



DNREC

Compliance & Enforcement Response Guide

September 19, 2002

AN INTRODUCTION TO THE DNREC COMPLIANCE AND ENFORCEMENT RESPONSE GUIDE

The Compliance and Enforcement Response Guide (CERG) consists of a set of guiding principles, policies and procedures, all of which collectively establish a framework for DNREC to use in exercising its enforcement authority and discretion in determining appropriate enforcement responses. Portions of the CERG are newly developed guidance and policies, and other portions have been implemented for some time.

The CERG is intended to enhance the fairness, consistency, predictability, deterrence value and efficiency of the DNREC enforcement process. The principles and policies contained in the CERG are intended to guide DNREC managers and staff in:

- 1) Designing appropriate case-specific enforcement strategies; and
- 2) Developing comprehensive compliance assurance strategies.

In addition, the CERG is intended to further the overall mission of DNREC by advancing the goals and objectives identified in the Department's Strategic Plan. Finally, the CERG is intended to help DNREC managers and staff use sound professional judgment. The CERG also serves to inform the regulated community, elected officials and the general public about the manner in which the Department conducts its compliance and enforcement activities. The CERG is not intended to be a substitute for the use of sound professional judgment.

A. RELATIONSHIP TO OTHER DEPARTMENT GUIDANCE AND POLICY

The CERG is effective on September 19, 2002, and supersedes the 1987 Secretary's Enforcement Policy For the Division Of Air and Waste Management and the Division Of Water Resources. To the extent that components of the CERG are not inconsistent, all components should be read in conjunction with one another, and, collectively, define the DNREC enforcement program.

The CERG applies to all enforcement actions taken under the authority of the Delaware environmental statutes (as listed in the Scope) and regulations administered by DNREC, and all Federal environmental statutes and regulations delegated to Delaware and administered by DNREC, except where a case is subject to a program statute or regulation that requires a result at variance with the CERG, in which case that statute or regulation shall govern. In addition, should procedures in this Guide appear to conflict with other Department procedures or with state or federal statutes and regulations, the Secretary must be notified immediately for resolution before any action is taken.

This document also applies to all enforcement cases pending as of the effective date of this Guide in which DNREC has not reached agreement in principle with the regulated entity on the specific terms of a resolution. The CERG also applies to all enforcement cases commenced after the effective date of this policy.

There may be exceptional cases not adequately addressed by the CERG. In those cases a decision to act at variance with the CERG should be discussed in advance, and must be approved by the Secretary. The CERG is a working document that will be reviewed and updated periodically to reflect statutory, regulatory, and/or policy changes.

B. LEGAL EFFECT

The guidance, policies and procedures set forth in the CERG do not constitute final agency action, do not carry the force of law, and are intended solely as guidance for DNREC employees in the exercise of enforcement authority. If a conflict were to arise between this Guide and Delaware's statutes and regulations, the statute or regulation would control. The CERG is not to be relied upon to create rights, duties, obligations, or defenses, implied or otherwise, enforceable at law or in equity, by any person in litigation with DNREC. This guidance is not intended to, nor does it, constitute "regulations" as that term is used in the Delaware Code. DNREC reserves the right to act at variance with this guidance, and to change the guidance and procedures at any time without public notice, whenever necessary to carry out the intent of the statutes and regulations.

In general, 29 Del. C. Chapter 100, the Freedom of Information Act ("FOIA") and the Department's FOIA regulation will govern the release of disclosures made pursuant to any provisions and policies within the CERG.