

CHAPTER TWO: DNREC APPROACH TO COMPLIANCE ASSURANCE

SECTION I. EDUCATION AND OUTREACH

A. INTRODUCTION

DNREC believes that a multi-faceted approach is the best way to encourage and maintain compliance with environmental laws and regulations and to stimulate a sense of responsibility and stewardship that goes well beyond compliance. This chapter presents an overview of DNREC's various education and outreach activities, with reference as applicable to the interaction between the approach and specific compliance assurance activities or objectives.

At times, education and outreach activities overlap with technical assistance activities. For example, a seminar might cover a topic in such a way that an attendee can learn how to implement improvements at his or her work facility based on the presentation, even though the primary focus of the seminar was more general education and outreach.

For purposes of this section education and outreach activities are deemed to be those whose primary audience is the public at large, including a very broad group of regulated entities such as industrial complexes, small businesses, government facilities, nonprofits, homeowners, etc. This section is not intended to describe those activities that focus on specific facilities needing compliance-related advice.

Throughout each year, DNREC staff frequently undertakes education and outreach activities. The majority of such activities are directed to the public at large as well as to a broad range of people more directly affected by environmental laws, such as municipal officials, industrial hazardous waste managers, pollution control facility operators, and individual property owners. The activities are designed to elevate awareness and instill a sense of personal and corporate responsibility for compliance and, ultimately, to foster environmental stewardship. Routine inspections permit application processing, and other DNREC endeavors also typically incorporate education and outreach. Thus, these activities also are a key component of DNREC's compliance assurance goal.

In addition to providing more general information to a larger audience, many education and outreach activities play a more direct role in promoting compliance with environmental laws and in addressing violations that have occurred. DNREC inspectors frequently carry fact sheets on topics that are anticipated to be of concern or benefit to property owners and facility managers. DNREC settlements of administrative enforcement actions sometimes include as a condition of settlement that the alleged violator:

- attend or sponsor a continuing education seminar covering the area from which the underlying violation arose;
- periodically provide the community with environmental performance reports; or

- implement an Environmental Management System (EMS) developed in accordance with the process set forth in ISO 14000.

If DNREC notices a pattern of non-compliance throughout a regulated sector, a seminar specific to that topic can be prepared and presented.

B. PROVIDING ESSENTIAL INFORMATION

1. Business and Permitting Services

The Office of Business and Permitting Services, within the Office of the Secretary, houses the Pollution Prevention Program, Clean Air Act Small Business Assistance Program, community involvement and general permitting assistance programs. This office is responsible for preparing, coordinating, and disseminating informational material to the regulated community and the general public, for coordinating the Development Advisory Service, and for providing direct technical assistance to facilities.

The Development Advisory Service (DAS) is a forum for developers, landowners, businesses and others seeking information concerning environmental permitting requirements. DAS is unique to Delaware and has existed within DNREC for over 20 years. Individuals who have site plans or conceptual designs for commercial establishments, subdivisions, major manufacturing facilities, utility operations and the like may attend one of DAS's monthly meetings. There, in one room, developers can meet regulators from all divisions in DNREC and receive advice and/or regulatory requirements likely to impact their project. Other staff from the State Fire Marshall's Office, the Public Service Commission, the Department of Agriculture and the State Department of Transportation also regularly attend meetings, providing a one-stop shop of information for those seeking to develop a parcel of land.

In the Office of Business and Permitting Services, there are two Ombudsman positions dedicated to assisting small businesses with environmental requirements and advocating for communities affected by environmental issues.

2. DNREC Ombudsmen

The Ombudsmen within DNREC help to fulfill the Department's commitment toward developing and maintaining positive relationships with the community it serves. Historically, the first public sector Ombudsmen originated in Sweden in 1809 and were appointed by the Parliament to investigate reported complaints, report findings, and helped to achieve equitable settlements. The Ombudsman concept spread through Europe and eventually to the United States in the 1960's. There are three Ombudsman positions within DNREC to assist the public:

a. Small Business Ombudsman

DNREC's Small Business Ombudsman ("SBO") position was created by the Clean Air Act Amendments of 1990 which required each state to implement a Small Business Assistance Program and employ an Ombudsman to administer the program. The SBO assists small businesses in understanding and complying with the requirements set forth

by the Clean Air Act, as well as other environmental rules and regulations. This position ensures that the special needs of small businesses are not overlooked when new regulations are developed by the agency. DNREC's SBO is a member of the Delaware Small Business Resource Partnership, which is a consortium of State and Non-profit agencies that serve small businesses in Delaware. The SBO works with small businesses by answering questions on the phone, through e-mails, and in person, as well as through training workshops and seminars.

b. Community Ombudsman

DNREC's Community Ombudsman ("CO") position was created as a result of Senate Bill 33 which was passed in 2001 to help DNREC serve the public and community groups more efficiently. The mission of the CO is to conduct community outreach, serve as an advocate for community environmental issues, and facilitate dialogue among stakeholders. This position helps to promote an understanding of community concerns relating to public health and the environment. The CO acts as a voice to under-served communities and ensures that community concerns play a role in the Department's decision-making process.

c. Water Resources Ombudsman

DNREC's Division of Water Resources ("DWR") Ombudsman position was established in 1994 to provide improved communications with the general public and overall responsiveness of Division staff. The DWR Ombudsman works to foster effective and open communications between the public and the Division, and to ensure that services provided to the public are user-friendly.

3. Printed Outreach and Education Materials

a. Fact Sheets, Reports, Guidance Documents, Directories

DNREC has developed an extensive array of environmental fact sheets, on topics ranging from summaries of DNREC's air quality, water quality, and waste management rules, to procedures for remediating contaminated sites, to tips on how citizens, municipalities, and businesses can help protect the environment.. Existing fact sheets are revised and new fact sheets are created as necessary to provide accurate, up-to-date information.

b. Reports, Guidance Documents, Directories

In addition to fact sheets, more comprehensive reports and guidance documents facilitate DNREC's education and outreach efforts. As with fact sheets, these documents fulfill a role both in preventing violations and in remediating them. A number of "best management practices" provide guidance for complying with requirements and going beyond compliance using pollution prevention. Examples of documents produced for compliance purposes include:

- Delaware Erosion and Sediment Control Standards and Specifications
- UST Branch Technical Guidance Manual
- Delaware Risk Based Corrective Action Program Guide
- Vapor Recovery and You Manual
- Manual Tank Gauging and Inventory Controls Manual
- Toxics Release Inventory

- Annual Air Quality Report
- Pollution Reduction Management Practices and Regulatory Guidance for Vehicle and Other Salvage Facilities
- Hazardous Waste and You
- Managing Automotive and Repair Waste
- Solvents – Regulations and Reduction
- Simply Septics – A Guide for Delaware Homeowners

c. Newsletters

DNREC publishes several newsletters. *DNREC News*, is a regularly published, general purpose newsletter designed to reach a broad audience that includes individuals, community groups, environmental consultants, legislators, government agency officials, industry officials, and anyone else who wishes to be placed on DNREC's mailing list. Each issue of DNREC News contains a calendar of events, an update of regulatory actions and news releases that were recently issued to the press.

Outdoor Delaware Magazine is published quarterly and covers conservation and environmental issues of interest to school students and to the general public. The magazine is available to all paid subscribers. Further, the distribution to certain school programs is supported with State of Delaware general funds through an appropriation.

Other specialty newsletters are targeted to specific audiences. "Think Tank", for example, created by DNREC's Underground Storage Tank Branch, is distributed to tank owners/ operators statewide, providing them with the latest state and federal regulatory requirements as well as technical updates. The Fish and Wildlife Division publishes a semi-annual newsletter directed to hunters and anglers. Examples of related specialty newsletters published by others include:

- NEIWPCC LUSTline
- ASTSWMO MTBE Newsletter
- Fish and Wildlife 's Observer

In addition to preparing DNREC publications, DNREC staff frequently contributes to outside publications such as newsletters published by industry or business associations.

4. Education and Outreach through the News Media

DNREC reaches out to its stakeholders, the regulated community, and the general public through newspapers, magazines, television, and radio.

a. Press Releases

DNREC frequently reaches out to the regulated community and the general public by issuing press releases. Over 370 press releases are issued each year. As a general information and education tool, press releases are a vehicle for informing the public about releases of pollutants into the

environment. It is also a means of announcing new programs, regulations, events, publications, and to provide information on upcoming hearings and conferences, program milestones, training opportunities and other subjects designed to keep the regulated community and the public informed of DNREC's environmental protection and natural resource management activities.

As a compliance-related tool, press releases are also used to announce the initiation and/or resolution of significant enforcement actions, and so play an important deterrent role in DNREC's compliance assurance efforts. See section on public information policy regarding enforcement actions.

b. Interviews

DNREC conveys environmental protection messages, including regulatory requirements, through interviews with reporters from the various print and audio-visual media. Hundreds of interviews are given each year, providing the public with DNREC's perspectives on issues and events and information on DNREC regulatory and educational programs.

DNREC's outreach and responsiveness to the media are particularly valuable practices in assisting the agency in conveying regulatory compliance information. Media interviews often focus on specific DNREC enforcement actions, providing a forum for educating both the public and the regulated community on environmental requirements and DNREC enforcement activities. Some of these media inquiries are precipitated by agency-issued press releases.

c. Public Service Announcements, Training Videos

DNREC also periodically creates Public Service Announcements (PSAs) that are aired on television and/or on radio. Recent examples include:

- Open Burning Video
- Automobile gas tank filling procedures
- Recycling PSAs in conjunction with the Environmental Defense Fund
- Clean air series on transportation issues and impacts

Non-PSA videos have been developed that have also proven successful. For example:

- Poultry carcass composting
- Storm water best management practices
- Sludge

d. Education and Outreach through DNREC Web Site

DNREC reaches out to its stakeholders, the regulated community, and the general public through the Internet. DNREC's Web site continues to emerge as a powerful outreach tool. By accessing www.dnrec.state.de.us, Delaware's regulated community along with all citizens can tap into a wealth of information critical to compliance assurance. From regulations and rules to

fact sheets, event calendars to press releases, program descriptions to Q & A sections, DNREC's web site has become an invaluable tool for meeting a variety of educational needs. It is increasingly referred to by DNREC inspectors, permit engineers, and others to carry out their duties. Ease of access to useful information is critical to compliance assurance operations, and the information available through this web site now encompasses virtually every DNREC program. The site's logical format coupled with key links within and without, facilitates and expands its user friendliness.

To increase the utility of the Web site in an enforcement context, in 2000 DNREC began posting each formal administrative enforcement action, criminal enforcement action, and Notice of Violation that is issued along with a listing of all environmental releases reported to the agency. Posting this information is seen as a timely way to better inform the regulated community and the general public about actions DNREC is taking. See section on Public Information policy regarding enforcement actions.

DNREC has also initiated development of an Environmental Information System that will be accessed through the Department's web site. When fully operational, the system will provide compliance, enforcement and permitting information on regulated facilities and sites. The system will be a useful tool for agency staff in coordinating multi-media regulatory efforts and for the public and regulated community for tracking facility performance.

All press releases, public notices and issues of DNREC News, complete with calendar and regulatory updates, are also published on the web. Information on participatory and volunteer events is listed—oftentimes with online registration forms. Increasingly education materials for teachers are being put online as well as education material for the general public (e.g. biodiversity reports) and links to sites like Project Wild.

5. Speaking Engagements, Workshops, Training Courses, Conferences, Trade Fair Displays

Providing information can be facilitated through meeting with people in a group setting, and DNREC is extremely active in this arena. Topics covered in these presentations include air pollution, beach preservation, lakes, pollution prevention, riparian corridor protection, shoreline protection, waste management, wastewater treatment, water supply, and wetlands. This type of communication serves DNREC's compliance outreach objectives well.

C. PROMOTING AN ETHIC OF ENVIRONMENTAL STEWARDSHIP

Several outreach activities are designed to foster an ethic of environmental stewardship, especially among the younger generation. DNREC believes that promoting a sense of personal responsibility for environmental stewardship will result in increased compliance with environmental law.

1. Environmental Education in Schools

Environmental education in the schools helps DNREC target impressionable youngsters, who often carry messages learned home to parents and other relatives. DNREC staff frequently "guest lecture" for classes at all education levels, and have provided technical assistance with special projects such as composting. DNREC, in conjunction with the Department of Education, other agencies and not-for-profit organizations, has developed curriculum and educational supplements for teachers and students on such topics as watershed management, pollution prevention and recycling, air quality, wetlands and aquatic resources.

2. Volunteer Programs

Outreach and education can take many forms. Successful DNREC-sponsored programs involving the training of volunteers have reaped benefits, both scientific and goodwill, for DNREC programs and volunteers alike. Most importantly, Delaware's environment has benefited.

D. REGULATORY DEVELOPMENT PROCESS

It is the policy of the Department of Natural Resources and Environmental Control to follow the process outlined below when developing, amending, repealing, or adopting any regulation as defined in 29 Del. C. §10102, except emergency regulations where such are allowable by law. The steps in this process are detailed in Appendix II – 1.

SECTION II. TECHNICAL AND FINANCIAL ASSISTANCE

DNREC has long recognized that regulatory compliance is best attained and sustained using a combination of approaches, including outreach/education and technical and financial assistance. Frequently, outreach/education activities and technical assistance activities overlap. For example, fact sheets on very specific topics, such as shoreline stabilization educate as well as provide specific guidance. Also, seminars on program-specific requirements and guidance documents often are targeted at a particular regulated sector for purposes of increasing awareness and compliance. For purposes of this discussion, technical assistance is deemed to focus on providing site-, activity-, or facility-specific compliance-related guidance.

Because DNREC believes that compliance is part of the ultimate goal to ensure protection of public health and the environment, DNREC places a high priority on providing technical assistance to regulated entities. Some programs are specifically designed to provide technical assistance to regulated entities (and so do not have any direct regulatory responsibilities); these include the Pollution Prevention Program and Small Business Technical Assistance Program housed in the Office of Business and Permitting Services in DNREC's Office of the Secretary.

Programs that have direct regulatory responsibilities (such as permitting, compliance inspections, and enforcement) are typically more limited in the amount or type of assistance they can provide, often due to resource constraints or potential liabilities for providing guidance that may not completely solve a problem that is subject to an enforcement action. Not all DNREC staff can provide assistance on all issues, and sometimes a facility's need for guidance will be beyond the scope of what DNREC can

provide even with all applicable programs working together, so there will be times when DNREC will suggest that a consultant be retained.

DNREC also strongly supports financial assistance for regulated entities, especially those in the public sector that rely on public monies to fund operations and compliance activities. DNREC takes an active role in identifying areas where financial assistance is needed, such as in removing old underground petroleum storage tanks, and upgrading domestic wastewater disposal systems, and manure management at animal feeding operations and in supporting legislation to provide for such assistance. A brief description of existing financial assistance programs (e.g. SRF, FIRST Fund, PLUS Loans) can be found in the Appendix II – 2 (*Reserved at this time*).

SECTION III. PENALTY MITIGATION OPPORTUNITIES

The Delaware Department of Natural Resources and Environmental Control (DNREC or Department) wishes to promote voluntary compliance with environmental requirements. DNREC believes that the protection of the environment and public health and safety rests, in part, on voluntary compliance with environmental laws. Voluntary compliance begins with an awareness of environmental problems and is often achieved through the implementation of compliance assessments or audits. The Department will provide meaningful incentives to encourage large and small businesses to develop and implement an environmental management system and to conduct regular compliance assessments. The Department's current Penalty Mitigation Policy is attached in Appendix II - 3. A detailed discussion of opportunities, procedures and requirements associated with the self-reporting of violations is contained in Chapter 8.

SECTION IV. PUBLIC INFORMATION POLICY – ENFORCEMENT ACTIONS

The Department of Natural Resources and Environmental Control is granted the authority through numerous state statutes to enforce laws and regulations designed to protect public health, water, air, plants, animals and other natural resources.

A major element of that authority is DNREC's responsibility to ensure that businesses, industrial facilities and other regulated and non-regulated parties are complying with state and federal environmental laws and regulations. DNREC also has an obligation to inform the citizens of Delaware about the State's progress in achieving compliance. This includes reporting, through a variety of mechanisms, the compliance activity of the regulated and non-regulated community in Delaware.

When parties violate laws, regulations or permit conditions, DNREC has a number of enforcement tools it can use to achieve compliance and/or punish violators. These include Administrative actions, civil actions and criminal charges. Formal Administrative actions include Secretary's Orders, Notice of Administrative Penalty Assessment, Cease and Desist Orders and Imminent Hazard Orders. Civil actions occur when a lawsuit against a violator is filed in court.

A. USE OF THE INTERNET

a. Enforcement Action Postings

DNREC will post a listing on the Department's Internet Web site (www.dnrec.state.de.us) of all administrative, civil and criminal actions, notices of violations and unclassified misdemeanors, taken after such actions have been issued. Information on the web will include, but not be limited to:

- name of the party or facility to whom the order was issued;
- date the order was issued;
- a summary of the violations;
- the amount of the penalty assessed;
- a description of any supplemental environmental project funded as part of the settlement;
- status of the order including final resolution

Staff with the Office of the Secretary will coordinate with appropriate Division staff to ensure that the information is posted on the Web in a timely manner (within three working days).

b. Delaware Environmental Navigator

The Delaware Environmental Navigator ("DEN"), located on DNREC's Internet Web site (www.dnrec.state.de.us) will currently allow the public to view all facility information, violations, enforcement actions and monitoring results pertaining to Air Quality, Waste Water, Hazardous Waste, Landfill, Recycling, Waste Transfer Stations, Infectious Wastes, Underground Tanks, Petroleum Vapor Recovery, Land Development and Erosion Control. The DEN also contains limited information on Salvage Yards, Above Ground Tanks, Tire Piles, Animal Operation, Artificial Reef, Nature Preserve, Historic Monument Site, Open Spaces, Parks, Playgrounds, and Wildlife Areas

Future Plans for the DEN: Work is in progress to integrate Contaminated Site Cleanup, Septic Permits, and Ground Water Usage information into the DEN. These will be completed by March 2003. Further work is needed to integrate Wetlands, Hazardous Waste and Underground Tank Corrective Action Sites, Toxic Release Inventory, Above Ground Tanks and Ambient Monitoring Data. These are expected to be completed by September 2004. More Natural Resource programs data are expected to be integrated into DEN by June 2005.

B. PRESS RELEASES

Press releases on all enforcement actions taken by DNREC shall be issued at the discretion of the DNREC Secretary.

Under no circumstances will DNREC waive or forfeit its right to issue a press release on any enforcement action as part of the negotiation or settlement of any action.

Parties that fund an environmental improvement project as part of the settlement of an enforcement action may not initiate, solicit or accept any recognition for that project.

The Department will consider a number of issues, including the following primary factors, in deciding whether to issue a press release on any enforcement action:

- Violations of environmental laws, permits or regulations may have resulted in or had the potential to harm human health or the environment;
- The company or individual is considered to be a chronic violator against whom DNREC is stepping up enforcement efforts;
- DNREC believes the enforcement action will have a deterrent effect on other possible violators.

C. DNREC NEWS

DNREC will include press releases on enforcement actions in ***DNREC News***, the Department's regular newsletter.

SECTION V. PUBLIC NOTIFICATION OF ENVIRONMENTAL RELEASES

A. ENVIRONMENTAL RELEASES

The Department has established processes and procedures for notifying the public in a timely manner of environmental releases. For these purposes the term "environmental release" means any emission, discharge, or delivery into the air or waters or on the lands of this State, of any garbage, refuse, rubbish, sewage, oil, industrial waste, liquid waste, solid waste, hydrocarbon chemical, restricted chemical material, vessel discharge, air contaminant, pollutant, or other wastes. These procedures are:

1. The Department will, within twelve hours of its occurrence, notify the public, who have subscribed to the system, of any release exceeding the threshold levels through its Environmental Release Notification System. The notification would occur by email, phone, or fax as designated by the public.
2. The Department will also publish on the Department's Web site, any self-reported environmental release from industry, and upon confirmation, any environmental release that involves off-site contamination, or any environmental release that involves significant environmental impact without regard to notifying party. The notice of such a release will identify therein: (i) the nature of the release (including identification of the components of the release where possible); (ii) the geographic area in which the release occurred; and (iii) whether or not the Department is investigating the release. Information posted in accordance with the foregoing will be derived from the initial reporting. As such, the initial posting may be inaccurate and subject to substantial revision.
3. The Department will update the environmental release information on the Department's Internet Web site to include the most recent information regarding: (i) the nature of the release if known (including identification of the components of the release where possible); (ii) the geographic area in which

the release occurred; (iii) whether or not the release posed a threat to the public health; and (iv) the status of the Department's investigation, if any, into the circumstances surrounding the release; and (v) a summary of any actions taken by the Department on the matter.

4. Exemptions - The following discharges or emissions are not considered "environmental releases" for the purposes of communication to the public:
 - Discharges or emissions in compliance with a validly issued state permit or in compliance with state or federal regulations that are routine, anticipated and intermittent during normal operations or treatment processes
 - Discharges or emissions that are wholly contained within a building or which are wholly contained in a secondary containment system.
 - Discharges or emissions of pollutants, which are identified in operating permits and normally reported as excess emissions or exceedances during regular or routine operating conditions as required by state or federal permits or regulations.
 - Continuing discharges or emissions that are a matter of public record from site investigations of historical land uses and the site is listed for remediation on any one of the following lists: Leaking Underground Storage Tank Sites, RCRA Corrective Action Sites, Inventory of HSCA Sites, Voluntary Clean-up Sites, Solid Waste Closure, Debris Pit Priority, or Debris Pits.
 - Discharges or emissions associated with an activity that is the subject of a criminal investigation provided there are no threats to public health. Upon completion of the investigation the exemption no longer applies and notice is to be provided as soon as practicable thereafter.
5. Nonetheless, episodic discharges such as those associated with accidents, equipment malfunctions, emergency shutdowns, or pipe ruptures are to be considered as environmental releases and reported in accordance with provision (B) above.

B. INDUSTRIAL INCIDENT REPORTING

In July 1990, Section 6028 was added to 7 Del. C. Chapter 60. Legislation required the Department of Natural Resources and Environmental Control (DNREC) to implement regulations. The *Reporting of a Discharge of a Pollutant or an Air Contaminant* regulation was adopted on April 1, 1991. Several programs from the Division of Air and Waste Management, including Air Engineering and Compliance, Emergency Response, Emergency Planning and Community Right-to-Know, Accidental Release Prevention, Enforcement, Solid Waste Management, and Hazardous Waste Management participated in the regulation development effort.

Delaware Code requires that the Delaware Reportable Quantity (DRQ) be the most stringent of the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) threshold quantity (TQ), the Clean Water Act (CWA) TQ, or Department regulations with TQ's. State regulations may also be used to amend the list of chemicals. In 1990, some of the federal TQ's were set at a default amount of one pound. Calculated TQ's have replaced many of the default amounts in the federal regulations. Subsequently, the federal list of chemicals has changed with additions and deletions.

The Department is preparing revisions to the existing regulations that govern the discharge or emission of pollutants into the air, surface water, ground water or on the land in excess of quantities that may be specifically allowed or permitted under state law or regulations. The Accidental Release Prevention Group in the Air Quality Section has been given the responsibility for the regulation revision process.

The initial focus will be on revisions to 7 Del C Chapter 60 §6028 and associated regulations. General issues of concern have been identified that include: adding substances, modifying the reporting thresholds, methods of communication, mandatory duties and information management needs.

The regulation revision will address the following issues:

1. The List of Chemicals needs to be reviewed and revised.
2. The DRQs need to be reviewed and revised.
3. Submission of a written report should be made mandatory.
4. The use of the *Incident Report* form should be made mandatory. Several of the data elements from the latest form revision should be added to the regulation. The format of the form should be reorganized to match the new regulation.
5. The *Incident Report* form should be posted on Department web pages for electronic use.
6. A single repository within the Department for submission of the report should be identified.
7. The group responsible should communicate the incident to I&E for public disclosure of the incident and distribute the report to the various Department programs.
8. A mechanism should be developed to ensure that the current verbal notification of a release is communicated internally to the various programs.