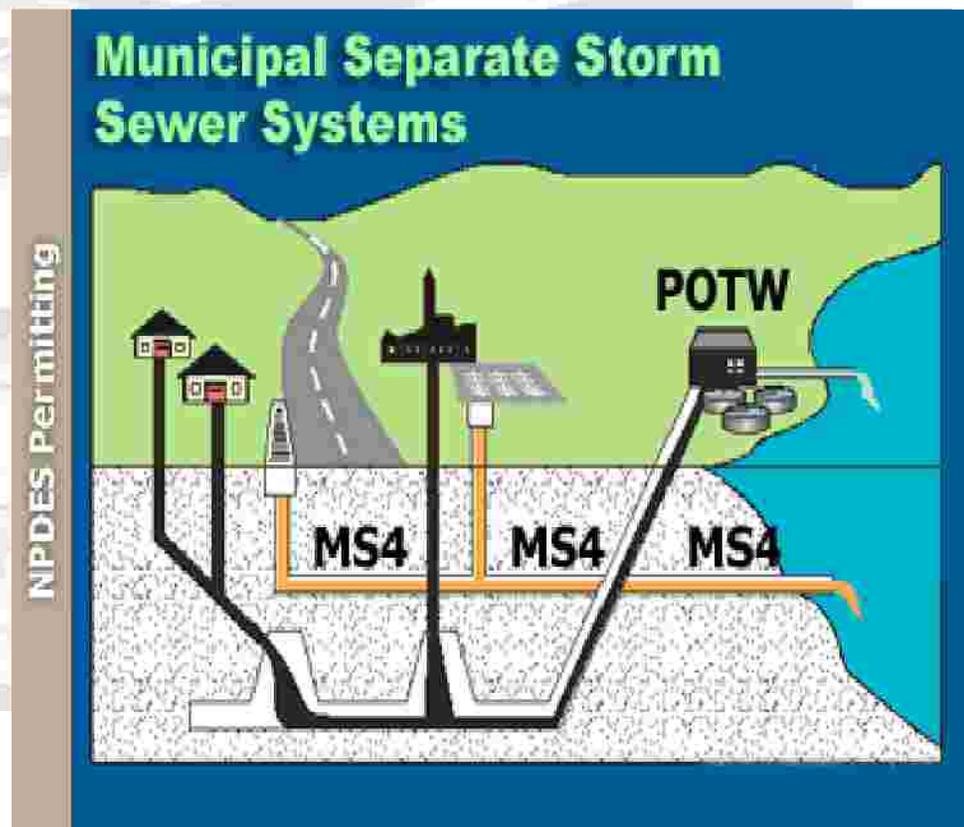




Recent Enforcement Initiatives

Initiative to Eliminate Combined Sewer Overflows (CSOs) and Sanitary Sewer Overflows (SSOs)

- CSOs and SSOs adversely impact water quality and result in risk to public health from raw or partially treated sewage
- January 1, 2009 Enforcement Initiative
- All three Maryland jurisdictions with combined sewer/stormwater systems have completed separation under Consent Decrees

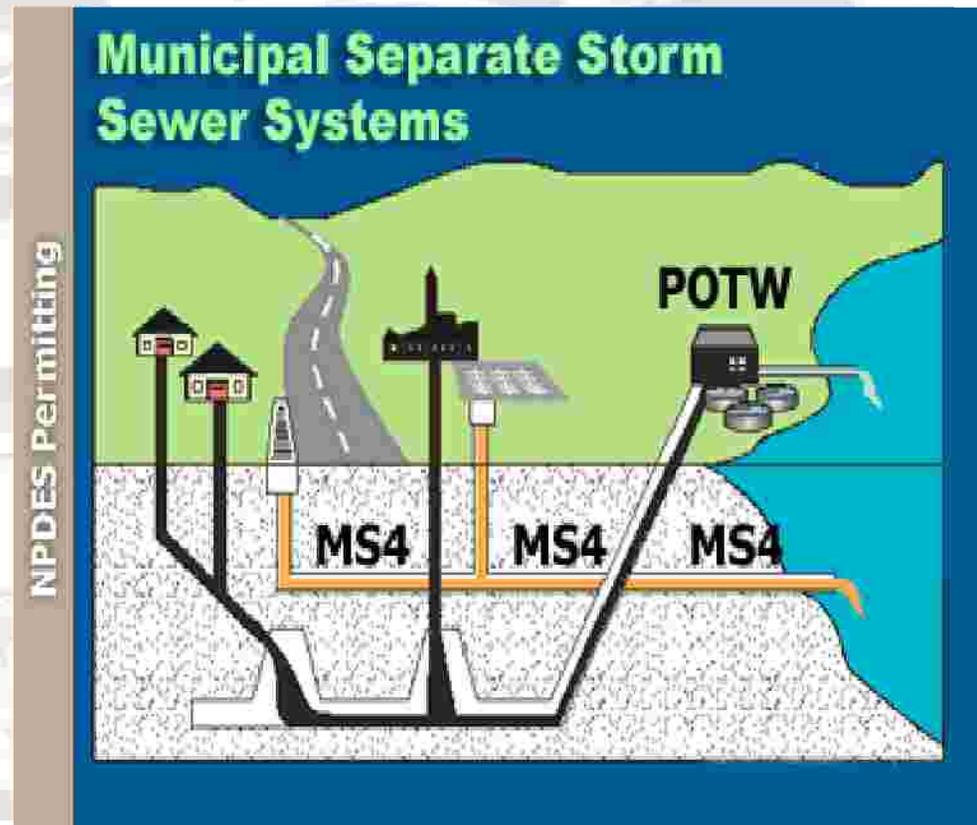




Recent Enforcement Initiatives

Initiative to Eliminate Combined Sewer Overflows (CSOs) and Sanitary Sewer Overflows (SSOs)

- All jurisdictions with history of significant SSOs under consent order or consent decree to upgrade systems
- Significant progress achieved:
- Reduction of pump station failures
- Reduction in number of large overflows





Challenges Ahead

- ? **Need to do a better job with enforcement**
 - **Waterkeeper's Petition to EPA to Rescind State discharge permit program approval**
- ? **Doing more with less:**
 - **Getting to more facilities**
 - **Improving compliance rates**
 - **Reducing backlog of cases in OAG**
- ? **MDEStat process a helpful tool to assess and improve operation of enforcement programs**





Maryland Department of the Environment

For Questions Contact:

**Lisa Nissley
MDE Legislative Liaison
410-260-6301**

**Heather Barthel
Director, MDE Legislation and Policy
410-537-3056**

1800 Washington Boulevard | Baltimore, MD 21230-1718
410-537-3000 | TTY Users: 1-800-735-2258
www.mde.state.md.us

