

From: [BACHMAN Jeff](#)
To: [ROOT Jenny](#)
Subject: FW: FYI: conversation w/Jon Gasik about Div. 12 rule change
Date: Tuesday, January 07, 2014 12:29:43 PM

Jeff Bachman
Office of Compliance and Enforcement
Oregon Dept. of Environmental Quality
(503) 229-5950

From: GASIK Jon
Sent: Wednesday, September 12, 2012 11:11 AM
To: NOMURA Ranei; BACHMAN Jeff
Cc: BIORN-HANSEN Sonja; SCHNURBUSCH Steve
Subject: RE: FYI: conversation w/Jon Gasik about Div. 12 rule change

Hi Ranei and Jeff,

A couple of follow up items on this:

- I talked to Les Carlough about the BRC issue. Les told me that the latest revisions to Div 12 removed the requirement that DEQ issue a WL or PEN for every documented violation. Since this is no longer in Division 12, it is a guidance issue. Regarding the guidance, Les generally agreed with me that issuing a WL or PEN is not desirable under certain circumstances. The criteria that we came up with off the tops of our heads is something like this:
 - o The cause was BRC (including force majeure)
 - o The entity responded appropriately (including reporting) and did not exacerbate the violation.
 - o DEQ would not have expected any additional measures. (This may be redundant with BRC)
 - o DEQ is not requesting any additional measures.

Anyway, this is something for the guidance.

- This was discussed at yesterday's WR WQ Point Source meeting. All were in agreement that for SSOs specifically, the staff would like to just document DEQ's review on the bullets above and not create any additional paperwork in these situations. This will be a topic for the Sept. 19th permit managers meeting.

I know that more discussion is needed. I have many suggestions for the guidance. Many of my comments are housekeeping where the guidance really wasn't fully updated to the last go of Div 12 revisions.

Please keep me in the loop on the guidance revisions.

Best, Jon

From: NOMURA Ranei
Sent: Tuesday, September 04, 2012 11:38 AM
To: BACHMAN Jeff
Cc: GASIK Jon
Subject: RE: FYI: conversation w/Jon Gasik about Div. 12 rule change

Just so you know, I can see why we wouldn't want to!

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.

Jeff Bachman
Office of Compliance and Enforcement
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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.

Jeff Bachman

Office of Compliance and Enforcement

Oregon Dept. of Environmental Quality

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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!