

Date: February 1, 2010

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item E, Informational and discussion item: DEQ's Office of Compliance and Enforcement
February 18-19, 2010 EQC meeting

Purpose of item The purpose of this informational item is to inform the commission about DEQ's Office of Compliance and Enforcement.

Background DEQ has a comprehensive regulatory program that ranges from education and technical assistance to formal enforcement. While most of the regulated community voluntarily complies with Oregon's environmental laws, some fall out of compliance.

Enforcement process When field staff inspect a facility or respond to a complaint that DEQ receives, they sometimes find violations of Oregon law. Depending on the nature of the violation, the inspectors may refer the violator to DEQ's Office of Compliance and Enforcement. The office then issues the violators, generally known as respondents, a notice of violation that may include a department order or a civil penalty.

Each program at DEQ has enforcement guidance that inspectors are to consult when determining what response to follow when they find a violation. The guidance may direct the inspector to respond with a warning letter, which gives the respondent an opportunity to correct the violation and no formal enforcement or penalty will follow. For other violations, the guidance may direct the inspector to send a pre-enforcement notice that tells the respondent how to correct the violation and that the violation will be referred for formal enforcement, which may include a penalty.

Once an inspector has sent a pre-enforcement notice, the inspector creates an enforcement referral with all of the evidence gathered about the respondent and the violations, and sends it to the Office of Compliance and Enforcement. An environmental law specialist will review the referral and draft and issue a formal enforcement action, or notice. The respondent may either pay the penalty and comply with the department order as applicable or appeal the notice.

When the respondent appeals, the environmental law specialist meets with the respondent and the inspector who referred the case to discuss the notice and hear

any new or additional information the respondent may have about the violations. After this meeting, the environmental law specialist makes a recommendation to the manager of the Office of Compliance and Enforcement to settle the case, which may include a reduction in the penalty. Once approved, the environmental law specialist makes the settlement offer to the respondent. The respondent may either accept the settlement offer or continue with a contested case hearing before an administrative law judge. Once an administrative law judge issues a proposed order, the respondent or DEQ may appeal the decision to the Environmental Quality Commission for a review of the judge's decision. Once the commission has issued a final order, only the respondent may appeal this order to the Court of Appeals. Either DEQ or the respondent may appeal a decision of the Court of Appeals to the Supreme Court.

Other functions

The Office of Compliance and Enforcement participates in an environmental crimes team with Oregon State Police, U.S. EPA and the Oregon Department of Justice. DEQ sometimes refers cases for criminal enforcement when the violations are especially egregious due to the environmental damage, or when the violators are deceitful and dishonest in their action or are recalcitrant. Depending on jurisdiction, the County District Attorneys, Oregon Department of Justice or U.S. Attorneys' Office may prosecute these cases.

Discussion questions

- Are there questions about the enforcement process?
- Are the director's dialogue updates on specific cases of interest helpful?

Report prepared and approved by: Leah Koss
Interim manager, Office of Compliance and Enforcement
Phone: (503) 229-6408