

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE COMMUNICATION

REVISED OPERATIONAL MEMO 115-9 (641-9)

June 2, 1997

TO: All Waste Management Division Supervisors

FROM: Jim Sygo, Chief, Waste Management Division

SUBJECT: Part 115 Enforcement Procedures

The purpose of this memorandum is to provide Michigan Department of Environmental Quality (DEQ), Waste Management Division (WMD) staff with instructions on how to prepare and respond to referrals to the Enforcement Section for escalated enforcement pursuant to Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). The information provided in this memorandum, its attachments, and the internal office procedures contained herein, are intended to provide guidance to WMD staff and is not intended to convey any rights to any parties nor create any duties or responsibilities under law. This document and matters addressed herein are subject to revision. This memorandum replaces Operational Memo 641-9 (Revised), dated April 2, 1992.

I. Evaluation and Determination of Enforcement Response to a Violation

District staff, in conjunction with their normal job responsibilities, shall continue to be responsible for the discovery of violations and for the initial enforcement response. In general, violations will be discovered through site inspections; file reviews; permit and license application reviews; and other inspections, reviews and investigations made by WMD staff in response to citizen complaints. The initial enforcement response shall generally consist of a letter of warning or letter of deficiency signed by the appropriate District staff person. Other WMD or DEQ staff involved with the matter should be provided with a copy of the letter.

In general, if violations are not resolved after the first or second letter of warning or letter of deficiency, the District Supervisor should consult with the Solid Waste Enforcement Unit Chief. Consultation with the Solid Waste Enforcement Unit Chief should be used to help reach an initial determination as to whether a particular matter warrants referral for escalated enforcement prior to District staff expending time in preparing a formal referral. If the decision is made to refer the case for escalated enforcement, District staff at the direction of the District Supervisor shall prepare the referral in accordance with the procedures set forth in Section II.

In certain circumstances, such as operating without a permit or license or when there is an imminent risk of injury to the public health or the environment, the Solid Waste

Enforcement Unit Chief should be contacted immediately after discovery of the violation. Some circumstances may also be appropriate for criminal investigation, and a District Environmental Conservation Officer should be contacted to discuss the potential for criminal enforcement.

II. Referral Procedures and Information Requested

All referrals shall be in the form of a formal referral memorandum signed by the WMD District Supervisor and addressed to the Enforcement Section Chief. The referral memorandum shall include all of the information, as applicable, identified in Attachment A. A file, which includes copies of all relevant documents discussed in Attachment A, shall be sent with the referral memorandum. All WMD or DEQ staff previously involved with the case should be copied on the referral memorandum.

III. Roles and Responsibilities

A. Prior to Referral

Upon identification of a violation and initiation of an enforcement response (i.e., letter of warning or letter of deficiency), appropriate District staff shall be responsible for tracking the case, coordinating subsequent responses to the facility, conducting follow-up inspections, and determining if the facility has adequately complied with the letter of warning or letter of deficiency.

Enforcement Section staff shall assist District staff in identifying violations, determining appropriate enforcement responses, and seeking informal or formal advice from the Department of Attorney General (DAG), as necessary.

B. After Referral

After a case has been formally referred to the Enforcement Section for escalated enforcement, an Enforcement Section staff person will be assigned to the case by the Solid Waste Enforcement Unit Chief and shall assume the duties of Case Manager. Enforcement Section staff shall be primarily responsible for the following: 1) establishing and implementing case strategy, 2) performing as lead negotiator for the WMD, and 3) coordinating all subsequent responses to the facility. Upon receipt and assignment of the referral, Enforcement Section staff shall initiate discussions with the referring District staff to discuss the case's priority and establish time frames by which an initial escalated enforcement response will be initiated.

District staff shall be responsible for the following: 1) assisting in development of case strategy, 2) providing technical assistance to the Enforcement Section Case Manager, and 3) participating in negotiations with the facility. District staff should continue to conduct routine compliance monitoring activities, such as inspections and document review(s), but should coordinate and/or advise the

assigned Enforcement Section Case Manager prior to such an inspection or taking action to approve or disapprove any document(s) reviewed.

C. Problem Solving

Issues or disputes that arise regarding a referred case's priority or enforcement strategy shall be resolved in discussions between the Enforcement Section Chief, Solid Waste Enforcement Unit Chief, District Supervisor, and the Program Manager or, failing that, by the Assistant Division Chief or Division Chief.

IV. Specific Responsibilities for Referred Cases

Unless otherwise agreed upon, Enforcement Section and District staff shall perform the duties and responsibilities identified below:

A. Enforcement Section staff shall be responsible for the following:

1. Notifying the District Supervisor of any lawsuits filed against the DEQ regarding Part 115 in their respective District and initiating and coordinating all subsequent responses or other actions involving the case.
2. Obtaining a cost recovery tracking number from the WMD's Administration Section and entering the case into the Enforcement Section's case tracking system.
3. Sending the District Supervisor a memorandum which acknowledges receipt of the referral and identifies the cost recovery tracking number to be used for tracking time and costs associated with the case.
4. Discussing case strategy with the referring District Supervisor, other involved staff, management, and the DAG, as appropriate, and recommending a strategy and case management schedule to, and obtaining approval for same from, the Enforcement Section Chief.
5. Conducting any further case preparation necessary, including the following: 1) drafting all administrative documents necessary to advance the case; 2) coordinating review of draft administrative documents with the WMD, or other DEQ staff as appropriate, and the DAG; 3) reviewing and coordinating DEQ staff review for judicial complaints, consent judgments, or other court documents; 4) calculating the amount of any penalties to be sought; and 5) coordinating responses to interrogatories.
6. Copying the Division Chief, Assistant Division Chief, Program Manager, District Supervisor, and other appropriate DEQ staff on all notices of violation, consent orders, and relevant judicial documents.

7. Informing the District Supervisor and other DEQ staff, as necessary, of the result of any meetings or other communication with the facility, requesting their participation as necessary, and keeping the Program Manager, Enforcement Section Chief, and other DEQ staff, as necessary, informed of any ongoing discussions regarding the case.
 8. Tracking compliance with the case management strategy and schedule and reporting any problems meeting the time frames to the Enforcement Section Chief and the District Supervisor.
 9. Assisting the DEQ's or DAG's Press Secretary, as necessary, in completing press releases and responding to press inquiries for all significant actions, such as entry of administrative orders, filing judicial complaints, consent decrees, and/or court opinions.
 10. Reviewing all draft correspondence from WMD regarding the facility prior to finalizing.
- B. District staff shall be responsible for the following:
1. Copying Enforcement Section staff on all correspondence and documents regarding the facility and advising Enforcement Section staff of any contacts with the facility or other interested parties regarding the facility.
 2. Providing drafts of all correspondence from WMD regarding the facility to Enforcement Section staff for review and concurrence prior to finalizing.
 3. Participating in any meetings regarding case strategy or settlement negotiations as appropriate.
 4. Assisting Enforcement Section staff in any necessary case preparation such as follow-up inspections, sampling, document reviews, drafting affidavits, and answering interrogatories.
 5. Providing testimony, if necessary, regarding the statute and rules, permit and/or license conditions, site conditions, observed violations, or other pertinent information.
 6. Tracking staff time and costs associated with the case by using the appropriate cost recovery number on timesheets, travel expense vouchers, travel logs, environmental laboratory analysis request sheets, and other documents, as applicable.

V. Settlement - Compliance Tracking

Once a case has been settled through entry of an administrative consent order or judicial consent decree/judgment, the assigned Enforcement Section staff person will generate an outline of the compliance tracking and review tasks associated with the consent order or judicial consent decree/judgment and recommend certain responsibilities and time frames for that tracking and review (see Attachment B). The compliance tracking outline is intended to be a management tool only and, as such, may be modified by the District to allow for different divisions of responsibility among District staff or provide for different time frames for review, as appropriate. The compliance tracking outline will, at a minimum, identify the following: 1) due dates and tasks required in the administrative consent order or judicial consent decree/judgment, 2) District staff person responsible for tracking compliance with the tasks, 3) actual dates of completion of the tasks, 4) due dates for any penalties or costs, and 5) due dates for other important events or milestones.

Each District shall be responsible for designating a Compliance Tracking Coordinator for the case. It shall be the responsibility of the Compliance Tracking Coordinator to track compliance dates using the compliance tracking form. District staff shall also review the compliance tracking form and add any other dates that will assist them in tracking compliance dates. Any violations of an administrative consent order or judicial consent decree/judgment discovered through inspections or review of submittals required pursuant to an administrative consent order or judicial consent decree/judgment shall be immediately brought to the attention of the Enforcement Section by the Compliance Tracking Coordinator.

Attachments

cc: George Bruchmann, Assistant Division Chief
Frank Ruswick, Program Manager

REFERRAL INFORMATION

1. A description of the site/facility, including any available maps.
2. A list of violations, including a reference to the specific section and/or subsection of the statute and/or rule, permit, license, consent order, judicial consent decree/judgment, or other requirement violated, the manner and duration of such violation(s).
3. A list of any compliance dates specified in a license, permit, consent order, judicial consent decree/judgment, or in the statute and/or rules, which have been violated and any dates which may be violated in the future due to a failure to comply with the preceding deadline(s).
4. A description of which current violations have been cited in the past, the number of times, and information on any past consent orders or judicial consent decrees/judgments entered with the facility. A copy of any letters of warning and/or letters of deficiency and inspection reports.
5. A file chronology and copies of all relevant information regarding the violations.
6. A description of groundwater quality, including the following:
 - a. direction and rate of groundwater flow;
 - b. identification of background and downgradient wells;
 - c. identification of public and private water supply wells likely to be impacted;
 - d. a summary of groundwater analytical data in the form of a chart/table similar to the example in Table 1. Such a chart/table shall include a list of groundwater constituents that are detected above background; identification of the monitoring well(s) where detected; range of concentrations; date of sampling event; and the applicable Part 201 criteria for each constituent; and
 - e. a map identifying monitoring well locations.
7. A narrative description of corrective action(s) necessary to correct each of the violation(s) identified in the referral, including the following:
 - a. scientific, engineering and operational remedies;
 - b. recommendations on how to proceed; and
 - c. recommendations on time frame(s) for implementation of recommended remedies consistent with the requirements of applicable statutes and administrative rules.
8. Other relevant information, such as the following:
 - a. pending permit or license application decision date; and
 - b. potential implication of enforcement action(s).

9. The names, titles, addresses, and telephone numbers of pertinent individuals, such as property owner, operator, site manager, consultant(s), attorney(s), unit(s) of government contact, legislator(s), citizen organization(s), WMD contacts, and other DEQ Division contacts.