Environmental Enforcement Overview

Waste & Materials Management Study Group
April 14, 2016
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Environmental Enforcement

• Enforcement is essential to a successful environmental protection program.

• We are expected to treat public and private entities in a similar manner – level playing field.

• Our goal is to resolve violations at the lowest level that is appropriate for the circumstances.

• Depending on the program and circumstances, violations may be resolved through criminal or civil enforcement.
Stepped Enforcement

What is Stepped Enforcement?

A series of actions designed to resolve violations at the lowest level appropriate for the circumstances.
Factors Considered

• Actual or potential impacts to human health or the environment.
• Cause of the violation.
• Number and duration of violations.
• Degree of willful or negligent conduct.
• Compliance history of the facility.
• Preventative or corrective actions taken.
• Other mitigating circumstances.
Stepped Enforcement

- Notice of Noncompliance
- Notice of Noncompliance
- Request for Secondary Enforcement
- Notice of Violation
- Enforcement Conference
- Admin. / Consent Order
- Referral to DOJ/DA/EPA
- Prosecution / Citation
Stepped Enforcement

• Tailored to fit the circumstances

• Starts informally, becomes more formal

• A planned series of actions that expand and intensify as the case goes on to increase the motivation toward compliance
Stepped Enforcement – Why?

• It’s our job – part of our core work. We are regulators – we inspect facilities and investigate complaints and identify areas of noncompliance or violations that need to be addressed.
• It works. Data show most violations are resolved voluntarily and there are fewer future violations at facilities.
• It improves consistency within our program.
• It makes the best use of limited field, enforcement and legal resources. Court resources are also strained – voluntary settlement and mediation are encouraged before trial.
Stepped Enforcement – Informal Contacts

- Program Staff
  - Contact with individual/facility via phone or in person
- Documentation
  - Letters
  - Inspection Forms (or alternate documentation – database, Case Activity Report, phone record, etc.)
  - Photographs
  - Samples (when applicable)
- Some informal contacts lead to a NON, some do not.
Notice of Noncompliance (NON)

- Issued by Program Staff
  - Following or in lieu of a more informal contact
  - Letter sent to violator
    - Advises of problems
    - Requests correction
- WMM may issue NONs for:
  - not operating according to code
  - not operating according to approvals
  - not operating according to plan submittals
- Identifies potential for escalated enforcement actions
  - “Failure to respond in a timely manner may result in escalated enforcement actions.”
• Issue when informal contacts do not resolve the area of noncompliance or when the area of noncompliance is significant enough to create a formal record.
  – Degree of noncompliance
  – Repeated noncompliance
  – Didn’t return to compliance with lower level of enforcement
  – Need for more formal enforcement than verbal or letter
• If the NON is not successful in resolving the area of noncompliance, a Notice of Violation may be issued – this moves it into Secondary Enforcement.
Secondary Enforcement

- Notice of Violation
- Enforcement Conference
- Admin. / Consent Order
- Referral to DOJ/DA/EPA
- Prosecution / Citation
Secondary Enforcement

- Supervisor review and approval
- Program Supervisor notifies EE Team Supervisor
- EE Supervisor approval if appropriate
- Enforcement Specialist assigned to draft NOV for staff review.
- Enforcement conference scheduled.
- Referral decision.
## WMM Program Data

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<th>NOV</th>
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<td>2016 to date</td>
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*Solid Waste Only - NONs*
- FY13 – 61
- FY14 – 89
- FY15 – 95
- FY16 (6 mos.) – 36
DEPARTMENT 2015 Data

Notices of Violation 266
Enforcement Conferences 251
Orders 32
Referrals to WI DOJ 39

*Historically, ~87% of violations resolved w/o referral – this shows the importance of paying attention to NONs & NOVs.
*In 2015, 94% attended Enforcement Conferences
Environmental Enforcement

Questions?