EBC Rhode Island Program

RIDEM & USEPA Enforcement Programs & Priorities for 2020
Introduction and Program Overview

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Environmental Business Council of New England
Energy Environment Economy
RIDEM Compliance and Inspection Updates and Overview

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Outline

• Organizational Chart
• Bureau/Office Responsibilities/Mission
• Issues Public Focuses On/Communications
• Overview of Regulatory Programs
• Enforcement Tools
• Enforcement Approach
• Expedited Citation Notices
• 2018 Bureau Highlights
• Top Violations by Program
• 2020 Compliance Initiatives
Mission: Preventing and minimizing pollution to, and monitoring the quality and overseeing the restoration of, water, air, and land

- Regulatory Offices
  - Office of Water Resources
  - Office of Air Resources
  - Office of Waste Management
  - Office of Customer and Technical Assistance
  - Office of Emergency Response
  - Office of Compliance and Inspection
Office of Compliance & Inspection

Mission: Investigate citizen complaints, perform compliance monitoring of regulated entities and enforce alleged regulatory violations in a fair and consistent manner in accordance with State law and regulations.

• 8 programs within OC&I
• Budgeted for 24 FTEs – currently have 23 FTEs with 1 vacancy
• Funding is from Federal, State, and restricted receipt accounts
• Office Administrator is executive, non-Union position
As OC&I is the central regulatory office for enforcement, the public focus is on our response:
- When are you coming out to inspect?
- What are you doing about the problem?
- Why is it taking so long to correct?
- Why didn’t you cite someone?
- How many/what type of enforcement actions have you taken?
- What is the status of open enforcement actions?

Communication tools: DEM’s web page, written & electronic correspondence, telephone, press releases

Follow DEM on Twitter or Facebook?
Air Pollution

• Investigates complaints relating to visible emissions, odors, fugitive dust and exterior lead paint removal and performs compliance monitoring of exterior lead paint removal activities and businesses/facilities with a history of noncompliance

• Issues formal enforcement actions resulting from complaint investigations and referrals from the Bureau’s Office of Air Resources for air permit noncompliance

• Statutory authority R.I. Gen. Laws Chapter 23-23
  o Maximum penalty=$10,000/day for each violation
  o No authority to record violation in land evidence records
• Investigates citizen complaints relating to, and performs compliance monitoring inspections of, dams whose failure could cause loss of life or significant property damage

• Issues formal enforcement actions for unsafe dams resulting from complaint investigations and compliance monitoring inspections

• Statutory authority R.I. Gen. Laws Chapter 46-19
  o DEM authorized to regulate operation and maintenance of dams to ensure that dams maintained in a safe condition
  o Maximum penalty= $1,000/day for each violation
  o Authority to record violation in land evidence records
Freshwater Wetlands

• Investigates citizen complaints and referrals from DEM divisions and offices relating to freshwater wetlands

• Issues formal enforcement actions resulting from complaint investigations and referrals from the Bureau’s Office of Water Resources for FWW permit noncompliance

• Statutory authority R.I. Gen. Laws Sections 2-1-18 et seq.
  o DEM authorized to regulate activities that alter a freshwater wetland
  o Maximum penalty= $5,000/violation, unless knowing, reckless, or in violation of a permit, in which case =$10,000/violation
  o Authority to record violation in land evidence records
• Investigates citizen complaints and referrals from DEM divisions and offices relating to onsite wastewater treatment disposal (septic systems or cesspools)

• Issues formal enforcement actions resulting from complaint investigations and referrals from the Bureau’s Office of Water Resources for OWTS permit noncompliance and license issues involving OWTS designers and installers

• Statutory authority R.I. Gen. Laws Sections 42-17.1-2 (12) and (13)
  o DEM authorized to regulate location, design, construction, and maintenance of onsite wastewater treatment systems
  o Maximum penalty= $1,000/day for each violation
  o Authority to record violation in land evidence records
Hazardous Waste (which includes Oil Pollution and Site Remediation)

• Investigates citizen complaints and referrals from DEM divisions and offices relating to hazardous waste and oil spills and performs compliance monitoring of hazardous waste generators

• Issues formal enforcement actions resulting from complaint investigations and compliance monitoring inspections, referrals from the Bureau’s Office of Waste Management for hazardous waste permit noncompliance and site remediation noncompliance & from the Bureau’s Office of Emergency Response for oil spills

• Statutory authority R.I. Gen. Laws Chapter 23-19.1
  - DEM authorized to regulate storage, transportation, treatment and disposal of hazardous waste
  - Maximum penalty=$25,000/day for each violation
  - Authority to record violation in land evidence records
Hazardous Waste (which includes Oil Pollution and Site Remediation)

• Statutory authority R.I. Gen. Laws Chapter 23-19.14
  o DEM authorized to regulate releases of hazardous materials to the land
  o Maximum penalty=$25,000/day for each violation
  o Authority to record violation in land evidence records

• Statutory authority R.I. Gen. Laws Chapter 46-12-.5.1
  o DEM authorized to regulate transportation and discharge of oil, including byproducts, on the water and over the land
  o Maximum penalty=$25,000/day for each violation
  o Authority to record violation in land evidence records
Medical/Solid Waste

• Investigates citizen complaints and referrals from DEM divisions and offices relating to medical waste and solid waste and performs compliance monitoring of medical waste generators

• Issues formal enforcement actions resulting from complaint investigations and compliance monitoring inspections and referrals from the Bureau’s Office of Waste Management for MW/SW permit noncompliance and noncompliance with recycling and transport regulations

  o DEM authorized to regulate generation, transportation, storage, treatment, and disposal of medical waste
  o Maximum penalty=$5,000/day for each violation, unless willful, in which case=$25,000/day for each violation
  o No authority to record violation in land evidence records
Medical/Solid Waste

• Statutory authority R.I. Gen. Laws Chapter 23-18.9
  o DEM authorized to regulate the storage, treatment, reuse and disposal of solid waste
  o Maximum penalty=$25,000/day for each violation
  o Authority to record violation in land evidence records

• Statutory authority R.I. Gen. Laws Chapter 23-63
  o DEM authorized to regulate the transportation, storage, disposal and recycling of vehicle tires
  o Maximum penalty= $1,000/violation
  o No authority to record violation in land evidence records
Underground Storage Tanks

• Investigates citizen complaints and referrals from DEM divisions and offices relating to underground storage tanks and performs compliance monitoring of underground storage tanks

• Issues formal enforcement actions resulting from complaint investigations and compliance monitoring inspections and referrals from the Bureau’s Office of Waste Management for noncompliance with regulations

• Statutory authority R.I. Gen. Laws Section 42-17.1-2 (31) and Chapter 46-12
  ○ DEM authorized to regulate location, design, construction, and operation of underground storage tanks used for storage of petroleum products or hazardous materials
  ○ Maximum penalty=$ 25,000/day for each violation
  ○ Authority to record violation in land evidence records
Water Pollution

• Investigates citizen complaints and referrals from DEM divisions and offices relating to surface water and groundwater

• Issues formal enforcement actions for complaint investigations and referrals from the Bureau’s Office of Water Resources for OWR permit noncompliance

• Statutory authority R.I. Gen. Laws Chapter 46-12
  o Statute authorizes DEM to regulate the discharge of pollutants to the surface water or in a location where it is likely to enter the surface water
  o Maximum penalty=$25,000/day for each violation
  o Authority to record violation in land evidence records
Water Pollution

• Statutory authority R.I. Gen. Laws Chapters 46-12 and 46-13.1
  o DEM authorized to regulate the discharge of pollutants onto or beneath the land surface in a location where it is likely to enter the groundwater
  o Maximum penalty=$25,000/day for each violation
  o Authority to record violation in land evidence records
ENFORCEMENT TOOLS

- INSPECTIONS AND INVESTIGATIONS
- INFORMAL ACTIONS
- FORMAL ACTIONS
ENFORCEMENT TOOLS

- Education
- Expedited Citation
- Immediate Compliance Order
- Informal Notice
- Notice of Violation
- Superior Court
- Verbal Warning

Which of these tools do you think is the most effective in achieving compliance?
Enforcement Approach

- Fair Process
- Consistent
- Timely
- Just
- Reasonable
Expedited Citation Notice (ECN)

- In 2013, legislation was enacted to allow DEM to issue an ECN (see R.I. General Laws §42-17.6-3 (c)).

- An ECN is similar to a NOV in that it advises the party of the alleged facts that support the violation and the statutes and regulations that are alleged to have been violated.

- It can include requirements to meet compliance, but it **cannot order** corrective action.

- It **always** includes an administrative penalty, which is developed in accordance with the Rhode Island Code of Regulations titled *Rules and Regulations for the Assessment of Administrative Penalties (250-RICR-130-00-1)*.
Expedited Citation Notice (ECN)

• ECNs are voluntary – the party can opt out.
• Unlike an NOV, the party does not have a right of appeal; however, the ECN cannot be recorded on the title for the property and the ECN expires after 60 days. After that time, if the party has not complied with the ECN, DEM can issue a NOV.
• At any time during the 60 days, the party cited can request a NOV.
• In 2017, the law was amended to allow DEM to issue an ECN with penalties up to $5,000.
• The target for issuance of an ECN is 14 days from the date OC&I decides to issue an ECN or the date a case is referred to OC&I from one of the other offices.
OVERALL – APRIL 2014 THROUGH NOVEMBER 2019

112 ECNs ISSUED – 86 COMPLIED (77%)

$273,850 PENALITES ASSESSED – $179,500 PENALTIES COLLECTED (65%)

AVERAGE PENALTY ASSESSED=$2,445

AVERAGE PENALTY COLLECTED=$2,087
Expedited Citation Notice (ECN)

Penalties Assessed vs Penalties Collected

- Air Pollution
  - Penalties Assessed: 67500
  - Penalties Collected: 67500

- Water Pollution
  - Penalties Assessed: 30250
  - Penalties Collected: 30250

- Freshwater Wetlands
  - Penalties Assessed: 31050
  - Penalties Collected: 31050

- Hazardous Waste
  - Penalties Assessed: 48000
  - Penalties Collected: 48000

- UST
  - Penalties Assessed: 29350
  - Penalties Collected: 29350

- OWTS
  - Penalties Assessed: 1200
  - Penalties Collected: 1200

- Solid Waste
  - Penalties Assessed: 200
  - Penalties Collected: 200
➢ 990 complaints received of alleged environmental violations
➢ 1,024 inspections and 773 investigations performed in response to complaints
➢ 4,075 inspections performed to determine compliance
➢ 695 emergency response actions performed
➢ 24 inspections performed of construction general permit projects for compliance assistance
➢ 27 self-certification checklists received of auto body facilities for evidence-based compliance assistance
➢ 17 return-to-compliance plans received for auto body facilities for evidence-based compliance assistance
➢ 441 informal enforcement actions issued
➢ 73 formal enforcement actions issued
2018 BUREAU HIGHLIGHTS

• 2018 ANNUAL REPORT titled SUMMARY OF COMPLIANCE ASSISTANCE, EMERGENCY RESPONSE & ENFORCEMENT ACTIVITIES can be found at http://dem.ri.gov/programs/benviron/compinsp/pdf/report18.pdf.

• The report includes the following:
  ▪ 6 Key Performance Indicator charts for enforcement
  ▪ Compliance Assistance Spotlights
  ▪ Data on enforcement activities
  ▪ Spotlight on an enforcement case
  ▪ Efforts undertaken in each city and town
TOP 3 VIOLATIONS BY PROGRAM

Air Pollution
• Failure to apply for and/or obtain an air pollution permit (mostly emergency generators, but also boilers, process equipment and/or air pollution control equipment)
• Release of fugitive dust, objectionable odors, emissions of air contaminants detrimental to person or property or visible emissions
• Failure to comply with air pollution permit

Dam Safety
• Failure to maintain dams free of vegetation to allow for visual inspections
• Failure to maintain low level outlets in operable condition
• Excessive erosion and/or leakage of embankments
TOP 3 VIOLATIONS BY PROGRAM

Freshwater Wetlands
- Clearing, stumping/grubbing, filling, and grading within 50 foot Perimeter Wetland/100 foot or 200 foot Riverbank Wetland/100-year Floodplain
- Clearing, filling, and grading within biological wetland (mostly Swamp)
- Failure to comply with wetlands permit

Hazardous Waste
- Failure to determine if a solid waste meets the definition of a Hazardous Waste (HW)
- Failure to label tanks and containers holding HW, Used oil or Universal Waste (UW)
- Failure to keep containers holding HW, Used Oil or UW closed except when adding or removing waste
TOP 3 VIOLATIONS BY PROGRAM

OWTS
• Wastewater (black water/gray water) overflowing to the surface of the ground.
• Wastewater (black water/gray water) being actively pumped from a cesspool or system to the surface of the ground and/or into a stormwater catch basin
• Repair/installation of OWTS without a permit from DEM

Solid Waste
• Improper disposal of tree waste and leaves (homeowners dumping on adjacent properties, unregistered composting facilities, using organic waste from off-site as fill, landscapers dumping on vacant land)
• Commercial dumping (camper recycling debris, auto parts, C&D, manufacturing waste, tires, used oil not managed per HW rules, scrap metal not managed for recycling, derelict boats, bagged trash)
• Failure to comply with solid waste license/permit
TOP 3 VIOLATIONS BY PROGRAM

Underground Storage Tanks
• Failure to assign and register ICC-certified Class A and B UST facility operators, train staff and assign them as Class C UST facility operators, maintain training logs and have the Class A or B UST facility operator perform and document monthly facility inspections.
• Failure to permanently close single-walled tanks and pipelines before the deadline (22 December 2017 or 32 years of age).
• Failure to keep tank top sumps, dispenser sumps and spill containment basins free of liquids and solid debris.

Water Pollution
• Construction related sediment discharges to waters of the State
• Industrial discharges to storm drains from mobile dog wash operations, painting projects, carpet cleaning, car/truck washing operations, and restaurant equipment cleaning
• Failure to comply with permit (RIPDES, stormwater, groundwater/UIC)
Stormwater Construction General Permit Enforcement Initiative

Cesspool Phase Out Enforcement Initiative

Underground Storage Tank Single Wall Deadline Enforcement Initiative

Dam Spillway Capacity Analysis Initiative
USEPA Region 1 Enforcement and Compliance Assurance

James Chow

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EPA New England
Enforcement and Compliance Update
Priorities and Initiatives

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EPA Region 1
January 15, 2020
How We Accomplish Our Mission

• **Strong partnerships** with states, tribes and federal agencies

• **Close coordination** among EPA headquarters and regional office programs

• **Innovative solutions** to build compliance with the law

• **Focus on national problems** where federal action can provide significant benefits to communities and businesses
Environmental Statutes under EPA’s Jurisdiction

- Clean Air Act (CAA)
- Clean Water Act (CWA)
- Safe Drinking Water Act (SDWA)
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- Resource Conservation and Recovery Act (RCRA)
- Emergency Planning and Community Right-To-Know (EPCRA)
- Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)
- Toxic Substances Control Act (TSCA)
EPA’s National Compliance Initiatives (FY20-FY23)

• Reducing Excess Emissions from Stationary Sources
• Reducing Hazardous Air Emissions from Hazardous Waste Facilities
• Reducing Risks of Accidental Releases at Industrial and Chemical Facilities
• Reducing Significant Noncompliance with National Pollutant Discharge Elimination System (NPDES) permits
• Stopping Aftermarket Defeat Devices for Vehicles and Engines
• Reducing Noncompliance with Drinking Water Standards at Community Water System

(2020-2023NClmemo.pdf)
Region 1 Compliance Efforts - Lead Paint: Renovation, Repair and Painting (RRP) Rule

- Integrated approach to providing compliance assistance & enforcement of EPA’s lead RRP Rule
- In partnership with state and local health agencies
- EPA Region 1 implements the RRP program in 4 NE states (CT, VT, ME, NH)
Region 1 Compliance Efforts - Lead Paint: Renovation, Repair and Painting Rule

Targeted Communities
- New Haven, CT (FY14)
- Nashua, NH (FY15)
- Lewiston-Auburn, ME (FY16)
- Portsmouth, NH & Portland, ME (FY18)
- Southern Vermont (FY19)

Results
- Over 1000 targeted mailings
- Over 200 field inspections
- Over 20 actions with fines assessed
- Publicize our results with press releases
Enforcement actions have ensured improvement at over 70 facilities to make them safer (FY13-FY19).
Integrated Approach to Chemical Safety

- Ammonia training for 300 participants on industry standards and safe handling practices (FY17-19).
- 15 emergency preparedness exercises and 13 workshops.
- Pilot effort in FY19-20 focusing on smaller facilities.
- MOU with local ice rink trade association
- 12.5% increase in TRI reporting
Innovations in Compliance

- Advanced monitoring
  - At potential discharge points (air and water) – private and government use

- E-Reporting
  - Electronic reporting of compliance info

- Transparency
  - More public information

- Innovative Enforcement
  - Data analytics to identify potential violations
Geospatial Measurement of Air Pollution (GMAP)

- Identify pollution in real time
- Facility feedback – Fix emission problems near real time
- Vehicle equipped with sensors for methane and BTEX
Digital Photo vs. Infrared Image

Regular digital photo of gasoline tank vent

FLIR® Gasfinder infrared photo of gasoline tank vent
Merging Air Pollution Sensors With Information Technology

- Citizen hand held sensors
- GPS
- Sensors – CO, NO₂, O₃, particulates
- Smartphone – App
- Data uploaded – help provide air quality info

Citizen Science
Using Smart Tools

Mapping noncompliance

E-reporting and Data Mining
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To report a potential violation:
https://echo.epa.gov/report-environmental-violations
Interplay of Civil and Criminal Enforcement in Rhode Island

Moderator: Christian Capizzo
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Interplay of Civil and Criminal Enforcement in Rhode Island

Sheila Paquette

Environmental Police Officer Detective
Division of Law Enforcement
Rhode Island Department of Environmental Management
Interplay of Civil and Criminal Enforcement in Rhode Island

John Gauthier

Assistant Special Agent in Charge
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Moderated Discussion

Moderator: Jonathan Schaefer, Robinson & Cole

Panelists:
- Christian Capizzo, Partridge, Snow & Hahn
- David Chopy, RI DEM
- James Chow, U.S. EPA, Region 1
- John Gauthier, U.S. EPA, Region 1
- Sheila Paquette, RI DEM