

CHAPTER TWO

COMPLIANCE OPTIONS

2.0 Introduction

Positive environmental results are the goals of the Agency, and we all work for the protection of human and environmental health through cleaner air, water, and soil, and the protection of natural and state resources. Attaining and maintaining present and future compliance is the main objective of our settlements, enforcement cases, permits, program participation, many Department policies, and outreach and education efforts. Simply put, our objective in enforcement is to apply the best method to resolve a violation and prevent further violations.

Determining which method is best should include an assessment of the type of violation, its qualitative environmental impact, the behavior motivating the violation, the costs of pursuing different options, the likelihood of successful compliance, and reimbursement of our expenses. The options for resolving violations can generally be divided into formal and informal categories. The formal options include warning letters and administrative and judicial actions. The informal, or compliance, options are discussed in this section.

Considering which compliance options should be applied to a case is an integral part of and first step toward resolving a violation. Many options are already a familiar part of the Department's enforcement practices, from allowing for a timely response to an inspection documenting a violation (often referred to as Compliance Assistance) to using our traditional mechanisms to achieve compliance, such as a compliance assistance offer, a warning letter, or an enforcement case. Within the limits of statutory mandates and delegated programs, the Department often has some discretion in how to proceed against a violator, and options should

be discussed with local management as well as OGC in relation to the strength of an enforcement case and its associated costs.

Compliance assistance can benefit both the Department and the violator. Effective compliance assistance is less costly for the Department than legal proceedings, and the violator typically spends more of its resources towards resolving or preventing environmental damage rather than defending itself in a legal action. In fact, an analysis of actual cases for FY10-11 and FY11-12 revealed that about 2/3 of all consent orders during that time frame resulted in dollar penalties less than \$3,000 and nearly 1/3 of all consent orders less than \$1000 (see below). Of course, the time, effort and expense of the Department (setting aside that of the alleged violator) to consider, arrange for, meet with, negotiate and process a consent order can run into the thousands of dollars. As such, it makes the soundest business sense for the Department and the environment to focus our efforts on the more serious violations. In support of this approach, traditional, formal enforcement mechanisms are covered in the other chapters of this manual.

2.1 First Steps

The first step is to decide what type of violation is involved. The effect a violation has is one way to think about violations and can influence how the Department proceeds in a particular situation. Violations that are facility-specific, involve a single event, or an infrequently repeated activity are examples of specific-level non-compliance and typically are excellent candidates for compliance assistance. A specific-level violation might be found as a result of an inspection, verification of a complaint, review of records, self-reporting, or other mechanism that brings a problem to the Department's attention and is verified by either a site visit or documentation. General levels of non-compliance involve a pattern or trend of non-compliance that may be common across a type of facility, an industry, or a particular geographical area. This manual

focuses on enforcement procedures commonly associated with specific non-compliance, and options for dealing with generalized non-compliance will not be addressed here.

Determining how to proceed in any particular case can be complicated, but our decisions should be gauged by the net benefit of the environmental results which would be achieved. Each situation is different. An example may help to clarify how to think about some of the compliance options available to the Department, and how complicated the considerations can be.

Example: Groundwater contaminated with dry-cleaning solvents is a serious problem in the state, and the investigation and cleanup of these sites can be expensive. When faced with a case of dry-cleaning contamination, the Department could proceed with any of a number of formal enforcement options, including sending out a notice of violation or filing a lawsuit. But in some cases, litigation may not be the best approach, and it may be appropriate to pursue non-litigation options, including compliance assistance. For example, a regulatory assistance program is available for sites contaminated with dry cleaning solvents but only in cases when the facility is not subject to current criminal or civil enforcement action. If the Department sued the facility owner, then the site would not be eligible for the program. However, the circumstances of the case may demonstrate that the cleanup fund should not be used for the site. If the dry cleaning solvent plume is mixed with other contaminants that are not eligible under the program or the violator has a history of non-compliance, then use of the clean up fund may be inappropriate. If the Department pursues litigation, the site may not qualify for the program, but the existence of other contaminants may mean that only part of the plume would have been covered in the program, and the Department's best option is to force the responsible party to clean up the entire site. This example is not intended to imply that non-litigation options are always preferable in the dry-cleaning or any other program. In many cases, litigation will be the best option, but the

example demonstrates that the Department must consider the potential consequences of all options before proceeding.

2.2 Compliance Options

The Department has several compliance options, which are always less formal than the enforcement options described in the following Chapters. Compliance options can be used when the corrective actions required to bring a violation into compliance are not complicated, the responsible party does not have a history of non-compliance, and penalties are not appropriate. For example, if the inspector finds a small dredge and fill violation in a backyard, the owner did not know about the requirement for a permit, and the owner agrees to restore the area quickly, the case can be resolved without the need for more formal enforcement. The inspector could reach an oral agreement with the owner for the restoration or could send a compliance assistance offer as a means of both documenting the potential violation and offering to assist in its resolution. The inspector should always follow up to ensure the promised restoration was completed on time and in an acceptable manner.

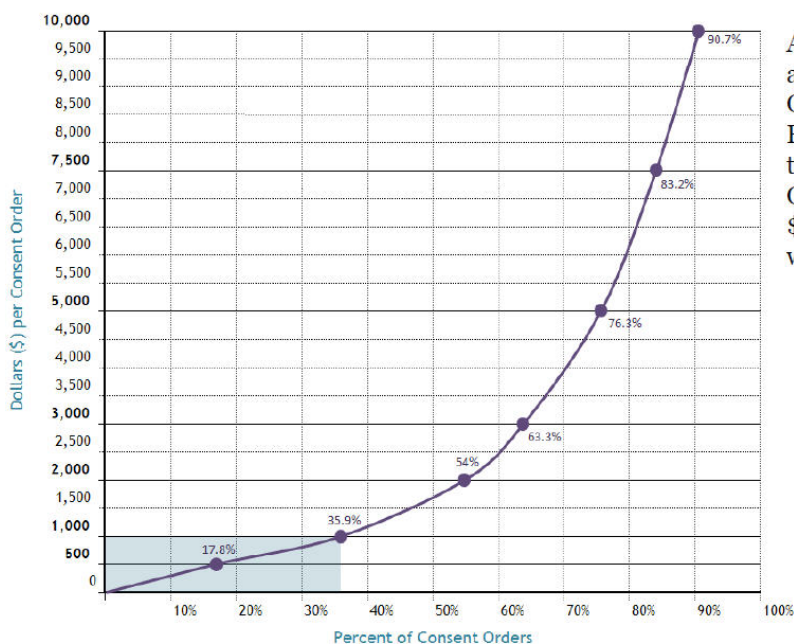
Inspections can be used proactively. Through on-site inspections, investigations, and exit interviews, site owners and operators also can be directly informed of the compliance problems they may be having. Further, section 403.091(1)(c), Florida Statutes, requires that the Department, when requested, must provide the owner or operator of the premises that are inspected with a report setting forth all facts found that relate to compliance status.

2.3 Conclusion

The Department has a broad set of options available to deal with violations. Most cases have several ways in which they could be resolved, and each case would benefit from a consideration of the Department's options. The objective is to apply the best method to resolve a

violation and/or prevent further violations, while at the same time meeting other Department interests in recovering its expenses, deterring further violations, and preserving or improving the environment. If you do not know or understand the options that are available, discuss the case with your supervisor, District and Division management, and OGC before deciding which method will best achieve and maintain compliance and protect Florida's environment.

A LOOK BACK: FY10-11 and FY11-12



Actual penalties assessed from Consent Orders, Final Orders and Final Judgment (1592 total). Of those, **64%** were \$3,000 or less and **36%** were \$1,000 or less.