

All information contained herein is provided solely for educational purposes. It is not intended as a substitute for professional or legal advice. Should you decide to act upon any information contained in this presentation, you do so at your own risk.

While the information posted has been verified to the best of our abilities, we cannot guarantee that there are no mistakes or errors.



LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIROSCCHOOL

Understanding the LDEQ Enforcement Process

Wayne R. Slater

Senior Environmental Scientist-Water
LDEQ Enforcement Division



LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIROSCHOOL

Office of Environmental Compliance

Mission Statement: The Mission of the Office Environmental Compliance is to ensure the public and occupational welfare of the people and protect the environmental resources of Louisiana by...issuing sound enforcement actions.

How: Through a program of regular inspection of permitted facilities, timely investigation of complaints and incidents, coupled with a thorough review process, and by issuing enforcement actions that clearly document the violations and presents a path to compliance.

Why: To deter future non-compliance and eliminate the economic incentives for non compliance.



State Environmental Regulations

Louisiana Revised Statutes (La. R.S.)

➤ Title 30

- Louisiana Environmental Quality Act

Louisiana Administrative Code (LAC)

➤ Title 33

- Part I Office of the Secretary
- Part III Air
- Part V Hazardous Waste
- Part VI Inactive Sites
- Part VII Solid Waste
- Part IX Water Quality
- Part XI UST
- Part XV Radiation Protection

What Starts The Enforcement Process?

- SELF-DISCLOSED ISSUES
- OES (PERMIT) REFERRALS
- ENFORCEMENT INTERNAL FILE REVIEWS
 - BASED ON DMRs/TITLE V, ETC.
 - BASED ON DOCUMENTS SUBMITTED TO DEQ or LACK OF REQUIRED DOCUMENT SUBMITTAL
- FIELD (SURVEILLANCE/ER/CAPP) REFERRALS
 - ROUTINE
 - COMPLAINTS and SPILLS

NOT ALL INSPECTIONS w/AOCs WILL LEAD TO ENFORCEMENT



Regional Enforcement Processes: After The inspection...

- For AOCs that are relatively minor and have little to no adverse impacts to the environment.
- The local DEQ Regional Office may issue an Notice of Deficiency (NOD).
- Upon a satisfactory response to the NOD, the Regional Office will issue a Notice of Corrected Deficiency (NOCD) and the issue will be considered resolved.

IT IS IMPORTANT to respond to an NOD! Failure to respond in a timely manner could result in the inspection being forwarded to Enforcement.

Field Referrals: Why Are They Sent To Enforcement?

- Failure to Respond to an NOD
- Previous Violations of a Similar Nature
- Previous Enforcement Actions
- Adverse Impacts to Public Health and/or the Environment
- More significant violations that cannot be resolved during or shortly after the inspection
- Violations that require soil and/or groundwater remediation



WARNING LETTER: The Beginning...



- Informs facility that AOCs have been referred to Enforcement
- Will reference inspection date
- Requests a 30 Day Response

Warning Letter FAQs

- Question: Where can I find the inspection or investigation report?
- Answer: Inspection/investigative reports will be filed by the inspection/investigative date in EDMS under the facilities Agency Interest (AI) number.

Warning Letter FAQs

- Question: Should I respond to a Warning Letter?
- Answer: YES! A Warning Letter Response is the first opportunity to talk to Enforcement; however, you are not required to respond to a Warning Letter.

Warning Letter FAQs

- Question: Do I need an extension for submitting a response?
- Answer: An official extension is not needed. Inform the enforcement writer of your intent to submit a response.

Warning Letter FAQs

- Question: If I respond to the Warning Letter will I still get an Enforcement action?
- Answer: Probably so. However, an adequate response showing that the violations have been corrected or a response that shows mitigating circumstances surrounding the violations may allow you to get a less “severe” action.

What To Do If You Get A Warning Letter

- If corrected
 - Call us
 - Submit written response.
- If not corrected
 - Call us to tell us you are working on problem
 - Submit written response
 - Keep us updated
- *Keep lines of communication open*



Referral Routing

- Enforcement Writer
- Supervisor
- Manager
- Legal
- EPS (formatting review)
- Administrator
- Assistant Secretary

ENFORCEMENT TOOLS

- Administrative Orders (AO)
- Notice of Violation (NOV)
- Compliance Order (CO)
- Consolidated Compliance Order and Notice of Potential Penalty (CO/NOPP)
- Notice of Potential Penalty (NOPP)
- Penalty Assessment/Settlement Agreements
- Expedited Penalty (XP)

Administrative Orders

- There are two (2) types: 1.) Administrative Order (AO) and 2.) Administrative Order on Consent (AOC)
- Is not preceded by a Warning Letter
- Does not cite violations
- Uses Assistant Secretary's discretion to address an environmental concern
- Typically requires a report or submittal of information
- Cannot be appealed

ENFORCEMENT TOOLS

- Notice of Violation (NOV)
 - Minor violations
 - Written Report - Optional
 - Can Not be Appealed
 - In Most Cases an NOV is Closed upon Issuance
- Compliance Order (CO)
 - Minor to Moderate violations
 - Requires Written Report (Usually within 30 days)
 - Requires timely Compliance with Regulations (Injunctive Relief)
 - Can be Appealed

ENFORCEMENT TOOLS

- Compliance Order & Notice of Potential Penalty (CONOPP)
 - Moderate to Major violations
 - Requires Written Report
 - Requires timely Compliance with Regulations
 - Can be Appealed
 - Notice that the Department is considering a Penalty
 - Request Submission of Gross Revenues & Benefit of Noncompliance
- Notice of Potential Penalty (NOPP)
 - Moderate to Major violations
 - Requires Written Report
 - Can Not be Appealed
 - Notice that the Department is considering a Penalty
 - Request Submission of Gross Revenues & Benefit of Noncompliance

If You Receive An Action

- DON'T PANIC!
- Read the Action Thoroughly
- Note Any Deadlines
- Start Preparing the Written Response
- Open the Lines of Communication

- REMEMBER – An Action Won't Go Away Because You Ignore It

Administrative Appeals

- Respondent has 30 days from receipt of action to appeal.
- Appeal requests must be specific
- If appeal is requested, the Secretary has 30 days to grant or deny appeal.
- Both Respondent and Department may elect for Informal Dispute Resolution (IDR). During IDR, the 30 day requirement to grant or deny the appeal is postponed for up to 1 year.
- Only COs, CONOPPs, and Penalty Assessments can be appealed.
- If action is not appealed and compliance is not achieved during the prescribed timeframe, Enforcement may petition to make the action Executory at the 19th JDC

Administrative Hearings

- Hearing will be heard by an Administrative Law Judge
- The hearing will be governed by the Louisiana Environmental Quality (LEQA) and the Administrative Procedures Act (APA) and the Division of Administrative Law Procedural Rules
- Respondent can appeal a negative outcome to the 19th JDC
- The Department cannot further appeal a negative ruling.

Amended Actions

- Amended Actions
 - Remove, Add, or Modify Violations/Citations in the Original Action
 - Add Construction/Compliance Schedule
 - Remainder Original Action stays in-force
 - Memo to EDMS documenting Basis for the AO

ENFORCEMENT TOOLS: Penalties and Settlements

- LAC 33:I.701.A:

The intent of this Chapter is to assure that, after the department has determined a penalty is to be assessed for one or more violations, each penalty is assessed in a consistent, fair, and equitable manner; that penalties are appropriate for the gravity of the violation committed; that economic incentives for noncompliance are eliminated; that penalties are sufficient to deter persons from committing future violations; and that compliance is expeditiously achieved and maintained.

ENFORCEMENT TOOLS: Penalties and Settlements

- Penalty Assessment
 - Moderate to Major violations
 - “Nine Factors”
 - Uses Penalty Matrix (Two Violation specific Factors – Nature & Gravity and Degree of Risk to Human Health & Environment)
 - Considers Five Violator specific factors
 - Considers Benefit of Noncompliance
 - Considers Cost of Enforcement

Penalty Matrix – Violation Specific

- Matrix – LAC 33:I.705.A

Penalty Matrix				
Degree of Risk/Impact to Human Health or Property	Nature and Gravity of the Violation			
		Major	Moderate	Minor
	Major	\$32,500 to \$20,000	\$20,000 to \$15,000	\$15,000 to \$11,000
	Moderate	\$11,000 to \$8,000	\$8,000 to \$5,000	\$5,000 to \$3,000
Minor	\$3,000 to \$1,500	\$1,500 to \$500	\$500 to \$100	

Description of Degree of Risk, Nature and Gravity and examples of each category (Minor, Moderate, Major) are given in the Regulations.

Five Violator Specific Factors

- LAC 33:I.705.C
 - History of Previous Violations or Repeated Noncompliance
 - Gross Revenues
 - Degree of Culpability, Recalcitrance, Defiance, or Indifference
 - Timely Mitigation
 - Timely Reported or Was There an Attempt to Conceal

GROSS REVENUES – WHY?

“Please forward the Respondent’s most current annual gross revenue statement...If the Respondent chooses not to submit the requested most current annual gross revenues statement within ten (10) days, it will be viewed by the Department as an admission that the Respondent has the ability to pay the statutory maximum penalty as outlined in La. R.S. 30:2025.”

Gross Revenues can be declared CONFIDENTIAL. Such requests are made through the DEQ – Legal Division

Benefit of Noncompliance (EBn) And Recovery Of Response Costs

- Response Costs:
 - The costs of surveillance staff activities including cleanup costs
 - The costs of bringing and prosecuting an enforcement action
- Examples of EBn:
 - Permit Fees
 - Sampling Costs
 - Costs to Develop or Implement Plans
 - Costs to Install/Upgrade Pollution Reduction Equipment

\$1,000,000 – LAC 33.I.705.I

“The department reserves the right to assess an additional penalty of not more than \$1,000,000 for any penalty event that is done intentionally, willfully, or knowingly, or results in a discharge or disposal that causes irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health.”



Investigation of the Temple-Inland Incident fish and mollusk kill in the lower Pearl River, Louisiana and Mississippi, August 13 – August 24, 2011 Summary Several agencies...impacted on the Pearl River Basin from the unauthorized release of August 12 – 17, 2011. An estimated total of 591,561 fish and mussels were lost as a result of the event



Settlement Agreements

- Language in a CONOPP and an NOPP states:

“the Respondent may offer a settlement amount to resolve any claim for civil penalties for the violation(s) described herein. The Respondent may offer a settlement amount, but the Department is under no obligation to enter into settlement negotiations. The decision to proceed with a settlement is at the discretion of the Department.”

- Complete Request to Settle Form

Past Settlements can be found on the LDEQ public website:

www.deq.louisiana.gov > About LDEQ > Enforcement

Settlement vs Penalty

Settlement

- Agree to disagree – standard language
- Negotiated monetary amount using Chapter 7
- Allows Beneficial Environmental Projects (BEPs)
- Must receive concurrence from the AG
- Requires public notice
- May require public hearing based on public comments.

Penalty Assessment

- Can be appealed
- Allows facility to see exactly how we determined the penalty amount including our justification.
- No AG concurrence req'd.
- No public notice or hearing required.
- Can be paid and closed immediately upon issuance.



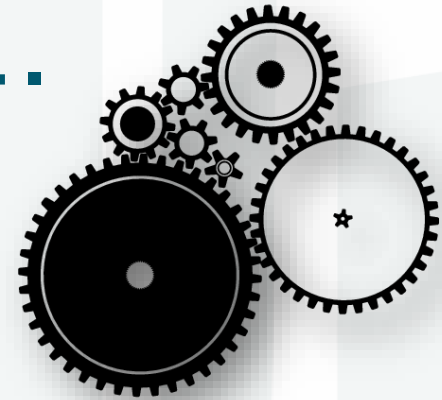
Expedited Penalty (XP) Agreements

- To provide an alternate to the conventional penalty assessment mechanism.
- To address common violations of lesser gravity.
- To assess penalty amounts for common violations that are appropriate, consistent, fair, and equitable.
- To eliminate economic incentives for noncompliance.
- To ensure quick compliance with the environmental regulations.

Expedited Penalty (XP) Program

- Not to exceed \$3,000 for one/\$5,000 for two or more violations.
- XP violations and XP amounts are listed in LAC 33:1.807.
- Voluntary—companies may choose to be subject to the traditional enforcement process.
- Cannot be Appealed

Expedited Penalty Agreements How Do They Work?....



- Come into compliance
- Tell us that you're back in compliance
- Pay a significantly reduced penalty
- DONE

**CASE
CLOSED**

ENFORCEMENT TRACKING NO.		XP-WE-05-0330
AGENCY INTEREST NO.		122904
ALTERNATE ID NO.		LAG490049
Date/Citation	Description	Penalty
November 30, 2005 LAC 33:IX.2701.L.4.a	Respondent failed to submit Discharge Monitoring Reports (DMRs) as required by LPDES General Permit LAG490049 for the months of March, May, June, July, August, and September 2005. \$100/occurrence	\$600.00
Apr. & Nov. 2005 LAC 33:IX.2701.A	Respondent exceeded the daily maximum for a qualifying permit parameter (TSS). Two exceedances at \$150/exceedance	\$300.00
November 1, 2005 LAC 33:IX.2701.A	Respondent exceeded the monthly average for a qualifying permit parameter (TSS). \$300/occurrence.	\$300.00
April 1, 2005 LAC 33:IX.2701.A	Respondent failed to sample and/or report a permit parameter (Flow) in accordance with LPDES General Permit LAG490049	\$100.00
TOTAL EXPEDITED PENALTY AMOUNT:		\$1,300.00



XP Examples

Notification Violations

Failure to provide timely notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition.	\$500	Per occurrence
Failure to provide timely written notification of the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition.	\$500	Per occurrence

XP Examples

Storm Water Violations

Failure to submit a Notice of Intent for coverage under LPDES Storm Water General Permit LAR050000 or LAR100000.	\$1,000	Per occurrence
--	---------	----------------

Solid Waste Violations

Unauthorized processing and/or disposal of solid waste which was generated at an off-site location.	\$1,500	Per occurrence
---	---------	----------------

XP Examples

SPC Violations

Failure to develop a Spill Prevention and Control (SPC) plan for any applicable facility.	\$1,000	Per occurrence
Failure to implement any component of an SPC plan which does not result in a release of pollutants to waters of the state.	\$500	Per occurrence
Failure to implement any component of an SPC plan which results in a release of pollutants to waters of the state.	\$1,000	Per occurrence

Closure Documents

- Request to Close Form
 - COs/CONOPPs
- Closure Memo
 - Internal document
 - Will be placed in EDMS
- Violation Clear Letter (VCL)
 - Drafted upon Request of Respondent
 - Will ID specific Violations that have been addressed
 - Reserves LDEQs Right to issue a Civil Penalty
 - Will be placed in EDMS



... Finally!

- Once “compliance” is achieved and/or
- Penalties are addressed



**CASE
CLOSED**

The action can be put to rest!!!
...until the next inspection

Takeaways...

- There are Checks and Balances incorporated into the Process
- There are many Enforcement tools to use for different Circumstances (One size doesn't fit all)
- Enforcement is a cumbersome and timely process (Be Patient)
- Consistency is our Goal

- Keep the Lines of Communication Open
- Be Aware of Your Deadlines
- Always be Honest and Upfront in any Responses

Contact Information

- Wayne R. Slater
 - Senior Environmental Scientist
- Water Enforcement Section
 - wayne.slater@la.gov
 - 225-219-3729

All information contained herein is provided solely for educational purposes. It is not intended as a substitute for professional or legal advice. Should you decide to act upon any information contained in this presentation, you do so at your own risk.

While the information posted has been verified to the best of our abilities, we cannot guarantee that there are no mistakes or errors.



LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIROSCHOOL