Managing Environmental Enforcement

Guam Environmental Protection Agency

Outline

- Goal of Enforcement
- Stakeholders
- Capacity Issues
- Challenges
- Chalan Pago Case
- Fairness
- Settlements & SEPs
- Emerging Issues

Goal of Environmental Enforcement

- The goal of environmental enforcement is to compel or **"force"** compliance with environmental laws.
- Voluntary **compliance** is the act of conforming, acquiescing or yielding to environmental laws readily/cooperatively.

Guam's Regulated Community

- **Individuals and small business** (illegal wastewater disposal, wetland fill, solid waste disposal, etc.)

- **Medium to large business** (illegal waste storage, processing, erosion, emissions, etc.)

Guam's Regulated Community

- **Department of Defense** (industrial, residential commercial & natural resources)
- **Government of Guam** (public works, power, water, wastewater, natural resources & solid waste)
- **Foreign** Interests (development & shipping)

Enforcement & Program Management Capacity

The larger the number of potential enforcement cases the more likely programs are under resourced and ineffective in some way.

Most enforcement cases, even those of low or moderate complexity, are resource intensive.

Enforcement Capacity

Guam EPA has 25 employees consistently that deal with enforcement in least 10 enforceable program areas (2.5 employees/program).

- Agency size, program complexity, and the need for program control have been cited for maintaining enforcement autonomy at the program level.
- Rule development, contracting, & operational consultation place a high demand on legal services.
- Collaboration with federal partners can make all the difference.

Enforcement: One Component of “the job” Time & Effort Considerations

CURRENT

- 30% Inspections
- **25% Enforcement**
- 15% Consultation
- 10% Reporting
- 10% Permitting
- **5% Outreach**
- 5% Training

IMPROVED

- **25% Outreach**
- 20% Permitting
- 15% Consultation
- 15% Inspections
- **10% Enforcement**
- 10% Reporting
- 5% Training

ENFORCEMENT CHALLANGES

- Lack of enforcement personnel/legal counsel
- Facility abandonment/absentee ownership
- Language barriers/cultural differences
- Family feuds (undivided interest)
- Government land leases/management
- Ignorance and disregard of the regulations
- Small environmental services market
- Lack of compliance personnel in Govt.
- Multi-party liability problems (Chaot & Polaris)

ENFORCEMENT DECISIONS

- A decision to pursue one or more of these options should be based on the nature and severity of the violation, the strength of available evidence and available resources.
- Type of Enforcement actions:
  - Field (litter) Citations
  - Administrative Action – warning letter, administrative order, administrative penalty & exercise permit conditions
  - Civil Court Action
  - Criminal Court Action

Guam EPA Solid/Hazardous Waste Enforcement Status

Approximately 100 complaints received by the Agency (2004)

12 CASES

- 2 Enforcement cases have been resolved to the Agency's satisfaction
- 6 are currently undergoing SEP agreement
- 2 cases are pending additional data
- 1 case reduce to Letter of Warning
- 1 Criminal Case being pursue by the Agency

Largest fine issued to a company is $98,000.

The Agency agreed to a SEP in lieu of monetary fine.

PRIVATE CITIZEN CASE

- The media reported the alleged storage of chemicals in 3-20 foot containers at a private property. Guam EPA conducted an investigation at the site and found the following violations:

  Solid Waste Violations

  Potential Hazardous Waste Violations

  Illegal Hardfilling at the site

Potential Hazardous Waste Materials

found inside the 20-foot containers

Cadmium Batteries

found inside one of 20-foot container

Deteriorated Paint Containers

Chemicals found inside the damaged 20-foot container

Hardfill debris mixed w/ solid waste

Total Volume of Waste Disposed/ Removed from the Site

- Scrap Metal – 100 cubic yards (estimated)
- Refrigerators – 14 each
- Non-Hazardous Waste – 2,970 lbs
- Hazardous Waste – 6,000 lbs
- Petroleum Contaminated Soil – 14 cubic yard (bio-remediation facility)

- Administrative Penalty approximately $3,000

“Fair enforcement is consistent enforcement”

- **Violator** – Consider circumstances, track record, commitment….etc.
- **Competition** – Level the playing field!
- **Public** – Equal to impact (cost and suffering)
- **Policy** – Consider the broader social context (jobs, quality of life, etc.)
- **Staff** – If we referred, maximize return ($)!
- **Board** – Inclined to support Agency & require reasonable settlements.
- **Administrator** – Considers everything
- **Judge** – Govt. must make the case!

Settlements & SEPs

- **Equipment** – improve agency's capacity to get the job done (vehicles, computers, communications, etc.)

- **In-Kind Services** - minor building repairs, partner in public outreach efforts, cleanup dump sites, waste collection & disposal (HHW), community service (mayors and schools)

Privately initiated projects are typically more flexible and responsive to needs….in contrast to government project efforts.

Emerging Settlement Issues

- **Cost recovery** for third party responders (Public Works, Civil Defense & Fire Dept.)
- **Direct compensation** to impacted community (replacing damaged property, environmental testing, temporary living arrangements, etc.)
- **Financial assurance** (access & timing issues)
- **Asset seizures** (example: dump truck to DPW then work order or MOA for special services)
- **Effective deterrence** – Are penalties & enforcement policy harmonized to effectively prevent problems/violations?