

Handling Enforcement Actions Before OEPA and ODH

David G. Cox
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Ohio EPA's Enforcement Process

- ❖ Levels of Enforcement
 - ❖ Notice of Violation letter
 - ❖ Director's Warning letter
 - ❖ Director's Final Findings and Orders
 - ❖ Civil and/or criminal referrals to the Ohio Attorney General's office

Ohio EPA's Enforcement Process

- ❖ Who are the players?
 - ❖ Local air agency
 - ❖ OEPA District Office
 - ❖ OEPA Central Office
 - ❖ Ohio Attorney General

- ❖ What is their role?
 - ❖ Enforcement Action Request
 - ❖ Enforcement Committee
 - ❖ Litigators

Ohio EPA's Enforcement Process (Letters)

- ❖ What do you do?
 - ❖ Consult counsel?
 - ❖ Respond timely!
 - ❖ Be conciliatory
 - ❖ Be descriptive

- ❖ How do you do it?
 - ❖ Interview your field personnel
 - ❖ Call the inspector to gather more facts

Ohio EPA's Enforcement Process (Orders and Referrals)

- ❖ What do you do?
 - ❖ Retain counsel
 - ❖ Respond
 - ❖ Timely
 - ❖ Conciliatory
 - ❖ Descriptive
 - ❖ Negotiate
- ❖ How do you do it?
 - ❖ Consult with counsel

Ohio EPA's Enforcement Process (Orders and Referrals)

- ❖ Negotiation process
 - ❖ OEPA issues draft proposal
 - ❖ You respond
 - ❖ Negotiations continue until a resolution is reached

- ❖ Items to negotiate
 - ❖ Sometimes the facts (if agency has them wrong)
 - ❖ Injunctive relief
 - ❖ Penalties
 - ❖ Non-admission of liability

Ohio EPA's Enforcement Process (Orders and Referrals)

- ❖ Typical items in Findings and Orders
 - ❖ Parties bound
 - ❖ Jurisdiction
 - ❖ Facts
 - ❖ Orders (includes penalties)
 - ❖ Termination clause
 - ❖ Modifications
 - ❖ Notice and documents
 - ❖ Waiver
 - ❖ Other laws

Ohio EPA's Enforcement Process (Orders and Referrals)

- ❖ Calculation of penalties
 - ❖ Up to \$25,000 per day per violation
 - ❖ Components
 - ❖ Economic benefit
 - ❖ Gravity of Harm
 - ❖ Importance to regulatory program
 - ❖ Other adjustment factors
 - ❖ Asbestos penalty policy (U.S. EPA)

ODH's Enforcement Process

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ODH's Enforcement Process



David G. Cox, BECO Annual
Conference 10/22/09

ODH's Enforcement Process

- ❖ Levels of enforcement
 - ❖ Public Health Emergency (PHE)
 - ❖ Proposed License Revocation/Suspension
 - ❖ Final License Revocation/Suspension
 - ❖ “Settlement Agreement”
 - ❖ Referral to Ohio Attorney General

- ❖ Who are the players?
 - ❖ Regional staff
 - ❖ Central office staff

ODH's Enforcement Process

- ❖ What do you do?
 - ❖ PHE – request a hearing w/in 10 days of receipt
 - ❖ Proposed revocation/suspension – request a hearing w/in 10 days of receipt
- ❖ Administrative hearing
 - ❖ Before an “impartial” hearing officer
 - ❖ No rules of evidence
 - ❖ Witnesses and documents presented
 - ❖ Report and recommendation issued
 - ❖ Director's final action
- ❖ Settlement Agreement – retain counsel and negotiate

ODH's Enforcement Process

- ❖ Settlement Agreements
 - ❖ No authority for them
 - ❖ ODH's alternative to filing suit
 - ❖ Negotiate with Attorney General's office
- ❖ Items to negotiate
 - ❖ Sometimes the facts (if ODH has them wrong)
 - ❖ Sometimes the penalty
 - ❖ Sometimes the non-admission of liability
 - ❖ Sometimes the other terms (training, documents, etc.)

ODH's Enforcement Process

- ❖ Contents of Settlement Agreements
 - ❖ Jurisdiction
 - ❖ Facts
 - ❖ Terms
 - ❖ Penalty
 - ❖ Personnel training
 - ❖ Successor liability
 - ❖ Potential license revocation/suspension

Summary

- ❖ Be on good terms with your inspector
- ❖ Be prompt in responding to any letters
- ❖ Ask for a hearing if necessary
- ❖ Retain counsel
- ❖ Negotiate when necessary
- ❖ Train your staff

Contact Information

- ❖ David G. Cox
- ❖ 614-457-5167
- ❖ dcoxlaw@columbus.rr.com
- ❖ dcox@lanealton.com