

The Dos and Don'ts of Responding to EGLE Enforcement Communications

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AGENDA:

- Permitting Statues
- Applying for Permits/Contesting Decisions
- Avoiding Violations
- Compliance/Enforcement Process
- How to Respond (And How Not to Respond)



PART 41 OF NREPA: SEWERAGE SYSTEMS

- Construction/Install Permits
- Permit Needed for All or Part of a Sewerage System
- Potential Penalties: Injunctive Relief + Civil Fines of \$1,5000 - \$25,000 + 90 Day Misdemeanor and \$500 Criminal Fine



PART 31 OF NREPA: WATER RESOURCES PROTECTION

- Discharge Permits
- Permit Needed of Injurious Substances to Waters of the State
 - Including Groundwater
- Violation Requires Knowledge or Negligence



PART 31 POTENTIAL PENALTIES

- Restoration + Injunctive Relief
- Civil Fines of \$2,500 - \$25,000 Per Day
- Possible Much Higher Penalties for Substantial Endangerment to Public Health



AVOIDING VIOLATIONS

- Get Permits!
- When in doubt, Ask Legal Counsel or Environmental Consultant
- Do Not Start Work Until Permit is Issued
- If Your Application is Denied, Consult Legal Counsel Right Away
- Take Photos/Keep Records Documenting Work Performed



OPTIONS FOR CONTESTING PERMITTING DECISIONS

- Pre-decision Appeal to Director
- Contested Case Hearing
- Time is Important
 - Speak now or forever hold your peace
- Consult Legal Counsel Promptly



COMPLIANCE/ENFORCEMENT PROCESS

- Most Violations Arise from EGLE Inspections or Third Party Complaints
 - EGLE can get warrants if necessary
- Whether EGLE needs a warrant depends on the situation



TYPES OF COMPLIANCE/ENFORCEMENT COMMUNICATIONS

- Violation Notice: Request for Information
- Violation Notice: Order to Restore
- Enforcement Notice
- Administrative Consent Order
- Rule 1511 Letter



VIOLATION NOTICE: REQUEST FOR INFORMATION

- Information Request
- First Chance to Present Your Side
- Time Extensions are Often Granted
- Contact Legal Counsel Before Responding



HOW TO RESPOND

- Legal Counsel Can Help Draft Written Response
- Seek ATF Permit If At All Possible
- Do Not Admit Violations
- Indicate Willingness to Discuss Amicable Resolution
- Have Legal Counsel Present at Meetings



VIOLATION NOTICE: ORDER TO RESTORE

- Second step if not resolved after request for information
- Usually ATF permit not available at this stage
- Typically lists restoration activities
- May require restoration plan



ENFORCEMENT NOTICE

- Final notice from EGLE before referral to Attorney General
- Typically requires Administrative Consent Order



ADMINISTRATIVE CONSENT ORDER (ACO)

- VOLUNTARY SETTLEMENT AGREEMENT (YOU CAN SAY NO)
- No admission of wrongdoing
- Requires compliance with law
- Typically requires:
 - Plan to ensure future compliance + monitoring
 - Fine/Settlement Amount
- Provides Stipulated Penalties
- Public Notice + comment



RULE 1511 LETTER

- Attorney General Department, not EGLE
- Provides opportunity to meet before lawsuit
- 60-day window to meet
- Last opportunity to resolve violation without litigation



KEYS TO SUCCESSFUL RESPONSE

- Do NOT ignore these communications
- Time is essential
- Act immediately with assistance of an Attorney
- Always be polite and respectful
- Indicate willingness to work together to resolve the issue
- Do NOT admit violations



KEYS TO SUCCESSFUL RESPONSE CONT.

- When possible, Amicable Resolution is best
 - Litigation is expensive and carries risk
- EGLE has in-house (No Cost) experts and attorneys
- EGLE rarely sues people without some basis (EGLE rarely loses)
 - Beware attorneys who steer you toward unnecessary litigation



KEYS TO SUCCESSFUL RESPONSE CONT.

- Sometimes litigation is unavoidable or the right choice
- In that case, excellent recordkeeping and documentation is key
- Keep records of your actions and communications
- Lay the groundwork in your first response (Begin with the end in mind)
- Be forthright, accurate, and consistent





QUESTIONS?