

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION SAFETY  
AND ENVIRONMENTAL COMPLIANCE OFFICE GUIDANCE FOR  
INTERACTION BETWEEN  
NOAA LINE/STAFF OFFICES AND ENVIRONMENTAL AND  
OCCUPATIONAL  
SAFETY AND HEALTH REGULATORY AGENCIES**

1.0 Policy

- 1.1 The National Oceanic and Atmospheric Administration (NOAA) is committed to operating facilities in full compliance with environmental laws and other governing authorities.
- 1.2 The provisions of this guidance apply to all NOAA personnel, including contractors and visiting researchers.

2.0 Effect on other records and documents

- 2.1 This guidance implements the component of the NOAA 216-17, concerning adherence to environmental pollution control laws.
- 2.2 This guidance implements the component of the NOAA NAO 209-1, concerning safety procedures within NOAA.
- 2.3 This guidance does not negate other directives currently composed or proposed by any NOAA Line or Staff office which may be more stringent than the requirements herein.

3.0 Purpose

- 3.1 The purpose of this guidance is to standardize the protocol to be followed in interactions between NOAA facilities and regulatory agencies. This guidance is intended to ensure that the appropriate personnel from the Safety and Environmental Compliance Office (SECO), and the Office of General Counsel for Compliance (OGC/C) are involved at all stages of these interactions. This involvement is essential to ensuring compliance with all applicable environmental, safety and health laws. Ideally, all interactions with regulatory agencies serve as positive compliance experiences; however, the possibility that civil or criminal action may result should always be borne in mind and should govern the protocol followed in these interactions.

4.0 Protocol

- 4.1 Environmental Safety and Health Technical Guidance. When compliance questions or questions involving possible violations of environmental, safety and health laws arise, Line/Staff Office managers and other employees are directed to contact SECO for technical guidance rather than to the hotlines that are operated by many regulatory agencies. SECO employs technical

experts who are in the best position to offer technical guidance to the facilities in their regions because of their familiarity with each facility as well as the applicable laws. In addition, through their involvement in the larger safety and environmental program, SECO technical experts are able to offer guidance within the context of the Agency's overall compliance scheme. If you are not familiar with your local SECO point of contact, their national office's telephone number is (301) 713-2870.

- 4.2 Reporting. If a NOAA employee witnesses criminal violations of safety or environmental laws, they should report internally first, nothing in the above section should be taken to prohibit reporting directly to the appropriate regulatory agency. The Line Offices should immediately report alleged violations to SECO.

Spill reporting is required by law. If possible, SECO should be contacted immediately when a spill occurs. Depending on the scenario, the SECO technical expert might be able to assist with notification of the Environmental Protection Agency (EPA), as well as provide follow-up assistance. Facility managers should maintain a master list of individuals and agencies to notify in the event of a release. Once contacted, SECO will provide guidance regarding the appropriate individuals to contact.

- 4.3 Inspections. Most compliance actions begin with an inspection by a regulatory agency. The inspection may be scheduled or unscheduled, but in any event, it tends to be a challenging event. Whether an inspector shows up announced or not, courteousness and cooperation are imperative.

Upon receiving notification from a regulatory agency that a facility audit or inspection is planned, the facility manager should notify SECO. When an inspector arrives unannounced at a NOAA facility, SECO should be notified immediately. If SECO is not available, the Office of General Counsel for Compliance (OGC/C) should be contacted. The Office of General Counsel can be reached at (301) 713-1217. This notification is essential should the inspection result in any type of administrative action. If an inspector arrives with a search warrant, legal counsel should immediately be notified and summoned. No further discussion should be made with the inspector until counsel arrives. Additional contact information and guidance is available from the SECO. <http://www.seco.noaa.gov>.

Although SECO and OGC/C representatives are not typically present for inspections, in certain instances their presence may provide comfort as well as protection against the unnecessary disclosure of information. In any case, SECO should be included (e.g., via teleconference) in any in-brief, any conversations with the inspector about the purpose of the audit/inspection, as well as any follow-up. Be aware that you may want to invite unions to be partied to external inspections.

The inspection will proceed more smoothly if the facility manager is able to present the inspector with any pertinent paperwork that is requested. Therefore, facility managers must make it a practice to keep all administrative environmental, health and safety paperwork organized and easily accessible. Audit and assessment records are for internal NOAA use only. Approval from SECO or OGC/C must be received before releasing information to any inspector. Releasing means handing to and allowing to read as well as copying.

In addition to providing the inspector with information, it is imperative that certain information be obtained from the inspector. NOAA will need this information if the inspection should result in any kind of administrative action.

4.4 Notices of Violations and Citations. A Notice of Violation (NOV), citation or administrative order is usually the next step in an enforcement action. These notices will usually come in the form of a letter, although inspectors may have the authority to issue citations on the spot. Inability to meet requests for environmental records or permits should be considered a citation for the purposes of this policy and responded to as such.

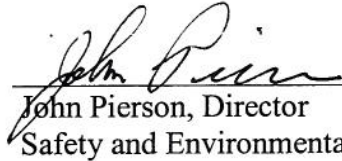
4.4.1 Responding to an NOV. Under no circumstances should the response to any NOV or citation issued by a regulatory agency be generated at the facility level. All such NOV's and citations should be forwarded immediately to SECO and OGC/C. NOV's are time sensitive. Each response will take into account whatever determination has been made by OGC/C as to the enforcement agency's authority, including analysis of issues of sovereign immunity. In any case, OGC/C and/or SECO will thoroughly investigate and discuss the facts surrounding the NOV with the client before responding.

The response must be in writing, even when numerous informal conversations have taken place between NOAA and the inspector. The initial response sets the stage for settlement negotiations and, hopefully, a dismissal or satisfactory settlement. If no settlement is reached, the thoroughness of the response and the position it takes will provide a framework for further proceedings and provide the strongest administrative record possible. If the investigation and interpretation indicates that no defenses are available, the response should, at the very least, set forth:

- either that the violation was quickly corrected or a description of the plans that NOAA has to come into compliance;

- the details of any plan that has been implemented to prevent a recurrence of the violations;
- any finding that no environmental harm occurred or was even likely as a result of the violations; and
- a statement addressing the penalty that takes into consideration how the regulatory agency works, as well as the agency's penalty policy.

4.5 Settlement Negotiations. Under no circumstances should settlement negotiations be undertaken before coordinating with SECO/OGC. The Facility contacts, management, SECO and OGC/C will collectively develop a negotiation strategy.

  
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John Pierson, Director  
Safety and Environmental Compliance Office