



Maneuvering Through the Regulatory Process: Permitting, Compliance and Enforcement

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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.

There is always two sides
to every story. There's
the truth, then there's your
dillusions...

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 options



"SEND THIS BACK TO THE LEGAL DEPARTMENT, I THINK THEY COULD MAKE IT MUCH MORE COMPLICATED THAN THIS..."

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...

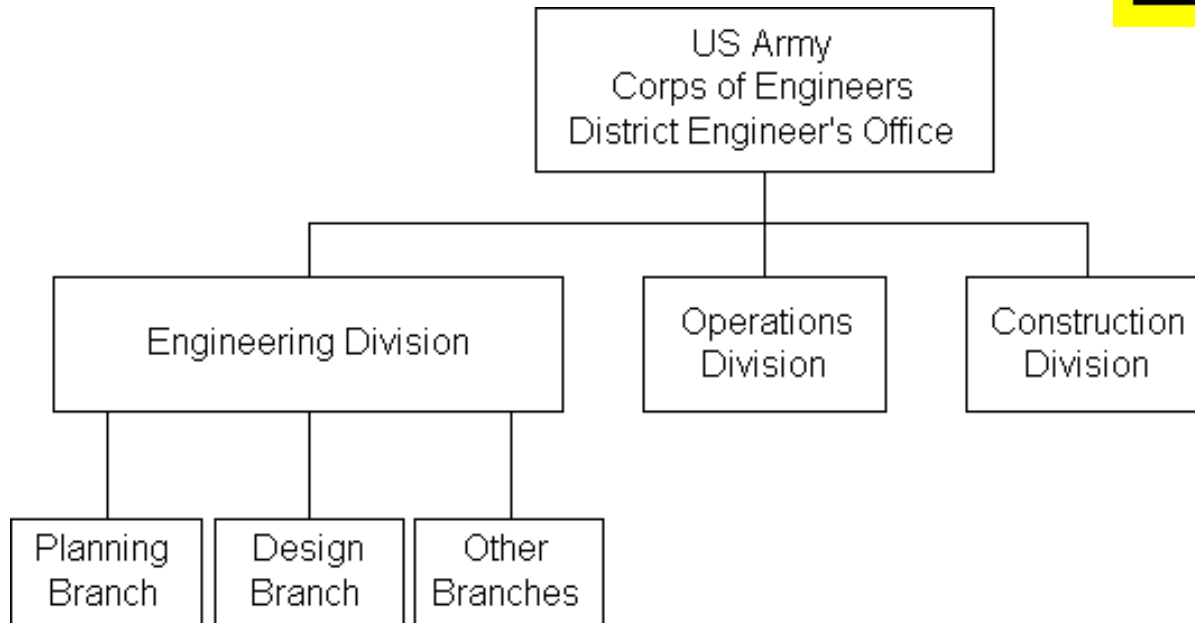
GOES AROUND...
AND COMES BACK
AROUND...

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
 - USACE, FDEP or WMD
- Staff directories



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

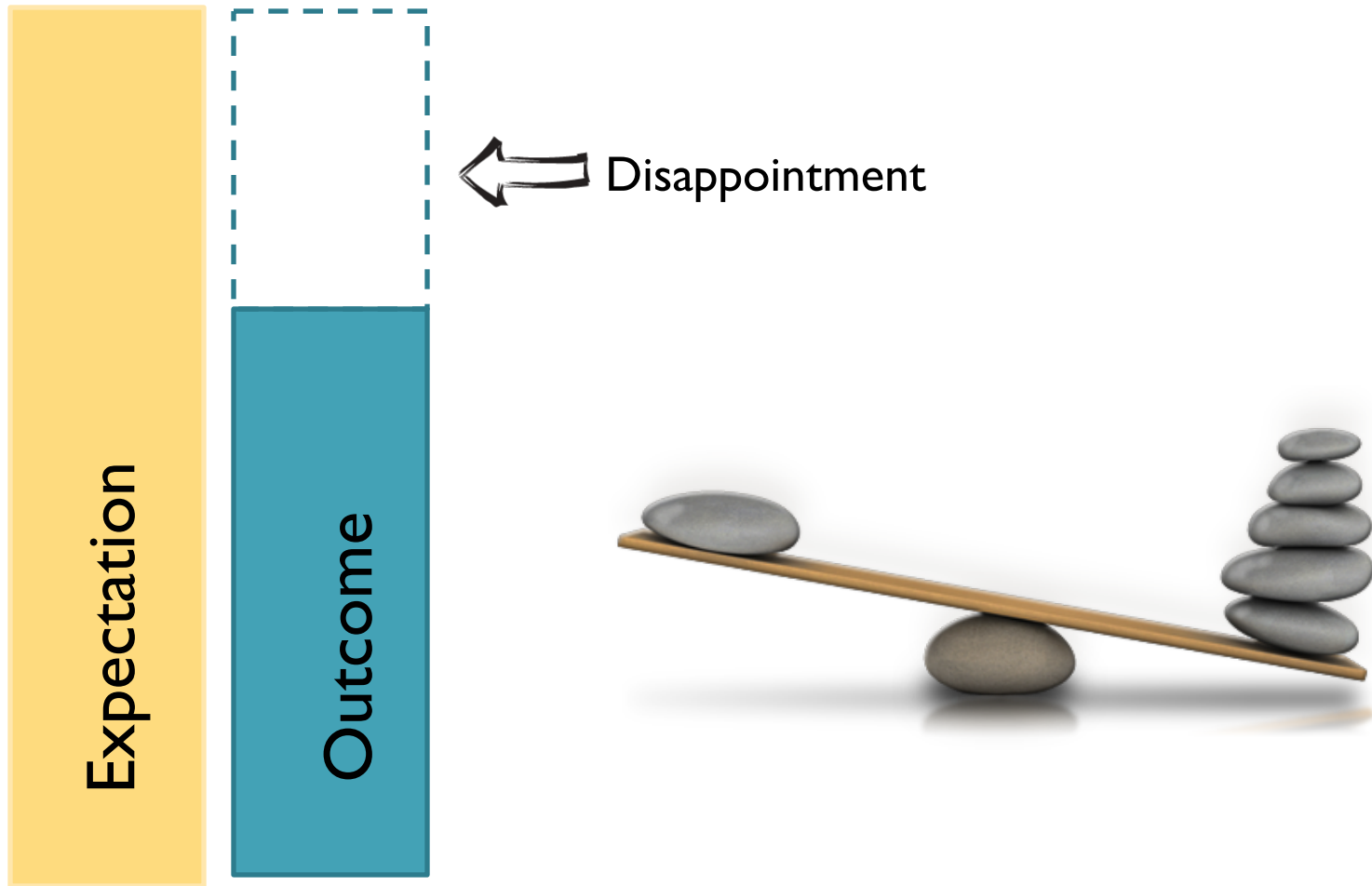
- Verbal
 - “On the record” vs. “Informal hypotheticals”
 - Remember that each party has a “client”
 - Conference calls – do you ever really know who is on the other line?
 - The Facts, Nothing But the Facts
 - Client Confidentiality vs. Duty to Provide Information
 - Document, Document, Document



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



Real World Story

- Trademark Metals - Tampa



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



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

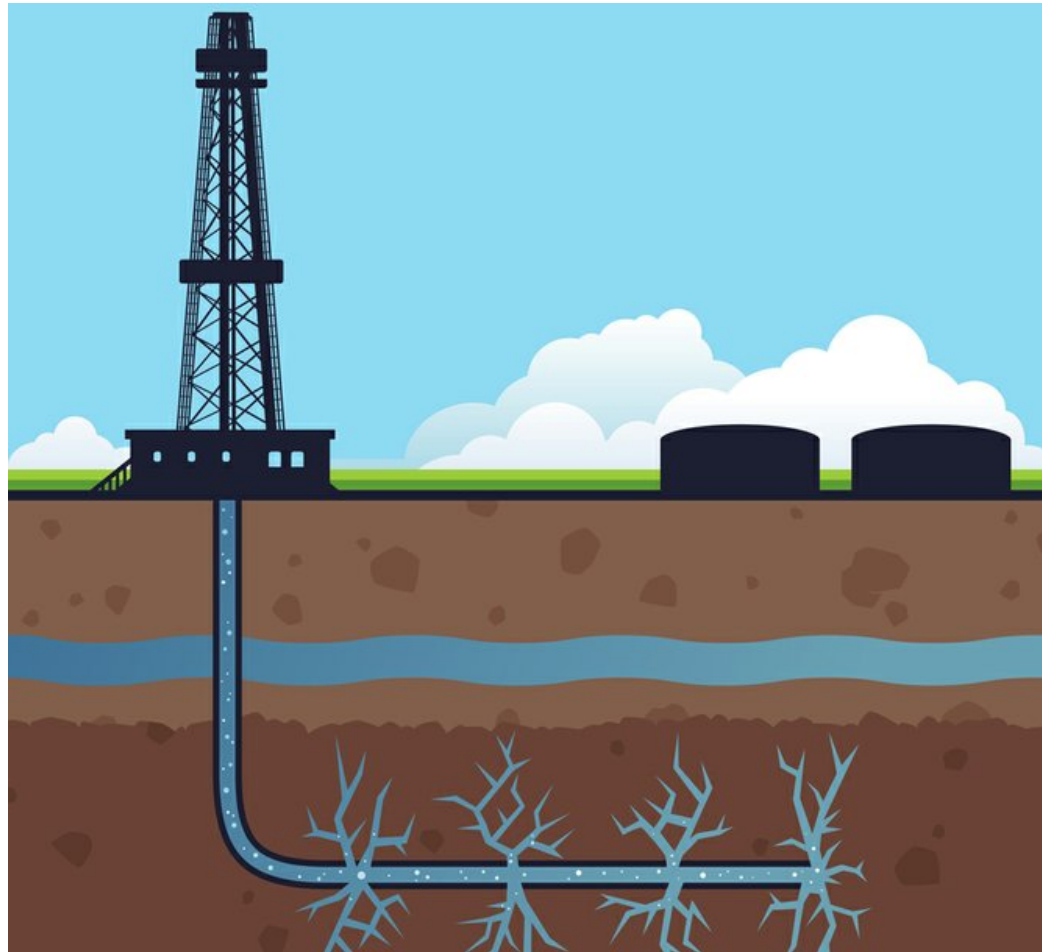
- Understand the Regulations
 - Chapter 62-780 FAC – Contaminated Site Cleanup Criteria
 - SOPs / Guidance
- Understand the Agency's Jurisdiction
 - FDEP vs WMD



“Have you got an Environmental Impact Statement for that castle, son?”

Real World Stories

- Collier County -Fracking



Pharmaceutical Manufacturing



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

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 62-76 I.450 – Underground Storage Tank Systems

Examples

- Bonded Bat
- Osceola County

I. Respect

- Goes without saying but...
 - Be Polite, Courteous, RESPECTFUL even when disagreeing with opposing side
 - Understand that everyone has a job to do and a side to represent.



"I fear we may have strayed from the agenda somewhat."

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





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