

Key Steps to a Strong Enforcement Case



MVanHyll



LEXINGTON

*Environmental Quality
& Public Works*

Demetria Kimball Mehlhorn
Program Manager Sr – Natural Resource Protection
Lexington-Fayette Urban County Government
Division of Environmental Services



Ordinances

Building a Case

Case Initiation

Pre-Inspection

Site Inspection

Enforcement Response Plan

Post Inspection

Enforcement Response Plan

Case Studies





Ordinances

Definition of ordinance (Merriam-Webster dictionary)

1 a : an authoritative decree or direction : [order](#)

1 b : a law set forth by a governmental authority; specifically : a municipal regulation

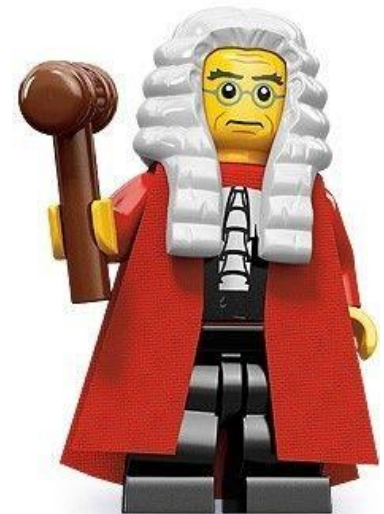


Enforceable Ordinances?

- Ensure your ordinances are worded correctly – not too specific but clear enough to follow.
 - Reference manuals or permit language whenever possible.
- Are they up to date?
- How can you “enforce” the ordinance – civil citation, lien, empty threats, court action, criminal action?

Enforce: verb (used with object), en·forced, en·forc·ing.

- *to put or keep in force; compel obedience to: to enforce a rule; (dictionary.com)*



Sec. 16-44. - Grease and oil interceptors when required.

(a) Grease and oil interceptors shall be required at all facilities which provide food service and/or preparation activities, including, but not limited to, full service restaurants, fast food establishments, delis, cafeterias (including church and school facilities where commercial equipment is installed and the square footage and/or frequency of use indicates more than occasional use), meat distributors, food processing facilities, grocery stores with food preparation/service areas, bakeries, caterers, and/or other similar types of operations.

(b) Grease and oil interceptors shall be provided as stipulated in subsection (a) above or when liquid wastes contain an excess of one hundred (100) mg/l of grease or contain substances which may solidify or become viscous at temperatures between thirty-two (32) degrees Fahrenheit or zero (0) degrees Centigrade and one hundred fifty (150) degrees Fahrenheit or sixty-five (65) degrees Centigrade, except that such interceptors shall not be required for single family or multifamily dwelling units unless problems occur at particular locations more than twice in twelve-month period.

(c) Any facility where a grease and oil interceptor is required must apply for a grease and oil interceptor permit from the division of water quality. The director, division of water quality, upon review of a permit application, may grant the permit, reject the permit, or grant the permit with the following conditions:

- (1) Require the use of a grease and oil interceptor meeting specified performance standards;
- (2) Require a specific schedule for cleaning the grease and oil interceptor;
- (3) Require the applicant to exercise best management practices in its operation related to grease and oil handling as specified in the permit;
- (4) Require any other reasonable conditions warranted by the circumstances of the particular facility applying for the permit.

(d) Grease and oil interceptors to be installed shall be in conformance with the most recent Lexington-Fayette Urban County Government Sanitary Sewer and Pumping Station Manual, the State Plumbing Code and the applicable Lexington-Fayette Urban County Government Standard Drawing. The required interceptor shall be designed according to the most stringent of the above current standards. A site map, design documents, and as-built drawings shall be submitted to the Lexington-Fayette Urban County Government Division of Water Quality. Approval of the interceptor shall be determined by the Division of Water Quality upon review of the proposed facility and sized according to the requirements of the Lexington-Fayette Urban County Government Sanitary Sewer and Pumping Station Manual. The interceptor shall be located so as to be readily and easily accessible for cleaning and inspection.

(e) Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperatures. They shall be of substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight. Each user shall provide protection against accidental discharge of grease and oil. Features which prevent accidental discharge of these materials shall be provided and maintained at the user's expense. Facilities and operating procedures to provide this protection shall be submitted to the division of water quality for review and approval prior to construction of the facility. Review and approval of such plans and operating procedures by the division of water quality shall not relieve the user of the responsibility to modify its facility as necessary to meet the requirements of this chapter.

(f) A food service and/or preparation facility which demonstrates that the discharge from its food service and/or preparation activities contains less than one hundred (100) mg/l of grease, may receive an exemption from minimum sizing requirements or installation and maintenance requirements. The sampling and testing to demonstrate the concentration of grease in the discharge must be conducted, at the facility's expense, by an independent testing organization and measured in accordance with the analytical test procedures established in 40 CFR Part 136 as amended from time to time.

(g) Grease and oil interceptors shall be cleaned on a regular basis which will ensure proper and efficient operation but not less than one (1) time within a six-month period or as provided in the facility's grease and oil interceptor permit. Approved internal or under-counter interceptors shall be cleaned at least once per week or as provided in the facility's special grease and oil interceptor permit. Cleaning shall consist of removal of the entire contents of the device, including grease cap and sludge pocket, and inspection of the empty device for defects and/or obstructions which would prevent proper function.

(h) Written records shall be maintained by the user indicating maintenance and cleaning of the grease interceptor. The record shall indicate: dates of maintenance; person performing the maintenance; estimated volume of grease removed; receipts or manifest from haulers; disposal locations; facility manager's verification. The records shall be retained for a period of three (3) years and shall be available at the facility along with a copy of the grease interceptor permit for inspection by the division of water quality.

Who Can Enforce Ordinances?

Law Enforcement officers

Peace officers

District Court

KRS 67A.076 Citation officers

- (1) Urban-county governments may appoint citation officers who shall have qualifications as prescribed by ordinance and who shall not have powers of peace officers to arrest or carry weapons but may issue citations as authorized by ordinance upon observation of:
 - a) Nonmoving motor vehicle offenses
 - b) Violations of ordinances except for moving motor vehicle offenses and except for offenses which constitute a violation of the Kentucky Penal Code

LFUCG Sec. 14-10. - Citation officers.

Authorized. Pursuant to KRS 67A.076, there are hereby authorized citation officers, subject to the provisions of this section.



Position Title	Ordinances To Be Enforced
Director of building inspection, building inspection manager, building inspection supervisor, commercial building inspector and building inspector employed in the division of building inspection.	The zoning ordinance; the land subdivision regulations; and Code of Ordinances chapter 2A ; articles I, II and III of chapter 5 ; and section 14-61 , 17-21 , 17-22 , 17-28 , 17-30 , 17-38.4 , and 18-113.4 .
Director of revenue and license inspector employed in the division of revenue.	Code of Ordinances article III of chapter 4 ; chapter 13 ; and sections 15-7 , 15-8 and 15-9 .
Municipal engineer senior; municipal engineer, associate municipal engineer, engineering technician principal, employed in the division of engineering.	Code of Ordinances sections 14-60 , 16-34.1 , and 17-21 , zoning ordinance articles 19-7(a)(1), 19-7(g), 19-8, and 20 and subdivision regulations article 6-7, and 6-11.
Code enforcement officer, nuisance control officer, code enforcement supervisor, and director of code enforcement employed in the division of code enforcement.	Code of Ordinances sections 12-1 through 12-5 , 14-105 , 14-106 , article IV of chapter 17 , and subsections 17-4 (g) and (j) of the zoning ordinance (per Ordinance No. 349-2005).
Director of environmental services, and enforcement and compliance program manager and environmental enforcement specialist in the division of environmental services.	Code of Ordinances chapter 16 ; subsections 5-4 (b)(1), 16-2 (g), and 19-7(g) of the zoning ordinance; sections 6-7 and 6-11 of the land subdivision regulations; and LFUCG engineering manuals.
Urban forester employed in the division of environmental policy, arborist technician employed in the division of environmental policy, and environmental enforcement specialist employed in the division of environmental policy.	Code of Ordinances chapter 17B .
Environmental health specialist, senior environmental health specialist, environmental health team leader, environmental health and protection manager, and environmental health coordinator, employed by the Lexington-Fayette County Health Department.	Code of Ordinances sections 14-97 through 14-104 .
Firefighter assigned to the division of fire and emergency services office of the fire marshal.	Code of Ordinances sections 9-20 , 18-112 (a) and 18-118 .
Parking control officers employed by or otherwise under the control of the Lexington and Fayette County Parking Authority.	Code of Ordinances sections 14-105 , 18-63 , 18-64 , 18-106 , 18-108 , 18-110 through 18-112 , 18-113.3 through 18-115 , 18-118 through 18-131 , 18-133 , 18-135 through 18-138 , 18-141 , 18-142 .
Commissioner, director of enhanced 911, citation officers, GIS programmer/analyst, and GIS specialist employed in or assigned to the department of public safety.	Code of Ordinances sections 17-2 through 17-4 ; and section 6-8(k) of the land subdivision regulations of the zoning ordinance.

Building a Case

- Case Initiation
- Pre-Inspection
- Site Inspection
- Enforcement Response Plan
- Post Inspection
- Enforcement Response Plan

DOCUMENTATION!!!!!!



Case Initiation

Building a Case



Hotline



Citizen Complaint



Council Member



Pre-Inspection

- Was there a violation?
- What ordinance was violated?
- Which department should investigate?
- Where is/has the violation occurred?
- Who owns the property?



Who – What – When – Where - How



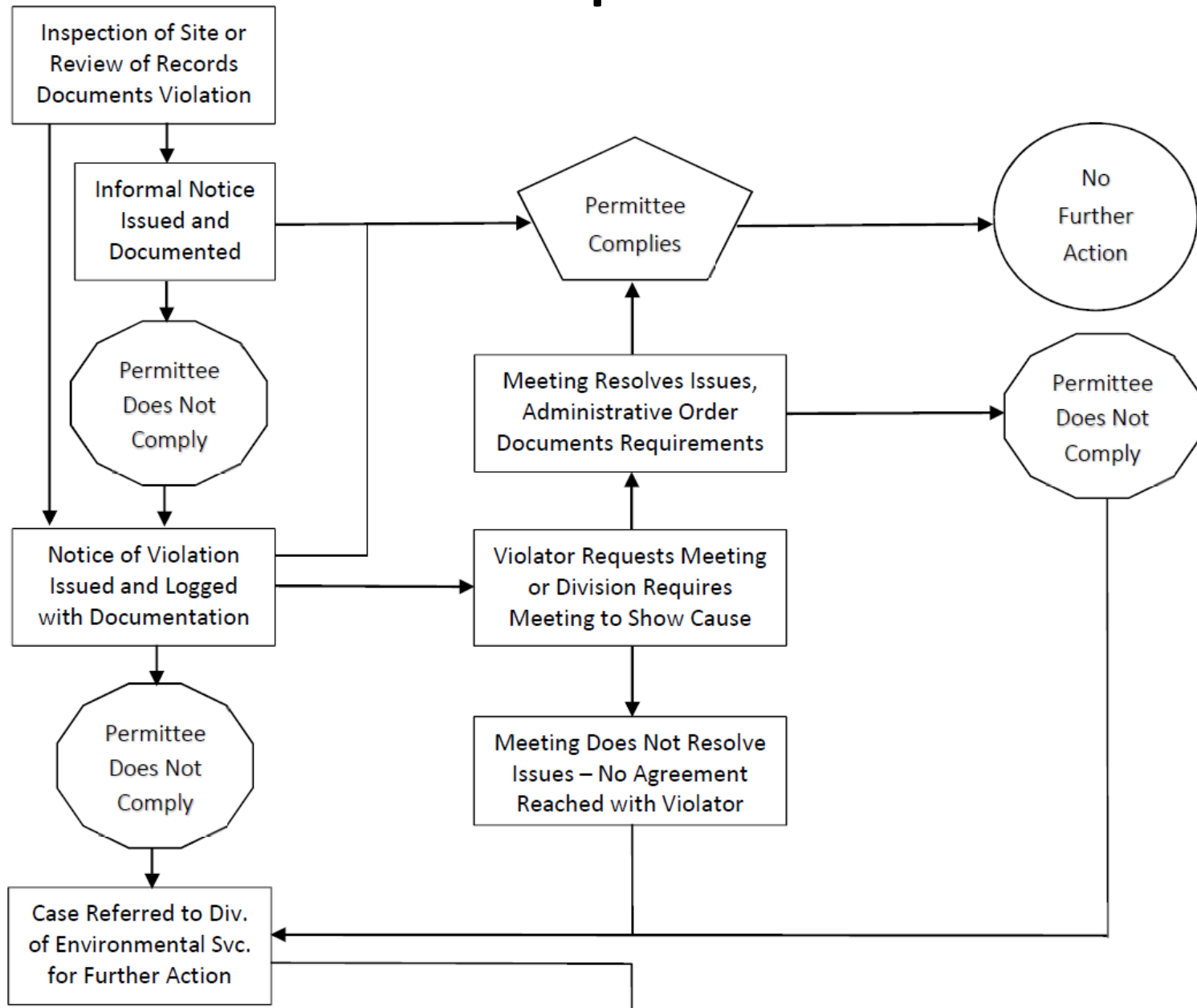
Site Inspection

- Photos – Date/Time Stamp (iphone app)
- Communicate with on-site foreman/supervisor/owner
- Inspection Log (pre-formatted or field book)



Enforcement Response Plan

Building a Case



Enforcement Response Plan

Table 3. Compliance Assistance for LFUCG Inspectors.

Compliance Area ¹	Informal Notice	Notice of Violation ^{2, 3}	NOV and Refer to DES for Citation
Construction Entrance to Public Road	Rock pad poorly installed/maintained	Rock pad not installed	
	Small amount of sediment on road	Rock pad completely covered with soil	
		Significant amount of sediment on road	
Unstabilized Areas	Flat inactive disturbed areas not stabilized in 14 days	Ditches not stabilized immediately after construction	Disturbed, inactive slopes above waterways, wetlands, floodplains, critical areas not stabilized within 24 hours
		Disturbed, inactive slopes not stabilized within 14 days	
Inlet Protection	Sediment needs to be removed around inlet protection	Curb inlet protection not in place or improperly installed	Discharge of concrete wash water, chemicals, other pollutants into inlets, streams, wetlands, etc.
Silt Fencing	Does not match ESC Plan but critical areas ⁴ and roads are protected	Silt fence not installed per plan	
	Does not comply with Stormwater Manual but is functional	Blowouts have occurred with discharge of sediment to critical areas ⁴	
	Needs maintenance / repair, but is not near an inlet or surface water	Not trenched in, is not functional	
		Needs repair in critical areas ⁴	
Soil Stockpiles	No perimeter controls, downstream BMPs in place	No perimeter controls, downstream BMPs not in place	
Permit Violations		Permit expired	Site not permitted
		Permit not posted or available on site	
		Contact name/phone not posted	
		No self-inspection reports; reports not on site	
		Inspection reports not current	
		ESC Plan / SWPPP not on site	
		Minor unapproved construction activities in 25 ft buffer zone around sinkholes, streams, wetlands, etc.	Major unapproved construction activities in 25 ft buffer zone around sinkholes, streams, wetlands, etc.
	Construction has started, BMPs not installed		

1. Document site conditions, photograph relevant areas when issuing notices
2. Refer NOV for citation if conditions are not corrected after the second NOV
3. Refer for citation NOVs committed by repeat offenders
4. Critical areas are streams, wetlands, sinkholes, and inlets



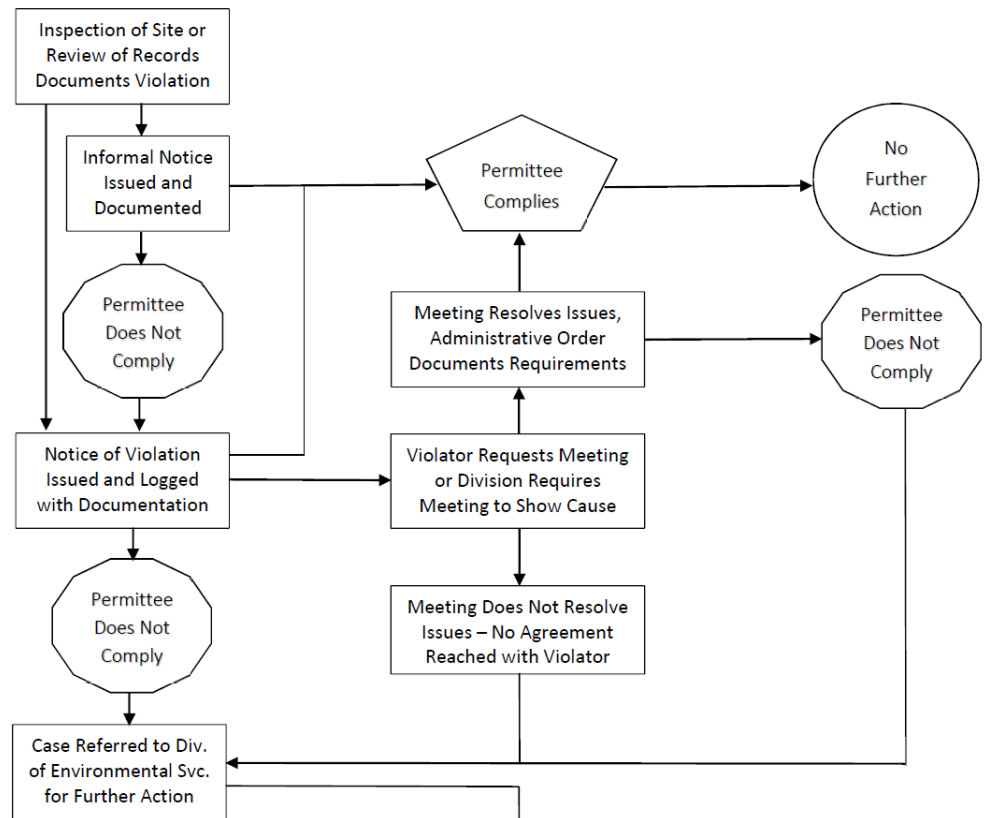
Enforcement Response Plan

- Verbal Warning (phone call – always follow-up with email or snail mail)
- Notice of Violation (mail and email if possible)
 - Any person found to be violating any provision of an ordinance shall be served by an authorized representative of the urban county government with a written notice stating the nature of the violation.
- Straight to Civil Citation
 - Serious threat to the public health, safety, and welfare or the environment, or
 - In the absence of immediate action, the effects of the continuation of the violation would be irreparable or irreversible, or
 - The offense occurs after the first citation for the same type violation is issued to a person or entity for the same property address.
- Administrative Order
 - Order to Appear
 - Compliance Schedule
 - Cease & Desist/Stop Work



Post Inspection

- Follow-Up Inspection
- Document Inspection
- Document Non-Compliance Areas
- Document Compliant Areas
- Document Communication



ENFORCEMENT REFERRAL

To: Division of Environmental Policy
Environmental Compliance & Enforcement Program

Date: _____

From: _____

1. Facility/Property/Site

Site Name or Identification: _____
Address: _____
Current Use: _____
Permit or other regulatory ID# (if applicable): _____

2. Responsible Party or Parties (include all owners, operators, landowners, permittees, or other involved parties. If a parent company is involved, list it below. Indicate relationships among the listed entities.)

Name: _____
Address: _____
Contact Person: _____
Contact Phone Number: _____

Name: _____
Address: _____
Contact Person: _____
Contact Phone Number: _____

3. Regulatory Program (check all that apply)

- | | |
|---|---|
| <input type="checkbox"/> Stormwater - Construction Sites | <input type="checkbox"/> Fats, Oils & Grease (sanitary sewer) |
| <input type="checkbox"/> Stormwater - Industrial/Commercial | <input type="checkbox"/> Illicit Discharges or Connections |
| <input type="checkbox"/> Erosion & Sediment Control | <input type="checkbox"/> Dumpster/Solid Waste Container |
| <input type="checkbox"/> Grading Permit(s) | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Industrial User (sanitary sewer) | <input type="checkbox"/> Other _____ |

4. Inspector's Comments

Please list any immediate threats posed by the violation(s) to public health, safety, welfare or the environment. Describe the violator's compliance history and/or good faith efforts to comply. Include details of meetings, telephone calls or informal notices as applicable.

Attachments (check all that apply)

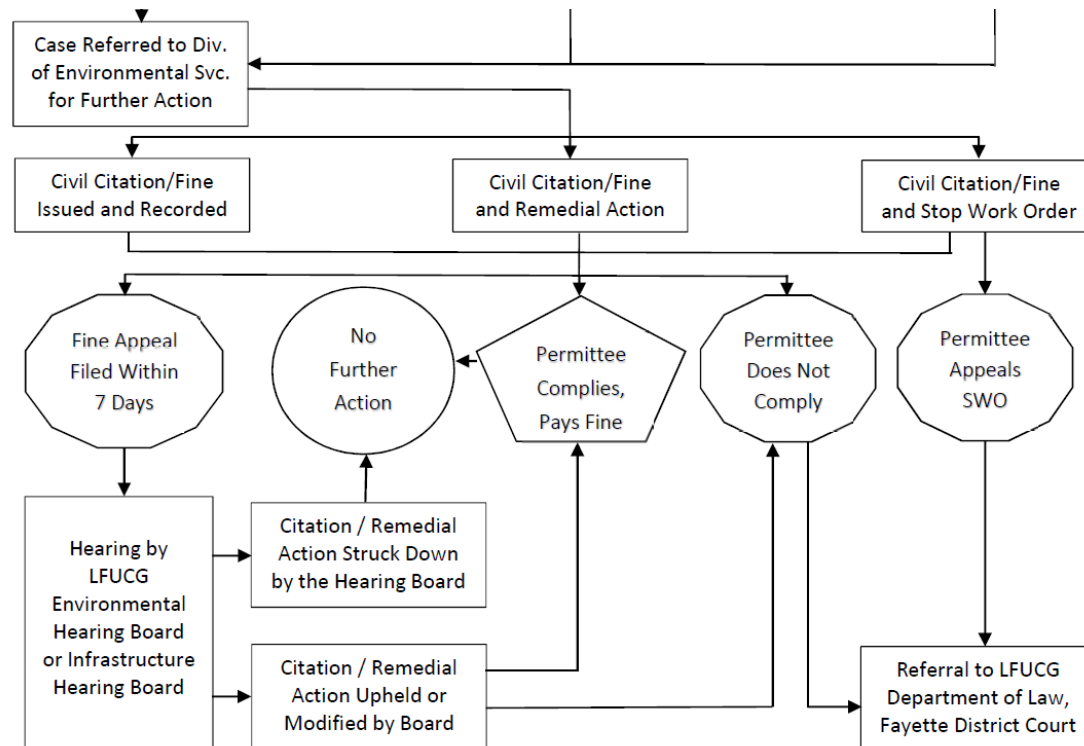
- Notice of Violation
 Stop Work Order or Cease and Desist Order
 Inspection Report
 Photographs

Recommended By: _____ Date: _____
(Inspector)

Approved By: _____ Date: _____
(Division Director / Designee)

Civil Citation/Penalty

- Case Initiation
- Pre-Inspection
- Site Inspection
- Enforcement Response Plan



Penalties Defined vs Calculated

Penalties for Violations of Section 16-10 (Roll Cart)

First citation within any twelve month period	\$36.00
Second citation within any twelve month period	\$66.00
Three+ citations within any twelve month period	\$100.00

Penalties for Violations of Sec. 16-36, 16-42, 16-43, 16-45, 16-46 & 16-47

Individual Offense: \$200-\$500

Corporation Offense: \$500-\$10,000 (16-36, 16-45(b-h), 16-46 and 16-47)

Corporation Offense: \$1,000 - \$10,000 (16-42, 16-43, and 16-45(a))

Use general Penalty Calculation Worksheet if corporation offense.



PENALTY CALCULATION WORKSHEET – GENERAL

Degree of Harm to Human or Environmental Health

- Amount or relative toxicity of pollutant(s) discharged or released
- Sensitivity of the affected environment
- Potential risk posed to human health or the environment
- Duration of discharge or release
- Number and type of environmental media affected

Deviation from Regulatory Requirements

The extent of deviation from the regulatory requirement (ordinance or permit) relates to the degree to which the requirement is violated. The violator may be only slightly out of compliance or may have totally disregarded a requirement, or any point in between.

Multi-day Violations

Multi-day penalties will generally be assessed in the case of ongoing violations that have significant potential for harm to human health or the environment and/or that demonstrate substantial deviation from regulatory requirements.

	Extent of Deviation from Requirement(s)			
		Major	Moderate	Minor
Degree of Environmental Harm	Major	\$15,000 to \$12,000	\$12,000 to \$9,000	\$9,000 to \$6,000
	Moderate	\$6,000 to \$4,500	\$4,500 to \$3,000	\$3,000 to \$1,500
	Minor	\$1,500 to \$1,000	\$1,000 to \$500	\$500 to \$200



PENALTY CALCULATION WORKSHEET - EROSION SEDIMENT CONTROL

Violation (16-101 Erosion Sediment Control)	Minor		Moderate		Major	
	1	2				
Working w/o Permit; w/ESC Measures	1	2				
Working w/Permit; w/o ESC Measures				4	5	
Working w/o Permit; w/o ESC Measures					5	6
Small sediment volume but reasonable likely to move/wash into roadside gutter, storm water or waterway	1	2				
Small Volume but has moved/washed into roadside gutter, storm water or waterway		2	3			
Large sediment volume but reasonable likely to move/wash into roadside gutter, storm water or waterway		2	3			
Large Volume but has moved/washed into roadside gutter, storm water or waterway			3	4		

Circumstantial Modifiers

First Citation	-1	Land Disturbance >5 acres	1
Second Citation	1	Land Disturbance >10 acres	2
Third Citation	2	Land Disturbance >20 acres	3
Fourth Citation	3	Environmental Damage	2-6
Fifth Citation	6	Encroached on Aquatic Buffer	1-6

***Citations within a rolling 12 month period.*

Points Calculated: _____

1= \$200	11= \$2,200
2= \$400	12= \$2,400
3= \$600	13= \$2,600
4= \$800	14= \$2,800
5= \$1,000	15= \$3,000
6= \$1,200	16= \$3,200
7= \$1,400	17= \$3,400
8= \$1,600	18= \$3,600
9= \$1,800	19= \$3,800
10= \$2,000	20= \$4,000



Administrative Orders

Order to Appear (16-202)

Any person who, after receiving a notice of violation, continues to violate any provision of chapter 16 or who is determined to be a chronic or persistent violator may be ordered to appear

Compliance Schedules; compliance orders (16-202)

The Director may issue a compliance schedule providing a reasonable time for the violator to come into compliance.

Cease and Desist Order /Stop Work Order (16-204)

The person immediately cease and desist all such violations and may direct those persons in noncompliance to comply forthwith and/or take appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation such as terminating the discharge

Permit Block (16-212)

No person who has been adjudicated to be in violation of any provision of this chapter shall be granted a building permit or any other permit



Enforcement Response Plan

Enforcement Delivery

- Regular Mail
- Certified Mail
- USPS/UPS/FedEx
- Fax
- Hand Deliver to someone over 18

Compliance Timeline

- At least 24 hours
- No unrealistic requirements (weather related, etc.)
- Give a specific date/time (not *within 5 days of this notice*)



- For paper mail, there is a default non-interested third party deliverer. There is no default non-interested third-party deliverer for electronic mail.
- Not all email is delivered and furthermore, not all undelivered email returns a bounce or delivery failure notice to the sender.



Enforcement Response Plan

Due Process

The Fourteenth Amendment of the Constitution provides that no person shall be denied equal protection of the law and that everyone shall be afforded due process of law.

Substantive Due Process means that any and all legislations that are enacted by a government must bear some rational relationship to a legitimate governmental interest and must be compatible with individual liberties.

Procedural Due Process requires that when the state or federal government acts in such a way that denies a citizen of a life, liberty, or property interest, the person must first be *given notice and the opportunity to be heard*.

Any person affected by a determination of a director, or the assessment of a civil fine in a civil citation issued in connection with the enforcement of article II, shall have the right to be granted a hearing on the matter.



Case Studies



What Mail?



Wrong email address/No Email



What Mail?

Case Studies



Didn't read their mail



What Mail?



Certified mail – not signing



Inspections Gone Wrong

Inspected a day too early (according to appeal board)

You are hereby given notice that the violations cited below

*must be abated **by 12/31/13.***



12.31.2013 08:53



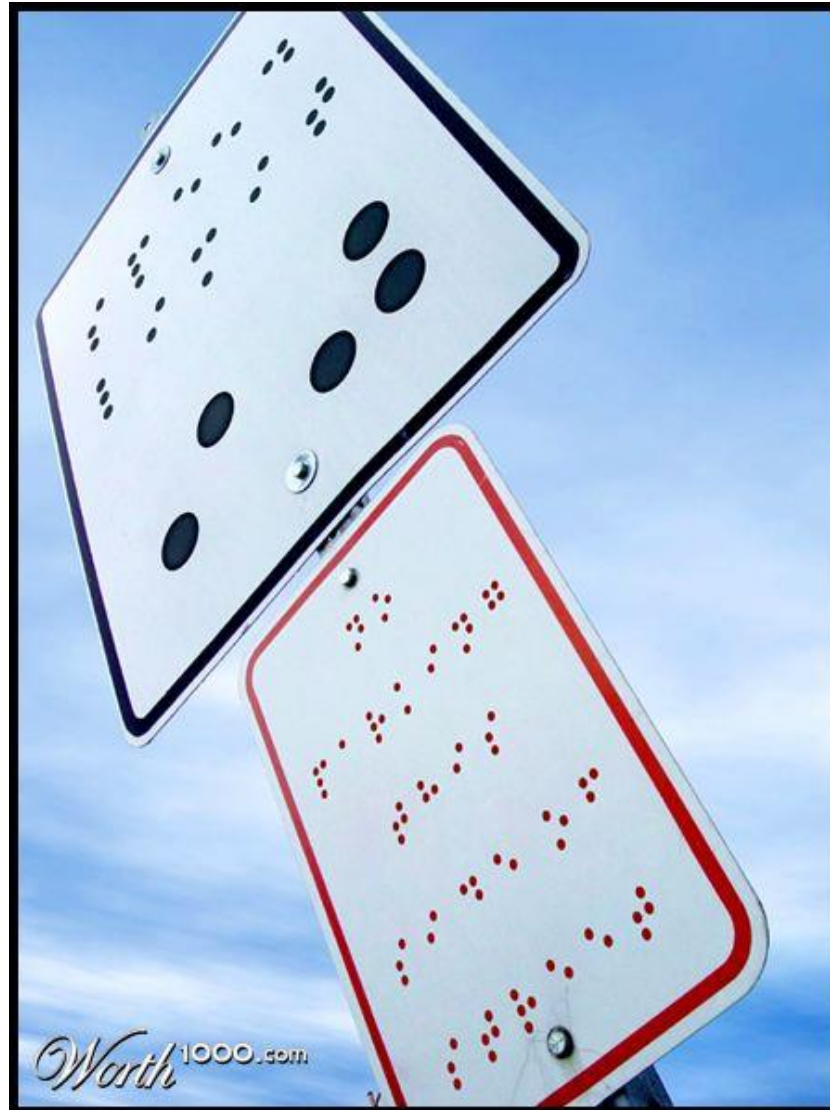
Inspections Gone Wrong



Didn't get a date stamp
No citizen witnesses

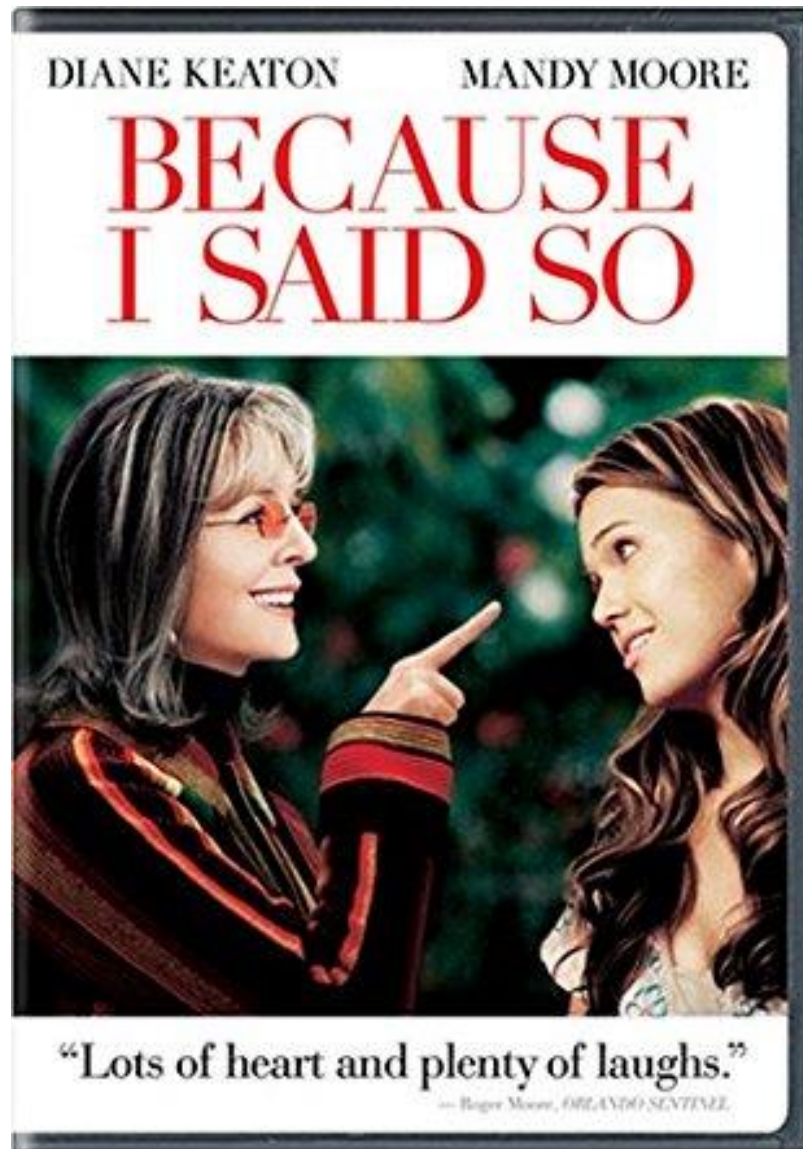
Inspections Gone Wrong

Didn't communicate what actually wanted (zoning inspector)



Is it in writing?

Case Studies



Do you need an Attorney?

Case Studies



@20tauri



How to Win an Enforcement Case?

Case Studies

DOCUMENTATION

COMMUNICATION



QUESTIONS?



Lego House – Billund Denmark



DMB TRAINING, LLC

Administrative Enforcement Training for all Inspectors
(code, environmental, engineering, development and more)

Fundamentals of Enforcement (2 Day Course)

Principles & Practices

History – Constitutional Law
History – Building Code
Kentucky Law
Role of Inspector/Officer
Goal of Inspector/Officer
Professional Readiness
Informal Methods of Enforcement
Development of Code Enforcement Case
Administrative Hearing Board
Liens on Property

Report Writing

What will you learn
What are important facts
Purpose of Documents
Enforcement Documents
Writing Styles
Nine Requisites
General Sentence Rules
General Paragraph Rules
Email Writing

Communication Skills

Basic Communication Skills
Active Listening
Non-Verbal Communication
Verbal Judo – Gentle Art of Persuasion
Dealing with an Angry Person
Ethics

Property Ownership

Where to Find Property Owners
Property Description

\$250/pp at your facility; minimum 10 participants

Training Materials & Interactive Discussion

Morning Coffee / Snack & Afternoon Drinks / Snack Provided

Demetria Mehlhorn • 859-339-9000 • dmbtrainingllc@gmail.com