**DEP ENFORCEMENT MANUAL**

**TABLE OF CONTENTS**

**INTRODUCTION**

**CHAPTER ONE - DEP ENFORCEMENT ORGANIZATION**

1.1 Secretary and Deputy Secretaries and Assistant Deputy Secretary

1.2 Division Directors

1.3 Districts

1.4 Duties and Responsibilities of District Staff

1.5 Office of General Counsel

1.5.1 Enforcement Section of Office of General Counsel

1.6 Other Governmental Entities

**CHAPTER TWO - COMPLIANCE OPTIONS**

2.0 Introduction

2.1 First Steps

2.2 Compliance Options

2.3 Conclusion

**CHAPTER THREE - ENFORCEMENT OPTIONS**

3.0 Introduction

3.1 First Step Options

3.2 Options Following the Issuance of Compliance Assistance Offer

3.3 Options Following the Issuance of a Warning Letter

3.4 Options Following the Issuance of a Notice of Violation

3.5 Options Following the Issuance of a Final Order or a

 Consent Order

3.6 Options Following the Submittal of a Case Report to OGC

3.7 Options Following the Entry of a Consent Final Judgment

 or Final Judgment

**CHAPTER FOUR - INSPECTIONS AND INVESTIGATIONS**

4.0 Determining Non-Compliance

4.1 Jurisdiction

4.2 Preparation for an On-Site Inspection

4.3 Regulatory Inspections - Obtaining Site Access

4.3.1 Site Access - Statutory Authority

4.3.2 Site Access - Permission

4.3.2.1 Site Access Permission by Owner, Operator, or Person in

 Charge - Express Permission

4.3.2.2 Site Access Permission by Owner, Operator, or Person

 in Charge - Implied Permission

4.3.3 Judicial Authorization for Site Access

4.3.3.1 Inspection Warrant

4.3.3.2 Sampling under an Inspection Warrant

4.3.3.3 Litigation Seeking Site Access

4.3.3.4 Site Access During Litigation

4.3.4 Administrative Site Access

4.4 On-Site Inspection

4.4.1 Violation Corrected

4.4.2 On-going Violation

* 1. Documenting the Inspection (Post-Inspection Reporting)

and Investigation

4.5.1 Witnesses

4.5.2 Pictures

4.6 Location

4.7 Obtaining Legal Descriptions

4.8 Responsible Parties

4.9 State Corporate and Partnership Information

4.10 Sampling and Analysis

4.11 Technical Support for Criminal Violations

4.11.1 Criminal Search Warrants

4.11.2 Evidentiary Sampling for Criminal Cases

4.11.3 Safety Plan

4.11.4 Records

4.11.5 Interviews

4.11.6 Inventory

4.11.7 Photography

4.11.8 Videotaped Evidence

4.11.9 Measurement and Mapping

**CHAPTER FIVE - THE ADMINISTRATIVE PROCESS AND REMEDIES**

5.0 Nature of the Administrative Process

5.1 Warning Letter

5.2 The Notice of Violation

5.2.1 The Notice of Violation Subsections

5.2.2 The Orders for Corrective Action Section

5.2.3 The Notice of Rights Subsection

5.2.4 Model NOVs

5.2.5 Environmental Litigation Reform Act (ELRA) NOVs

5.2.5.1 Use of ELRA

5.2.5.2 ELRA Penalty Calculation

5.3 The Administrative Process

5.3.1 Service of the NOV

5.3.2 Informal Conference

5.3.3 Request for Hearing

5.3.4 Procedures after the Request for Hearing

5.4 Costs and Expenses Which May be Included in a Consent

 Order or Notice of Violation

5.4.1 Conditions Under Which Other Costs and Expenses May be Included or Recovered

5.4.2 Costs and Expenses Recoverable in an ELRA Proceeding

5.4.3 Determination of the Costs of Those Persons Employed by

 the Department

5.4.4 Documentation of Costs

5.4.5 Determination of Costs for Settlements

5.5 Mediation

5.5.1 Agreeing to Mediation

5.5.2 Mediation of Administrative Disputes

5.5.3 Preparation for Mediation

5.5.4 The Mediation Conference

5.5.5 The Conclusion of Mediation

5.6 The Consent Order

5.6.1 Short Form Consent Order

5.6.2 Model Consent Orders

5.6.3 Long Form Consent Orders

5.6.3.1 Findings of Fact and Conclusions of Law

5.6.3.2 The Ordered Section

5.6.3.3 The Notice of Rights Section

5.6.3.4 The Effective Date

**CHAPTER SIX - JUDICIAL PROCESS AND REMEDIES**

6.0 Introduction

6.1 The Decision Making Process Before Taking Judicial Action

6.1.1 Nature and Seriousness of the Violation

6.1.2 Judicial Actions

6.1.3 Likelihood of Responsible Party Complying with a Final Order

6.1.4 Issues Likely to be in Dispute

6.1.5 Local Judges’ Records on Environmental Cases

6.2 Review and Approval Process Before Taking Judicial Action

6.3 Available Enforcement Remedies

6.3.1 Injunctive Relief

6.3.2 Civil Penalties

6.3.3 Damages

6.4 Case Report

6.5 Complaint

6.6 Petition for Enforcement

6.7 Venue

6.8 Service of Process

6.9 Motions and Answers

6.10 Discovery

6.11 Settlement

6.12 Mediation

6.13 Pre-Trial and Trial

6.14 Post-Judgment Enforcement

6.15 Appeals

6.16 Collections

6.16.1 Accounts

6.16.2 Duty to Collect

6.16.3 Authority to Settle

6.16.4 Records

6.16.5 Initial Efforts to Collect

6.16.6 Referral

6.16.7 OGC Collection Mechanisms

6.16.8 Additional Enforcement Proceedings

6.16.9 Setoff

6.17 Bankruptcies

6.17.1 Notice

6.17.2 Department’s Interest

6.17.3 Effect of Filing Bankruptcy

6.17.4 Department’s Response to the Filing of Bankruptcy

6.17.5 Parallel Proceedings

6.17.6 Discharge

6.17.7 Subsequent Actions

**CHAPTER SEVEN - LITIGATION PROCEDURES**

7.0 Introduction

7.1 Communication with the Opposing Lawyer and Party

7.2 Public Records

7.2.1 Exemptions from the Public Records Act

7.2.1.1 Trade Secrets

7.2.1.2 Confidential Informants

7.2.1.3 Attorney “Work Product”

7.2.1.4 Criminal Investigation Documents

7.2.2 Draft Documents

7.3 Subpoenas

7.4 Preparation for Hearing

7.4.1 Before Testifying

7.4.2 Day of the Hearing

7.4.3 When You are on the Stand

**CHAPTER EIGHT - DATA MANAGEMENT**

8.0 A Summary of the Legal Case Tracking System (LCTS)

8.1 Codes for Receipts Written for Money Collected from

 Enforcement Actions

**APPENDICES**

**CIVIL PENALTY POLICY MEMOS**

 Settlement Guidelines for Civil Penalties - DEP Directive 923

 List of Hazardous Substances – Supplemental Document to Attachment III of DEP Directive 923

 Guidelines for Characterizing Air Violations

Guidelines for Characterizing Wastewater Violations

 Guidelines for Characterizing Drinking Water Violations

 Guideline for Characterizing Drycleaner Solvent Containment Violations

 Guidelines for Characterizing NPDES Stormwater Violations

 Guidelines for Characterizing Storage Tank Violations

 Guidelines for Characterizing Hazardous Waste Violations

 Specific Compliance Assistance Guidelines for RCRA /Hazardous Waste

 Guidelines for Characterizing UIC Violations

 Guidelines for Characterizing Used Oil Violations

 Guidelines for Characterizing Solid Waste Violations

 Guidelines for Characterizing Environmental Resources Violations

 Certified Operator Penalty Guidance

 Guidelines for Handling State Lands Violations

 Sanitary Sewer Overflow (SSO) Evaluation Tool**COLLECTION/WRITE-OFF DOCUMENTS**

Collection Referral Template

 Write-off Referral Template

 Past Due Notice – Example 1

Past Due Notice – Example 2

**DATA MANAGEMENT DOCUMENTS**

 Legal Case Tracking (LCT) Enforcement Case Entry Form

**FINANCIAL DOCUMENTS**

Financial Affidavit for Corporations

 Financial Affidavit for Individuals and Sole Proprietors

 Financial Affidavit for Partnerships

Financial Affidavit for LLC

**COMPLIANCE DOCUMENTS**

In Compliance – Closure Letter

 Compliance Assistance Offer - all sites

Regulatory Compliance Memorandum 11-16-2011

Warning Letter

Compliance Assistance and Enforcement Process Flowchart

Potable Water Secondary MCL Memo to File

Limitations on Use of CAOs

Sanitary Sewage Overflow Documents

SSO Memo To File

SSO CAO

SSO Warning Letter

SSO Warning Letter for facility with existing Consent Order

SSO Model Corrective Actions

**MODEL CONSENT ORDERS**

Signatory Language and Certifications

 Enforcement Style Guide

DW/CO

DW/SSO Model Corrective Actions

LFCO NPDES CGP

LFCO NPDES MSGP

LFCO NPDES Sample Violation Corrective Action Language

NPDES Reporting/CO – FOR DWRM USE ONLY

 HW/CO

 HW/CO Corrective Actions

 Indigent Petroleum Cleanup CO

 Indigent Tanks CO

 IW/CO (permitted facility)

 IW/CO (unpermitted facility)

 PW/CO

 PW/CO for Disinfection By-products

 PW/CO for 4-Log

 Emergency Well CO

 SLERP/CO

 SLERP/CO with incorporated TUA

Non 404 SLERPCO with TUA and Permitting conditions

ERP Non 404 Consent Order Technical Staff Report

 SW/CO

 SW Model Corrective Actions

TK/CO

Short-Form Consent Order (SFCO) for SSO

Short Form Consent Order (SFCO) for Business Entities

Short Form Consent Order (SFCO) for Individuals

Short-form Consent Order with Environmental School Option (Option Available at

District Discretion)

 SFCO with Pollution Prevention Language

Model In-Kind Paragraph Language

**CONSENT ORDER MODEL POLLUTION PREVENTION**

**DOCUMENTS**

Pollution Prevention in Enforcement Process Memo

Short-form Consent Order with Pollution Prevention Language

Pollution Prevention Project Summary – SFCO Exhibit

 Long-form Consent Order Pollution Prevention Paragraphs

 Pollution Prevention Project Plan – LFCO Exhibit

 Pollution Prevention Project Final Report

**VOLUNTARY CLEANUP AGREEMENT**

 Model Voluntary Cleanup Agreement – drycleaning solvent contaminated sites

## MODEL DOCUMENTS FOR 62-780

 Model 780 Consent Order

 Model 780 Consent Order – Indigent Cleanup

 Model 780 Modification to Consent Order

 Model Warning Letter – Permitted Facilities

 Global RBCA Notice Letter

 Guidance Letter for Property Owners with Potential Impacts from Neighboring/Adjacent Properties

Instructions For Use of Site Access Documents

Site Access Assessment Letter

Site Access Notice of Intent

Site Access Assessment Final Order

Site Access Remediation Letter

Site Access Remediation Final Order

 WCU Request for OGC Assistance

LCT Case Entry Form – WCU PRP Analysis and NOV Questionnaire

 Procedure for Ability to Pay – Cleanup Costs Only

**OFFICE OF EMERGENCY RESPONSE DOCUMENTS**

 OER Compliance Assistance Offer Letter

 OER Model Access Permission Template

 OER Model ESR Insufficient Letter

 OER NFA Emergency Source Removal Report

 OER NFA Interim Source Removal Report

**MODEL FINAL ORDERS**

Default Final Order

**MODEL ORDERS - MISCELLANEOUS**

 Order To Comply with Request for Information

**MODEL LETTERS**

Probation Letter (for Drinking Water/Domestic Wastewater Certified Operators)

 Records Request Letter

**MODEL NOTICE OF VIOLATION**

Generic Programmatic ELRA Model NOV

Generic NOV (use for non-ELRA NOVs)

ModelNon-ELRA NOV for Tanks placard revocation

 Agriculture BMAP Model NOV

**STATE LAND PROPRIETARY ONLY**

Notice of Unauthorized Structures

State Lands Proprietary Only – NOV Single Respondent (With Contractor)

State Lands Proprietary Only – NOV Single Respondent (No Contractor)

State Lands Proprietary Only – NOV Multiple Respondents (With Contractor)

State Lands Proprietary Only – NOV Multiple Respondents (No Contractor)

**CORAL REEF PROTECTION ACT DOCUMENTS**

 Guidelines for Pursuing Coral Reef Protection Act Cases

 Civil Penalty Authorization – Coral Reef Protection

 Damages Authorization – Coral Reef Protection

 Coral Reef Resource Injury Definitions

**OGC ENFORCEMENT ORGANIZATION CHART**

Organization Chart

## EXTERNAL REFERRAL – STANDARD OPERATING PROCEDURES

External Referral Request Form

**ENFORCEMENT PROCESS**

Closure Memo Template (use to close any OGC matter that does not have a Case Closure Letter)

Model Case Closure Letter

Model In-kind or P2 Completion and Case Closure Letter

Civil Penalty Authorization Memo

 Case Report – Sample

 Case Report and Request for Authorization to File

 Suit Seeking a Temporary Injunction – Sample

 Enforcement Paper Flow Chart

 In-Kind Penalty Authorization Memo - Sample

MEMO – Final Agency Action To Agency Clerk in Non-Secured Searchable Format

Corrective Actions Requirement Tracking

**ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEM DOCUMENTS**

Case Report – Sample for OSTDS cases

Case Report and Request for Authorization to File Suit Seeking Temporary Injunction - Sample for OSTDS cases

OSTDS Model NOV

Citation Default Final Order

Legal Case Tracking (LCT) Case Form for OSTDS

**SITE ACCESS DOCUMENTS**

Model Affidavit and Application for Inspection Warrant

Model Inspection Warrant

Model Access Request Letter

 Model Access Permission Form

 Model Easement Agreement

 Model License Agreement

 Instructions for Use of Model Administrative Access

 Order

 Model Administrative Access Order

**RESTRICTIVE COVENANT/DEED RESTRICTIONS**

 Institutional Control Procedures Guidance Document with

Sample Restrictive Covenant

**TEMPORARY USE AGREEMENT (TUA)**

Temporary Use Agreement Attachment 0-1