

CHAPTER THREE ENFORCEMENT OPTIONS

3.0 Introduction

Achieving compliance with the agency's rules and statutes through amicable means is always preferred, and the options explained in the previous chapter should be considered before proceeding with enforcement. Unfortunately, compliance cannot always be achieved using only compliance tools. When enforcement is the best tool for achieving compliance, it should be used.

Many violations have caused environmental impacts at a level that require restoration and/or extended monitoring. Others are so extensive, or involve knowing or repeat violations that make the deterrence of civil penalties very important in achieving future compliance. As with compliance options, several options are available at each level of the enforcement process. The nature of the violation and the history of the case will determine which one is best suited for use.

3.1 First Step Options

Once an inspection has been conducted and a violation has been discovered, any of the following options may be used as the Department's initial response to the violation:

1. Issue a compliance assistance offer letter. The compliance assistance offer is normally used when the violation is minor, and the Department does not intend to pursue a consent order or penalties if the violation is promptly corrected.
2. Issue a warning notice. The warning notice is normally used if the Department does intend to pursue a consent order and/or penalties.
3. Issue a Notice of Violation (NOV). The Notice of Violation is normally used as an initial response if the violation is causing significant environmental harm or because a program-specific deadline for initiating formal enforcement must be met.

4. Submit a short form Case Report to OGC seeking the entry of a temporary injunction. The short form Case Report should only be used if the responsible party refuses to cease an ongoing violation after notice from the Department, and the ongoing violation involves a potential health threat or potential significant harm to the environment. This option is always available at any step in the process.

3.2 Options Following the Issuance of a Compliance Assistance Offer

If the issuance of a compliance assistance offer results in the responsible party coming into compliance, no further action is necessary. In cases where the violation is minor, a first-time violation and likely resulted from ignorance of Department requirements, the responsible party may be required to complete an environmental education course as a means of keeping a “clean record”. Such a course will become available as an alternative to enforcement beginning calendar year 2014.

If the responsible party fails to come into compliance promptly after the issuance of a compliance assistance offer letter, the decision should be to issue a warning letter or (in some cases) an NOV.

Since the issuance of a compliance assistance offer letter normally occurs when a minor violation has been discovered, the submittal of a case report to OGC upon the failure of the responsible party to come into compliance after the issuance of a compliance assistance offer should only be pursued after discussion with OGC concerning the appropriateness of filing such a case in court.

3.3 Options Following the Issuance of a Warning Letter

If the responsible party responds to the issuance of a Warning Letter by agreeing to negotiate a Consent Order, a meeting or series of meetings by phone or in person should be held in an attempt to reach agreement on the terms of a Consent Order. If agreement is reached

between the parties, a model Consent Order, short form Consent Order, or OGC reviewed Consent Order should be executed by the parties.

If the responsible party fails to agree to the terms of a Consent Order, or fails to respond to the issuance of a warning letter, a decision should be made to either issue an NOV or submit a standard Case Report to OGC requesting a complaint be filed in circuit court seeking corrective actions, penalties, costs, or damages or a combination thereof.

3.4 Options Following the Issuance of a Notice of Violation

If after the issuance of an NOV, the responsible party fails to file a petition for formal or informal hearing within 20 days of receipt of the NOV, a default Final Order should be entered against the responsible party.

If the responsible party files a petition for formal or informal hearing, OGC will then take the lead in processing the case. The case will either proceed to the entry of a Final Order after an administrative hearing, or the parties can agree to resolve the NOV by entering into a Consent Order.

If after issuing an NOV, the responsible party does not agree to the payment of civil penalties in a case in which civil penalties are appropriate, or circumstances arise that warrant the entry of a temporary injunction to stop an ongoing violation that is a potential threat to the environment, a decision must be made to either withdraw the NOV and submit a short form or standard Case Report to OGC; or to continue the NOV. The Department has the legal authority to simultaneously pursue a responsible party with an NOV and a complaint in circuit court. In either case, the Deputy Secretary of Regulatory and OGC should be consulted before such a decision is made.

3.5 Options Following the Issuance of a Final Order or a Consent Order

If the responsible party complies with the terms of the Final Order or Consent Order, no further action is required.

If the responsible party fails to comply with either a Final Order or a Consent Order, a Case Report should be submitted to OGC requesting that a Petition for Enforcement be filed in circuit court seeking to enforce the terms of the Final Order or Consent Order.

3.6 Options Following the Submittal of a Case Report to OGC

If after the submittal of the Case Report to OGC and prior to the filing of a complaint or petition for enforcement in circuit court, a case can be settled by the parties by the entry of a Consent Order. After the filing of a complaint or petition for enforcement in circuit court, the case can be settled by the entry of a Consent Order or Settlement Agreement and the dismissal of the complaint, or by the entry of a consent final judgment.

If the case can't be resolved after the filing of a complaint or petition for enforcement in circuit court, the case should proceed to trial and the entry of a final judgment.

3.7 Options Following the Entry of a Consent Final Judgment or Final Judgment

If the responsible party complies with the terms of the consent final judgment or final judgment, no further action is necessary.

If the responsible party fails to comply with corrective actions required by the consent final judgment or final judgment, a report should be submitted to OGC identifying the provisions of the consent final judgment or final judgment that have not been complied with and factual statement describing the non-compliance. OGC can then file a motion with the court requesting that the court hold the responsible party in contempt of court and requesting that the responsible party be ordered to comply with the consent final judgment or final judgment. If the non-

compliance involves solely the payment of penalties, damages or costs, see the Department's collection procedures in Chapter 6 of this Manual.