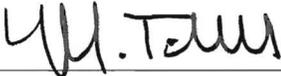




Highway Division DIRECTIVE



	NUMBER ENV 20-01	SUPERSEDES New
	EFFECTIVE DATE 05/24/10	PAGE NUMBER 01 OF 06
	REFERENCE ODOT'S STRATEGIC DIRECTION (2001)	
SUBJECT Environmental Violation Reporting	APPROVED SIGNATURE 	

PURPOSE:

The purpose of this directive is to manage risks to the mission, goals, and values of the Oregon Department of Transportation (Department) from Highway Division violations of environmental laws and permits. The directive:

- (1) Provides Highway Division guidelines to ensure an effective and coordinated response to formal notices of violation from regulatory agencies as a result of activities that occur or emanate from Department actions, including Federal Aid projects; and,
- (2) Facilitates Highway Division process improvements to avoid future violations.

Reporting of hazardous spills is not covered by this directive; for information regarding hazardous spill response, please see the First Responder's Guide at http://intranet.odot.state.or.us/erp/documents/first_responder.pdf and the Environmental Management System Manual at <http://egov.oregon.gov/ODOT/HWY/OOM/EMS.shtml>.

BACKGROUND:

The Department is committed to environmental stewardship and excellent environmental performance and places a high value on its relationships with regulatory agencies. Authority and responsibility for assuring the quality and consistency of statewide environmental programs, activities, and permits resides within the Highway Division Technical Services Geo-Environmental (GE) Section and the Office of Maintenance and Operations. All reporting functions subject to this directive must be coordinated with the GE Section Manager of the Department.

DEFINITIONS:

Activities: Construction and maintenance actions and projects that occur on Department-owned facilities, or in the field on Department right of way, including temporary or permanent

easements. Activities in this directive are limited to those conducted by Department employees, contractors, agents, or assigns, and to local agencies receiving federal aid funds through the Department.

After-action Review: An internal Department review of a violation situation/incident triggered by a formal notice of violation from a regulatory agency or tribe.

Coordinate: To work together in a concerted way.

Regulatory Agency: Local, state, federal, and tribal agencies and entities that administer environmental regulations which the Department is obligated to comply with in order to construct and manage transportation projects.

Environmental Regulation: Includes environmental laws, regulations, administrative rules, permit conditions, terms and conditions of authorizations, and agency clearances.

Formal Notice of Violation: Written notification to the Department from a regulatory agency alleging that a violation of environmental regulations has occurred.

Informal Notice of Violation: Verbal or email notification to the Department from a regulatory agency asserting that a violation of environmental regulations has occurred or may have occurred, and that provides the Department with an opportunity to correct the situation without a formal notice of violation being issued. An informal notice of violation also includes correspondence that may be characterized as fact-finding but does not assert that a violation has occurred.

Violation: Any construction or maintenance action that does not comply with applicable environmental regulations.

GUIDELINES:

All Department employees, contractors, agents, or assigns are responsible for efficient and appropriate internal coordination and response to (1) Department receipt of formal notices of violation, and (2) situations where receipt of a formal notice of violation is imminent. Internal Department communication and coordination in response to these situations should follow Department chain-of-command communication protocols.

Formal Notices of Violation Have Been Received

When formal notices of violation are received by Division staff, in addition to notifying their supervisor, the primary Division contacts to be immediately notified are the appropriate Region Environmental Manager and the GE Section Manager (or his/her designee). They will then notify and coordinate with their respective executive management and the Maintenance Environmental Program Manager, as appropriate to the situation. Because formal notices of violation from regulatory agencies can be received by the Director's Office, Region management, or the GE Section Manager, or all entities simultaneously, notifying both the Region Environmental Manager and the GE Section Manager helps ensure

smoother internal coordination. Notification of executive management, if they are not yet aware of the situation, must occur as soon as practicable in a manner assuring that the message has been personally received.

Formal Notices of Violation are Imminent

When circumstances indicate that the Division is about to receive a written, formal notice of violation from a regulatory agency, use the same communication and coordination protocol noted above. It is in the best interests of the Department for staff to respond to these situations as if a formal notice has already been received, rather than wait to respond until after a notice has been issued by a regulatory agency.

Responding to Regulatory Agencies

Receipt of formal notices of violation or responding to situations where a formal notice is imminent will prompt an immediate need to communicate with the relevant regulatory agencies. Division staff should respond to regulatory agencies with a single, coordinated message. Thus, it is crucial that communication with regulatory agencies be centralized with the Region Environmental Manager and the GE Section Manager. It is incumbent upon these two management entities to communicate and coordinate with one another to ensure a consistent response to formal notices of violation.

The Region Environmental Manager is, in general, responsible for preparing a written response to formal notices of violation; some notices state deadlines for a response, as well as specify Cease and Desist orders or other short-term remedial actions. Written responses to regulatory agencies should be coordinated with the GE Section Manager, who, as Chief Environmental Officer for the Department, is responsible for consistency and risk management associated with the Department's environmental compliance obligations.

Regions or the Office of Maintenance and Operations may take the lead in resolving violations but must keep the GE Section Manager updated throughout the process. All formal violations involving archaeology resources or tribal cultural resources, however, must be routed to the GE Section Manager for resolution.

What is Not Addressed by This Directive

This directive does not apply to the following situations:

- When informal notices of violation have been received by the Department. Informal notices of violation and activities that may be out of compliance with environmental regulations but have not resulted in a formal notice of violation must be addressed in accordance with procedures outlined in the most current version of the ODOT Environmental Compliance Incident Reporting Field Guide
<ftp://ftp.odot.state.or.us/techserv/Geo-Environmental/Environmental/Other%20Enviromental%20Materials/Environmental%20Compliance%20Incident%20Reporting%20Field%20Guide.pdf>
- Wetland fill violations as a consequence of contractors making arrangements with

landowners that are not permitted under state statutes. (Refer to PD-10, Disposal of Excess Excavation Materials, and Standard Specifications for Highway Construction, Section 00330.41 (a) (5).)

- Violations conducted by others who are trespassing on Department Right of Way. (Contact state and federal law and regulatory authorities as appropriate.)

Facilitating Process Improvements

After agreements have been reached between the Department and relevant regulatory agencies to resolve violations, an After-action Review may be prepared by the GE Section Manager. The purpose of the review is to identify and share process improvements to prevent similar Department violations from occurring elsewhere. The review may be conducted by interviews of incident participants/stakeholders or through a facilitated meeting with the participants/stakeholders. A written report should follow the review and be provided to Region Environmental Managers and other stakeholders for next steps as appropriate. After-action Review reports can be discussed at appropriate Department leadership teams.

RESPONSIBILITY

ACTION

Director (or designee)

Contact appropriate state, tribal, or federal agency head to acknowledge receipt of formal notice of violation.

Coordinate with Governor's office, Legislature, and Congressional Delegation as appropriate.

Region Managers

Implement directive through coordination with Department Region staff and regulatory agencies.

Coordinate with Director's Office as appropriate.

Ensure Region employees are made aware of expectations in this directive.

Assume responsibility for ensuring violation response and resolutions are consistent with the Department's mission, goals, and values.

Geo-Environmental (GE) Section
Manager

When reports of formal notices of violation are received or are imminent:

(Chief Environmental Officer)

- Provide updates to and receive direction from the Director's office as needed.
- Immediately notify and coordinate with the appropriate Region Environmental Manager.

RESPONSIBILITY

ACTION

- Notify as appropriate the Federal Highway Administration (FHWA) Division Office and the Office of Maintenance.

To ensure statewide consistency, work with and assist the Region Environmental Manager to negotiate agreements with state, tribal, or federal agencies to resolve formal notices of violations.

If a formal notice of violation emanates from a maintenance action, notify and coordinate response and resolution with the Office of Maintenance Environmental Program Manager.

Conduct After-action Reviews and follow up reporting.

Track the status and circumstances of violations to identify trends and emerging issues and to facilitate process improvements where necessary.

All Managers/Supervisors

Report formal notices of violation to the Region Environmental Manager, the GE Section Manager, or, for maintenance related incidents, the Maintenance Environmental Program Manager.

Region Environmental Manager

For all activities notify and coordinate resolution of formal notices of violation and incidents where formal notices are imminent with the GE Section Manager.

For maintenance activities also notify and coordinate resolution of formal notices of violation and incidents where formal notices are imminent with the Maintenance Environmental Program Manager and the District Manager

Office of Maintenance and Operations, Maintenance Environmental Program Manager

Notify and coordinate resolution of formal notices of maintenance violations and incidents where formal notices are imminent with the GE Section Manager and Region Environmental Manager,

Track the status and circumstances of violations to identify trends and emerging issues and to facilitate

RESPONSIBILITY

ACTION

process improvements where necessary.

Geo-Environmental (GE) Section
and Local Government Section
staff

Develop Departmental standards, processes, and procedures to support implementation of this directive, including violation reporting and tracking procedures, consistent with Technical Services and Department policies.

All Employees

Comply with environmental regulation reporting requirements and Department policies and procedures.