
Navigating an Enforcement Action: Managing the Process and Mitigating the Pain

**Presented by
Laura Kerr (Stoel Rives LLP) and
Richard Roché (Parametrix)
NEBC Managing Stormwater in Oregon
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Sources of Enforcement

- Inspections
- Self-reporting
- Third-party complaints, including environmental advocacy groups, competitors, other governmental agencies



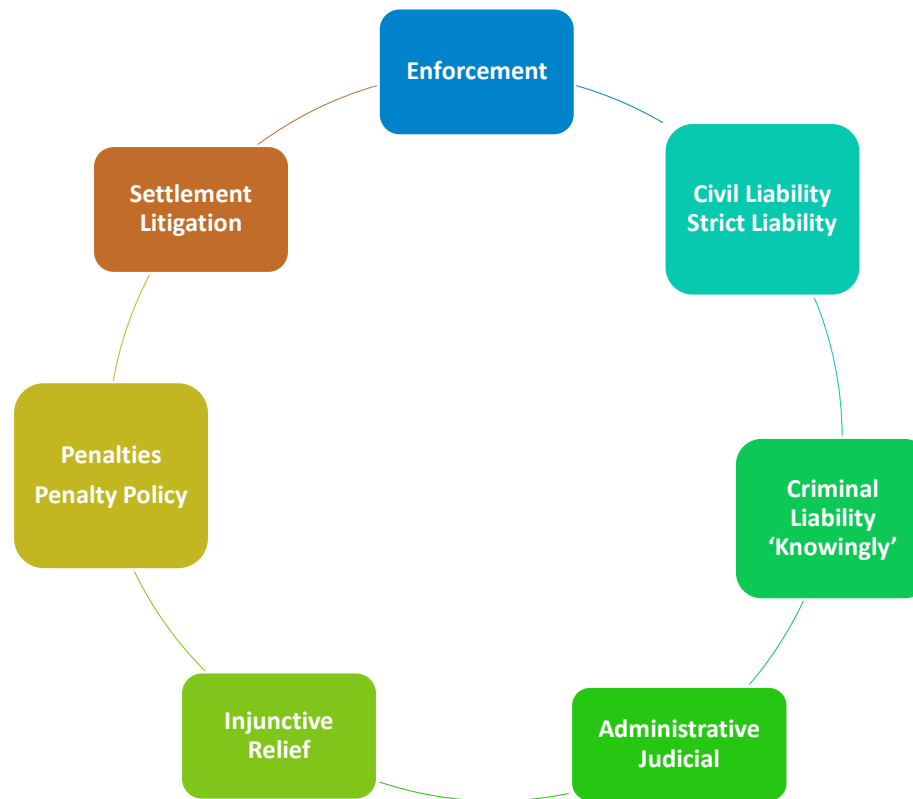
Types of Enforcement

Types of enforcement of stormwater permits in Oregon

- Civil enforcement
 - U.S. Environmental Protection Agency
 - Oregon Department of Environmental Quality
 - Citizen suits
- Criminal enforcement
 - Federal and state



Enforcement in a Nutshell



The Enforcement Process

Stage 1: Warning Letter, Pre-Enforcement Notice or Notice of Noncompliance

- Informal enforcement step
 - Important to understand what you've received
 - Takes different forms with different agencies
 - May be a warning only or the first step to formal action
 - *Caveat re: citizen suits*

The Enforcement Process

Stage 1: Warning Letter, Pre-Enforcement Notice or Notice of Noncompliance (cont.)

- Thorough factual investigation
 - Facts are seldom what they tell you the first time
- Probing legal analysis
 - Even simple rules can have multiple interpretations
- Corrective action
 - If the problem can be easily fixed, do it
 - If the fix will take time, work out a schedule with the agency

The Enforcement Process

Stage 1: Warning Letter, Pre-Enforcement Notice or Notice of Noncompliance (cont.)

- Constructive communication with agency
- Pre-referral settlements

The Enforcement Process

Stage 2: Assessment of Civil Penalties or Order

- Preserving rights
 - Answer and request for hearing must be timely filed
- Easier if case developed at NON stage
- Know when to fold 'em
 - Penalties compared to cost of defense
 - Effect on agency relations

The Enforcement Process

Stage 2: Assessment of Civil Penalties or Order (cont.)

- Most cases settle
- Negotiations
 - Civil penalties
 - Corrective actions
- Settlement considerations
 - Penalties
 - Realistic expectations
 - Role of economic benefit
 - Compliance order and schedule
 - Supplemental environmental projects
 - Press release

The Enforcement Process

Stage 2: Assessment of Civil Penalties or Order (cont.)

- Settlement agreement
 - Document completion of corrective actions
- Administrative appeal
 - Raises the case to a higher level
 - Your chance to set the facts straight or establish appropriate legal interpretation
 - Not typically effective if amount of penalty is only issue

Mitigating the Pain

Addressing the Sources

- Be proactive – comply with the permit
- Ensure agency record shows compliance
- Manage inspections
- Take advantage of self-reporting policies
- Manage public perceptions



Mitigating the Pain



Working the Process

- Remedy any potential violations pronto and document efforts to do so
- Get your story out there: Respond to PENs, request meeting/site visit if appropriate, request settlement conference
- Frame responses/discussions around penalty calculation factors

Avoiding the Enforcement Process

- Develop a culture for compliance
- Corporate and facility commitments
- Know your site!
- Be organized
- Understand and eliminate common stormwater compliance issues

Questions/Comments?



Laura Kerr
(503) 294-9176
laura.kerr@stoel.com



Richard Roché
(503) 416-6168
roche@parametrix.com