

STATE OF WISCONSIN

PERSONNEL COMMISSION

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CHARLES L. WEISTER,
Appellant,
v.
Secretary, DEPARTMENT OF
NATURAL RESOURCES, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,
Respondents.
Case No. 85-0075-PC
* * * * *

DECISION
AND
ORDER

This matter is before the Commission as an appeal of a decision to deny appellant's request to reclassify his position. The parties agreed to the following issue for hearing:

Whether respondent's decision to deny the request for reclassification of appellant's position from Environmental Specialist 5 to Environmental Specialist 6 was correct.

FINDINGS OF FACT

1. For all periods relevant to this proceeding, the appellant has been employed in the North Central District (NCD) office of the Department of Natural Resources as the district's environmental enforcement specialist.

2. Appellant reports directly the NCD's assistant district director. Other positions reporting to the assistant district director and their respective pay ranges are water quality planner (14), air management (14), solid waste unit supervisor (14), district hydrologist (14), wastewater supervisor (15), water resource management supervisor (14), and water supply unit supervisor (15).

3. The Environmental Specialist 5 classification is assigned to pay range 15-05 which corresponds to range 13.

4. The appellant is responsible for planning, coordinating and implementing the environmental enforcement program for each of four major environmental programs (wastewater, solid waste, air management and water supply) in the North Central District. He has no supervisory responsibilities. A copy of appellant's position description is attached hereto and incorporated as part of this finding as if fully set out below.

5. Environmental enforcement has two main components. Primary enforcement is carried out by the district field staff of the wastewater, solid waste, air management and water supply programs. Field staff, upon encountering an apparent violation of environmental statutes or rules actually generate all enforcement activity. In response to a violation they may informally contact the noncomplying entity to gain information about the cause and remedy of the problem or may schedule and conduct an informal enforcement meeting with representatives of the noncomplying entity. The appellant, as the district enforcement specialist, performs an auditing role with respect to primary enforcement activities and responds to field staff's questions regarding enforcement and investigation techniques. The appellant also works with the district supervisors of the four major programs to ensure that the budgets for each program adequately support environmental enforcement functions. The supervision of the program field staff rests with the various program supervisors rather than with the appellant. Approximately 50% to 75% of all violations are resolved (or forgotten) as a consequence of primary enforcement.

6. Secondary enforcement includes a variety of more formal enforcement techniques and typically will include direct involvement by the appellant in a coordinative role. The enforcement specialist will help guide a case through the various levels, including: 1) notice of noncompliance (NON) which asks the entity to state how they will correct the problem; 2) notice of violation (NOV), which may direct the entity to take corrective action within a specified time limit or may schedule an enforcement conference; 3) enforcement conference; 4) investigatory hearing; 5) modification of a permit; 6) an administrative order; 7) show cause hearing; 8) immediate compliance abatement order; 9) suspension or revocation of a permit or license; and 10) referral to the Department of Justice (DOJ) to initiate further legal action. All of these actions, except the NON, NOV and enforcement conference require advance approval in the central office of either the Division of Environmental Standards or the central office of the Division of Enforcement or both.

7. Respondent DNR has issued an Environmental Enforcement Handbook that carefully describes the various enforcement techniques that are available along with the procedures for utilizing them and a summary of the information to be included in various notices and enforcement documents. The handbook summarizes the roles of the various actors in the enforcement process for each major program. The summary for the solid waste program is attached to this decision and included in this finding as if it were set out fully, below. The summary indicates that the appellant is often responsible for the initial drafting of documents that comprise the enforcement activity. Also, the program staff rather than the appellant are required to provide the technical or scientific expertise regarding violations. Appellant's expertise and responsibilities relate to

enforcement procedure. Once a case is referred to DOJ, the appellant still acts as a liaison between DOJ and DNR (see position description Goal B) although the Bureau of Legal Services is also performs a liaison role with DOJ at that time.

8. The relevant portion of the position standard for the Environmental Specialist (ES) series reads as follows:

Classification Factors

Because of the variety of environmental protection programs and their varying degrees of complexity, individual position allocations have and will be based upon general classification factors such as those listed below:

- A. The organizational status as it related to level of responsibility assigned and accountability assumed for program development and/or implementation;
- B. The availability and applicability of established guidelines, procedures, precedents, and legal interpretations;
- C. The potential impact of policy and/or program decisions on the public, the State's environment, and other governmental entities;
- D. The degree of internal and external coordination required to accomplish objectives;
- E. The availability of non-subordinate staff having authority to make difficult program decisions or interpretations;
- F. The scope, variety, and complexity of decisions considering the number and nature of the variables that are relevant to the specific decision; and
- G. The extent and frequency with which problems or tasks of varying types occur.

* * *

Major Programs

Major programs as described within this specification are in the Department of Natural Resources. As of August, 1983, these include solid waste, water supply, water resources management, water regulation and zoning, wastewater, air, environmental impact. The extensiveness and scope of these programs varies between the districts and contributes to the complexity of the program coordination.

Subtitles

The basic subtitles which will be used in this class series are: solid waste, air management, surface water, environmental impact, environmental enforcement, water management, water supply, and wastewater. For the purpose of identifying representative positions, many working titles are defined in this standards. In most cases, such working titles are not subtitles.

II. CLASS DEFINITIONS AND REPRESENTATIVE POSITIONS

* * *

ENVIRONMENTAL SPECIALIST 5 (PR 15-05)

Definition:

This is responsible environmental program coordinative work. Positions allocated to this class typically function as: 1) an area program specialist responsible for implementing all phases of a major environmental protection program in a portion of a district where program decisions are delegated from the district office, or an equivalent combination of responsibilities; 2) a district specialist responsible for providing districtwide expertise and program coordination for a significant portion of a major environmental program, or an equivalent combination of responsibilities; 3) a central office specialist responsible for providing central office coordination and/or guidance for segments of an environmental program being implemented on a statewide basis; or 4) an environmental scientist performing a wide range of functions involving assessing unusual conditions; evaluating incomplete or conflicting data; choosing and adopting a variety of specific scientific principles and techniques in order to develop research conclusions; developing methods and standards; evaluating programs or proposals; planning projects; coordinating work with others; and handling conflicts or unusual situations independently. Work at this level is performed under general direction.

Representative Positions:

Positions Functioning Out of an Area Office

Water Management Specialist: this position is responsible for administering the water regulation and zoning program in order to protect public rights in surface waters and ensuring reasonable use of floodplain, shoreland and wetland areas; reviewing and approving/denying permits; providing surveillance; assisting with investigations and prosecution of violators; and providing technical assistance to counties and municipalities in administrations of zoning ordinances.

Positions Functioning Out of a District Office

Assistant Environmental Impact Coordinator: this position has been delegated major segments of the district environmental

impact program with full authority for coordinating and certifying environmental assessments for district actions for compliance with Wisconsin Statutes, and independently conducting investigations and developing agency recommendations on assigned outside agency proposals and department environmental impact statement projects. There is a clear separation of duties with the district environmental impact coordinator and formal delegation of these responsibilities.

* * *

ENVIRONMENTAL SPECIALIST 6 (PR 15-06)
ENVIRONMENTAL SPECIALIST 6 - MANAGEMENT (PR 1-14)

Definition:

This is very responsible professional environmental program coordinative work. Positions allocated to this class typically function as: 1) a district staff specialist responsible for planning, coordinating, and implementing a major district environmental program; 2) a central office staff specialist responsible for independently planning, coordinating, and implementing all segments of a significant statewide environmental program; 3) an advanced environmental scientist which is distinguished from the previous level by the greater complexity and depth of knowledge required and the greater scope of standards developed or decisions recommended; or 4) a central or a district office position with a similar level and complexity or responsibilities. Work at this level is performed under general direction.

Representative Positions:

Positions Functioning Out of the District Office

Solid Waste Management Specialist: this position is responsible for implementing the State's solid waste program in an assigned district by coordinating the evaluation of solid waste facilities (e.g., sanitary landfills, demolition sites, industrial waste sites, toxic and hazardous waste sites, salvage yards, collection and transporting facilities, pathological incinerators, and transfer stations) for conformance to State rules and regulations; coordinating the work of subordinate employees; and developing program budget proposals and plans.

Water Resources Management: this position is responsible for planning, implementing and coordinating the district's water resources management program by conducting biological studies and analyses; conducting waste assimilation studies to determine effects of waste discharges on stream quality; preparing river basin survey reports; identifying and evaluating biological samples to determine the effect of pollutants on the biota; coordinating the aquatic nuisance control program in a district by reviewing applications and preparing environmental impact assessments; acting as the expert witness at hearings which are held on permit denials; providing assistance to interested groups

regarding lake protection and rehabilitation; and performing water pollution surveys as necessary.

Water Management Coordinator: this position is responsible for planning, organizing, and implementing district water, shoreland, floodplain and wetland management programs for the implementation of Chapters 30 and 31 of the Wisconsin Statutes (relating to the navigability of public waters, the enlargement and protection of waterways, and the regulation of dams and bridges affecting navigable waters); receiving and reviewing requests for such action; investigating the site to determine the physical characteristics; determining if significant damage to the public interest will occur as a result of the proposal; and denying or approving the application or developing alternative methods.

Environmental Impact Coordinator: this position is responsible for planning, coordinating and implementing the environmental impact process by reviewing environmental impact statements and assessments by outside agencies and coordinating all district evaluation investigations; advising and assisting field personnel in the preparation of environmental impact statements and assessments for departmental projects and reviewing these statements for technical accuracy; approving impact assessments as delegated by the District Director; and coordinating highway investigations as district highway liaison.

9. The ES position standard was adopted in 1983. In 1985, respondent DNR reviewed the designations of "major programs" as that term is used in the position standard and declined to revise the list of "major programs" to include environmental enforcement.

10. All of the environmental enforcement specialists at the district level have been classified by the respondents at the ES 5 level.

11. The appellant's position is better described by the ES 5 definition than by the ES 6 definition.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.44(1)(a), Stats.

2. The appellant has the burden of proving that the respondent's decision to deny the reclassification of his position to the Environmental Specialist 6 position was incorrect.

3. The appellant has failed to meet that burden of proof.

4. The respondent's decision to deny appellant's request to re-classify his position to the ES 6 level was not incorrect.

OPINION

This case boils down to an interpretation of a position standard that refers, for the most part, to positions responsible for coordinating major programs, where the appellant's program is not designated as major.

The Environmental Specialist position description lists seven "major programs": solid waste, water supply, water resources management, water regulation and zoning, wastewater, air (management) and environmental impact. The position standards underline the fact that environmental enforcement is not a major program when it lists the same list of seven programs plus environmental enforcement as the eight basic subtitles to be used in the series. Testimony also established that as a consequence of a review in 1985, DNR specifically declined to designate environmental enforcement as a "major program" even though the appellant's supervisor was among these who supported such a change.

The key allocations at issue in this case read as follows:

ES 5

. . . 1) an area program specialist responsible for implementing all phases of a major environmental protection program in a portion of a district where program decisions are delegated from the district office, or an equivalent combination of responsibilities; 2) a district specialist responsible for providing district wide expertise and program coordination for a significant portion of a major environmental program, or an equivalent combination of responsibilities. . . .

ES 6

. . . 1) a district staff specialist responsible for planning, coordinating, and implementing a major district environmental program. . . .

The respondent argues that because environmental enforcement is not a major program, appellant cannot fit the relevant ES 6 allocation and must be deemed to perform the equivalent of a significant portion of a major program. There is support elsewhere in the ES specifications for a one classification level distinction between positions performing identical functions for major versus non-major programs. The second allocation at the ES 6 level refers to "a central office staff specialist responsible for independently planning, coordinating, and implementing all segments of a significant statewide environmental program." (Emphasis added.) In contrast, the third allocation at the ES 7 level refers to "a central office staff specialist responsible for planning, coordinating, and implementing a major statewide environmental program." (Emphasis added.) Although this language refers to central office rather than district positions, it is indicative of an intent to assign non-major program positions to a lower classification level.

The appellant contends that environmental enforcement should be considered a major program even though it is not so designated in the position standards. The Commission has noted on numerous prior occasions that it must apply the class specifications as they are written. Kennedy et al. v. DP, 81-180, etc.-PC (1/6/84). As noted above, the 1983 specifications clearly exclude environmental enforcement from the list of major programs and the 1985 review did nothing to change that.

The Commission agrees with the respondent's contention that the appellant's position is effectively precluded from classification at the ES 6 level absent the designation or a finding that environmental enforcement is a major program.

The appellant also argues that a factor-by-factor comparison of his position with representative positions at the ES 5 and ES 6 levels justifies classification at the higher level. Assuming, arguendo, that the absence of "major program" designation is not determinative in the matter, the Commission will go ahead and compare the appellant's position to other positions at the ES 5 and ES 6 levels on a factor-by-factor basis. Some of the factors to be used in this type of comparison are set forth in the position standard itself. The best positions for purposes of comparison are four positions identified as representative positions in the position standards: 1) water management specialist in an area office (ES 5); 2) assistant environmental impact coordinator in a district (ES 5); district water management coordinator (ES 6); district environmental impact coordinator (ES 6). The environmental enforcement program is similar to the environmental impact program because they both provide a coordinative function and act in a service role. In contrast, the water resources management, solid waste, water supply, water regulation and zoning, waste water and air management programs are more self-contained.

1. Organizational status. The appellant heads a district-wide program as the EI Coordinator and water management (district) coordinator also do. In contrast, the assistant EI coordinator and the area water management coordinator portions of the district program. However, the respondent correctly notes that it is the various program staff who are responsible, and accountable, for the primary enforcement portion (representing from 50% to 75% of the cases) of the total enforcement responsibility. The appellant's position is, therefore, distinguishable on this point from both the EI Coordinator and the district water management coordinator.

2. Availability of guidelines. The appellant has a very complete handbook available to him that compiles the procedures, time limits and informational requirements necessary at the various stages of enforcement. Nothing in the record suggests that any of the positions serving as comparisons have a similar handbook available.

3. Potential impact of decisions. The appellant's decision as to whether to recommend enforcement may have a significant impact on the public welfare. Appellant's supervisor testified that the decisions by the environmental enforcement specialist have a greater impact than the water management coordinator.

4. Degree of external and internal coordination required. The appellant's coordination is with four programs in one DNR division plus DOJ. The EI Coordinator (and assistant coordinator) deal with 3 divisions within DNR and extensively with the Department of Transportation and other external agencies. While both the area and district water management coordinators have significant liaison responsibilities with other programs in and outside the department, it is not as extensive as appellant's interaction.

5. Availability of non-subordinate staff with authority to make difficult program decisions. This factor reflects, to some extent, the organizational structure of the various positions, but both assistant EI Coordinator and the area water management coordinator have been fully delegated program decisions/authority for coordinating and certifying environmental assessments.

6. Scope, variety and complexity of decisions. This factor more than any other must reflect the fact that the appellant has no subordinate employees and has much more limited budgetary and work planning

responsibilities than a district supervisor with one of the other programs. Furthermore, it is the program staff who have the responsibility of staying at the "cutting edge" of technology although the appellant must keep up with new enforcement developments.

When going through the above analysis of the various factors, it is apparent that this is a close choice. It is important to keep in mind that the EI Coordinator positions, which are also service-oriented, provide the closest and best comparison to the appellant's position. As represented by the Mier position description (Appellant's Exhibit 10), the district EI Coordinator interacts with more internal and external agencies, has more extensive supervisory, budgetary and work planning responsibilities, and is responsible for applying the administrative rules promulgated by the Bureau of Environmental Analysis and Review in addition to both the Wisconsin and the National Environmental Protection Acts. The designation of the environmental impact program as a major program and the appellant's lack of responsibility for the primary enforcement activities support the conclusion that his position is better compared to the assistant EI coordinator than to the coordinator.

ORDER

Respondent's decision denying the reclassification of the appellant's position is affirmed and this appeal is ordered dismissed.

Dated: June 12, 1986 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner

KMS:clk
CHRIS2/2
Attachment

Parties:

Charles L. Weister
DNR
Box 818
Rhineland, WI 54501

Carroll Besadny
DNR
P.O. Box 7921
5th Floor, GEF 2
Madison, WI 53707

Howard Fuller
DER
137 E. Wilson St.
P.O. Box 7855
Madison, WI 53707

UPDATE

| | | |
|----------------|---------------------------|-------------|
| 1 Position No. | 2 Cert/Reclass Request No | 3 Agency No |
| | 840119 | |

Employment Relations
PERSONNEL

NAME OF EMPLOYEE

Charles L. Weister

CLASSIFICATION TITLE OF POSITION

Environmental Specialist 5

CLASS TITLE OPTION (To be Filled Out By Personnel Office)

AGENCY WORKING TITLE OF POSITION

District Environmental Enforcement Specialist

NAME AND CLASS OF FIRST-LINE SUPERVISOR

Dale T. Urso, Assistant District Director,
Environmental Protection - Nat. Res. Admin. 2

5 DEPARTMENT, UNIT, WORK ADDRESS

Department of Natural Resources
North Central District Headquarters
Box 818
Rhinelander, Wisconsin 54501

8 NAME AND CLASS OF FORMER INCUMBENT

10 NAME AND CLASS OF EMPLOYEES PERFORMING SIMILAR DUTIES

12. FROM APPROXIMATELY WHAT DATE HAS THE EMPLOYEE
PERFORMED THE WORK DESCRIBED BELOW?

January 1982

DOES THIS POSITION SUPERVISE SUBORDINATE EMPLOYEES IN PERMANENT POSITIONS?
AND ATTACH A SUPERVISORY POSITION ANALYSIS FORM (DER-PERS-84).

Yes ☐ No ☒

IF YES, COMPLETE

POSITION SUMMARY - PLEASE DESCRIBE BELOW THE MAJOR GOALS OF THIS POSITION

(See attached sheet)

DESCRIBE THE GOALS AND WORKER ACTIVITIES OF THIS POSITION (Please see sample format and instructions on back of last page)

- GOALS: Describe the major achievements, outputs, or results. List them in descending order of importance.
- WORKER ACTIVITIES: Under each goal, list the worker activities performed to meet that goal.
- TIME %: Include for goals and major worker activities.

TIME % GOALS AND WORKER ACTIVITIES

(Continue on attached sheets)

(See attached sheet)

RECEIVED

OCT 30 1985

Personnel
Commission

Respondent's Exhibit 9

SUPERVISORY SECTION - TO BE COMPLETED BY THE FIRST LINE SUPERVISOR OF THIS POSITION (See Instructions on Back of last page)

1. The supervision, direction, and review given to the work of this position is ☐ close ☐ limited ☐ general

2. The statements and time estimates above and on attachments accurately describe the work assigned to the position (Please initial and date attachments)

Signature of first-line supervisor

Dale T. Urso

Date

4/25/84

EMPLOYEE SECTION - TO BE COMPLETED BY THE INCUMBENT OF THIS POSITION

I have read and understand that the statements and time estimates above and on attachments are a description of the functions assigned my position
(Please initial and date attachments.)

Signature of employee

Charles L. Weister

Date

4/25/84

Signature of Personnel Manager

Dag Syp

Date

8/8/84

Position Summary

This staff specialist position is responsible for planning, coordinating and implementing the District's environmental enforcement program for wastewater, solid waste, air management and water supply. The major goal of the enforcement program is to ensure that the industries, municipalities and individuals impacting environmental quality comply with the statutes and rules of each of the District's major environmental protection programs. This goal is accomplished by providing administrative duties for the assistant district director and district director for the district enforcement program. Such duties include monitoring primary enforcement activities in cooperation with program supervisors, providing enforcement guidance to district and area staff, initiating formal administrative enforcement actions, investigating civil and criminal violations and in cooperation with the Bureau of Legal Services coordinating the Department's formal legal actions resulting from violations.

Time % Goals and Worker Activities

- 10% A. Administration of District Environmental Enforcement Programs for Wastewater, Solid Waste, Air Management and Water Supply.
- A1. Recommend guidelines, policies and procedures to the Division of Enforcement and Division of Environmental Standards to be applied on a statewide basis to enable accomplishment of District enforcement program goals.
 - A2. Develop an environmental enforcement program plan for the North Central District consistent with Departmental and District objectives, directives, and procedures established for the four major programs.
 - A3. Ensure development of a budget to support District environmental enforcement functions.
 - A4. Review enforcement policies and actions taken within the District and in other Districts to ensure uniformity of enforcement on a statewide basis.
 - A5. Maintain the District environmental protection confidential file.
 - A6. Provide environmental enforcement related training to Department staff, other governmental agencies and the public.
- 25% B. Coordination of the Resolution of Referred Cases
- B1. Determine, upon consultation with District and appropriate central office personnel, the course of referral action and Department's position for case resolution.
 - B2. Coordinate past referral conference to expedite case resolution through a pre-trial settlement.
 - 15% B3. Act as Department administrative liaison to Attorney General's Office providing additional information and follow-up activity necessary for settlement of case.

Time % Goals and Worker Activities

- B4. Assist Department of Justice in preparation of pre-trial discovery materials such as interrogations and depositions.
- B5. Provide expert testimony during pre-trial discovery and at formal hearings and trials concerning wastewater, solid waste, air management and water supply enforcement cases.
- B6. Monitor for the Department progress with the terms of settlement to ensure that compliance occurs and adequate follow-up is performed by District staff in the event of noncompliance.

15% C. Provision of Enforcement Guidance

- C1. Provide interpretation of statutes, administrative codes and case law to District field staff responsible for enforcement or obtain necessary information from the Bureau of Legal Services.
- C2. Recommend enforcement strategies and applicable investigative procedures (sampling procedures, chain of custody, lab procedures, evidence documentation, etc.) to field staff for development of sound enforcement cases.
- C3. Provide general advise on enforcement procedures such as confidentiality of documents, the referral process, post-referral process, discovery procedures, sufficiency of evidence, courtroom and trial procedures.

10% D. Investigation of Civil and Criminal Cases

- D1. Determine, with consultation of District and Central Office Management, appropriateness of proceeding under civil or criminal statutes.
- D2. Interview witnesses and respondents and gather evidence to prove case or coordinate such activities.
- D3. Obtain or provide guidance to field staff on the procedures for obtaining inspection or search warrants when entry is denied.
- D4. Prepare reports concerning investigation findings, conclusions and recommendations for enforcement action.

30% E. Provision of Formal Follow-Up Activities (Secondary Enforcement)

- E1. Research case history to determine the enforceability of a violation.
- E2. Initiate or coordinate formal enforcement actions such as notification of violations, enforcement conferences and show cause hearings as necessary to resolve violations.
- 10% E3. Coordinate preparation and issuance of administrative orders designed to correct environmental problems.
- 15% E4. Develop District director's referral memorandum describing violations and recommending remedial measures and forfeitures. This document is the primary basis for the Secretary's decision to refer and is used by the Attorney General for drafting of a complaint.

clw
9/25/54
[Signature]
11/2/61

Time %

Goals and Worker Activities

10%

F. Auditing of Compliance/Surveillance Activities (Primary Enforcement)

- F1. Review District environmental protection programs to ensure appropriate guidelines and procedures are being used to discover and resolve violations by an acceptable method.
- F2. Audit environmental enforcement activities in the District's geographic areas to determine if program goals are being met and enforcement actions taken by program staff are uniform.
- F3. Recommend approval or denial of WPDES permit reissuances and modifications to the District Director for transmittal to the Administrator, Division of Enforcement.

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Environmental Enforcement Handbook

A. Solid Waste Investigator and Hazardous Waste Specialist

The role of a solid waste investigator or hazardous waste specialist is one of first line contact with the regulated facility and the general public. As such, they are usually the first to detect and document a violation, contact the facility, and initiate enforcement action. Because of familiarity with the history of a given facility's performance, this person is expected to identify the existence and severity of a violation and make the initial judgment of what type of enforcement action is appropriate. Their technical expertise is important during any evaluation of a proposed corrective action. Specific duties of these individuals include:

1. Informal facility contact and investigation;
2. Detection, identification, and documentation of a violation as class I or II;
3. Initiation of primary enforcement actions for class I and II violations;
4. Assistance in development of corrective actions with facilities;
5. Participation in enforcement conference discussions;
6. Initial preparation of the district's recommendation for formal enforcement action;
7. Assistance in preparation of (NOV) and no action close-out letters, the issuance or modification of orders, license issuance and revocations, referral packages;
8. Participation in referral settlement discussions;
9. Providing testimony at hearings, trials, etc.
10. Continual follow-up and documentation for all enforcement action and post-referral actions.

B. District Solid Waste Coordinator

The district solid waste coordinator may be directly involved in enforcement activity, but in all cases functions to insure that all enforcement activities of the district's solid waste investigators and hazardous waste specialists are consistent with established procedures and policy. In addition, the Coordinator's duties include the following:

1. Prior review and approval of NOV;
2. Technical support to program staff;
3. Participation in enforcement conference discussion;
4. Review and preliminary approval of enforcement recommendations and referral settlements;
5. Providing testimony at hearings, trials, etc.

C. District Environmental Enforcement Specialist

The enforcement specialist's role is to work with program staff to aid the administrative or judicial resolution of violations and to ensure consistent application of enforcement procedures. The enforcement specialist also attempts to develop consistency between environmental program decisions within the District, where possible. This individual should be copied on all enforcement recommendations and actions. It is expected that the enforcement specialist will engage in the following:

1. Assist in preparation of, and sign, NOVs;
2. Arrange and participate in enforcement conferences and draft summary letters of these conferences;
3. Coordinate preparation of district recommendation and documentation for further formal enforcement action, i.e. coordinate:

Environmental Enforcement Handbook

- a. Preparation of orders and associated transmittal letters for issuance, modification and close-out;
- b. Preparation of opportunity to show cause hearing notices;
- c. Preparation of letter to entity advising of license suspension or revocation;
- d. Preparation of referral memo and letters and duplication of the case file sent to the Department of Justice and the entity;
- e. Preparation of letters advising the entity of no further enforcement action;
4. Serve as administrative liaison with the Department of Justice on referrals;
 - a. Schedule and participate in referral strategy meetings and participate in settlement conferences with the Department of Justice Attorney and the appropriate DNR individuals;
 - b. Assist in developing proposed case materials e.g. stipulations, forfeiture recommendations, etc;
5. Provide testimony at hearings, trials, etc.
- D. Division of Environmental Standards
 1. Administrator

As stated in Chapter 10, the Administrator, Division of Environmental Standards is responsible for providing general program priorities and for highlighting areas of special concern to the Bureau of Solid Waste Management. The Administrator shall also attempt to resolve policy disagreements and particular problems with enforcement recommendations in concert with the Enforcement Division Administrator.
 2. Bureau of Solid Waste Management

The function of the Bureau of Solid Waste Management is to provide technical support and policy guidance. Specific enforcement activities include:

 - a. Provide informal review of district issued NOVs for form and content after issuance;
 - b. Review of all district recommendations directed to the Enforcement Division Administrator to ensure statewide consistency. This includes review of proposed action on administrative orders, revocation of licenses, referrals, direct referrals, and no further action close-out letters;
 - c. Provide technical expertise to district staff and the Department of Justice on new specialized procedures and provide guidance with respect to program policy;
 - d. Review feasibility reports, plans of operation and closure, and then in cooperation with the district, ensure that proper development, operation and closure of a facility occurs;
 - e. Attend referral strategy meetings and referral conferences once cases are transmitted to the Attorney General;
 - f. Assist in developing court orders (or consent decrees) along with other referral settlement materials.
 - g. Testify at hearings, trials, etc.;
 - h. Track enforcement actions on a statewide basis.

Within the Bureau, the Systems Management Section has a distinct role in the overall enforcement process. The Section shall:

- (1) Maintain documentation generated for each facility in the main case file;

Environmental Enforcement Handbook

- (2) Track the issuance of NOVs and other enforcement action initiated after the issuance of a NOV;
- (3) Note the receipt of a rough draft enforcement recommendation from a district:
 - (a) If the recommendation involves some action other than referral, the Section shall review the contents of the district package to determine whether it is complete or if additional information is required. If the package is deemed to be incomplete, the Section shall immediately contact the originator of the district's document to obtain the necessary information. Within the same day of contacting the district, the Section shall transmit the package (even if it is incomplete) to the appropriate technical review section. The additional information shall be transmitted by the district to the Section without delay. This information will then be forwarded to the appropriate technical review section in the Bureau. Once the review and approval process is complete, the package shall again be routed to the Section to log its exit.
 - (b) If the recommended action is referral, the Section shall compare the supporting documentation submitted by the district with the main case file. As noted earlier, deficiencies in the referral file will be corrected and noted. Once this process is complete, the package will be routed to the appropriate technical section for review and approval. The package will be returned to the Systems Management Section to record its exit.

(The Section's purpose in tracking this information is solely for the purpose of providing data to program managers to assess the level of statewide enforcement activity);

- (4) Note the receipt of the final draft of a district enforcement recommendation. The Section will track the enforcement recommendation at the time it is implemented;
- (5) Notify the district directors of upcoming requirements for facilities at least 60 days prior to the action date imposed through administrative orders and stipulations arising from litigation;
- (6) Track receipt of fees for the Waste Management Fund as well as license fees and applications and advise the district directors which facilities have not met their obligations within 30 days of the due date;
- (7) Keep a log of all letters, originating from the central office, sent by certified, return-receipt mail.
 - (a) If a return-receipt form for a document sent by the Bureau is not received within 15 days of the date of mailing, the Section shall initiate efforts to trace the location of the document.
 - (b) If the letter was sent by the Office of Environmental Enforcement and no reply is received within 15 days of mailing, the Environmental Enforcement staff shall advise the Systems Management Section staff of their efforts to locate the document.
- (8) Track receipt of groundwater monitoring, hazardous waste notifications, annual and quarterly hazardous and residuals management waste reports, and advise the district directors of the same.

E. Bureau of Legal Services

Along with activities relating to development of rules, the Bureau of Legal Services is responsible for reviewing and approving those enforcement actions which must receive prior approval of the Division of Enforcement Administrator for legal sufficiency. In addition to formal approval and sign-offs, the attorney may be consulted by the Bureau of Solid Waste Management and district staff for a legal interpretation of particular regulations. Specific duties include:

1. Review by separate copy, of all district recommendations directed to the Enforcement Division Administrator;

Environmental Enforcement Handbook

2. Provide legal assistance to Bureau and districts: In drafting administrative orders, legal notices, and permit or license conditions; on applicability and interpretation of rules, statutes, license or order conditions and how specific violations and the Department's response may set precedent;
3. Serve as legal liaison in activities with Attorney General's office for all referred cases;
4. Provide guidance on Department's legal position at referral strategy meeting;
5. Assist in developing court orders (or consent decrees) along with other referral settlement materials;

F. Division of Enforcement

1. Administrator

The Administrator is responsible for the statewide enforcement program. There are many areas of direct involvement, some of these areas are described below. This individual shall set overall program priorities and highlight areas of particular concern. The Administrator shall also attempt to resolve differences in staff opinions. This may involve discussions with the Environmental Standards Division Administrator and the district director. The Enforcement Division Administrator is responsible for the final enforcement decision to approve or disapprove a district enforcement recommendation. In making this decision, the Division Administrator takes into account the advice of the Bureau of Solid Waste Management, Bureau of Legal Services and the Office of Environmental Enforcement. The Administrator has the final approval authority for all Department enforcement activities. However, as defined earlier, the responsibility for actual enforcement activities in some cases is delegated to other individuals. Any forfeiture settlement proposals of the Department during the referral process must be approved by the Administrator prior to transmittal to the Department of Justice.

2. Office of Environmental Enforcement

In general, the Office shall provide staff assistance and advice to the district Enforcement Specialists and the Division Administrator. The Office shall also be involved with the Bureau of Solid Waste Management in a periodic analysis of the districts' enforcement programs. In addition, the Office will provide specific comments on material submitted to the Administrator. More specifically, this includes, but is not limited to;

- a. Informal review of language used in a NOV, after issuance;
- b. Review and approval of all district recommendations directed to the Office by the Enforcement Division Administrator;
- c. Review of referral settlement material and policy advice for the Administrator when requested;
- d. Advise appropriate district and central office staff of changes of wording in enforcement documents and decisions having statewide application;
- e. Transmittal of the referral package to the Department of Justice once approved by the Secretary;
- f. Participation in enforcement meetings and conference calls with the U.S. EPA;
- g. Development and review of statewide enforcement program priorities and periodic review of district activities to ensure consistent application of procedures set forth in this Chapter and Chapter 10;
- h. Track referral status on a statewide basis.