Maneuvering Through the Regulatory Process: Permitting, Compliance and Enforcement

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1. **Respect**

- Goes without saying but…
  - Be Polite, Courteous, RESPECTFUL even when disagreeing with opposing side
Respect: Regulatory Authority

- **Sources of Law**
  - Regulatory Agencies derive their powers from Federal, State, and Local Regulations or in some instances, the State Constitution
    - Local Governments (FL Const. art VIII, F.S. 124-185)
    - Code Enforcement (F.S. ch 162)
    - Growth Management (F.S. ch 163)
    - DEP Air/Water Pollution Control (F.S. ch 403)
Respect In Action

BUILDING PERMIT

KEEP CALM AND RESPECT OTHERS
2. Always Follow Through

- Crucial to maintain, among other things – credibility.
- You cannot always assume “no news is good news.”
  - This applies in not only regarding compliance matters generated as a result of a consent order or settlement agreement, but to effectuate permit transfers.
Follow Through - Regulations

- Time periods for responses
- Ch 120 F.A.C. – Administrative Procedures Act
  - 120.57 Additional procedures for particular cases.
  - 120.573 Mediation of disputes
  - 120.574 Summary hearing
- Ch 62-330 ERP* q3
- Ch 68A-27 Rules Relating to Endangered or Threatened Species (refers to Ch 120)
- Ch 62-761.450 – Underground Storage Tank Systems
3. Have a Strategy for Resolution

- Consider all options
- Be prepared to give in a little
- Know what you want to stand firm on
- Consult lawyer?
- Hire a consultant?
Strategy for Resolution

- Understand the Regulations
  - Chapter 62-780 FAC – Contaminated Site Cleanup Criteria
  - SOPs / Guidance

- Understand the Agency’s Jurisdiction
  - FDEP vs WMD
Real World Stories

- Collier County
- City of Cape Coral
- Orange County
- Palm Coast
4. Understand Gravity of Situation and Perspective from Agency

- Understand the “worst case scenario” from the beginning
- Consider the agency’s perspective
  - Is this a repeat violation?
  - Is there a recent, similar case that soured the agency’s view of this type of situation?
  - What is the global effect of their decision in this particular case?
Things to Consider

• Look on agency’s sites for similar cases
  ◦ Search databases for specific information
  ◦ Skim news releases for current related events

• Penalty Matrix and Multiplier
  ◦ Agencies may have the ability to multiply penalties for repeat offenders
  ◦ Code Boards may lien all properties owned by same entity across jurisdiction
Examples
5. **Know the Expectations of Outcome**

- What does the agency need from you?
- What do you want out of the meeting?
- What is the level of authority of the person(s) that you are meeting with?
- Can the person(s) you are meeting with approve what you need?
- Any legal precedent on other sites?
- Is it possible to negotiate?
Expectations of Outcome

Expectation

Outcome

Disappointment
Real World Story

- Bleach site
6. Communicate

- **Written**
  - Document, Document, Document (this includes phone conversations, and casual meetings, as well as formal meetings).
  - Know statutory requirements for submitting written communications.
    - Dates
    - Content
    - Format
    - Routing
Communicate

◦ Adhere to “voluntary” and/or “negotiated” terms for communicating.
  • Deadlines
  • Content
  • Format
  • Routing

◦ Provide Updates when applicable, including notifications when dates, commitments, etc., need to be adjusted, and
  • Document, Document, Document
Communicate

- **Verbal**
  - “On the record” vs. “Informal hypotheticals”
  - Remember that each party has a “client”
  - Conference calls – do you ever really know who is on the other line?
  - The Facts, Nothing But the Facts
    - Client Confidentiality vs. Duty to Provide Information
    - Document, Document, Document
7. Not Knowing Your Audience / The Players

- Decision makers versus support staff – client representative versus owner / operator / agent.
  - A familiar face goes a long way in resolving an issue amicably/fairly. Being involved in various associations and getting to know the regulators/professionals outside of an enforcement action is beneficial for both sides.
Where to Look

- Agency organizational charts
- Delegation of Authority
  - DEP or WMD
- Staff directories
8. Document Everything

- We wanted sunshine...we got it!
- F.S. ch 286 governs Sunshine Law
- F.S. ch 119 governs public records
Document Everything

- Best to take great notes BUT if agency staff are also taking notes, think public record
- Consider what to disclose or not – if it’s a confidential document, best not to share
- Follow up meeting discussions/action plans in email
- Keep great notes for your file – these projects tend to come around again!
Second Chances...
9. Do your Research

- How serious is the issue?
- Don’t underestimate the consequences.
- What are you agreeing to?
  - A consent order can be very onerous
Do your Research

- Understand the issue
  - Is it rule or guidance?
- Understand the potential penalties
- Understand the your options
Real World Story

- Agriculture chemical site
10. Didn’t Take Time to Know the Facts – from both perspectives

- There are at least two sides to every story and somewhere in between is the what really happened.
Example

- UMAM (FAC------) vs. Orange County wetland classification system (chapter 15 Orange County Code).
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