TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Solid Waste Management
5th Floor, L & C Tower
401 Church Street
Nashville, Tennessee 37243-1535
(615) 532-0780

NOTICE OF PERMIT DENIAL FOR A SOLID WASTE DISPOSAL FACILITY

The Commissioner of the Tennessee Department of Environment and Conservation (TDEC) has evaluated the major solid waste landfill permit modification for the Cedar Ridge Landfill, Inc. The major modification proposed expansion of Cedar Ridge Landfill adding Phase 7. This expansion included the construction, operation, closure, and post-closure care of the proposed expansion of Phase 7 to the existing landfill. The facility, identified as SNL 59-0238, is located in Marshall County, at 2340 Mooresville Highway, Lewisburg, Tennessee (latitude 35°27'43" N/ longitude 86°50'13" W).

Following an in-depth review of Cedar Ridge Landfill, Inc. application, the Division of Solid Waste Management has determined the proposed expansion does not meet the provisions of Tennessee Code Annotated (TCA) 68-211-105 or the General Facility Standards of Tennessee Rule Chapter 1200-1-7 Solid Waste Processing and Disposal. Further, the Commissioner has concluded that the applicant has failed to demonstrate that for the, proposed expansion area:

1) There is not significant potential for surface collapse;
2) The ground water flow system is not conduit flow which would contribute significant potential for surface collapse or which would cause significant degradation to the ground water;
3) The location of Cell 7 in the Karst terrane will prevent significant degradation to the local ground water resources. [Refer to Tennessee Rule 1200-1-7-.04 (2)(q)]; and
4) The Commissioner has concluded that the applicant has not demonstrated that the proposed facility meets the General Facility Standard; a solid waste facility must be located, designed, constructed, operated, maintained, closed, and cared for after closure in such a manner as to minimize to the extent practicable the potential for releases of solid wastes, solid waste constituents, or other potentially harmful materials to the environment except in a manner authorized by state and local air pollution control, water pollution control, and/or waste management control agencies. [Refer to Tennessee Rule 1200-1-7-.04(2)(a)]

Further, information concerning the Commissioner's decision is contained in the Department's Response Summary available to the public as stated below.

After considering all public comments, the Commissioner has issued its final decision to deny the proposed expansion of the Cedar Ridge Landfill. The denial letter and Response to Comments may be viewed at:

1) The Marshall County Memorial Library, 310 Old Farmington Road, Lewisburg, Tennessee 37091-2861; telephone: 931-359-3335; or
2) The TDEC Columbia Environmental Field Office, 1421 Hampshire Pike, Columbia, Tennessee 38401; telephone: 931-380-3371.

These materials are also available for public inspection at the TDEC Nashville Office, 5th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243, telephone: 615-532-0780.

According to Tennessee Statutes, T.C.A. 68-211-113(b), should the applicant wish to appeal this decision, the applicant may do so by filing a written appeal with the Solid Waste Disposal Control Board. The applicant's appeal will be considered at a regularly scheduled meeting of the Solid Waste Disposal Control Board.

The Tennessee Department of Environment and Conservation is committed to principles of equal opportunity, equal access, and affirmative action. Contact the EEO/AA Coordinator at 1-888-867-7455 or the ADA Coordinator at 1-866-253-5827 for further information. Hearing impaired callers may use the Tennessee Relay Service at 1-800-848-0298.

Persons who wish to be on the Division of Solid Waste Management's mailing list should obtain a Mailing List Request form by calling or writing the Public Participation Officer, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville TN 37243-1535, telephone: (615) 532-0798, email: solid.waste@tn.gov.

NOTICE ISSUED: April 16, 2010

Cedar Ridge Landfill
Proposed Phase 7 Expansion
Response to Comments

There were numerous comments received concerning the Department of Environment and Conservation's (the Department) Notice of Intent to Deny (NID) the proposed Phase 7 expansion at the Waste Management Cedar Ridge Landfill in Marshall County, including a number of letters having the same contents. Where deemed appropriate, similar comments received from multiple commenters have been grouped and a single response provided.

Comment #1: Without the Cedar Ridge Landfill, there will be only one disposal option in the southern middle Tennessee area.

Response #1: A review of solid waste disposal options in the southern middle Tennessee area do not support this claim. In addition to the operational Middle Point Landfill owned by Allied/Republic Waste in neighboring Rutherford County, Waste Management owns a permitted landfill (Quail Hollow) in Bedford County. According to the Department's records, the Quail Hollow Landfill has a remaining capacity of approximately 1 million tons of solid waste. While Waste Management has opted not to operate the Quail Hollow Landfill since 1998, the remaining capacity is still available, the permit is still active, and the site could be open and operating in a very short time frame. According to the Department's 2009 Remaining Life Survey, Waste Management reported that the Cedar Ridge Landfill currently receives 406 tons of waste per day. At that rate, Quail Hollow Landfill could operate for 8 years, 8 months and 22 days before reaching capacity. Furthermore, Maury County, which is immediately adjacent to Marshall County, and which is in the same Solid Waste Disposal Region as Marshall and Bedford Counties, has permitted a Class I landfill, and once constructed, will represent additional capacity in southern middle Tennessee. Further, Williamson County, which is immediately adjacent to Marshall County, has a permit that allows construction of a Class I landfill. As for the Cedar Ridge landfill itself, Waste Management purchased an adjacent tract of land, locally referred to as the Coble property, which is at a higher elevation, and may present a more competent bedrock foundation than proposed Phase 7 has to offer.

Comment #2: The State intends to stop Waste Management from expanding the Cedar Ridge landfill.

Response #2: This has never been the Department's goal. TDEC Staff evaluated the site geology and pertinent criteria landfill sites must meet before the Department approves a new landfill or the expansion of an existing landfill. The Department is charged with protection of human health and the environment, and has determined the proposed Phase 7 area to be unsuitable for expansion due to the presence of a sinkhole within the footprint area being fed by a blue line stream, ongoing surface and ground water contamination issues and issues relating to the monitorability and geological stability of the site.

Comment #3: Marshall County has an unemployment rate of between 16 and 20%. Denial of the proposed expansion would cause the loss of jobs to 40+ Waste Management employees, cause a hardship to families, and add to Marshall County's unemployment problem with the elimination of independent haulers. Citizens will experience a substantial tax increase.

Response #3: The Department realizes this is a local economic concern. The Department is charged by statute and rule to approve/deny a landfill permit application or permit modification based on the suitability of the proposed site for construction and operation of a landfill. Our evaluation of the information received for this site is that the site will not be protective of public health and environment. Further, Cedar Ridge Landfill has been issued six separate Directors' Orders (combined) by the Divisions of Water Pollution Control and Solid Waste Management (between 1998 and 2009) for the discharge of pollutants to waters of the state. The East Fork of Globe Creek stream has been placed on the State's 303(d) list for impaired waterways because of the continued release of contaminants from the landfill. Every existing groundwater compliance monitoring location associated with the Cedar Ridge Landfill ground water monitoring program has been adversely impacted by releases from the site, with the exception of the upgradient (background) monitoring point. The surface and ground water impacts are well documented. The Cedar Ridge Landfill currently is in ground water assessment monitoring because of the release of contaminants from the landfill into local ground waters. The Department must consider these facts in its decision. Refer also to the response for comment #1.

Comment #4: If the expansion application is denied, Marshall County will have to close 4 convenience centers that are presently operated free of charge for Marshall County residents. This denial would limit disposal options, and consequently cause an increase in taxes and waste disposal fees.

Response #4: See response to Comment #3.

Comment #5: Most of southern middle Tennessee is located in karst terrane. This was known when Cedar Ridge was first permitted. Whatever damage has been done has already been done. Let Cedar Ridge continue to operate rather than site another landfill.

Response #5: When the landfill was initially permitted in 1989, the presence and extent of karst development at the site was not as well defined and documented as it is today. With subsequent site expansions and geologic evaluations, the extent of on-site karst development became better defined, and the site's geological stability and monitorability became more questionable. The Department denied the requested expansion into the Phase 7 area for two reasons:

The Overall Performance Requirement of Rule 1200-1-7-.04(2)(a) which states:

> *"…The facility must be located, designed, constructed, operated, maintained, closed, and cared for in a manner so as to minimize to the extent practicable … [t]he potential for releases of solid wastes, solid waste constituents, or other potentially harmful materials to the environment except in a manner that is authorized by state or local air pollution control, water pollution control, and/or waste management control agencies…"*

And the General Facility Standard for Karst Terrane at Rule 1200-1-7-.04(2)(q), which states:

> *"If a facility is proposed in an area of highly developed karst terrane (i.e., sink holes, caves, underground conduit flow drainage, and solutionally enlarged fractures) the applicant must demonstrate to the satisfaction of the Commissioner that relative to the proposed facility siting:*
>
> 1) *These is no significant potential for surface collapse;*
> 2) *The ground water flow system is not a conduit flow which would contribute significant potential for surface collapse or which would cause significant degradation to the ground water; and*
> 3) *Location in the karst terrane will not cause any significant degradation to the local ground water…"*

Failure to satisfy the requirements of the Overall Performance Standard alone is reason to deny the expansion request. The Department also considered the on-site karst features and the inability to properly construct, operate and monitor the landfill expansion area due to those karst features in its denial. Analysis of ground water samples from every existing groundwater compliance monitoring location associated with the Cedar Ridge Landfill demonstrates that the facility is releasing contamination into ground water, with the exception of the upgradient (background) monitoring point. Additionally, there were significant problems with the construction of Phases 3, 4 and 5 of the landfill because of "dropouts"(failure of the rock structure in karst areas) that occurred during construction. During the construction of Phase 4 a 67 foot deep cave was discovered. Expansion of the Phase 7 area was not allowed in previous permit expansions due to the presence of the sinkhole and a blue line stream. The Department has considered these facts in its decision to deny this expansion request.

Comment #6: Expansion of Cedar Ridge was approved under the Jackson Law by both Marshall County and the City of Lewisburg. The expansion was also approved by the Maury-Marshall Regional Solid Waste Planning Board. To deny the permit expansion would violate local authority.

<u>Response #6:</u> Denial of the proposed expansion for Phase 7 of the Waste Management Cedar Ridge landfill does not violate local authority. The Jackson law was created to allow city and county governments that had adopted that law to have the opportunity to

pre-emptively reject the siting of a landfill in their jurisdictional limits provided the local decision was based on specific criteria as defined by statute. The Solid Waste Management Act requires the Department to approve/deny permit requests based on a determination that the constructed landfill provides appropriate protection of public health and the environment. The Regional Solid Waste Planning Board approval affirms that the location of a proposed landfill, or the expansion of an existing landfill does not conflict with that Regional Planning Board's long range solid waste management plan.

Comment #7: Approval of expansion would give Marshall County seven years to develop alternative waste disposal plans.

Response #7: The evaluation of the Phase 7 expansion proposal must be performed based upon its own technical merits. Consideration of non-technical issues is beyond the purview of the Department's permit review process. See also the response to comment #1.

Comment #8: Denial of expansion would result in increased open dumping.

Response #8: The evaluation of the Phase 7 expansion proposal must be performed based upon its own technical merits, and consideration of possible illegal disposal actions by outsiders is beyond the limits of the Department's permit review process. The Department actively investigates open dumping, and takes enforcement actions as appropriate.

Comment #9: Landfill should not be expanded on a sinkhole.

Response #9: The Department conducted a thorough review of all data submitted by the Applicant regarding the local geology, including the presence of a sinkhole within the expansion area. It is the Department's determination that the Applicant failed to adequately demonstrate both the geological stability and monitoribility of the Phase 7 area.

Comment #10: Cedar Ridge Landfill is responsible for water pollution in East Fork Globe Creek and Vickery Spring.

Response #10: The Department agrees with this statement. The Owners and Operators of the Cedar Ridge Landfill have been issued six separate Directors' Orders (combined) by the Divisions of Water Pollution Control and Solid Waste Management (between 1998 and 2009) for the discharge of pollutants into the waters of the state.

The East Fork of Globe Creek is on the State's 303(d) list due to the release of contaminants from the Cedar Ridge Landfill into the stream. Every existing groundwater

compliance monitoring location associated with the Cedar Ridge Landfill ground water monitoring program has been adversely impacted, with the exception of the upgradient (background) monitoring point. The sinkhole located within the proposed Phase 7 expansion area footprint is one of the initial recharge points for the East Fork of Globe Creek.

Comment #11: Concern about contamination of well water.

Response #11: The Department understands this concern. As was stated in the answer to the comment #10, Cedar Ridge Landfill has been issued six separate Directors' Orders (combined) by the Divisions of Water Pollution Control and Solid Waste Management (between 1998 and 2009) for the discharge of pollutants to waters of the state. The East Fork of Globe Creek is on the State's 303(d) list, and Cedar Ridge Landfill is listed as a source of contamination. Every existing groundwater compliance monitoring location associated with the Cedar Ridge Landfill ground water monitoring program has been adversely impacted, with the exception of the upgradient (background) monitoring point. Both surface and ground water impacts are well documented.

Comment #12: The Intent to Deny is not consistent with other expansion permits granted by TDSWM on other similar landfill expansion requests.

Response #12: Each permit application is evaluated on its own merits. See also response to Comment #20.

Comment #13: Cedar Ridge Landfill has complied with the Department's rules as shown by its good inspection record with respect to site operations and General Facility Standards.

Response #13: The inspection record for Cedar Ridge Landfill is not an issue here. The issue relates to the persistent, documented surface and groundwater impacts associated with the site, as well as the location of an open sinkhole fed by a blue line stream within the proposed footprint. Inspection records evaluate ongoing operational practices (including, but not limited to adequate control of blowing litter, performance of random inspections, etc.). Further, the facility is not in compliance with landfill regulations because of the on-going ground water contamination from the landfill.

Comment #14: The Department issued a letter dated April 17, 2009 which specifically states that the Phase 7 construction and operations manual "have been reviewed and tentatively determined to be complete." In that letter, TDSWM specifically states, "Specifically this review is based on Rule 1200-1-7-.04(1-9)," which includes the General Facility Standards.

Response #14: A completeness letter is exactly that: a letter back to the applicant, meaning that all of the pieces to be evaluated during the review process are physically included in the document. That is why the letter contains the wording "tentatively determined to be ***complete****" [bolding added here for emphasis]. That letter does not address the adequacy of the application, or the compliance status of the facility as a whole. The technical review follows the completeness review.*

Comment #15: Cedar Ridge landfill voluntarily spent over $1.3 million on the following upgrades, which were installed with the Department approval:

- Installed a force main from the wet well to the leachate tanks;
- Removed and upgraded an existing, TDSWM-approved leachate collection line in the clay lined cells of the landfill that had been installed prior to Waste Management's ownership of the Cedar Ridge landfill; and
- Added vertical sumps in the updated leachate collection line and upgraded the wet well pumping station

Response #15: The "voluntary" items listed in Comment #15 were actions taken by Waste Management, Inc. as part of an Order issued by the Department in 2007 due to releases from the landfill and violations of the Tennessee Water Quality Control Act, and also as part of an enforcement/corrective action as required in a Consent Order entered into by DSWM and Waste Management on November 24th, 2009. The Consent Order was issued after a leachate transfer line failure and subsequent release of leachate in June of 2009.

Comment #16: The TDSWM Hydrogeology Report Review dated December 29, 2008 states "It is worth noting that Globe Creek is on the state's 303(d) list, and Cedar Ridge landfill is listed as a source of contamination." The 303(d) list does not name Cedar Ridge landfill as a source of contamination. The listed sources include Landfill and Pasture Grazing.

Response #16: The Department's Division of Water Pollution Control (DWPC) was asked by Cedar Ridge in 2006/2007 to remove the Cedar Ridge Landfill as the source of pollution to East Fork of Globe Creek. After conducting an investigation, DWPC determined that Cedar Ridge continued to be a source of pollution entering the East Fork of Globe Creek including chlorides, ammonia and silt. DWPC identified several areas along the boundaries of Cedar Ridge Landfill where high levels of chlorides and ammonia were discharged from the landfill and entering the East Fork of Globe Creek. This is detailed in a 2007 DWPC report provided to DSWM and Waste Management.

Comment #17: The Applicant strongly disagrees with the tentative decision to deny the expansion on the basis of failure to satisfy the Overall Performance Requirement of Rule 1200-1-7-.04(2)(a), and offers that the proposed expansion meets the Overall Performance Requirement, based upon prior permitted modifications/expansions at the site.

Response #17: When the landfill was initially permitted in 1989, the presence and extent of karst development at the site was not as well defined and documented as it is today. With subsequent site expansions, the extent of on-site karst development has been better defined, and the site's geological stability and monitorability more questionable. There have been significant Karst issues which have occurred during the construction of Phases 3, 4, and 5, including the discovery of a 67 foot deep cave beneath Phase 4. Expansion of the Phase 7 area was not allowed in previous permit expansions due to the presence of the sinkhole and a blue line stream. Failure to satisfy the requirements of the Overall Performance Requirement alone are grounds for denial. The issues arising from the on-site karst circumstances are also substantial issues, and are grounds for a denial as well. Every existing groundwater compliance monitoring location associated with the Cedar Ridge Landfill ground water monitoring program has been adversely impacted by releases from the site, with the exception of the upgradient (or background) monitoring point. The surface and ground water impacts are well documented. It should also be noted that the Phase 7 area has been excluded from previous permit expansions due to the presence of the sinkhole and blue line stream.

Comment #18: In addition to the basis offered in Comment #17 by the Applicant in disagreement with the Department's tentative decision to deny the expansion on the basis of failure to satisfy the Overall Performance Requirement of Rule 1200-1-7-.04(2)(a), the Applicant also offers that the proposed expansion meets the Overall Performance Requirement, based upon the issuance of a Class V Injection Well Permit (MSH 0000020) by the Division of Water Supply for the repair of the Sinkhole in Phase 7.

Response #18: A Class V Injection Well permit was acquired at this site because the Phase 7 expansion would cover an existing sinkhole. The Class V permit received by Waste Management gave Waste Management permission to close the sinkhole before construction for Phase 7 began. The Class V permit does not authorize construction into the expansion area. In fact, the July 2, 2008 Class V permit contains the statement that "[a] sinkhole is by nature an unstable geologic area which has no permanent means of stabilization and is subject to times of movement and settling. This uncontrollable movement may cause some damage to any permanent structure placed on or around the karst feature." Further, the permit also contains the language "[t]he owner/operator shall at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used by the owner/operator to achieve compliance with the conditions of this authorization…This includes monitoring of all closed karst

features … and any repair to the feature or structure in the future to ensure water quality standards are met."

Comment #19: In addition to the basis offered in Comments #17 and #18 by the Applicant in disagreement with the Department's tentative decision to deny the expansion on the basis of failure to satisfy the Overall Performance Requirement of Rule 1200-1-7-.04(2)(a), the Applicant also offers that the proposed expansion meets the Overall Performance Requirement, based upon the issuance of an Aquatic Resource Alteration Permit (ARAP) by the Division of Water Pollution Control for the repair of the Sinkhole in Phase 7.

Response #19: The issuance of an ARAP for the stream segment located within the footprint of Phase 7 gives Waste Management permission to relocate a stream, provided the expansion of the landfill is approved. The information provided in the ARAP application does not provide information or facts about the suitability of this site for landfill expansion.

Comment #20: The design includes engineering enhancements (e.g., geogrid, sinkhole repair), that are commonly utilized across the state of Tennessee to provide support under non-rigid structures such as landfills (Carter Valley Landfill, the Eastman-Kodak Class II landfill, and the Jefferson County Landfill), and large buildings and rigid structures.

Response #20: The Department evaluated this comment and does not agree that the site conditions at Cedar Ridge are the same as the three locations cited above:

- *The Carter Valley landfill involved 2 small, closed depressions, not an open sinkhole with active water infiltration (blue line stream). No geogrid element was included in the construction.*

- *The Eastman-Kodak Class II landfill site conditions differed from those at the Cedar Ridge Phase 7 site in that there was no soil veneer present at the Eastman site. This allowed for the location and characterization of every defect in the bedrock surface with certainty. A custom stabilization procedure was subsequently developed for each defect encountered. Furthermore, the defects encountered were not active sinkholes with waters of the state flowing into them.*

- *The Jefferson County Landfill has no sinkholes within the footprint, nor was a geogrid element included in its construction. There was a concern about a surface feature however, and that feature was subsequently excavated and verified to be nothing more than an old farm pond.*

Comment #21: A nationally- and TDSWM-recognized and relied upon expert in karst geology, Dr. William B. White, concurs with CRL's previous findings, supported by other recognized expertise, that the site is monitorable and stable. CRL has repeatedly provided technical information to fully demonstrate the stability and monitorability of the proposed Phase 7.

Response #21: Karst conditions within geologic formations under the proposed Phase 7 Expansion Area appear too complex to reliably predict groundwater flow, or migration of potential contaminants at depths where human health is of greatest concern. At present, groundwater is being monitored at springs and surface water locations around the facility. All of the monitoring points at CRL reported impacts from landfill contaminants, with the exception of the upgradient background well. The goal of the Tennessee Solid Waste Management Regulations is to protect groundwater at depths where many local residents receive water by requiring a monitoring system capable of detecting contaminants before those contaminants cross the compliance boundary.

Expanding the landfill over a sinkhole and stream, that was re-routed away from the sinkhole, may upset buried cavities within the conduits below. Changing the natural water drainage may also trigger the development of more sinkholes, and even more unstable conditions, especially in the older unlined areas of the landfill. Water below ground fed by the stream in Phase 7 may actually help in keeping the surface soil in place. In previous phases, new sinkholes have already developed at Cedar Ridge Landfill as a direct result of landfill construction. Furthermore, adding weight over the proposed area above the sinkhole can further disrupt the groundwater fluid pressure and natural groundwater flow dynamics; and possible trigger surface collapses in older cells where geotechnical studies have not been done.

The potential for release of solid wastes, solid waste constituents, or other potentially harmful materials to the groundwater at depths lower than on-site springs are significant with the addition of this expansion over an active sinkhole and over areas of the existing landfill cells that may be releasing contaminants into the subsurface. Due to the conduit flow in this karst environment, it is likely that contaminants will migrate beyond the compliance boundary without detection. This point is emphasized by the current ground water monitoring system using springs rather than monitoring wells. Further, the landfill is currently in ground water assessment because of the release of contaminants to ground water. We agree with Dr. William B. White's statement in his report to Waste Management that "[t]here is substantial evidence for a system of small conduits developed along bedding planes with interconnecting vertical segments within the landfill site." Dr. White reaffirmed that the geologic formations of the proposed area are not capable of being monitored with this statement as well: "the usual semiannual or quarterly sampling would not be sufficient because of the short travel times within the karst." Groundwater conditions at depths below the lowest spring elevation is still

unaccounted for. The Phase 7 expansion would not only place waste over an existing sinkhole, but would place additional waste on previously constructed phases which have had documented impacts on waters of the State of Tennessee.

Comment #22: In their rebuttal to the Notice of Intent to Deny (NID) the permit application, the Applicant alleges bias on the part of the local geologist, reflected in statements in the NID itself. Additionally, the NID rebuttal includes the language concerning the inspection record for the facility since the year 2000:

> "Of the 115 inspections performed by the local environmental field office, 104 inspections revealed no violations. Of the 11 noted violations during this period, 6 were authored by the local geologist, who only inspected the site 32 times. More than half of these noted violations were issued as a result of those inspections… Some of these noted violations were issued after substantial rain events even though the longstanding TDSWM Policy and Guidance Manual clearly states, when describing the inspection frequency, "(Schedule should consider wet season and time for vegetation if necessary)." This Manual is dated 1992, and was reaffirmed in April 2009"

<u>Response #22:</u> Prior to the Waste Management rebuttal to the Department's NID, no complaints were filed alleging bias from field office staff members toward the Cedar Ridge Landfill. As for the content of the NID that the Applicant deemed to be biased, no specific references were presented by the Applicant in support of this claim. Further, regarding the site inspection history, a review of the database indicates that between January 1, 1998 and December 31, 2009, TDSWM conducted a total of 133 landfill inspections at this facility. During this time period there were 16 inspections during which violations were noted, and for which 28 specific violation items were identified involving 13 different violation codes. Our Columbia Environmental Field Office Geologist identified violations on 20.6% of his inspections at Cedar Ridge Landfill. A different inspector from the same field office identified violations on 24.1% of his inspections. While violations were identified and duly noted on the inspection form by our Columbia Environmental Field Office Geologist on 7 site visits, only one Notice of Violation was issued; indicating that the geologist made the facility aware of unacceptable conditions on 6 of 7 occasions without initiating an enforcement action.