

Nuts And Bolts of Enforcement: Russell McLaren (Entergy) Arkansas Environmental Federation Water Seminar



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Russell McLaren undertook a presentation at the 2019 Arkansas Environmental Federation Water Seminar titled:

Nuts And Bolts of Enforcement ("Presentation")

Russell is Entergy's ARES Water Lead.

The *Presentation* addressed:

- Why/What Is Enforcement
- Types of Enforcement
- How to Avoid Enforcement
- How to Deal with Enforcement
- Shifts in Enforcement

Enforcement is described as:

- To give force to or strengthen;
- To urge with energy;
- To uphold a stand or argument;
- Constrain;
- Compel obedience.

By way of summary, Russell notes that enforcement is a tool used to urge compliance and, when necessary, force retribution.

The two theories of governmental enforcement are described as:

- Normative Model of Behavior: Carrot
- Rationalists Model of Behavior: Stick

Normative Model of Behavior is described as:

Those regulated follow the logic of appropriateness and act in good faith. Compliance occurs, or doesn't, largely because of the regulated actor's capacity and commitment. If they can and understand, they will comply. This theory calls for more compliance promotion in the form of assistance, incentives etc.

Rationalists Model of Behavior is described as:

Those regulated follow the logic of consequence. Everyone acts to maximize their own self interest. If its “cheaper” to violate a requirement, then they will. This theory calls for deterrence-based enforcement. The regulated must believe that there is a high probability of getting caught, the response to violations will be swift, certain and fair; the punishment will be severe enough to outweigh the benefits of noncompliance.

The *Presentation* further characterizes enforcement in Arkansas. He notes that the Arkansas Department of Environmental Quality (“ADEQ”) implements and enforces:

. . . water quality laws, regulations, policies, and plans to protect the waters of the state. Timely and consistent enforcement is critical to the success of the water quality program and to ensure that the people of Arkansas have clean water. The goal of the Enforcement Branch is to protect and enhance the quality of the waters of the state by defining an enforcement process that addresses water quality problems in the most efficient, effective, and consistent manner.

The enforcement program relies on well-developed compliance monitoring systems designed to identify and correct violations, help establish an enforcement presence, collect evidence needed to support enforcement actions where there are identified violations, and help target and rank enforcement priorities.

Types of enforcement authorities are identified as:

- Enter a facility.
- Take samples.
- Take documents.
- Question personnel.
- Impose a schedule for compliance.
- Permanently shut down certain parts of operations or practices.
- Temporarily shut down certain parts of operations or practices.
- Permanently shut down an entire facility.
- Temporarily shut down an entire facility.
- Deny a permit.
- Revoke a permit.
- Require a facility to clean up part of the environment.
- Emergency powers to enter and correct immediate dangers to the local population or environment.
- Seek compensation for damage caused by the violation.
- Require specific testing and reporting.
- Impose specific labeling requirements.
- Require monitoring and reporting.
- Request information on industrial processes.
- Require specialized training (e.g., in emergency response to spills) for facility employees.
- Require a facility to undergo an environmental audit.
- Impose a monetary penalty with specified amounts per day per violation.
- Seek imprisonment.
- Seek punitive damages or fines within specified limits.
- Seize property.
- Seek reimbursement for government clean-up expenses.
- Bar a facility or company from government loans, guarantees, or contracts.
- Require service or community work to benefit the environment.
- Place limitations on financial assistance.

As to ADEQ water enforcement, he notes:

- Warnings
- Inspections – Notice of Violations
- Consent Administrative Orders
- Fines

Suggestions for avoiding enforcement are:

- Know your Permit
- Pay Attention to ADEQ Correspondence
- Know Your Systems/Watch Your Data Trends
- Know How to Respond Before Things Happen
- Keep ADEQ in the Loop
- Be a Good Actor

Dealing with enforcement suggestions are:

- Do Your Due Diligence
- Is this Legitimate
- Do You Have a Defense
- Is Your Documentation in Order
- Contact ADEQ
- Plead Your Case/Negotiate
- Set Up a Meeting
- Summarize Your Compliance History
- Determine Corrective Action

Finally, as to shifts in enforcement, Russell notes changes involving:

- Regulations
- Administrations
- Funding
- Directives
- Case by Case
- Personnel

A copy of the Presentation slides can be downloaded [here](#).