

COUNCIL ON ENVIRONMENTAL QUALITY



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DATE: April 23, 2012

TO: Council Members

FROM: Karl Wagener
Executive Director

RE: Analysis of 2011 Environmental Enforcement Data

I am attaching the internal report of our intern, Eric Walsh, that analyzes the nature of environmental violations for fiscal year 2011. The results are very interesting, especially the extent to which gasoline and other petroleum products dominate the enforcement activity of the Department of Energy and Environmental Protection (DEEP).

Background: Reason for Report; Method

Almost since the Council introduced compliance indicators to its annual reports in 1999, members have not been entirely satisfied with them. The indicators were improvements over any measures available at that time and were subsequently adopted by the Department of Environmental Protection (DEP) for its own reports on enforcement activity, but they failed to tell much of a story. For one thing, the overall compliance rate rarely varied from 90%, even as the number of inspections varied greatly. This caused some people to question what relationship there was, if any, between compliance and inspection activity, and to suggest that we did not really know what factors influenced the compliance rate. More importantly, several knowledgeable people – former member Earl Phillips and CEQ annual report critic Robert Klancko come to mind – argued repeatedly that the old model of discovering noncompliance through inspection had lost its importance, because most of the highly polluting industrial facilities had improved their processes or packed up and left, and what was left to inspect was not very closely related to environmental quality and improvement. (My apologies to those individuals if I mischaracterized their arguments.) When the Council attempted to review compliance indicators twice in 2011 as Indicators of the Month, members voiced a need to dig deeper into the enforcement statistics to understand the nature of the violations. Mr. Walsh did just that using the most recently available complete year of data (fiscal year 2011).

DEEP and its predecessor (DEP) issued 944 Notices of Violation (NOVs) .¹ Mr. Walsh created a data base and categorized the violations in several different ways to give us an idea of who the violators were and what they did (allegedly) that was illegal.

Results

A packet of charts is attached. Here are some of the highlights:

1. The majority of NOVs issued to businesses were related to the storage and distribution of gasoline or other petroleum products, including vehicle service facilities.

To some extent, this finding is an artifact of a more efficient process adopted two years ago by DEEP for the issuance of NOVs related to underground storage tanks (a major, but not the only, source of violations at petroleum facilities). Nonetheless, if one deletes from the enforcement picture the gas stations and convenience stores (by far the biggest category of violator), other petroleum-related facilities – along with medical offices, landscaping businesses and individual citizens,² none of which is widely perceived by the public to be fueling environmental destruction – then the universe of violators suddenly is less than half its original size. The burden placed on DEEP’s enforcement capacity by this handful of industries – and especially those related to petroleum – is instructive.

2. The vast majority (at least 73%) of the businesses that received NOVs had fewer than 100 employees, and most (at least 57%) had fewer than 20.³

3. Mr. Walsh notes that only seven percent of violators were manufacturers with more than 20 employees, the type of company that could affect Connecticut’s economy negatively if they were to move outside the state to a location perceived to have less assiduous environmental enforcement. The overwhelming majority of violators were entities – service businesses, municipalities, state agencies, or landowners – that are “rooted to Connecticut.”

We do not have data on the public’s perceptions of who the violators are, but I sense from everyday conversations that people suppose them to be factories, utilities, waste disposal facilities and perhaps oil terminals – a perception that does not match the data.

There are questions that we cannot answer:

-- Are the larger companies better at complying with environmental laws? (We have not analyzed inspection data to see how their compliance-to-inspection ratios compare to small companies; that would be a big task.)

-- What are the relative environmental burdens created by the violators? (A few large violators might be responsible for more illegal pollution than a large number of small businesses, but we do not have that data.)

-- Is it possible that the big companies, some of which can consume days of an inspector's time, might be placing the larger burden on DEEP's enforcement capacity even though the smaller violators are far more numerous? (While the question is interesting, our data would not provide an answer. We assume that violations and NOV's end up consuming more of DEEP's time and expense than inspections that do not find violations, irrespective of company size except in extreme cases.)

A note on the financial burden of petroleum

The data show clearly that DEEP spends a considerable portion of its budget on the prevention of petroleum leaks and spills and on cleaning up those not prevented. And that conclusion focuses just on staff time and "paperwork" throughout the agency; it does not reflect the very large sums spent on actual cleanup of spills and leaks. And even *those* sums do not include the tens of millions of dollars obligated and/or paid to gas stations for clean-ups through the Underground Storage Tank Petroleum Clean-Up Fund, which used to receive its funds from the gross receipts tax on petroleum but is proposed to be phased out, much to the consternation of the industry. And finally, that does not include the sizable expenditure of staff time on clean-up of contaminated sites through the transfer act program and other remediation programs of DEEP, though we know that many contaminated properties owe their status to spilled petroleum.

The storage, distribution and containment of petroleum places a larger burden than any other sector of the economy on Connecticut's environmental enforcement capacity. This probably is not surprising because nearly every aspect of life in Connecticut is dependent on consumption of petroleum. The challenge might be to make sure that the cost of regulating petroleum does not compete with the state's high-priority conservation and environmental protection requirements that do not receive adequate resources. The state could ill afford to turn its back on the regulation of petroleum storage and distribution, but perhaps the cost of such regulation should be taken out of competition with funding for environmental protection and conservation.

One example, taken from current cases, might further illustrate this point. Since August 2010, hundreds of thousands of dollars have been spent on the clean-up of diesel fuel that leaked from a storage tank at the Southeast Area Transit District facility in Preston. DEEP reportedly will seek to recover its direct costs, but it does not know from whom; the land is owned by the state. Regardless of the outcome, it is almost certain that the state will end up paying hundreds of thousands of dollars, especially if staff time of multiple agencies is counted, on one spill characterized as big but of moderate impact. During this same period, numerous organizations have

been working hard in an attempt to ask the General Assembly to appropriate \$90,000 in order to continue coordination of work to prevent invasive species outbreaks, even though such outbreaks are recognized universally as economic and ecological threats of the highest priority.

The reduction of petroleum's burden on DEEP, so that other environmental needs might be addressed, warrants further investigation.

Notes

1. Notices of Violation (NOVs) are informal enforcement tools. They carry no financial penalty. Usually, the recipient has 30 days to respond. They can be for relatively minor or major violations; in cases of the latter type, the recipient might also receive an order, which might carry a financial penalty. NOVs typically outnumber orders by a factor of five or more in any year. NOVs are good indicators of trends in violations because almost all violations found through inspections result in NOVs.
2. The most numerous violations by individuals were illegal structures or fill in tidal waters and noncompliant outdoor wood furnaces.
3. The percentages of medium and small businesses are probably higher than presented here. We could find no labor data on 16% of the businesses. Probably the majority of such companies are small, or we would have found data.