

ENVIRONMENTAL GRACE PERIOD AND AMNESTY LAWS

Bertram C. Frey and Jennifer K. Harr*

*Bertram C. Frey is Deputy Regional Counsel for EPA Region 5, Chicago. Jennifer K. Harr attends the University of Chicago Law School and served as an extern with EPA Region 5. The views expressed in this article are those of the authors and are not necessarily those of the EPA.

COPYRIGHT © 1998. All rights reserved by the copyright owners.

ENVIRONMENTAL GRACE PERIOD AND AMNESTY LAWS

States are beginning to experiment with environmental “grace period” and “amnesty” laws. Grace period and amnesty laws contain several novel features, however, which, compared to environmental audit privilege and immunity laws and bills, have not received much attention. This article seeks to accomplish two things. First, it provides a synopsis of these laws in table format, which should be useful for legal practitioners who are concerned with their content. Second, it attempts to highlight a few of the policy issues raised by the enactment of these laws, although it does not attempt to reach any conclusions regarding their desirability. The first approach provides a grace period for companies to come into compliance if a “minor” violation is discovered. The second approach provides amnesty to violators for violations discovered during compliance or technical assistance visits, or to those who participate in officially sponsored voluntary pollution prevention activities.

Grace Period & “Minor Violation” Laws

The idea that limited agency resources should be devoted to redressing those violations that present the greatest risk is increasingly being prescribed in policy and law. For example, President Clinton’s “Reinventing Environmental Regulations,” dated March 1995, encourages agencies to target enforcement to violations that present the most serious threat to human health and the environment. Justice Stephen Breyer’s popular book, *Breaking the Vicious Circle*,¹ cites “random agenda selection” as one of the “systematic problems” which currently impedes effective risk regulation. In other words, there is no detailed “governmental list that prioritizes health or safety risk problems so as to create a rational, overall agenda — an agenda that would seek to maximize attainable safety or to minimize health-related harms.”²

The United States Environmental Protection Agency (EPA) has recognized the importance of “risk-based” enforcement, that is, targeting enforcement towards problems which present the greatest risk to human health and the environment. For example, the agency’s RCRA Enforcement Response Policy (ERP) provides for formal enforcement against “Significant Non-Compliers” who present a serious risk to human health, safety, and the environment, or who are chronic violators.³ For less serious violations, the policy provides for an informal enforcement response, such as a “Notice of Noncompliance” (NON). A NON contains a list of violations and

¹Stephen Breyer, *Breaking the Vicious Circle* (1993).

²*Id.* at 20. For example, one study suggests that a better allocation of current health and safety expenditures could save 60,000 additional lives at no increased cost; alternatively, we could save the same number of lives with \$31 billion in annual savings. Harvard Group on Risk Management Reform; *Reform of Risk Regulation: Achieving More Protection at Less Cost* 16 (1995). In contrast, neither Justice Breyer nor the Harvard Group directly addresses the issue of risks of harm to the environment.

³EPA’s Hazardous Waste Civil Enforcement Response Policy, March 15, 1996.

a schedule for returning the facility to full compliance. Failure to correct the violations can, of course, result in the assessment of penalties.⁴

Similarly, New Jersey's "grace period" law is designed to "more sharply focus limited public resources on serious violations."⁵ New Jersey and California have enacted laws which are very similar in structure to the RCRA ERP, but, unlike the RCRA ERP, mandate a grace period if the requirements of the laws are met. When a "minor" violation is discovered, the relevant environmental agency must provide the violator with a "notice to comply" or a "notice of violation." The notice must identify the violation, and provide a period of time in which the violator can come into compliance. If the violation is corrected within this "grace period," the agency will not impose a civil⁶ or administrative⁷ penalty. Connecticut's law is nearly identical; however, like the RCRA enforcement policy, its use is discretionary rather than mandatory.

Missouri has promulgated a "grace period" regulation within its Clean Water program. Rather than providing the violator with written "notice," the Department of Natural Resources must begin a "conciliation" process upon discovery of a "minor" violation. An employee must make at least two "communications," one of which must be in writing. During this process, the Department and violator must agree on a compliance period which cannot exceed six months.⁸

Amnesty Laws

Environmental "amnesty" laws are designed to encourage businesses to request technical assistance, and/or to voluntarily engage in pollution prevention activities. We understand "amnesty" to mean the act of a government authority by which, for a defined class of persons who have committed a certain crime or offense, the crime or offense is abolished and forgotten. In the environmental context, state administrative agencies will ignore or "forget" a committed offense if the violator requests technical assistance or participates in officially sponsored voluntary pollution prevention activities.

Although "amnesty" and "pardon" are today often used interchangeably, the terms historically had different meanings. The Supreme Court once distinguished them by observing that while pardon is normally granted to an individual, amnesty usually applies to a class of persons or to an entire community.⁹ Additionally, while pardon usually follows a conviction and

⁴Id.

⁵N.J. Stat. § 13:1D-125 (1997).

⁶Cal. Health & Safety Code §§ 39150-39153 (1997), Cal. Water Code §§ 13399-13399.3 (1997), Cal. Health & Safety Code §§ 25117.6, 25187.8 (1997).

⁷N.J. Stat. § 13:1D-129 (1997).

⁸Mo. Code Regs. tit. 10 § 20-3.010 (1997).

⁹Ex Parte Garland, 71 U.S. 333 (1866).

eliminates any penalty, amnesty generally precedes trial and conviction. Amnesty's effect is to "leave no trace of the offense, and to place the offender in exactly the position which he occupied before the offense was committed, or in which he would have been if he had not committed the offense."¹⁰ In other words, "amnesty" involves forgetfulness (i.e., "burying the hatchet"), as opposed to "pardon," which entails forgiveness. While the Court later observed that the choice between terms does not make any difference from a legal standpoint,¹¹ the word amnesty seems to better describe the character of these state environmental laws.

Amnesty laws are often targeted towards smaller businesses, which may not have the resources or expertise to conduct a thorough environmental audit or self-evaluation. The idea that small businesses should receive special attention was first endorsed by Congress when it enacted Section 507 of the Clean Air Act, mandating that states establish small business stationary source technical and compliance assistance programs (SBAPs). States expressed concern, however, that SBAPs would not succeed unless small businesses could seek assistance without being subject to enforcement action. In response, EPA issued a policy for Clean Air Act Section 507 Small Business Assistance programs on August 12, 1994. This approach was also encouraged by the Clinton/Gore administration in a 1995 memo concerning "Regulatory Reform," which directed agencies to reduce or waive penalties for small businesses under certain circumstances.¹²

More recently, Congress passed the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996.¹³ The Act calls for more accessible sources of information on regulatory requirements for small businesses. It also requires agencies to establish policies providing for the reduction or waiver of civil penalties for small businesses. Consistent with the purposes of SBREFA, EPA has established "one stop shopping" Small Business Compliance Assistance Centers.¹⁴ These communication centers provide comprehensive, industry-based information on regulatory requirements, via the Internet and toll-free telephone numbers.¹⁵

EPA's Policy on Compliance Incentives for Small Businesses¹⁶ also implements certain provisions of SBREFA, by expanding its Clean Air Act Section 507 policy. Very generally, EPA will reduce or eliminate civil penalties for first time violators in cases where businesses receive technical assistance or conduct voluntary environmental audits, and then correct any violations

¹⁰Id.

¹¹Knote v. United States, 95 U.S. 149, 152 (1877).

¹²Executive Memorandum on Regulatory Reform, 60 Fed. Reg. 20,621 (1995).

¹³Small Business Regulatory Enforcement Fairness Act of 1996, March 29, 1996.

¹⁴See Notice of New Program, 62 Fed. Reg. 18,115 (1997).

¹⁵Currently, there are Compliance Assistance Centers for the printing, metal finishing, automotive services, and agriculture industries.

¹⁶EPA Policy on Compliance Incentives for Small Businesses, June 10, 1996.

discovered within six months. The policy does not apply, however, to violations which cause actual serious harm to public health, safety, or the environment, present “imminent and substantial endangerment,” or involve criminal conduct. Also, EPA may seek the full amount of any significant economic benefit associated with the violations. Finally, EPA’s policy applies only to small businesses, defined as those with fewer than 100 employees. (The two federal laws and the EPA policy are summarized in the chart below.)

Some or all of these features can be seen in parallel state legislation. For example, eight states have enacted laws which, very generally, specify that no enforcement action will be taken for violations which are discovered during technical assistance visits or participation in pollution prevention activities.¹⁷ The legislatures in Colorado and Missouri have expressed their desire that state technical assistance programs not be used for enforcement.¹⁸ Interestingly, out of the eight, only Washington’s law carves out an exception for repeat violations.¹⁹

Wisconsin’s approach is somewhat different. Ten regulated entities may participate in an “environmental cooperation” pilot program. As a condition of participation, the entity must conduct comprehensive “performance evaluations,” which examine environmental performance and compliance with the terms of the pilot program. Nonetheless, for any violations which are documented by the performance evaluation and reported, the entity will have a grace period of 90 days to come into compliance.²⁰ (Of course, the pilot program could also be classified as a “grace period” law; it is included here since amnesty is based upon participation in a state program, rather than on the fact that the violation is “minor.”)

Finally, Wyoming’s Department of Environmental Quality has issued a “Small Business Voluntary Disclosure Incentive” which is very similar to EPA’s small business policy, discussed earlier.²¹ The department will generally not seek civil penalties in cases where small businesses receive compliance assistance or disclose violations voluntarily. There are numerous exceptions, however, including violations which cause actual serious harm to public health, safety or the environment, present “imminent and substantial endangerment,” or involve criminal conduct. Furthermore, the penalty waiver is unavailable if the small business: realized a significant economic advantage from the violation, is a repeat violator, violates an administrative order, or was already under investigation by the department when the violation was disclosed. Like the EPA policy, Wyoming’s policy applies only to small businesses, defined as those with fewer than 100 employees.

¹⁷Alaska, Illinois, New Hampshire, Ohio, Oregon, Vermont, Washington, and West Virginia.

¹⁸Colo. Rev. Stat. § 25-16.5-107 (1997), Mo. Rev. Stat. § 643.173 (1996).

¹⁹Wash. Rev. Code § 43.05.050 (1997).

²⁰Wis. Stat. § 299.80 (1997).

²¹Chapter VIII Small Business Voluntary Disclosure Incentive, June 16, 1997.

Conclusion

At present, several other states are considering grace period and amnesty laws. There is concern, however, that the present and proposed laws could interfere with enforcement of environmental laws and result in harm to the environment. The EPA and several states have expressed a strong interest in preserving enforcement discretion in cases of criminal conduct, repeat violations, actual harm to the environment, significant economic benefit, imminent and substantial endangerment, or violation of an administrative order or decree. According to EPA policy, grace periods and amnesty are only appropriate outside of those contexts. The agency may not have the legal authority to authorize, approve, or delegate new or amended federal programs to states with grace period or amnesty laws that are not carefully drafted to preserve enforcement discretion to address the above referenced situations.

In addition, grace period laws which make minor violations less costly may interfere with deterrence. In other words, businesses may be less careful since they have less to worry about if they get caught. Moreover, EPA policies are very careful to not reward “bad actors.” On the other hand, a key premise of the grace period laws is that some businesses and agencies may be able to devote more time and money to reducing greater human health and environmental risks, and therefore get more “return” on their investment in environmental protection.

Lastly, our review of the amnesty laws shows that those laws that ignore violations discovered during a compliance or technical assistance visit seem more specifically targeted at getting more companies into compliance. Unless these laws require prompt correction of any violations discovered, however, the benefits of increased detection may not outweigh the costs in terms of the need for subsequent state and federal enforcement.

Guide to Terms Used:

Yes/No

Item is addressed explicitly in the statute, rule, or policy.

Presumably	Item is not addressed explicitly, but can be inferred, to a high degree of certainty, from the language of the statute, rule, or policy.
Not Specified	Item not addressed in the statute, rule, or policy.
N/A	Not applicable.

States that have enacted grace period and/or “minor violation” laws or regulations as of March 1998:

California
Connecticut
Missouri
New Jersey

States that have enacted amnesty laws or promulgated amnesty policies as of March 1998:

Alaska	Oregon
Colorado	Vermont
Illinois	Washington
Missouri	West Virginia
New Hampshire	Wisconsin
Ohio	Wyoming

Table I: Grace Period and “Minor Violation” Laws and Regulation

STATE	California	Connecticut	Missouri	New Jersey
Status	Law	Law	Regulation	Law
Cite	1. Cal. Health & Safety Code §§ 39150-39153 (1997) (<i>Air</i>). 2. Cal. Water Code §§ 13399-13399.3 (1997) (<i>Water</i>). 3. Cal. Health & Safety Code §§ 25117.6, 25187.8 (1997) (<i>RCRA</i>).	Conn. Gen. Stat. § 22a-6s (1997).	Mo. Code Regs. tit. 10 § 20-3.010 (1997).	N.J. Stat. Ann. §§ 13:1D-125 to -130 (1997).
Date Adopted or Date Effective	1. 9/23/96 2. 9/23/96 3. 10/5/95	5/2/96	12/31/91	12/22/95
Sunset Provision	1. January 1, 2001 2. January 1, 2001 3. No	No	No	No
General Applicability	Minor violations discovered during inspection.	Minor violations.	Minor violations (of Missouri Clean Water Law <i>only</i>).	All violations designated as “minor” by Dept. of Environmental Protection.
Grace Period	Compliance must be achieved in less than 30 days.	Compliance must be achieved in less than 30 days.	Department and violator must agree on period for compliance which cannot exceed six months.	Compliance must be achieved within 30-90 days. ²²

²²The Department may establish categories of minor violations which, “for public health and safety reasons,” must be corrected in less than 30 days. The Department also has discretion to extend the compliance period by up to 90 days. N.J. Stat. Ann. § 13:1D-127 (1997).

STATE	California	Connecticut	Missouri	New Jersey
Is violation “minor” if ...	Defining “Minor” Violation			
Violation is willful/ knowing?	No.	No.	Presumably No.	No.
Violation constitutes criminal conduct?	Presumably No.	Presumably No.	Presumably No.	No.
Violation causes imminent/ substantial endangerment?	1&2. Presumably No. 3. Not Specified.	No.	No.	Presumably No.
Violation causes actual harm to human health, welfare, property, or the environment?	1&2. Presumably No. 3. Not Specified	No, if causes actual exposure of any person to hazardous waste.	Presumably No.	Presumably No.
Violation has continued for more than 12 months?	Presumably No.	Not Specified.	Presumably No.	No.
Violator responsible for same/similar violation within previous 12 months?	Presumably No.	Presumably No.	Presumably No.	No.
Violator responsible for <i>pattern of same/ similar</i> violations?	No.	Presumably No.	Presumably No.	No.
Violator responsible for <i>pattern of any</i> environmental violations?	No.	Presumably No.	Presumably No.	Not Specified.
Violation results in economic benefit?	No.	No.	Presumably No.	Not Specified.
Violation of existing administrative or judicial order?	Not Specified.	Not Specified.	Not Specified.	Not Specified.

STATE	California	Connecticut	Missouri	New Jersey
Does grace period apply to ...	Extent of Grace Period			
Administrative Action?	Yes.	Yes.	Yes.	Yes.
Civil Action?	Yes, with exceptions (such as when civil penalty required by federal law).	No.	No.	Department or other agency may still seek damages or injunctive relief.
Criminal Action?	No.	No.	No.	Department or other agency may initiate or proceed with criminal investigation or enforcement.
	Action Taken by Administrative Agency			
Notice of violation?	Authorized representative shall issue a notice to comply. ²³	Commissioner of Environmental Protection <i>may</i> issue warning notice.	Department employee must seek to eliminate violation through process of conference, conciliation and persuasion consisting of at least two communications separated by no less than ten consecutive days. At least one of these communications must be in writing.	Department or agency shall issue order, notice of violation, or other enforcement document.

²³A notice to comply “shall not be issued for any minor violation that is corrected immediately in the presence of the inspector,” however. Cal. Health & Safety Code §§ 39152, 25187.8; Cal. Water Code § 13399.2 (1997).

STATE	California	Connecticut	Missouri	New Jersey
	Action Required by Regulated Entity			
Compliance?	Yes.	(See below).	Yes.	Yes.
Notice of compliance?	Within five working days of achieving compliance, person who received notice to comply must sign and return it.	Within thirty calendar days of receiving notice, violator must certify to commissioner that 1) violation has been corrected; 2) measures to assure the violation will not recur have been implemented; 3) action to correct the violation will be taken; or 4) no violation occurred or the notice is inaccurate.	Not Specified.	Department or local government agency may require person responsible to submit written certification or other documentation to verify that compliance has been achieved.

Table II: Amnesty Laws and Policies

Federal Entity	Congress	Congress	EPA
Status	Law	Law	Policy
Cite	Small business stationary source technical and environmental compliance assistance program. 42 U.S.C. § 7661f (1997).	Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. § 601 (1997).	Policy on Compliance Incentives for Small Businesses. 61 Fed. Reg. 27,984 (1996).
Date Adopted or Date Effective	11/15/90	3/29/96	6/10/96
Sunset Provision	No.	No.	No.
General Applicability	Small businesses (100 or fewer employees).	Small businesses (one independently owned and operated and not dominant in its field, <i>unless</i> agency establishes appropriate definition ²⁴).	Small businesses (100 or fewer employees).
Requirements	States must adopt “compliance assistance program” to aid in determining applicable requirements and in receiving CAA permits.	A. Agencies must prepare “small entity compliance guides.” B. Agencies must establish policy/program to provide for reduction/waiver of civil penalties. Requirements <i>may</i> include: violation must be detected through compliance assistance or audit program, entity must remedy violation within reasonable period, and entity must make good faith effort to comply with law.	A. Violation detected during on-site compliance assistance or environmental audit; and B. Must be first violation of requirement, must remedy within 180 days.
Limitations on Enforcement	N/A	(See above.)	Agency will exercise enforcement discretion to eliminate/mitigate civil settlement penalties.
Exceptions	N/A	<i>May</i> include: Entity subject to multiple enforcement actions by agency, violations pose serious health, safety, or environmental threats, or violations involve willful or criminal conduct.	Violations cause actual serious harm to public health, safety, or environment, present “imminent and substantial endangerment,” or involve criminal conduct; agency may seek full amount of any significant economic benefit.

²⁴ It has proven extremely difficult to promulgate a definition of “small business” which is appropriate in all contexts and takes all relevant factors into account. To date, the EPA has not adopted a final policy on SBREFA. Therefore, different entities may be considered “small businesses” in the context of different programs.

STATE	Alaska	Colorado	Illinois	Missouri
Status	Law	Legislative Policy	Law	Legislative Policy
Cite	Alaska Stat. § 46.06.031 (1997)	Colo. Rev. Stat. § 25-16.5-107 (1997)	Ill. Rev. Stat. § 415 5/31(c)(3)	Mo. Rev. Stat. § 643.173 (1996)
Date Effective or Date Adopted	9/2/90	7/1/97	8/1/96	7/9/92
Sunset Provision	No	No	No	No
General Applicability	Solid and hazardous waste reduction and recycling program.	Pollution prevention: technical assistance program.	Voluntary pollution prevention activities.	Air conservation: small business technical assistance program.
Requirements	Hazardous waste generator requests site visit.	(Receipt of technical assistance.)	(Participation in voluntary pollution prevention activities.)	(Receipt of technical assistance.)
Limitations on Enforcement	Visit may not be regarded as inspection or investigation. Representative of department “designated to render advisory or consultative services may not have enforcement authority.”	It is “intent of general assembly that the technical assistance program not be used to document violations of or used in the enforcement of state laws or regulations.”	If agency becomes aware of violation as a result of voluntary pollution prevention activities, then agency “shall not proceed with the written notice” of violation normally required.	To maximum extent possible, small business technical assistance program “shall be functionally separate from the department [of natural resources] enforcement responsibilities.”
Exceptions	N/A	N/A	A. Person fails to take corrective action or eliminate reported violation within reasonable time; or B. Violation poses “substantial and imminent danger” ²⁵ to public health or welfare or the environment.	N/A

²⁵“Substantial and imminent danger” is defined as “a danger with a likelihood of serious or irreversible harm.” Ill. Rev. Stat. § 415 5/31(c)(3)(B) (1997).

STATE	New Hampshire	Ohio	Oregon	Vermont
Status	Law	Law	Law	Law
Cite	N.H. Rev. Stat. Ann. § 21-0:19 (1996)	Ohio Rev. Code Ann. § 3704.18 (1997)	Or. Rev. Stat. 1. § 465.012 2. § 466.068 3. § 468A.330 (1996)	Vt. Stat. Ann. tit. 10 § 6627 (1997)
Date Effective or Date Adopted	7/1/96	7/30/93	1. 7/27/89 2. 7/31/91 3. 8/5/91	6/27/91
Sunset Provision	July 1, 2002	No.	No.	No.
General Applicability	Pollution prevention: small business technical assistance.	Air pollution control: technical and environmental compliance assistance program for small business stationary sources.	1&2. Technical assistance to users and generators of hazardous waste 3. Air quality: small business stationary source technical/compliance assistance program.	Toxics use reduction and hazardous waste reduction: technical and research assistance program.
Requirements	Small business requests technical assistance.	(Receipt of technical assistance.)	(Receipt of technical assistance.)	(Receipt of technical assistance.)
Limitations on Enforcement	Employees providing technical assistance “shall not make available to any ... regulatory or enforcement agency, information obtained in the course of providing” technical assistance.	No information acquired by officials acting pursuant to program “shall be used in any manner for purposes of enforcement.”	Technical assistance “shall not result in inspections or other enforcement actions.”	Technical services “shall not result in inspection or other enforcement actions.”
Exceptions	A. Small business already subject of active enforcement action or impending regulatory inspection; or B. Information pertains to imminent threat to human life or the environment, or reveals evidence of knowing criminal violation.	N/A	Reasonable cause to believe there is clear and immediate danger to the public health and safety or to the environment.	Reasonable cause to believe there is an imminent threat to human health or the environment.

STATE	Washington	West Virginia	Wisconsin	Wyoming
Status	Law	Law	Law	Rule
Cite	Wash. Rev. Code 1. § 43.05.040-070 2. § 43.21A.087 3. § 70.94.035	W. Va. Code § 21-3B-4 (1997)	Wis. Stat. § 299.80 (1997)	Chapter VIII: Small Business Voluntary Disclosure Incentive
Date Effective or Date Adopted	1. 7/23/95 2. 6/11/92 3. 5/15/91	7/1/92	10/11/97	6/16/97
Sunset Provision	No.	No.	No.	No.
General Applicability	1. Technical assistance programs 2. Dept. of Ecology: technical assistance officer 3. CAA: technical assistance program	Employer assistance for environmental protection	Environmental cooperation pilot program (10 cooperative agreements).	Small businesses (100 or fewer employees).
Requirements	1&3. Technical assistance visit. 2. Designation as technical assistance officer.	Employer requests on-site consultation services and agrees to correct all hazards noted by consultant.	Enter cooperative agreement, conduct “performance evaluations,” ²⁶ and report any violations discovered within 45 days of completing evaluation.	1. Voluntary disclosure of non- compliance within 60 days of discovery; correction within 180 days; <i>or</i> 2. Request for compliance assistance; prompt correction of violations.

²⁶“Performance evaluation is defined as “a systematic, documented, and objective review, conducted by or on behalf of the owner or operator of a facility, of the environmental performance of the facility, including an evaluation of compliance with the cooperative agreement covering the facility.” Wis. Stat. § 299.80(1)(g) (1997).

STATE	Washington	West Virginia	Wisconsin	Wyoming
Limitations on Enforcement	<p>On-site consultation visits may not be regarded as inspections and “no notices or citations may be issued or civil penalties assessed.”</p> <p>Owner/operator “shall be given a reasonable period of time to correct violations” before any civil penalty is imposed.</p>	<p>Information obtained by consultant related to environmental hazards “may not be disclosed to enforcement officials.” No fees, penalties, or costs may be assessed against employer.</p>	<p>The “state may not commence a civil action to collect forfeitures for violations” which are reported as required for at least 90 days. If the participant corrects violations within that time, the “state may not commence a civil action to collect forfeitures for the violations.”</p>	<p>Department will not seek civil penalties.</p>
Exceptions	<p>A. Individual or business subject to enforcement action or given notice for same/similar type of violation.</p> <p>B. Violation may place person in danger of death or bodily harm, cause more than minor environmental harm, or cause physical damage to property of another in amount > \$1000.</p>	<p>Employer fails or refuses to take corrective action to eliminate imminent danger or serious hazards.</p>	<p>A. Violations present an imminent threat to public health or the environment or may cause serious harm to public health or the environment.</p> <p>B. The department discovers violations before they are reported.</p>	<p>A. Violations cause actual serious harm to public health, safety or environment, present “imminent and substantial endangerment,” or involve criminal conduct.</p> <p>B. Small business realized a significant economic advantage from the violation, is a repeat violator, violates an administrative order, or was already under investigation by the department when violation disclosed.</p>