



SUBJECT <b>Environmental Non Compliance Incident Reporting</b>	FINAL NUMBER <b>GE11-02(B)</b>	EFFECTIVE DATE <b>07/21/2011</b>	VALIDATION DATE <b>02/10/2016</b>	SUPERSEDES or RESCINDS
TOPIC/PROGRAM <b>Environmental Compliance</b>	WEB LINK(S) <a href="http://www.oregon.gov/ODOT/HWY/TECHSERV/Pages/technicalguidance.aspx">http://www.oregon.gov/ODOT/HWY/TECHSERV/Pages/technicalguidance.aspx</a>  APPROVED SIGNATURE  <b>Original signed by: Susan Haupt Geo-Environmental Manager</b>			

*PURPOSE*

This is primarily intended for ODOT construction inspectors, contractors, Project Managers, Region Environmental Coordinators, and Maintenance staff. It provides guidance for—

- Recognizing environmental situations (triggers) that may result in compliance incidents and which should be reported to Region environmental staff for assessment.
- Procedures to follow when compliance incidents occur or a regulatory agency representative arrives and declares ODOT or a Local Agency is in violation.
- Commonly used terms in environmental compliance.
- Who to call for assistance when environmental triggers are observed or compliance incidents occur.

*GUIDANCE*

This guidance supplements the Environmental Violation Reporting Directive (ENV 20-01). It provides Department procedures and guidance for situations involving 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 from regulatory agencies.

*DEFINITIONS*

**Environmental Non-Compliance Incidents (Incidents):** Situations that concern environmental actions or events, which may be or are declared to be ‘deficiencies’ or ‘environmental violations.’ ODOT notification and coordination actions are necessary once a compliance incident is underway.

**Environmental Triggers:** Environmental actions or events that may or may not be in compliance with environmental permits, clearances, or laws; observation of environmental triggers should immediately prompt checking project compliance documentation and coordinating with Region Environmental Coordinators to determine their significance and what appropriate actions should be undertaken.

Ignoring environmental triggers may result in a compliance incident or environmental violation.

**Deficiencies:** Construction activities not meeting contract specifications or maintenance activities not meeting Maintenance Blue Book best management practices (BMPs). Due to magnitude or other reasons, these are not yet environmental violations. They can, however, result in violations if left uncorrected. They should be corrected according to contract specifications (Construction) or BMPs (Maintenance) and be reported according to Region specific policy.

**Environmental Violations:** Activities out of compliance with local, state, and federal environmental laws, permits, or clearances. Violations vary in significance and in how regulatory agencies respond to them. *Formal violations* involve written notices or orders of non-compliance issued to ODOT or contractors, which include letters of non-compliance, consent, or restoration orders, cease and desist orders, and citations. *Informal violations* are violations handled informally by regulatory agencies, without written notices or orders of non-compliance being issued to ODOT or contractors.

**Environmental Regulatory Agencies:** Administer laws and programs that require permits or clearances prior to conducting construction activities in their specific area of jurisdiction. Regulatory agencies include the Department of State Lands (DSL), Army Corps of Engineers (Corps), National Marine Fisheries Service, U.S. Fish and Wildlife Service, Department of Environmental Quality, Environmental Protection Agency, Oregon Department of Fish and Wildlife, and the State Historic Preservation Office.

## *BACKGROUND/REFERENCE*

### **EXAMPLES OF ENVIRONMENTAL TRIGGERS**

#### Cultural

- Finding archaeological or historical artifacts or human remains.

#### Biology

- Finding sick, injured, or dead fish or wildlife at a project site.
- Any project with temporary water management activities, such as dewatering, work area isolation, and re-watering.
- Any disturbance of bird nests with eggs must be reported.
- Violating timelines for specific activities listed in permits.
- Disturbing (grubbing, mowing, and herbicide spraying) known populations of threatened/endangered plants (e.g., SMAs).

#### Erosion Control

- Allowing sediment from project activities to enter waterways.
- Failure to install or maintain necessary erosion and sediment control measures on projects.

#### DSL/Corps Permits (if applicable)

- Exceeding permitted fill and removal volumes or footprints specified in permits.
- Work in wetlands and streams without a permit.
- Starting work before a permit application, modification, or in-water work extension request is secured from an agency.

#### HazMat/Water Pollution/Waste Management

- Spill, or threat of release, that exceeds a reportable quantity (42 gallons for petroleum, varies for other HazMat discharges), impacts water, requires excavation of soil (beyond a couple of shovelfuls), significantly impacts operations or exceeds on-site cleanup capabilities (i.e. off site equipment or contractors are required). (Call HazMat Coordinator to assess quantities.)
- Generation of hazardous wastes or potentially hazardous wastes not previously anticipated.
- Storage of fuels or other hazardous materials where it is not clear that the storage complies with applicable regulations and ODOT specs.
- Site inspection by a DEQ or EPA representative.
- Discharges to storm drains or surface water not covered by the 1200 CA permit or other project or location specific discharge permits.
- Failure to implement a Spill Prevention Control and Countermeasures (SPCC) Plan for aboveground petroleum storage over 1,320 gallons near surface water.
- Failure to label or properly contain hazardous materials or wastes.
- Disposal of solid waste materials, such as treated timbers or trash at unpermitted sites.
- Release of demolition debris, such as striping grindings, concrete, etc., to surface waters, wetlands, or other sensitive environments.

#### Plans and Specifications

- Any work occurring within a designated 'NO WORK ZONE.'

#### *EXPLANATION*

#### **WHY REPORT TRIGGERS AND INCIDENTS TO REGION ENVIRONMENTAL STAFF?**

- Region environmental staff can help assess observed triggers and resolve non-compliance incidents, especially when regulatory agencies are involved.
- Understanding why incidents happen can help improve processes and procedures to prevent future incidents.
- State employees have a responsibility to set a positive example of public service and good citizenship by following both the letter and spirit of laws, policies, and procedures.
- It will assist in achieving consistent environmental performance statewide.

## *RESPONSIBILITIES*

### **IF A REGULATORY AGENCY IS ON-SITE AND DECLARES THAT A VIOLATION HAS OCCURRED**

Respond in a courteous manner even if the regulatory agency representative is confrontational. Ask for the specific permit or clearance condition that is out of compliance. Ask for clarification if necessary.

Be open and honest; however, do not speculate.

When a regulatory agency requests stopping nonconforming work, comply. Make a written note of the situation and the people involved.

If possible, take notes when meeting with regulatory agency staff and photograph the incident in question.

- Step 1: Immediately notify the PM/DM and direct the regulator to the appropriate Construction or Maintenance manager.
- Step 2: The PM/DM shall notify the REM/GHM of the regulatory agency presence and their notification of a violation.
- Step 3: The REM/GHM or their designee shall meet with the regulatory agency representative and other appropriate Region staff to develop immediate response. The REM/GHM should also solicit input from the appropriate GES Unit Manager to determine the appropriate course of action for follow-up response to regulatory agencies.

Timing: Steps 1 – 3 should always occur within 24 hrs.

## *ACTION REQUIRED*

### **IF A VIOLATION OCCURS OR IS SUSPECTED**

Experience and judgment will always be necessary to determine the significance of a trigger or incident, whether to 'just fix it' or 'stop and report it.' When in doubt, contact the Region Environmental Coordinator (REC), Biologist (Bio), HazMat Coordinator (HazMat), or other appropriate Region environmental resource specialist.

The following notification protocols apply to Region and Geo-Environmental Section environmental staff, Maintenance and Construction personnel.

- Step 1. Initial incident discovery and follow-up notification.
  - For Maintenance projects, notify the Transportation Maintenance Manager/Supervisor (TMM). The TMM should then contact the REC/HazMat, who will coordinate with other resources specialists, if necessary, and determine if the incident is reportable. The TMM/S will also notify the District Manager (DM). For Construction projects, first notify the inspector then the Project Manager (PM) of potential environmental deficiencies or violations. Ongoing construction activities suspected to be in violation should be suspended and necessary measures implemented to protect affected resources from further disturbance.

- If the PM's office discovers an incident, the PM should immediately contact the REC, HazMat, or other appropriate Region environmental resource specialist to obtain guidance. If they are unavailable, the PM should contact the Region Environmental Manager (REM), GeoHydro Manager (GHM), or other Region-based manager overseeing environmental/cultural specialists.

Step 2. For either Maintenance or Construction incidents, the REC/HazMat/other resource specialist should then notify their respective supervisor of the situation.

Step 3. The REM/GHM/other manager, in coordination with other Region staff, determines if the incident is reportable to the Geo-Environmental Section (GES). If GES is notified, further notification and reporting procedures will be jointly determined by GES managers and the respective Region managers.

Timing/Sequencing: Depending on the significance of the incident, the PM/DM can immediately notify the REM/GHM. Steps 1 – 3 should occur within 24 hrs of discovery of an incident.

NOTE: If notification of a regulatory agency is legally required, that notification shall occur as soon as possible and concurrent with ODOT's internal notifications.

### *SPECIAL INSTRUCTIONS*

#### **WHOM TO CALL**

In general, the primary contacts for environmental compliance in ODOT's five regions are the Region Environmental Coordinators (RECs). They can then direct you to other specialists if need be. However, for obvious program/resource specific issues, directly contact HazMat, Bios, Archaeologists, etc.

#### Office of Maintenance Environmental Program

O: 503.986.3008  
C: 503.400.2140

#### Region 1

*REC, East* O: 503.731.8436  
C: 505.881.3431

*REC, West* O: 503.731.8240  
C: 503.913.2796

*HazMat* O: 503.731.8290  
C: 503.880.9074

#### Region 2

*REC, South* O: 541.757.4165  
C: 541.912.2162

*REC, North* O: 503.986.2822  
C: 503.881.3427

*REC, Local Agency Program* O: 503.986.2829  
C: 503.302.5748  
*HazMat* O: 503.986.2647  
C: 503.881.1735

Region 3

*REC, North* O: 541.957.3519  
C: 541.430.6863  
*REC, South* O: 541.864.8823  
C: 541.890.0773  
*HazMat* O: 541.957.3594  
C: 541.430.4916

Region 4

*REC, North* O: 541.388.6041  
C: 541.410.7683  
*REC, South* O: 541.388.6386  
C: 541.419.2952  
*HazMat* O: 541.388.6329  
C: 503.419.2085

Region 5

*REC, NE Area* O: 541.963.1906  
C: 541.786.3135  
*REC, SE Area* O: 541.963.1368  
C: 541.786.2788  
*REC Maintenance* O: 541.963.1905  
C: 541.786.3178  
*Environmental Lead* O: 541.963.1343  
C: 541.786.0986  
*HazMat* O: 541.963.1590  
C: 541.786.3137

*CONTACT INFORMATION*

Title: Environmental Resources Unit Manager  
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