

Defending Environmental Enforcement Actions

OSB Environmental and Natural Resources Section
Environmental Law: Year In Review

Presented by

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1. Responding to Initial Enforcement Notice

- Analyze validity of DEQ claims and penalties;
 - investigate alleged violations with client and check facts and evidence;
 - get penalty calculation worksheets from DEQ and compare to matrix;
 - do independent penalty calculation, compare to other similar penalty cases, and use DEQ database;

1. Responding to Initial Enforcement Notice

- Request informal conference;
 - meet with DEQ to discuss options--settlement, penalty (SEP), terms, compliance plan, appeal

2. Settling Claims

- can use administrative MAO, with SEPs, or judicial consent judgment--have conditions that list and resolve past violations;
- include provisions in settlement to preclude/moot citizen suits;
- can use compliance MAOs, providing deadlines

3. Contesting Enforcement Action

- Contested case hearing: determine evidence/discovery needed; use experts
- Court of Appeals