

# NEBC Managing Stormwater In Oregon Enforcement Panel

June 14, 2023

# Topics

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- DEQ's enforcement policy.
- The enforcement process, from violation to final order.
- Stormwater enforcement actions by the numbers.

# DEQ's Enforcement Policy

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## *Why does DEQ enforce the law?*

- Penalties deter future violations.
- Promotes fairness and “levels the playing field.”
- DEQ has an obligation to enforce the law.

# DEQ's Enforcement Policy

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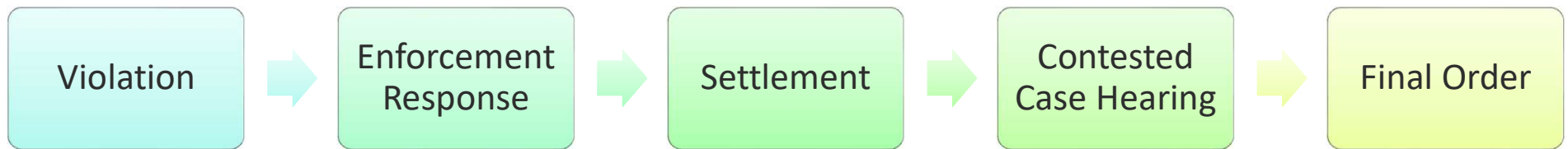
## *When does DEQ issue a civil penalty?*

- Ensure consistent statewide enforcement program.
- Escalating enforcement response.
- Focus on foundational requirements and activity that harms or may harm public health and the environment.

# The Enforcement Process

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From discovering a violation to a final order:



# The Enforcement Process

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## Discovery of a violation



Violation

- Begins when DEQ (or Agent) discovers a **violation** during an inspection or report review.
- Followed by post-inspection conference and a written inspection report.
- You may deny access. However, DEQ will return with a search warrant and you may be penalized.

**PRACTICE TIP: The inspection is an opportunity for you to set the tone of the interaction.**

# The Enforcement Process

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## Response to a violation

Enforcement  
Response

- Policy directs staff on the appropriate **Enforcement Response** for each violation: Warning Letter, Expedited Enforcement Offer (EEO), Pre-Enforcement Notice (PEN).
- Response is *not* at the discretion of the inspector. Consistency is key!
- Stormwater enforcement guidance is available online as Table 3A.  
<https://www.oregon.gov/deq/FilterDocs/enforcementpol2.pdf>

**PRACTICE TIP: To mitigate penalty assessment, complete corrective actions and respond to PEN in writing.**

# The Enforcement Process

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## Response to a violation

Enforcement  
Response

- *Formal enforcement* begins with a Notice of Civil Penalty Assessment and Order (NCPO).
- The NCPO is an administrative order. DEQ makes factual findings, cites violations, assesses penalties, and may include corrective actions.
- The Respondent must appeal in writing within 20 days of service.



# The Enforcement Process

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## The “informal meeting”

Settlement

- DEQ will always offer informal negotiations to foster **settlement**.
- Settlement is achieved through a Mutual Agreement and Final Order (MAO) and based on guidance, penalty assessment rules, policy, and consistent agency practice.
- You may pursue a Supplemental Environmental Project (SEP).

**PRACTICE TIP:** You may file a public records request to obtain DEQ’s enforcement records.

# The Enforcement Process

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## Your Day at Hearing

Contested  
Case Hearing

- Formal hearing before an Administrative Law Judge (ALJ).
- Trial-like setting, questioning witnesses and present evidence.
- DEQ has the burden of proof. Standard of proof is the preponderance of evidence.

**PRACTICE TIP: Consider cost and duration of a pursuing a contested case hearing.**

# The Enforcement Process

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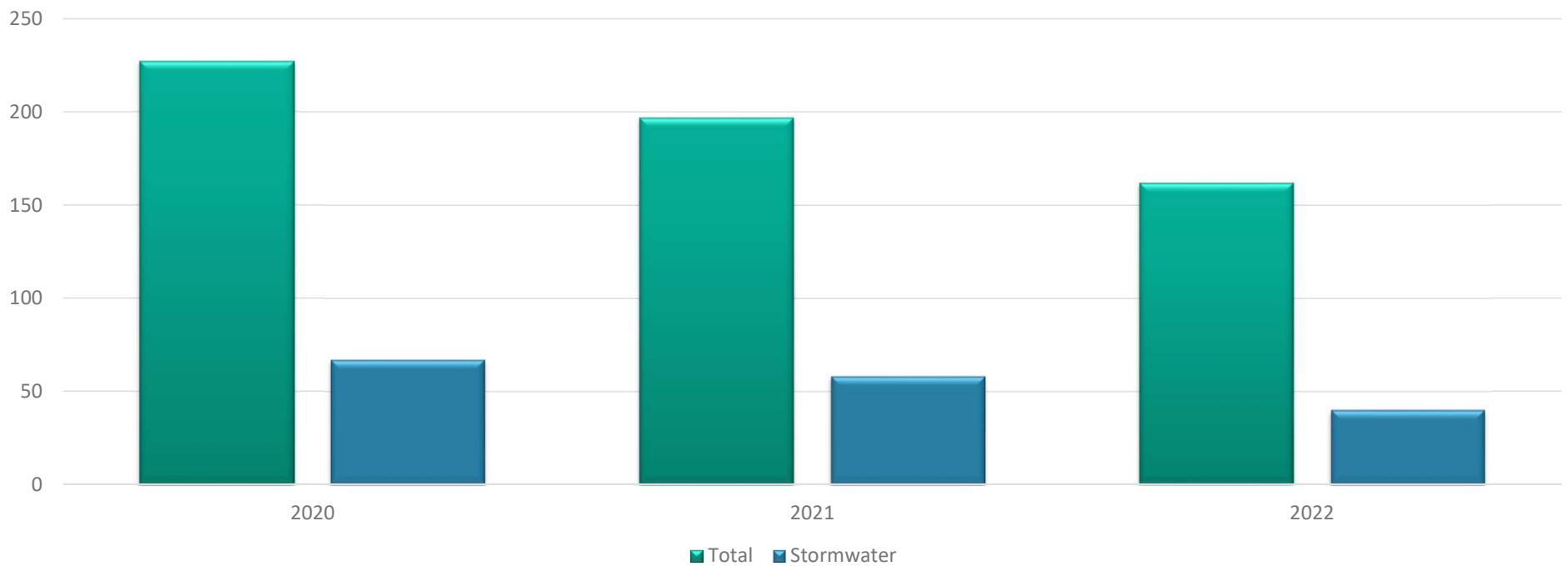
## After Enforcement

Final Order

- Either DEQ or Respondent may appeal ALJ's order to the Environmental Quality Commission (EQC).
- The final order resolves the violations.
- Violations in final orders may aggravate future penalty assessment.
- **PRACTICE TIP: Understand that the regulatory relationship continues after enforcement.**

# Enforcement – By the Numbers

Number of Formal Enforcement Actions Issued per Year



# Enforcement – By the Numbers

Year	Average Penalty	Highest Penalty
2020	\$18,617	\$108,210
2021	\$12,470	\$134,734
2022	\$21,914	\$114,089

- Nearly half of stormwater enforcement actions only cite missed monitoring violations.
- Higher penalty assessments typically include significant avoided cost estimates for failing to implement stormwater plans (SWPCP or ESCP).

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## Thank you

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