

WATER RESOURCES ENFORCEMENT POLICY

Resource Contact: Coordination and Hydrology Section

Effective Date: 07-22-92

Revised: New

References: Chapter 18.104 RCW, Chapter 43.21A RCW, Chapter 43.83B RCW, Chapter 90.03 RCW, Chapter 90.14 RCW, Chapter 90.44 RCW, Chapter 90.4B RCW, Chapter 90.54 RCW, Chapter 173-160 WAC, Chapter 173-162 WAC.

Purpose: This policy provides guidance to achieve consistent application of, and compliance with, the laws and regulations of the state for the protection and development of surface and ground water: for the regulation and licensing of well contractors and operators; and for the regulation of well construction standards.

Application: This policy applies to all water resource staff, when enforcement actions are taken against a public or private party.

Authority: Authority for the State of Washington Department of Ecology to protect and develop surface and ground water is contained in the above referenced statutes. This authority includes the power to regulate and control the appropriation, diversion, and withdrawal of water; to prevent wasteful practices and protect the quality of waters of the state; and to achieve compliance through administrative orders, civil penalties, and criminal prosecution for violation of the laws, regulations, permits, and orders issued thereunder.

Authority to regulate and license well contractors and operators and to enforce state well construction standards is contained in the above referenced statutes. This authority includes the power to issue, deny, suspend, or revoke well construction licenses; to enter upon lands for the purpose of inspecting any water well; to establish standards for the construction of wells; prevent the pollution of any surface or ground water; and to issue administrative orders and assess civil penalties for violation of the laws, regulations, permits, and orders issued thereunder.

1. Enforcement overview

- a. Water Resources staff will encourage voluntary compliance through education and informal enforcement actions.

When voluntary compliance is not achieved, formal enforcement actions shall be used to assure compliance. All enforcement actions should be timely, completely documented, and pursued in an escalating manner until the violation is resolved.

Informal enforcement action is the first step in documenting and creating an historical record of a violation (see section 4). Options for informal enforcement action:

1. Warning letters, and
2. Field notices of non-compliance.

Formal enforcement action is based on statutory authority (see section 5). Options for formal enforcement action:

1. Administrative orders,
 2. Field citations,
 3. Civil penalties,
 4. Suspension or revocation of well driller's license,
 5. Court injunctions or orders, and
 6. Criminal prosecution.
- b. Enforcement actions shall be timely.

Enforcement actions are most effective when taken in a timely manner. Informal enforcement actions should be initiated within 45 days from the date the violation was documented. Formal enforcement actions should be initiated within 30 days of documentation.

- c. Unauthorized use of water is a violation, and will be subject to enforcement actions by Water Resources staff.

Water use is considered unauthorized if the use is not consistent with the provisions of Chapter 90.03 and 90.44 RCW and the rules adopted by Ecology; and/or is not a vested right represented by a water right claim filed pursuant to the Registration Act Chapter 90.14 RCW.

- d. Enforcement action shall be pursued for public agencies, as well as private parties.

Enforcement procedures for public agencies may differ from private entities, but the goal of compliance shall not be subordinated to other considerations.

2. Coordination of enforcement actions

- a. Regional staff is encouraged to coordinate enforcement actions.

Occasionally enforcement of well licensing and construction standards may affect the concerns and responsibilities of other regions, agency programs, or state and federal agencies. Examples include the Department of Health, Bureau of Labor and Industries, and Tribal Governments. Staff is encouraged to share both information and resources.

- b. The enforcement coordinator at headquarters acts as liaison to the Attorney General's office in assisting with preparation of appeal cases.

The enforcement coordinator will also develop and present enforcement training opportunities to all staff who recommend, review, or sign enforcement actions. In addition, the Enforcement Coordinator is responsible for developing policies and procedures that maintain the continuity of our enforcement program.

3. Selecting enforcement response

- a. Selecting an appropriate response to a documented violation is accomplished by first classifying the magnitude of the violation.
 - 1. Minor violation- a violation of regulatory requirements, which does not create an actual or imminent threat to human health or the environment.
 - 2. Major violation- a violation having the potential to create, or actually creating, a threat to human health or the environment. Additionally, any repetition or continuation of a minor violation by an individual or company will be considered a major violation.
- b. The magnitude of the violation, along with the following discretionary factors will be the basis for selecting the appropriate enforcement response (see PRO-2005).
 - 1. Economic advantage gained by non-compliance,
 - 2. Violator's cooperation to resolve the violation, and
 - 3. History of previous violations.

4. Setting standards for enforcement

- a. All enforcement actions will be on approved boilerplate documents.

The use of boilerplates results in efficient and consistent documentation of violations. Enforcement boilerplates will follow an approved outline (see PRO-2005). Certain required legal language, such as statutory cites and appeal process, will not be modified by field inspectors. Paragraphs describing the particulars of the violation will be written by the field staff and inserted into the document as the outline indicates (PRO-2005).

- b. The well driller, drilling contractor, and property owner may be held liable for violations of well construction standards.

Enforcement action against a property owner can be taken when it is not possible or appropriate to act against the well driller for violations of well construction standards. The property owner shall receive a copy of any order or penalty issued to a well driller

resulting from improper construction of a well (18.104.155 RCW), as well as an explanation of the consequences of an improperly constructed well (see PRO-2005).

5. Informal enforcement actions

Informal enforcement actions will be taken to provide the violator with an opportunity to voluntarily comply with the law.

- a. Warning letter—informs the recipient that a violation has occurred, and outlines the steps necessary for compliance.
- b. Notice of non-compliance—informs the recipient that a violation has occurred, outlines the steps necessary for compliance, and requests a response from the violator within 30 days (see PRO-2010).

6. Formal enforcement actions

- a. Formal enforcement action may be initiated if either informal action does not encourage compliance, or if a major violation has occurred.

A Recommendation for Enforcement Action Memorandum will be completed by field staff for all formal enforcement actions and approved by regional section supervisors. Procedures for initiating and completing formal enforcement actions are contained in PRO-2005.

1. Administrative order—specifies actions or corrections to achieve compliance, and may precede a civil penalty action.
2. Field citations—issued as an immediate response to obvious violations of well construction standards or licensing requirements (see section 6).
3. Civil penalties—levied against private or public entities (see section 8).
4. Suspension and/or revocation of a license—a well driller's license may be suspended or revoked when escalated enforcement actions have failed to achieve compliance, and the violation continues (see section 7).
5. Court injunctions—continued violation after escalated enforcement action may require court intervention to correct initiated through Attorney General's Office (see PRO-2005).
6. Criminal Prosecution- deliberate and willful violation of well construction laws and regulations which results in a serious impact on human health or environment may require criminal prosecution to correct (see PRO-2005).

7. Issuing enforcement actions in the field

- a. An administrative order may be issued in the field by posting the paperwork on a drill rig, waterworks or diversion.

A posted order is appealable to the Pollution Control Hearing Board. (PCHB). A Recommendation for Enforcement Action Memo will be completed after the fact when a field order is issued.

- b. A penalty notice may be issued in the field using a field citation.

Regional field inspectors with signature authority and the prerequisite training may issue field citations as an immediate response to an obvious violation. A field citation constitutes a notice of penalty and is subject to the same appeals process (see section 8). Discretionary factors for assessing penalty amounts are discussed in PRO-2005. A Recommendation for Enforcement Action Memo will be completed after the fact when a field citation is issued.

8. Suspension or revocation of well driller's license

- a. Failure to renew a well drilling license will result in a 30-day suspension period.

If action is taken to renew the license within 30 days, the suspension may be terminated. Revocation proceedings will be initiated if no action is taken to renew the license. A license revoked for non-renewal may not be reissued. A licensee is eligible to reapply and retest to obtain a new well driller's license.

- b. Field staff may recommend suspension or revocation of the well driller's license for recalcitrant drillers.

A recalcitrant driller is one who continues to resist compliance after escalated enforcement action is taken. The well driller's license may be suspended by the program manager for a maximum of six months. If the well driller continues to resist compliance after suspension, the well driller's license can be revoked for a period of one year. The licensee is eligible to reapply for a new license after one year.

- c. If a license is suspended or revoked while a driller is constructing a well, the suspension or revocation order may contain a waiver which allows the driller to complete construction of the well within a specified time period.

9. Protecting water quality standards

In conjunction with the enforcement of water resource rules and regulations, field inspectors are granted authority under Chapter 90.48 RCW to control and prevent the pollution of surface and underground waters. Application of this enforcement tool should be coordinated with Water Quality personnel.

10. Assessing penalties

- a. Civil penalties may be assessed on a per day per violation basis for each separate offense.

The maximum penalty for violation of a referenced statute, rule, or the conditions of a regulatory order is \$100 per day per violation. In assessing a penalty, field staff should consider the previous history of the violator, degree of cooperation in resolving the violation, and the impact on public health and/or environment of the violation. Guidance on penalty assessment is contained PRO-2005.

- b. Labor and Industries (L&I) bonds can be attached for delinquent penalties.

L & I bonds can be attached by the state for delinquent penalties. Application of this enforcement action must be coordinated with the Attorney General's office.

11. Appeal process

- a. A Notice of Penalty may be appealed to the PCHB or to the regional office that issued the penalty (Application for Relief from Penalty), but the directives of a regulatory order can only be appealed to the PCHB.

An appeal is made to the regional office by an Application for Relief from Penalty. Only new information that mitigates or refutes the evidence will result in a reduced or dismissed penalty. Applications for Relief from Penalty will be acknowledged within 30 working days of receipt.

- b. Innovative settlements may be negotiated at the request of the violator.

An innovative settlement often requires the violator to do more than pay a penalty, and encourages continued compliance. The environmental benefit of a negotiated settlement must equal or exceed the economic impact of the original penalty. Field staff are encouraged to negotiate innovative settlements, (see PRO- 2005).

12. Tracking enforcement actions

Informal enforcement action shall be tracked at the regional level. Regions will establish their own methods for tracking informal enforcement actions, for example, an enforcement database or memorandums to file. Formal enforcement actions are tracked by Central Programs (PRO-2005).

13. Educating the regulated community

- a. The regulated community is informed of changes in Water Resources policies and procedures.

Knowledge of and compliance with the state of Washington's statutes and regulations is the responsibility of those engaged in activities regulated by the laws of the state. To assist the regulated community and the public, or program will publicize changes in our policies and procedures.

- b. The enforcement history of violator may be made available to the public upon request.

The Water Resources Program may choose to publicize enforcement actions as a way of educating the regulated community and public. Publication of news releases for enforcement actions is coordinated through the program's public information officer.

14. Training requirements

Water Resources enforcement staff are required to participate in Ecology's Enforcement Certification Program.

Water Resource personnel who recommend, review, or sign enforcement actions will attend mandatory enforcement training courses, and complete a Water Resources on-the-job training manual. The Central Programs Enforcement Unit maintains record of participation in this certification program. In addition, the Field Citation Training Course is a prerequisite to obtaining the signature authority to issue these enforcement actions in the field.

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Special Note: These policies and procedures are used to guide and ensure consistency among water resources program staff in the administration of laws and regulations. These policies and procedures are not formal administrative regulations that have been adopted through a rule-making process. In some cases, the policies may not reflect subsequent changes in statutory law or judicial findings, but they are indicative of the department's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.