

From: [BACHMAN Jeff](#)
To: [ROOT Jenny](#)
Subject: FW: FYI: conversation w/Jon Gasik about Div. 12 rule change
Date: Tuesday, January 07, 2014 12:27:51 PM

Jeff Bachman
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From: NOMURA Ranei
Sent: Tuesday, September 04, 2012 5:15 PM
To: BACHMAN Jeff
Cc: GASIK Jon
Subject: RE: FYI: conversation w/Jon Gasik about Div. 12 rule change

Got it! Thanks!

From: BACHMAN Jeff
Sent: Tuesday, September 04, 2012 5:07 PM
To: NOMURA Ranei
Cc: GASIK Jon
Subject: RE: FYI: conversation w/Jon Gasik about Div. 12 rule change

No we can't because we would essentially be using a rule to try and rewrite statutes written by the legislature. The legislature intended our statutes and rules to impose strict liability.

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From: NOMURA Ranei
Sent: Tuesday, September 04, 2012 11:35 AM
To: BACHMAN Jeff
Cc: GASIK Jon
Subject: RE: FYI: conversation w/Jon Gasik about Div. 12 rule change

So you are saying we could but OCE wouldn't want to?

From: BACHMAN Jeff
Sent: Tuesday, September 04, 2012 11:34 AM
To: NOMURA Ranei
Cc: GASIK Jon
Subject: RE: FYI: conversation w/Jon Gasik about Div. 12 rule change

Hi Ranei: I am against trying to incorporate a definition of "beyond reasonable control" in rule and my sense is that the rest of OCE would be as well, including Les and Leah. I am all for considering

other options, however, including an IMD and/or revisions to the enforcement guidance. Currently, when we make a determination that a violation was BRC, the warning letter states that a WL is being issued instead of a PEN because of that determination by DEQ.

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From: NOMURA Ranei
Sent: Tuesday, September 04, 2012 9:19 AM
To: BACHMAN Jeff
Cc: GASIK Jon
Subject: RE: FYI: conversation w/Jon Gasik about Div. 12 rule change

Jeff – I understand what you are saying and this issue may not be something that we can resolve with this rule update but I still want to track it so I have another question of you... Couldn't we define "beyond reasonable control" in the rule and pair it with a different sort of notice (e.g., force majeure notice) rather than a "warning letter."?

From: BACHMAN Jeff
Sent: Wednesday, August 29, 2012 3:50 PM
To: NOMURA Ranei
Cc: GASIK Jon
Subject: RE: FYI: conversation w/Jon Gasik about Div. 12 rule change

Hi Ranei and Jon: We can't incorporate "beyond reasonable control" into our rules because it is not a legal defense to a violation. Violations are violations regardless of whether they were beyond the Respondent's reasonable control or not. We use the concept of "beyond reasonable control" to determine whether a violation is subject to informal or formal enforcement. Under our guidance, violations that get a PEN are instead issued a WL if the violation is deemed by us to be beyond Respondent's reasonable control. I am vaguely aware that the spills program does not issue WLs for violations that are deemed beyond reasonable control, but that is not because they are not violations but rather because that is the approved guidance. I do not know why spills got an exception from the general rule that all violations get at least informal enforcement. If we wanted to go that route in the WQ guidance, we need to take that on we revise the guidance after we amend Div. 12, but I wonder how EPA might react to such a change.

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From: NOMURA Ranei
Sent: Tuesday, August 28, 2012 12:21 PM
To: BACHMAN Jeff
Subject: FYI: conversation w/Jon Gasik about Div. 12 rule change

I talked with Jon about potential changes last week (we were both on a conference call about another subject so I decided to take advantage of his time)...

1. He'd like a revision to include the "beyond reasonable control" concept into Div. 12 because he doesn't believe warning letters are an appropriate response for these situations. He's thinking a definition and another category of notice that is not a warning letter and would allow for a notice to the file. He also said he's been told by OCE that a rule revision is needed even though the spill program deals with the beyond reasonable control situations without warning letter so that's why he's bringing it up.
2. I asked him about bacteria. He said change "reclaimed" to "recycled" and did say that there was a disconnect between the way we deal with wastewater treatment vs recycled water but only for the summer months - we don't expect people to be swimming near outfalls in the winter vs. people playing golf all year round.

I will track both of these with the spreadsheet. Do you have anything else to add? Also, are you schedule for TMDL managers and 401 hydro group?

Thanks!