

OCP Enforcement Discretion Policy

Effective Date: August 25, 2026

Issuing Authority: Land and Materials Administration (LMA)

Applicability: Owners and Operators of Aboveground Storage Tank (AST) facilities.

1. Purpose

This policy establishes the formal criteria and administrative process by which the Director of the Land and Materials Administration, or their designated representative, may consider exercising enforcement discretion related to specific regulatory requirements under COMAR Title 26. This policy is intended to provide flexibility in instances where technical, economic, or situational factors render strict compliance impractical, provided that public health and the environment remain protected.

2. Scope of Enforcement Discretion

The policies regarding the Director's enforcement discretion set forth in this policy document are strictly limited to the following regulatory provisions:

- **Transfer Areas & Loading Racks:** Requirements for spill prevention and containment during product transfer (COMAR 26.10.01.18).
- **Secondary Containment Pipe Penetrations:** Standards for sealing and integrity where piping penetrates dike walls for both **Shop-Fabricated** COMAR 26.10.17.06B(1)(a) and **Field-Erected** ASTs COMAR 26.10.18.05B(1)(a).
- **Dike Permeability & Testing:** Requirements regarding the rate of seepage, corrective repairs, and mandatory testing protocols for **Shop-Fabricated** (COMAR 26.10.17.07C(2)(b)) and **Field-Erected** ASTs COMAR 26.10.18.06(2)(b).

3. Evaluation Criteria

Enforcement discretion may be exercised only after Oil Control Program staff have conducted a formal review of the site. The staff reviewer must consider the seven factors below. The applicant bears the burden of providing the basis for their request to the Department to exercise enforcement discretion and the following supporting documentation:

1. **Potential of Environmental Harm:** Assessment of the risk to groundwater, surface water, and soil in the event of a release;
2. **Location:** Proximity to sensitive receptors, including wetlands, residential zones, and Wellhead Protection Areas;
3. **Environmental Justice (EJ) Score:** Evaluation of the impact on overburdened or underserved communities as defined by the Maryland EJ Screening Tool.
4. **Feasibility:** Evaluation of whether technical or physical constraints make compliance with the

- existing regulation impossible;
5. **Alternatives:** The availability of secondary measures or technologies that provide a level of protection equivalent to the regulatory standard;
 6. **Cost of Implementation:** Consideration of whether the financial burden of compliance is significantly disproportionate to the environmental risk reduction;
 7. **Compliance Status:** Review of the facility's historical adherence to environmental laws, including previous violations or enforcement actions; and

Procedure

- **Application:** Applicants must submit a written request indicating which regulation they are not able to comply with, explicitly addressing each of the seven factors listed in Section 3.
- **Review Period:** The Oil Control Program staff will review the technical merits and may request a site inspection or additional engineering data. A recommendation will be provided to the Director for approval.
- **Determination:** The Director or authorized designee shall issue a written decision. Any enforcement discretion that is granted may include "conditional requirements" (e.g., increased monitoring frequency) to offset the non-compliance with the regulatory standard. Written determinations shall be posted on the MDE webpage.
- "The Department reserves the right to revoke or modify any grant of enforcement discretion at any time if site conditions change, if new information regarding environmental risk arises, or if the facility fails to adhere to any conditional requirements imposed." **Documentation:** The written notice must be maintained on-site by the facility and made available for inspection by Department personnel.

Other than provided in this memorandum, MDE retains all other enforcement authority as established by applicable law.



Rick Kessler

Director

Land and Materials Administration

August 25, 2026

Date