



Maneuvering Through the Regulatory Process: Permitting, Compliance and Enforcement

Presenters:

Peter K. Partlow, PE

E Sciences, Incorporated

Anna H. Long

Friedman, Friedman & Long, P.A.

Amanda Brock

Henderson, Franklin, Starnes & Holt, P.A.

Gordon L. Walters Jr., P.E., M.B.A.

Conestoga-Rovers & Associates

I. 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




**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

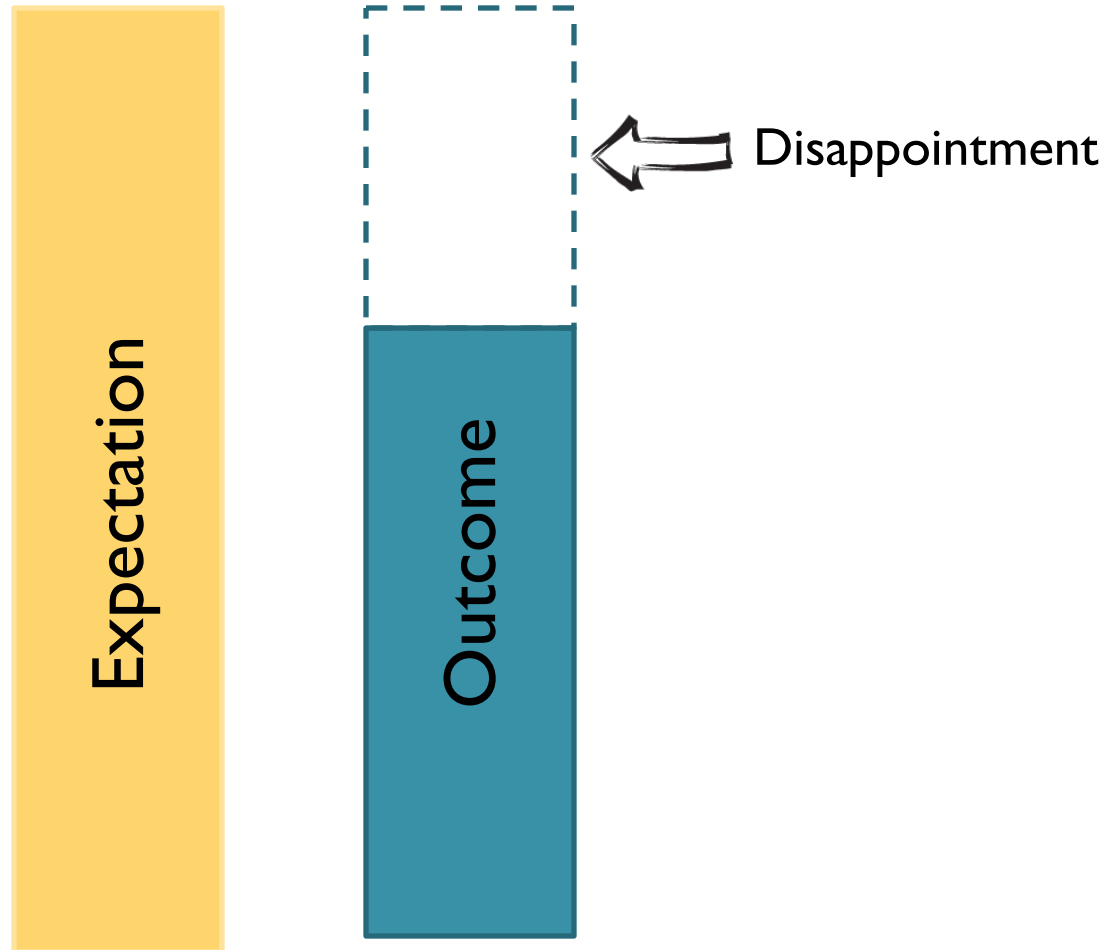
Examples



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

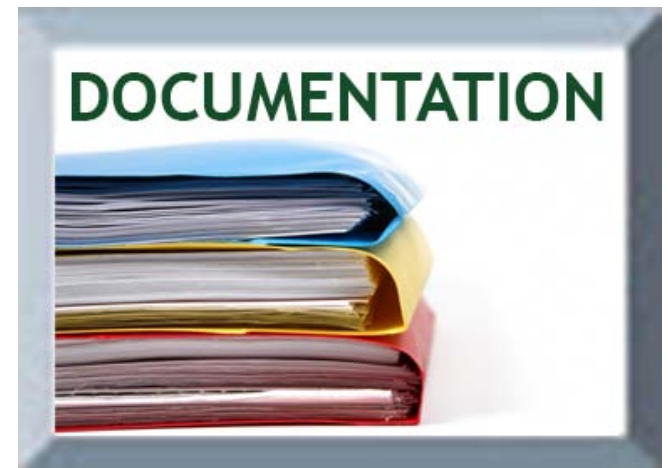


Real World Story

- 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

RESEARCH



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.

GET PERSPECTIVE

Example

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



ENGINEERING
ENVIRONMENTAL
ECOLOGICAL

Peter K. Partlow, PE

E Sciences, Incorporated

(407) 481-9006

ppartlow@esciencesinc.com



Henderson|Franklin
ATTORNEYS AT LAW

Amanda Brock

Henderson, Franklin, Starnes & Holt, P.A.

(239) 344-1269

amanda.brock@henlaw.com



FRIEDMAN, FRIEDMAN & LONG, P.A.
ATTORNEYS & COUNSELORS

Anna H. Long

Friedman, Friedman & Long, P.A.

(407) 830-6331

along@friedmanfriedmanandlong.com



**CONESTOGA-ROVERS
& ASSOCIATES**

Gordon L. Walters Jr., P.E., M.B.A.

Conestoga-Rovers & Associates

(239) 936-4003

GWalters@craworld.com