

Subject:	Enforcement Procedure	Created:	5/5/2009
Unit:	DMCE & TS: BKD; JB	Revised:	04/09/2015
Purpose & Scope: This procedure is intended as an outline of the Drinking Water Services (DWS) enforcement process and to ensure the consistent application of enforcement action(s) against water suppliers due to non-compliance with the requirements in OAR Division 333-061 and ORS Chapters 431 and 448 .			

1. Definitions:

Enforcement:

Enforcement means specific action taken by DWS in response to violations of the Oregon Administrative Rules in Chapter 333, Division 061 or Oregon Revised Statutes (ORS) in Chapters 431 and 448 and must include a written document including a compliance schedule.

Enforcement Actions:

- **Administrative Order (AO):**

An AO is drafted by DWS enforcement staff and reviewed by DWS managers as necessary. It should be issued when a situation constitutes a potential public health hazard and after a water supplier has failed to comply with clearly communicated regulatory requirements or there is an immediate risk to public health.

- **Bilateral Compliance Agreement (BCA):**

A BCA is written by DWS enforcement staff and should be issued when a water supplier has initiated corrective action.

- **Court Action:**

A court action is a complaint filed in circuit court seeking improvements or corrections to resolve a public health hazard.

- **Notice of Non-Compliance (NON):**

A NON is written by DWS enforcement staff and should be issued when a water supplier has failed to comply with clearly communicated regulatory requirements.

- **Other letters written by DWS, county or Dept. of Agriculture staff**

These letters (generally referred to as informal enforcement) are issued as an initial enforcement action and include the elements specified in step 2 under Section 4 of this procedure.

- **Proposed order (Notice of Intent to Assess Civil Penalties) and Final Order assessing civil penalties:**

Civil penalties are assessed when a water supplier has failed to take action after a previous enforcement action or when there is an immediate and serious risk to public health.

Regulatory Staff:

An individual staff member with regulatory responsibility for some aspect of a public water system, including:

- DWS Tech Services Staff
- County/Ag partners
- DWS Hydrogeologists
- DWS Enforcement Staff

2. Enforcement priorities

Enforcement is generally prioritized as follows:

1. Immediate health hazards;
2. Water systems specifically referred for enforcement; and
3. Other violations based on system score.

Rule violations for which enforcement action will be taken are identified below in order of priority.*

1. [333-061-0030\(4\)](#): exceedance of the MCL for *E. coli* (coliform bacteria)
2. [333-061-0032](#): inadequate or ineffective surface water treatment
3. [333-061-0032](#): failure to correct deficiencies or resolve fecal contamination of a groundwater source
4. [333-061-0030\(1\)](#): exceedance of the MCL for nitrate
5. [333-061-0030](#): exceedance of the MCL for any regulated contaminant at acute levels or posing an immediate threat to public health
6. [333-061-0031](#): exceedance of a maximum residual disinfectant level
7. [333-061-0030](#): exceedance of the action level for lead
8. [333-061-0034](#): failure to utilize or properly operate corrosion control
9. [333-061-0030](#): exceedance of the MCL for arsenic or any chemical contaminant not presenting an immediate threat to public health
10. [333-061-0032\(6\)](#) and 333-061-0078: persistent contamination by total coliform bacteria where repeated investigations do not identify a corrective action to resolve the situation
11. [333-061-0036](#): failure to meet monitoring requirements
12. [333-061-0076\(6\)](#): failure to correct significant deficiencies following a sanitary survey
13. [333-061-0042](#): failing to publish public notice as required
14. [333-061-0050](#): the existence of water system components that do not meet construction standards
15. [333-061-0232](#): failing to fulfill the responsibilities of a water system operator
16. [333-061-0225](#): failing to utilize a certified operator
17. [333-061-0060](#): failing to complete plan review before construction or installation of water system components
18. [333-061-0040](#): failing to report properly collected sampling results

**Enforcement priority may be adjusted on a case-by-case basis due to specific circumstances.*

3. Enforcement Process

The standard operating procedure for all enforcement actions is:

1. A water system is identified as non-compliant by regulator.
2. Initial discussion between regulatory staff to determine the appropriate type of enforcement action.
3. Letter is mailed to the water supplier from the regulator and must include the following elements:
 - Specific rule violation identified
 - Description of the violation
 - A statement that continued non-compliance may result in referral for formal enforcement, including assessment of civil penalties
 - A specific date identified by which compliance must be achieved or actions completed, or a formal acknowledgement from the water supplier it will achieve compliance by a specific date.
4. Compliance schedule and enforcement action are entered in SDWIS and letter posted online.

Recommended steps and other information related to enforcement actions:

- Discussions shall occur at five months to determine course of action.
- Some type of enforcement action must be sent when a water system is considered a priority non-complier ([PNC](#)) with a system score of 11 or more points for six months or more according to [PNC Resolution Process](#) as appropriate.
- Any DWS staff member may refer a water system for enforcement action at any point due to rule violations at the water system.
- Enforcement personnel will review violations and the compliance status of water systems every month, identifying those systems that may require enforcement action.
- DWS technical services and partner agency staff should attempt to ensure compliance at water systems prior to referral to DWS enforcement staff for action.
- For informal enforcement issued by a county or the Department of Agriculture, a signed copy of the letter must be forwarded to DWS enforcement staff or the DMCE email address.
- If the priority of the two proposed enforcement actions referred to DWS enforcement staff is equal, they will be processed in the order with which they were agreed upon or the request was received.
- The enforcement document is drafted and submitted to involved personnel for review.
- After review, approval (if necessary), and a signature, enforcement documents are mailed to the water supplier.
- If no response from the water supplier by the date identified in the letter, then DWS enforcement staff or partner agency staff will call the water supplier to ensure the general requirements and potential consequences of the enforcement action is understood.
- If a water supplier misses a deadline and no amendments or extensions are approved, then an escalated enforcement action will be issued.
- Escalated enforcement will proceed only after all parties agree that civil penalties are warranted if the water supplier fails to comply with the terms of the enforcement action.

4. Specific Guidelines for Civil penalties

Civil Penalties may be assessed after a water supplier fails to comply with the deadline in any enforcement action. When assessing a civil penalty, DWS enforcement staff will notify the Center for Health Protection Program Support Manager to facilitate the collections process if necessary.

5. Specific Guidelines for a BCA

- Water supplier is provided the opportunity to review the language and terms and propose revisions before signing the document.
- If the water supplier refuses to agree to the terms, an AO will be issued.
- If the water supplier agrees to the terms, a final copy is prepared for signatures.
- After review, approval (if necessary) and signed enforcement documents are mailed to the water supplier.
- If a water supplier misses a BCA deadline and no amendments or extensions are approved, then an administrative order will be issued.

6. Open Enforcement Actions

- Open enforcement actions will be reviewed by enforcement personnel every month to determine if any can be closed or if any approaching deadlines have not been met.
- Extensions must be requested by the water supplier prior to a deadline being missed.
- If a water supplier misses a deadline, DWS enforcement staff must determine if additional or escalating enforcement action is appropriate.
- Water suppliers may be notified of the approaching deadlines if DWS or partner agency personnel believe it will increase the chances of action on the part of the water supplier.
- Modification or extension of an enforcement action must be approved by DWS enforcement personnel. Amendments and extensions to enforcement actions must be signed by the individual who signed the original enforcement action or someone of equal authority.

7. Return to Compliance

- A water system which completes the required and agreed upon actions, and no outstanding violations remain, is considered to have returned to compliance (RTC).
- Any open compliance schedules will be closed and violations RTC in SDWIS.
- If a water system is abandoned or the water supplier ceases operation of the water system, open enforcement actions will be closed.
- For AOs, if all required compliance actions have been completed by the deadlines specified in the AO, DWS enforcement staff will issue a letter to the water supplier notifying them they have returned to compliance.
- For BCAs, a statement that the terms of the BCA have been satisfied may be mailed to the water supplier or included in another DWS letter (for example a plan review approval letter).
- If a letter is not mailed to the water supplier notifying them the terms of the enforcement action were satisfied, DWS technical personnel are encouraged to telephone or send an email to the water supplier notifying them.

