

3. Conference, Conciliation and Persuasion

Conference, conciliation and persuasion is a central concept in achieving compliance, and required by several environmental laws. Department staff can use this concept any time non-acute violations are detected. The purpose is to encourage prompt correction of violations in a productive way. Conference, conciliation and persuasion concludes if the violations are not corrected and formal enforcement must be taken. Aspects of conference, conciliation and persuasion such as respectful and good faith negotiation, are carried through the enforcement process. Conference, conciliation and persuasion also provides opportunities to handle enforcement cases through informal methods and strives to resolve any finding of noncompliance with statutes, rules, permits or other enforceable provisions.

Conference, conciliation and persuasion is neither required nor appropriate if the violations:

- Represent an imminent and serious threat to human health, public welfare or the environment.
- Appear to be intentional or result from negligence or are otherwise criminal.
- Have a required response specified in rule or guidance.

Description

Conference, conciliation and persuasion is verbal or written communications between authorized representatives of the department and a party believed to be in violation. The program or regional office may use administrative efforts to convince a regulated party to take necessary steps to abate or remedy a violation of the law, regulations, permit conditions or other requirements. The legal requirement for conference, conciliation and persuasion may be slightly different in various laws. Staff should review the specific wording for the law being used in their program.

Staff use conference, conciliation and persuasion to remedy noncompliance through direct personal contact with the responsible parties. The resolution of noncompliance should be as efficient as possible, minimizing the time and number of parties involved, and resolved at the lowest level of organization, without substantial involvement of other offices or programs unless the issues are multimedia. For example, this means that a process of conference, conciliation and persuasion initiated in a particular regional office for a single media, non-acute violation would be resolved in that office without consulting other regions or programs.

Conference, conciliation and persuasion is best used by staff through:

- Direct personal contact with the responsible parties.
- Efficient means.
- Minimizing the time and number of parties involved.
- Resolution at the inspector or case manager level of organization, without substantial involvement of other offices or programs unless the issues are multimedia such as conference, conciliation and persuasion initiated in a particular regional office for a single media violation would be resolved in that office.

Conference, conciliation and persuasion is an integral part of the compliance process and begins when noncompliance is discovered. It usually ends with a return to compliance or the initiation of formal administrative enforcement. Continuing conference, conciliation and persuasion is required by the air conservation law in some aspects of enforcement.

Expectations

Conference, conciliation and persuasion will be an effective tool. The department will use this tool to produce significant compliance gains without the need for further enforcement. Those conducting conference, conciliation and persuasion will adhere to the procedures, time limits and record keeping requirements below.

The process may resolve a potentially confrontational situation and gives fair consideration of the facts involved in an alleged violation. It provides all parties an opportunity to discuss the current situation in a positive and productive manner and attempts to resolve the issue. Conference, conciliation and persuasion is a cordial practice that will fail only because of the violator's inability or unwillingness to comply in a timely manner. Staff will remember that the regulated parties are part of the community we serve.

Staff will advise those in noncompliance of the purpose and process of conference, conciliation and persuasion and the ramifications of the violation. All activities will be documented in the facility's file and in the department's tracking system (ACE).

Activities

Communication between the responsible party and department staff is an essential element of conference, conciliation and persuasion. Efforts by program or regional office staff may consist of one or more of the following:

- Face-to-face meetings or conferences with owners, operators and other parties.
- Compliance assistance visits.
- Business correspondence informing of inspections and investigations showing violations.
- Requests for information to ascertain the reasons for violations.
- On-site visits and consultations.
- Inspection reports containing required actions or recommendations for facility corrections.
- Telephone conversations.
- E-mail.

The appropriate section of the program or region will be notified of the conference, conciliation and persuasion activities, usually by receiving a copy of a letter to the responsible party. Staff must be prepared to provide compliance assistance, help the responsible party locate sources of technical or financial assistance, or involve other departmental staff who can provide the information.

Time Limits

Conference, conciliation and persuasion is focused and time limited. The process will not exceed 90 days without prior contact with the applicable program and will not exceed 180 days to complete. Programs may specify different time limits as appropriate. Additional time for resolution may be allowed if a written compliance schedule is agreed to by the department and facility owner or operator within a Bilateral Compliance Agreement, Settlement Agreement or other contract.

To ensure that conference, conciliation and persuasion does not continue beyond the above time limits, the regional office or program will track the violation in ACE and follow up on violations. When another program or division takes the lead for providing compliance assistance, they are responsible for sending a written progress report to the requesting program or regional office within specified time limits.

Record Keeping

All communications with responsible parties should be well documented. Copies of all correspondence, phone conference records, records of meetings and other relevant information should be kept in the office conducting the conference, conciliation and persuasion and provided to the program office. Employee activity reports, personal work logs or other such documents should be maintained. These will indicate that contacts were made with facilities involved in conference, conciliation and persuasion. The program or regional office conducting the conference, conciliation and persuasion will track it in ACE.

The office conducting conference, conciliation and persuasion will specify:

- Which facilities or responsible parties are involved at any particular time;
- The current status of facilities or responsible parties with respect to its corrective actions or schedules.
- The outcomes of past conference, conciliation and persuasion (i.e. return to compliance) for facilities.

3.1 Air Pollution Control Policy Statement

The Missouri Air Conservation Law defines Conference, Conciliation and Persuasion in Chapter 643.020 (25) RSMo., as the following:

"...a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance."

Expectations

Examples of reasonable time for compliance are as follows:

Submittal of emissions inventory questionnaire	30 days
Submittal of a permit application	30 days
Submittal of a compliance plan	10 days
Cessation of open burning	Immediately
Improper asbestos removal	Immediately

Time expectations may be modified on a case by case basis after discussions with the Air Pollution Control Program's Enforcement Section. The section must be notified of all conference, conciliation and persuasion activities and they shall be documented and made a part of the facility's or individual's permanent file.

Time Limits

Conference, conciliation and persuasion will start with the issuance of a letter of warning or notice of violation. The Air Pollution Control Program will not initiate enforcement action until conference, conciliation and persuasion is completed except for the following violations (based upon direction from the Missouri Air Conservation Commission):

- High priority violations as designated by EPA (identified in [where]).
- Failure to get a permit by an "A" facility.
- Asbestos.
- Open burning (case by case basis).
- Repeat offenders.
- Other violations, as specifically directed by the Commission.

Emission Inventory Questionnaires and Emission Fees

Emission Inventory Questionnaires and fees are due by June 1 of each year. The Air Pollution Control Program's Emissions Inventory Unit will send entities that have failed to submit the questionnaires and fees a letter along with a late invoice by certified mail at the end of June. The questionnaire and payment are due upon receipt of letter. On July 15, the Emission Inventory Unit will submit a list of those sources in noncompliance to the Compliance/Enforcement Section.

3.2 Drinking Water

Policy Statement

The Missouri Safe Drinking Water Law defines conference, conciliation and persuasion in Chapter 640.102 (2), RSMo, as follows:

“...a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance.”

Description

There are no program-specific modifications to the overall guidance.

Expectations

Regional offices shall document conference, conciliation and persuasion activities and incorporate into each public water system’s permanent file, both at the regional office and at the central office. There are no other program-specific modifications to the overall guidance.

Activities

There are no program-specific modifications to the overall guidance.

Time Limits

Time limits shall be as specified in the general conference, conciliation and persuasion guidance of this manual, except for program-specific modifications detailed in the Public Drinking Water Branch and escalation policy. Time limits may be modified on a case-by-case basis with concurrence of the Public Drinking Water Branch Compliance/Enforcement Section.

Record Keeping

There are no program-specific modifications to the overall guidance.

3.3 Hazardous Waste

Policy Statement

Conference, conciliation and persuasion is defined in Section 260.360(3), RSMo.

“Conference, conciliation and persuasion, a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance.”

Conference, conciliation and persuasion reduces enforcement efforts by helping the hazardous waste generator understand the requirements that apply. Staff will be diplomatic, courteous, respectful, willing to consider options and convincing about the need to correct problems.

Hazardous Waste Program uses minimal conference, conciliation and persuasion if the violations at the facility represent an imminent and serious threat to human health and environmental quality, or appear to be intentional or result from negligence, or have a required response specified in rule or guidance. Direct referral can occur in these situations.

Expectations

Effective communication - Employees will focus on operation of the facility according to the requirements without any other agenda, maintaining a professional, direct, considerate demeanor during contacts with facilities.

Project a positive, professional image - Employees will be open, courteous, firm and businesslike in dealing with responsible parties, avoiding any appearance of personal favoritism by maintaining a properly detached attitude. Likewise, staff will avoid any appearance of personal antagonism by maintaining the same cool and courteous attitude.

Communicate clearly, avoiding jargon and highly specialized terms. Employees will focus on and explain actions and time frames needed to achieve compliance. They must ensure that the facility adheres to the time frames noted in Section 2.1 Hazardous Waste.

Time Limits

See Enforcement Process for Hazardous Waste Program, Section 2.1.

Tanks

The Hazardous Waste Program staff conducts the conference, conciliation and persuasion process because the department no longer has tank inspectors. The process consists of the following steps.

When department staff identifies one or more violations of underground storage tank law or regulations at a tank site, he or she must send a letter of warning informing the tank owner or operator of actions that must be taken to correct each violation. Alternatively, if employees are unsure of the responsible party or whether the violation is currently occurring, a letter instead of an official letter of warning may be sent. In either case, the letter requires a response within 45 days either describing how each violation was corrected or a schedule for correcting remaining violations. If a schedule is submitted, employees will inform the owner or operator whether or not it has been accepted and track compliance based on this schedule. Extensions of time to comply with the schedule may be granted in unusual circumstances if requested in writing and approved in writing by the department. Employees will record and file all documents and decisions regarding extensions.

Department employees will evaluate the response, and if adequate, inform the tank owner or operator of their return to compliance based on their submittal. The return to compliance letter will state whether or not penalties are being evaluated.

If no response, or an incomplete response to the letter of warning is received, the case manager will send a notice of violation requiring a response within 15 days. The notice of violation will be accompanied by a cover letter stating remaining actions that must be taken to achieve compliance.

If department employees receive no response (or an inadequate response) to the notice of violation, he or she will forward the notice of violation and information about past contacts and responses along with an enforcement action request to the Compliance/Enforcement Section chief.

The Petroleum Storage Tank Enforcement Unit chief will assign a case manager. The case manager will call the owner to ensure the letter has been received by the appropriate person, to assure the requests are understood, and to answer questions and provide guidance to explain the actions necessary to correct violations. The case manager will also explain the actions the department must take regarding potential referral to the Attorney General's Office for compliance and penalties.

To most effectively address compliance matters for a site, the person making the referral will include all items that are in question or not currently in compliance to the Compliance/Enforcement Section chief. These issues may include registration updates, fees due, lack of financial responsibility or remediation or closure problems. In corresponding with the tank owner or operator, the case manager will include and follow up on these items and ensure the Tanks Section is copied on correspondence and informed of their successful resolution.

If the violations are corrected, the case manager calculates a penalty, receives approval from management, sends a penalty negotiation letter and negotiates the penalty. If the penalty can be successfully negotiated, the case manager will draft a settlement agreement and a request for assistance from the Attorney General's Office and obtain department management approval.

If no response, or an incomplete response to the notice of violation is received, the case manager will prepare a request to refer the case to the Attorney General's Office through the Hazardous Waste Management Commission for compliance and penalties. This request is approved by department management. If at any time, compliance is reached, the request can be altered to acknowledge the return to compliance and to calculate and negotiate penalties as noted in the paragraph above.

If agreement on penalties cannot be reached, the case manager will prepare a request to refer the case to the Attorney General's Office through the Hazardous Waste Management Commission for penalties. This request is approved by department management and the department's Enforcement Review Board. If at any time, agreement on penalties is reached, the case manager drafts a settlement agreement and a request for the Attorney General's Office to assist in finalizing the agreement. The case is concluded with penalty payment and compliance with the other settlement agreement terms.

If a referral to the Attorney General's Office becomes necessary, the owner or operator has the opportunity to comply and settle the case until legal action is taken.

3.4 Land Reclamation Industrial Minerals

There are no program specific modifications to the overall guidance

Coal

The concept of conference, conciliation, and persuasion as an enforcement tool is not applicable to the Permanent Program Law (i.e., RSMO 444.800 through 444.970), and the Missouri Code of State Regulations, (Division 40, Chapters 3 through 8). These are laws and regulations enacted on or after May 18, 1982. Per RSMo 444.870 and 10 CSR 408.030(7)(A), an authorized representative of the commission shall issue a notice of violation if he finds a violation of the regulatory program that does not create an imminent danger or harm for which a cessation order must be issued under 10 CSR 408.030(6).

Metallic Minerals

Conference, conciliation and persuasion shall be a process of verbal or written communications, consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance. In general, the overall guidance is followed for this sector of mining.

3.5 Solid Waste Policy Statement

The Missouri Solid Waste Management Law defines conference, conciliation and persuasion in Chapter 260.200 (7) RSMo., as the following:

"...a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance."

Expectations

Examples of reasonable time for compliance are as follows:

Submittal of records	10 days
Correction of minor permit violations	By next inspection period or within a reasonable deadline established by a department.
Cessation of illegal dumping	Immediately
Cleanup of an illegal dump	30-90 days
Submittal of tonnage fees and quarterly reports	14 days

Time expectations may be modified on a case by case basis after discussions with the Solid Waste Management Program's Compliance/Enforcement Section. The Solid Waste Management Program's Compliance/Enforcement Section must be notified of all conference, conciliation and persuasion activities and they shall be documented and made a part of the facility's or individual's permanent file.

Time Limits

Conference, conciliation and persuasion will start with the issuance of a letter of warning or an official notice of noncompliance (illegal disposal investigation report). Solid Waste Management Program will not initiate enforcement action until conference, conciliation and persuasion is completed except for the following violations:

- Significant noncompliance violations as designated by the Solid Waste Management Program.
- Repeat offenders.
- Acute violations that are immediately or imminently harmful to the environment or public health.

Significant Non Compliance Solid Waste Issues

Unpermitted Facilities

- Waste hauler dumping, burning, processing or burying waste.
- Solid waste dumped in a sinkhole or waters of the state.
- Contractor dumps.
- Business trade waste dumps.
- Operating without a permit.
- Recalcitrant, chronic or excessive violations.

Permitted Facilities

- Landfill gas exceedences in excess of regulated limits.
- Unpermitted vertical or horizontal expansion of a landfill.
- Leachate leaving the property or entering waters of the state.
- Illegal storage, transportation or disposal of infectious waste.
- Putrescible waste on floor over 24 hours at a transfer station (causing a public nuisance or health threat).
- Landfill or transfer station receiving or accepting hazardous waste.
- Recalcitrant, chronic or excessive violations.

Scrap Tire Issues

Unpermitted Facilities

- Collection Center using an unpermitted hauler, processor, etc. (resulting in illegal disposal of scrap tires).
- A scrap tire dump of over 500 tires.
- Open burning of tires.
- Operating without a permit (resulting in illegal disposal of scrap tires).
- Recalcitrant, chronic or excessive violations.

Permitted Facilities

- Open burning of tires.
- Storage or fire regulations violated to a significant degree (discuss with Solid Waste Management Program Compliance/Enforcement Section).
- Recalcitrant, chronic or excessive violations.

For environmental assistance visits, the following subset of significant non-compliers constitutes the acute violations that are immediately or imminently harmful to the environment or public health and trigger a notice of violation and regular inspection.

- Open burning of solid waste or tires.
- Leachate leaving the property or entering waters of the state.
- Illegal storage or disposal of infectious waste.

- Landfill or transfer station receiving or accepting hazardous waste.
- Putrescible waste on transfer station floor more than 24 hours (causing a public nuisance or health threat).

3.6 Water

Policy Statement

It is the policy of the Water Protection Program's Water Pollution Control Branch to employ conference, conciliation and persuasion upon any finding and written notification of noncompliance with statutes, rules, permits or other enforceable actions in our jurisdiction. Exceptions to the use of conference, conciliation and persuasion may occur if the violations:

- Represent an imminent and serious threat to human health and the environment.
- Appear to be intentional or result from negligence.
- Have a required response specified in rule or guidance.

Description

The Section 644.016(3) of the Missouri Clean Water Law defines

"...Conference, Conciliation and Persuasion is a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance."

Conference, conciliation and persuasion begins when noncompliance is discovered. This process will either prompt return to compliance or the issuance of a notice of violation.

Expectations

The Water Pollution Control Branch expects those providing conference, conciliation and persuasion be diplomatic, courteous, respectful, willing to consider options and convincing about the need to return the facility or site to compliance. Conference, conciliation and persuasion should be a cordial exercise that will fail only because of the violator's inability or unwillingness to comply. Staff should remember that the regulated parties are also part of those we serve in the community and all are to be served equally.

The responsible party shall be advised about the ramifications of the violation and the purpose and nature of conference, conciliation and persuasion. After reasonable time, this process shall result in compliance, a compliance schedule or an enforcement action Request. All conference, conciliation and persuasion activities shall be well documented and shall be made part of a facility's permanent file. Without an appropriate written record, enforcement efforts may be compromised.

Activities and Application

Conference, conciliation and persuasion is communication between persons responsible for a facility or site and department staff. The communication can take a variety of forms, including:

- Meetings or conference with owners, operators and other responsible parties. One meeting or offer to meet is mandatory before any administrative penalty can be assessed.
- Business correspondence, including reports of investigations or inspections.
- Technical assistance to improve operations.
- Operational evaluation of the wastewater collection and treatment system.
- Assistance intended to improve communications among officials and responsible parties.
- Assistance intended to help officials or responsible parties improve their administrative procedure and practices.
- Assistance intended to help responsible parties improve their laboratory and reporting procedures.
- Environmental Assistance Visits.

Other activities may be included during the conference, conciliation and persuasion. Department employees may also conduct inspections and sampling. Further, the various forms of assistance provided may be directed by employees to persons responsible for the facility or could be directed to other individuals with whom responsible parties are having difficulties communicating. Which of the various conference, conciliation and persuasion activities are appropriate to a particular situation is a decision made by the employee involved with the facility and the immediate supervisor.

Generally, technical assistance within the Water Pollution staff in the regional office staff will provide environmental compliance assistance. All compliance assistance shall be coordinated only after consultation with an approval from the branch's Compliance/ Enforcement Section when the regions request enforcement action.

Time Limits

Conference, conciliation and persuasion should not be a prolonged activity. It should be focused and time limited. Where timing agreements have not been made, conference, conciliation and persuasion:

- Shall not exceed 90 days without prior contact with the applicable program.
- Should not exceed 180 days to complete unless a specific written compliance schedule is agreed to by the facility owner or operator providing for a longer period of time. This could include modifying Missouri State Operating Permits to include schedules of compliance or special conditions.

To ensure conference, conciliation and persuasion does not continue indefinitely, the responsible regional office's Water Pollution Control Branch staff shall employ methods to track and follow up on issues under conference, conciliation and persuasion.

Record Keeping

Communications with responsible parties should be well documented during conference, conciliation and persuasion. Copies of all written communications, inspection reports and meeting notes should be maintained in the appropriate file along with telephone and conference records. Employee activity reports, personal work logs or other such documents should be maintained indicating that contacts were made with facilities involved. It is important to maintain a file record of the communications with the responsible parties. Record keeping cannot be overemphasized. Staff should pay special attention during conference, conciliation and persuasion. While the department is attempting to resolve the noncompliance through business contacts and other communication, the department is also in the process of building a case file, which may be needed to support enforcement action.

Staff should not use phrases such as "If actions are not accomplished by (date), elevated enforcement action will be taken." Responsible parties may claim they had the reasonable expectation that if they corrected the violations no further action would be taken. A penalty case was thrown out by a judge because of the above phrase. Use phrases such as "Because the violations are serious, you are requested....," "Because the violations may present potential for harm to human health and the environment....," or "Due to the number and seriousness of the violations observed at your facility and noted in this report..."

Work planning and time recording for conference, conciliation and persuasion will be recorded on daily activity reports the same as used for compliance assistance, meeting and consultations and closely related efforts.