

From: [ELWORTH Susan](#)
To: [WHEELER Sarah](#); [BACHMAN Jeff](#); [ROOT Jenny](#)
Cc: [CARLOUGH Les](#)
Subject: RE: ELs: Div. 12 assignment
Date: Thursday, April 12, 2012 3:20:50 PM

Susan had an additional comment: To fix the numbering in Div. 12. Things could be condensed.
For instance:

- (2) \$8,000 Penalty Matrix:
- (a) The \$8,0000 penalty matrix applies to....

Why can't we just combine them? There are a lot of these examples throughout the rules.

Jenny and Les – My one comment (I copied Jeff and Sarah because it affects their programs too) would be that we need to coordinate the various different directions a “spill” can be treated under Div 12. For example, if a spill reaches waters of the state and you allege the discharge of oil under 468B.050 and 450, the violation is a Class I under 0055(1)(c). The applicable matrix is (4)(a)(A) with a base moderate penalty of \$1250 (because there is no other applicable matrix). Alternatively, if you have a spill of oil to land and they fail to immediately clean it up, the appropriate matrix is (2)(a)(K) for a base moderate penalty of \$4,000. Finally, if they spill used oil and there is a quantity over the numbers in 012-0135, well then you can allege a selected magnitude.

Does it make sense to have a lower penalty for a spill to water vs. land? Does it make sense to have selected magnitudes for used oil spills but not new oil spills? Shouldn't all of this be more coherent instead of so much depending on who refers the case?

My thoughts.....

From: KOSS Leah
Sent: Wednesday, March 28, 2012 3:07 PM
To: ELWORTH Susan; BROWN Courtney; WHEELER Sarah; BACHMAN Jeff; SMITH Bryan; ROOT Jenny
Cc: CARLOUGH Les; KOSS Leah
Subject: ELs: Div. 12 assignment
Importance: High

Hi folks!

As you know we have been gathering ideas for the upcoming Division 12 rulemaking (led by Jenny Root and Les Carlough) in which we will reconsider the penalty amounts in light of the statutory maximum increase to \$25,000 as of Jan. 1, 2011. We are considering whether more extensive/specific changes are warranted to the categories in the matrices, classifications, and magnitudes. Before we engage the programs I'd like to have our group do an initial scoping of needs. **By COB April 13**, please review the programs in which you work (see below) and send Jenny and Les a list of the things that could be improved due to proof, political or equitable (or any other)

issues in your cases:

- Do the categorical splits in the matrices still make sense (e.g., should a “person that has a NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day” be in the \$8,000 matrix)?
- If we were to create an additional matrix above the existing \$8,000 matrix for "superbad" violations, what violations in your program would be in it? This might be matrix categories or violations under certain circumstances.
- Do the classifications still mirror our concept of which violations are most important to the program or regulatory system and are they still consistent with how DEQ deploys resources?
- Should the magnitudes be adjusted, that is, do they match what we think of as threatened or actual damages, and do the newer more-complicated ones work?

We are especially interested in hearing about the programs for which you are primary contact, ***but you ideas about other programs are more than welcome too***. Below are the divisions of labor that I came up with based on your work and trying to be equitable. Please seek your peers thoughts on programs with which you are less familiar.

Air quality permitting – Jenny

Asbestos – Bryan

Open burning – Jenny

Water quality permitting – Jeff

Storm water – Courtney

Onsite – Bryan

Ballast water – Courtney

Solid waste and tires – Sarah

UST – Susan

Hazardous waste – Sarah

PCBs – Sarah

Used oil – Jeff

Clean up – Susan

Spills – Susan

Dry cleaning – Sarah

THANK YOU. Your thorough and specific input is absolutely critical to this rulemaking. The first major tasks for Jenny and Les are to determine scope, and therefore, timing, and therefore deadlines and advisory committees. If you can't meet the deadline, let me know. If you have questions, ask your fearless rulemaking leaders!

Thanks!!! Leah

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