

Inventory of States with Authority to Issue Penalties (by Program)

Clean Water Act Program

State	State agency can issue a "ticket" onsite at time of inspection for set amount	Agency must refer to the AG for court order with penalties	Only the agency's attorneys can bring suit for a court order	State agency can issue an order with penalties following hearing or state Administrative Procedures Act process	Other mechanisms or processes used
AK	No	Yes	-	No	Compliance order by consent w/penalties
CO	Yes, but not currently utilized. Authority would have to be designated down to field staff.	No, the Department has the authority to administratively impose penalties.	No, the Attorney General's Office and/or the District Attorney control authority to file actions in State District Court on behalf of the Department or citizens.	Yes – following the state's APA process.	Compliance Order on Consent w/penalties Expedited Settlement Agreement w/penalty
CT	No	Yes	No – only CT AG	No – only for the following programs: pesticides; coastal management – tidal wetlands, structures, dredging and fill; and inland water resources, water diversions, stream channel encroachments, and dam safety.	Issue Consent Order with penalties
FL	No	No	No, although agency attorneys handle virtually all cases. The agency can call in the AG but rarely has cause to do so.	Yes	Penalties may be included in consent orders (CO). Penalties are calculated under state Environmental Litigation Reform Act and, if \$10,000 or less may be resolved administratively. Penalties in excess of \$10,000 may also be settled by CO, but these penalties, as well as any pursuit of corrective actions, must be enforced judicially.
ID	Yes	Yes	Only Deputy AGs can bring a suit	No	-
IN	No	Yes	No - Attorney General	State tries Agreed Orders with penalties first. If no agreement, state agency issues unilateral Commissioner's Orders with penalty assessments. These orders can be appealed administratively and then through the court system.	The state also uses expedited enforcement where a proposed agreed order with a \$500 penalty for relatively minor actions is offered—if it is accepted, that issue is resolved. If not, the regular process of agreed order negotiation followed by unilateral Commissioners Order which may be appealed is followed.
KY	No	No	Yes	Yes	KYDEP can negotiate civil settlements directly with the regulated entity. If an agreement cannot be reached through negotiations, the case is referred to the Cabinet's attorneys to begin the administrative hearing process. If a regulated entity fails to comply with the

					terms and condition of a settlement document, the Cabinet can file a complaint in circuit court.
MA	No	Yes	No – Only MA AG	Yes	Issue penalties by consent order
MS	No	No	Agency Attorneys or Attorney General	Yes (MS Commission on Environmental Quality can assess penalties after an evidentiary hearing)	MDEQ can issue Agreed Orders with penalties
MT	Yes	-	-	Yes	State agency can issue an order with penalties, becomes final if no hearing requested within 30 days; if hearing requested, state APA process for “contested case” applies
NC	The program tried that approach several years ago but discontinued its use.	No	Not necessary for civil penalty assessment; AG gets involved if necessary to file an action to collect the penalty after the penalty assessment becomes final.	Agency can issue civil penalty assessment; assessment becomes final if violator fails to file administrative appeal of the penalty within 60 days under state APA.	Fast track penalty process for violations identified in effluent data reports. Instead of first issuing a notice of violation, send penalty assessment immediately after receiving the monthly report showing a violation that meets certain thresholds.
NE	No	Agency cannot collect penalties unless referring a case to the AG. Any court appearance must be by a Deputy AG.			
NH	Yes	Yes (for civil). Agency does admin. itself	No	Yes	-
NJ	No	No	No	State agency issues Orders and Penalty Assessments. Hearings can subsequently be requested and follow APA process.	Mandatory minimum penalties strengthen the agency position in settlements and saves time/resources enabling faster settlements.
NM	No	No	No	No	NM lacks CWA authority; must refer potential actions to EPA R6.
OH	No	No	AG’s Office only entity that can file suit in court	Do not have administrative penalty process/authority but state routinely resolves administrative actions with penalties on consent. If cannot be resolved, state refers the case to the Attorney General’s Office.	
OK	No	No	The agency’s attorneys, the AG, and the DA can bring suit for a court order.	Yes	-
OR	Yes, though development of ticketing processes has been limited to a very few	A court order couldn’t be obtained without representation of the agency	Yes, the agency cannot bring a suit for court order without using its attorneys in the AG’s office.	Yes	Most penalties are settled with administrative consent orders. The agency refers some violations to other state and federal law enforcement agencies for investigation and prosecution as crimes.

	programs	by an AAG. The agency obtains most penalties through administrative processes without an AAG. There is unused ambiguous authority to obtain judicial penalties.			
RI	No	No	No	State agency can issue an order with penalties, which becomes final if no hearing requested within 20 days; if hearing requested, state APA process for "contested case" applies - hearing is held before an Administrative Adjudication Division within DEM; the decision of the hearing officer is executed by the DEM Director and is appealable to RI Superior Court.	-
SC	No	No	No	State agency can issue an administrative order with penalties, which becomes final after 15 days unless the Respondent requests a final review conference before the state agency's Board. If the request is granted, the Board will hold the conference and either affirm, modify, or reverse the staff's decision. If the request is denied or if the request is granted and the Board affirms the staff decision, the Respondent may file, within 30 days, a request for a contested case hearing before the Administrative Law Court in accordance with the Administrative Procedures Act. At any point, if an order is not appealed to the next level and the order includes penalties, the state agency enforces the penalties.	The state agency may enter into Consent Orders which may include corrective actions and/or penalties.
SD	No	Yes	No – only SD AG	Yes	
TN	No	No	No	Yes	-
VA	No	No	No	Yes	-
VT	Yes	No	No	No	-
WA	Yes	No	No	No	-
WV	No	No	No - the agency's attorneys, the AG, and the DA can bring suit for a court order.	No	Compliance order by consent w/penalties

Clean Air Act Program

State	State agency can issue a "ticket" onsite at time of inspection for set amount	Agency must refer to the AG for court order w/ penalties	Only the agency's attorneys can bring suit for a court order	State agency can issue an order with penalties following hearing or state Administrative Procedures Act process	Other mechanisms or processes used
AK	No	Yes	?	No	Compliance order by consent w/penalties
CO	No	No	No	Yes. Compliance Orders are issued following conference with violator; unilateral order may be appealed by violator	Cases often resolved informally through documents including Early Settlement Agreements and Compliance Orders on Consent
FL	No	No	No, although agency attorneys handle virtually all cases. The agency can call in the AG but rarely has cause to do so.	Yes	Penalties may be included in consent orders (CO). Penalties are calculated under state Environmental Litigation Reform Act and, if \$10,000 or less may be resolved administratively. Penalties in excess of \$10,000 may also be settled by CO, but these penalties, as well as any pursuit of corrective actions, must be enforced judicially.
ID	Yes	Yes	Only Deputy AGs can bring a suit	No	-
IN	No	Yes	No – Attorney General	The state tries Agreed Orders with penalties first. If no agreement is reached, state agency issues unilateral Commissioner's Orders with penalty assessments. These orders can be appealed administratively and then through the court system.	The state also uses expedited enforcement where a proposed agreed order with a \$500 penalty for relatively minor actions is offered—if it is accepted, that issue is resolved. If not, the regular process of agreed order negotiation followed by unilateral Commissioners Order which may be appealed is followed.
KY	No	No	Yes	Yes	KYDEP can negotiate civil settlements directly with the regulated entity. If an agreement cannot be reached through negotiations, the case is referred to the Cabinet's attorneys to begin the administrative hearing process. If a regulated entity fails to comply with the terms and condition of a settlement document, the Cabinet can file a complaint in circuit court.
MA	No	Yes	No – Only MA AG	Yes	Issue penalties by consent order
MS	No	No	Agency attorneys or Attorney General	Yes (MS Commission on Environmental Quality can assess penalties following an evidentiary hearing)	MDEQ can issue Agreed Orders with penalties
MT	Yes	-	-	Yes	State agency can issue an order with penalties, becomes final if no hearing requested within 30 days; if hearing requested, state APA process for "contested case" applies

NC	Program has not used the "ticket" approach to penalty assessments.	No	Not necessary for civil penalty assessment; AG gets involved if necessary to file an action to collect the penalty after the penalty assessment becomes final.	Agency can issue civil penalty assessment; assessment becomes final if violator fails to file administrative appeal of the penalty within 60 days under state APA.	
NE	No	Agency cannot collect penalties unless referring a case to the AG. Any court appearance must be by a Deputy AG.			
NH	Yes	Yes (for civil). Agency does admin. itself	No	Yes	*
NJ	No	No	No	State agency issues Orders and Penalty Assessments. Hearings can subsequently be requested and follow APA process.	
NM	Yes	No	No; AG can also bring suit	Yes	No
OH	No*	Yes	No. Only AG	No**	*Ohio EPA director has limited authority to issue unilateral penalties of up to \$1000 per incident for "open burning" violations. These are issued out of OEPA headquarters rather than onsite. OEPA also has authority to enact additional rules assessing penalties. ** Where appropriate, Ohio EPA will negotiate agreed administrative orders that contain agreed civil penalties in settlement of the state's civil penalty claim.
OK	Yes, but seldom used	No	The agency's attorneys, the AG, and the DA can bring suit for a court order.	Yes	-
OR	Yes, though development of ticketing processes has been limited to a very few programs	A court order couldn't be obtained without representation of the agency by an AAG. The agency obtains most penalties through administrative processes	Yes, the agency cannot bring a suit for court order without using its attorneys in the AG's office.	Yes	Most penalties are settled with administrative consent orders. The agency refers some violations to other state and federal law enforcement agencies for investigation and prosecution as crimes.

		without an AAG. There is unused ambiguous authority to obtain judicial penalties.			
RI	No	No	No	State agency can issue an order with penalties, which becomes final if no hearing requested within 20 days; if hearing requested, state APA process for "contested case" applies – hearing is held before an Administrative Adjudication Division within DEM; the decision of the hearing officer is executed by the DEM Director and is appealable to RI Superior Court	--
SC	No	No	No	State agency can issue an administrative order with penalties, which becomes final after 15 days unless the Respondent requests a final review conference before the state agency's Board. If the request is granted, the Board will hold the conference and either affirm, modify, or reverse the staff's decision. If the request is denied or if the request is granted and the Board affirms the staff decision, the Respondent may file, within 30 days, a request for a contested case hearing before the Administrative Law Court in accordance with the Administrative Procedures Act. At any point, if an order is not appealed to the next level and the order includes penalties, the state agency enforces the penalties.	The state agency may enter into Consent Orders which may include corrective actions and/or penalties.
SD	No	Yes	No – only SD AG	Yes	
TN	No	No	No	Yes	*
VA	No	No	No	Yes	*
VT	Yes	No	No	No	*
WA	Yes	No	No	No	*
WV	No	No	No - the agency's attorneys, the AG, and the DA can bring suit for a court order.	No	Compliance order by consent w/penalties

Resource Conservation and Recovery Act Program

State	State agency can issue a "ticket" onsite at time of inspection for set amount	Agency must refer to the AG for court order w/ penalties	Only the agency's attorneys can bring suit for a court order	State agency can issue an order with penalties following hearing or state Administrative Procedures Act process	Other mechanisms or processes used
AK	-	-	-	-	Alaska has no authorized RCRA program or equivalent state program.
CO	No	Yes (for civil); Agency does admin orders itself.	No – only AG can bring suit; agency cannot bring suit.	No – state can issue admin. order with penalties, admin. orders then subject to appeal and APA process.	Issue penalties by consent order
FL	No	No	No, although agency attorneys handle virtually all cases. The agency can call in the AG but rarely has cause to do so.	Yes	Penalties in the RCRA program are not specifically covered by the state Environmental Litigation Reform Act discussed under CWA and CAA, above, but the process may be used. Thus, penalties of \$10,000 or less may be resolved administratively. Penalties in excess of \$10,000 may also be settled by CO, but these penalties, as well as any pursuit of corrective actions, must be enforced judicially.
ID	Yes	Yes	Only Deputy AGs can bring a suit.	No	-
IN	No	Yes	No-Attorney General	The state tries Agreed Orders with penalties first. If no agreement, state agency issues unilateral Commissioner's Orders with penalty assessments. These orders can be appealed administratively and then through the court system.	The state also uses expedited enforcement where a proposed agreed order with a \$500 penalty for relatively minor actions is offered—if it is accepted, that issue is resolved. If not, the regular process of agreed order negotiation followed by unilateral Commissioners Order which may be appealed is followed.
KY	No	No	Yes	Yes	KYDEP can negotiate civil settlements directly with the regulated entity. If an agreement cannot be reached through negotiations, the case is referred to the Cabinet's attorneys to begin the administrative hearing process. If a regulated entity fails to comply with the terms and condition of a settlement document, the Cabinet can file a complaint in circuit court.
MA	No	Yes	No—Only MA AG	Yes	Issue penalties by consent order

MS	No	No	Agency attorneys or Attorney General	Yes (MS Commission on Environmental Quality can assess penalties following an evidentiary hearing)	MDEQ can issue Agreed Orders with penalties
MT	Yes	-	-	Yes	State agency can issue an order with penalties, becomes final if no hearing requested within 30 days; if hearing requested, state APA process for "contested case" applies
NC	NC has not used that approach; unclear whether it would be consistent with statutes	No	Not necessary for civil penalty assessment; AG gets involved if necessary to file an action to collect the penalty after the penalty assessment becomes final.	Agency can issue civil penalty assessment; assessment becomes final if violator fails to file administrative appeal of the penalty within 60 days under state APA.	Use of a streamlined penalty assessment based on a penalty matrix with a maximum of \$6,500 per violation (compared to the program maximum of \$32,500). Limited to violations where actual or likely exposure to hazardous waste or hazardous waste constituents has not occurred.
NE	No	Agency cannot collect penalties unless referring a case to the AG. Any court appearance must be by a Deputy AG.			
NH	Yes	Yes (for civil). Agency does admin. Itself.	No	Yes	-
NJ	No	No	No	State agency issues Orders and Penalty Assessments. Hearings can subsequently be requested and follow APA process.	-
NM	Yes	No	No; AG can also bring suit	Yes	No
OH	No	Yes	No – only AG	No *	* Ohio EPA will negotiate agreed administrative orders that include agreed civil penalties in settlement of the state's hazardous waste claims.
OK	No	No	The agency's attorneys, the AG, and the DA can bring suit for a court order	yes	-
OR	Yes, though development of ticketing processes has been limited to a very few programs	A court order couldn't be obtained without representation of the agency by an AAG. The agency obtains most penalties through administrative	Yes, the agency cannot bring a suit for court order without using its attorneys in the AG's office.	Yes	Most penalties are settled with administrative consent orders. The agency refers some violations to other state and federal law enforcement agencies for investigation and prosecution as crimes.

		processes without an AAG. There is unused ambiguous authority to obtain judicial penalties.			
RI	No	No	No	State agency can issue an order with penalties, which becomes final if no hearing requested within 20 days; if hearing requested, state APA process for "contested case" applies – hearing is held before an Administrative Adjudication Division within DEM; the decision of the hearing officer is executed by the DEM Director and is appealable to RI Superior Court	--
SC	No	No	No	State agency can issue an administrative order with penalties, which becomes final after 15 days unless the Respondent requests a final review conference before the state agency's Board. If the request is granted, the Board will hold the conference and either affirm, modify, or reverse the staff's decision. If the request is denied or if the request is granted and the Board affirms the staff decision, the Respondent may file, within 30 days, a request for a contested case hearing before the Administrative Law Court in accordance with the Administrative Procedures Act. At any point, if an order is not appealed to the next level and the order includes penalties, the state agency enforces the penalties.	The state agency may enter into Consent Orders which may include corrective actions and/or penalties.
SD	No	Yes	No – only SD AG	Yes	
TN	No	No	No	Yes	-
VA	No	No	No	Yes	-
VT	Yes	No	No	No	-
WA	No	No	No	No	-
WV	No	No	No – the agency's attorneys, the AG and DA can bring suit for a court order.	Yes	Agency may impose penalties, which become final without resort to the judicial process either if no informal hearing is requested or if no formal APA appeal is taken following the informal hearing.

Additional information on state-specific conditions:

AK: The only program in Alaska that includes administrative penalties is the drinking water program.

CT: Connecticut can recover penalties by administrative consent orders, in court actions brought by the AG for civil cases and the Chief States Attorney for criminal actions, and by unilateral administrative orders for several programs (pesticides; coastal management – tidal wetlands, structures, dredging and fill; and water diversions, stream channel encroachments, inland water resources and dam safety).

FL: FLDEP does not have the authority to issue enforcement tickets or any equivalent. Florida's Environmental Litigation Reform Act (ELRA) sets forth an administrative process that must be used in the case of state CWA and CAA programs and may be used for RCRA programs. ELRA authorizes FLDEP to act on cases with penalties of \$10,000 or less through administrative proceedings, allowing swifter, more efficient, more consistent enforcement compared to civil litigation. Penalties greater than \$10,000 or cases involving corrective actions that cannot be resolved by consent must be pursued by filing in state court. Information on the ELRA process and its relationship to other forms of enforcement is available at <http://www.dep.state.fl.us/mainpage/ce/elra.htm>. With respect to the column headed "Other mechanisms or processes used," FLDEP has a fully elaborated enforcement scheme, the bulk of which is set forth in its online Enforcement Manual at <http://www.dep.state.fl.us/legal/Enforcement/enforcement.htm#new>.

MS: Under Mississippi law, the Mississippi Commission on Environmental Quality is the statutorily-designated pollution control agency. The Mississippi Department of Environmental Quality serves as the staff, including legal staff, of the Commission, although the Attorney General also serves as counsel for the Commission. The Commission has statutory authority to, following a hearing, assess penalties if it finds a violation of environmental laws. The Commission also has authority to institute judicial proceedings to obtain a penalty. The Executive Director of the Department has authority to issue administrative orders assessing penalties to which the violator agrees.

NH: The agency generally issues administrative fine orders up to \$25,000, then refers those that should pay higher penalties to the Attorney General for prosecution. However, the agency can and does issue administrative fine **by consent** orders with penalties higher than \$25,000.

OK: OK DEQ has authority to do all of its own administrative and civil enforcement, including: issuing unilateral administrative compliance orders with penalties; issuing consent orders with penalties; issuing penalty assessment orders upon failure to comply with a final administrative order; initiating district court actions for injunctive relief to prevent a violation, to compel compliance, or to seek penalties. The Attorney General and the District Attorney can also bring criminal actions.

SC: The SC Attorney General has authorized state agency (DHEC) attorneys to handle cases directly. Depending upon the violation of law, state agency attorneys or the Attorney General may bring an action seeking a court order. In criminal matters, only the local solicitor or the Attorney General may prosecute the case in state court. If the matter involves a criminal violation of federal law, only the U.S. Attorney may prosecute the case in federal court.

SD: South Dakota has the authority to enter into voluntary settlement agreements including civil monetary penalty assessments concerning violations of all environmental media pursuant to SDCL 34A-10-17. The level of civil penalties for most violations is up to a maximum of \$10,000/day of violation. South Dakota also has administrative penalty authority for drinking water violations, including monetary penalty assessments pursuant to SDCL 34A-3A-26, 34A-3A-27 and 34A-3A-28 (maximum penalty of \$500 or \$1,000/day of violation depending on the size of the system).

TN: Authority to issue administrative penalties lies with the state agency Commissioner for clean water and RCRA, and can be delegated to program directors. Clean air orders are issued under the authority of the program's technical secretary, who also serves as the program director. The agency may also refer cases to the AG and seek penalties and injunctive relief.

VA: Virginia can recovery penalties by administrative consent order, through APA process, or in court action brought by AG. Agency staff (even if admitted to the Bar) cannot represent the agency in court or file suit. Maximum penalties in APA process are limited to \$10,000 following APA "proceeding" or \$200,000 following APA "hearing." Additional conditions must be met before initiating a hearing.

VT: Vermont has had the ability to issue tickets for air and water for minor violations for about 10 years. This ticketing authority was limited, and only Environmental Enforcement Officers could issue these tickets. During the 2009 legislative session a new law was passed greatly broadening the state's ticketing authority to all areas where the Agency has authority to enforce. See: <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=10&Chapter=201&Section=08019>. The Agency is in the process of drafting rules which must be in place in order for the expanded ticketing to begin. This rule will be completed in spring 2010. The Agency has the present ability to issue Administrative Orders on its own authority. These can be appealed to a two-judge environmental court which is equivalent to a Superior Court in Vermont. This work is done by in Agency legal staff dedicated environmental prosecutors. Vermont also refers cases to its state AG who brings cases in Superior court or criminal cases in District court.

WA: In the RCRA and CAA programs, the agency has the authority to issue penalties/orders that can be appealed to a state environmental hearings board. The spill response program can also issue field citations with penalties and can often issue cost recovery actions.