



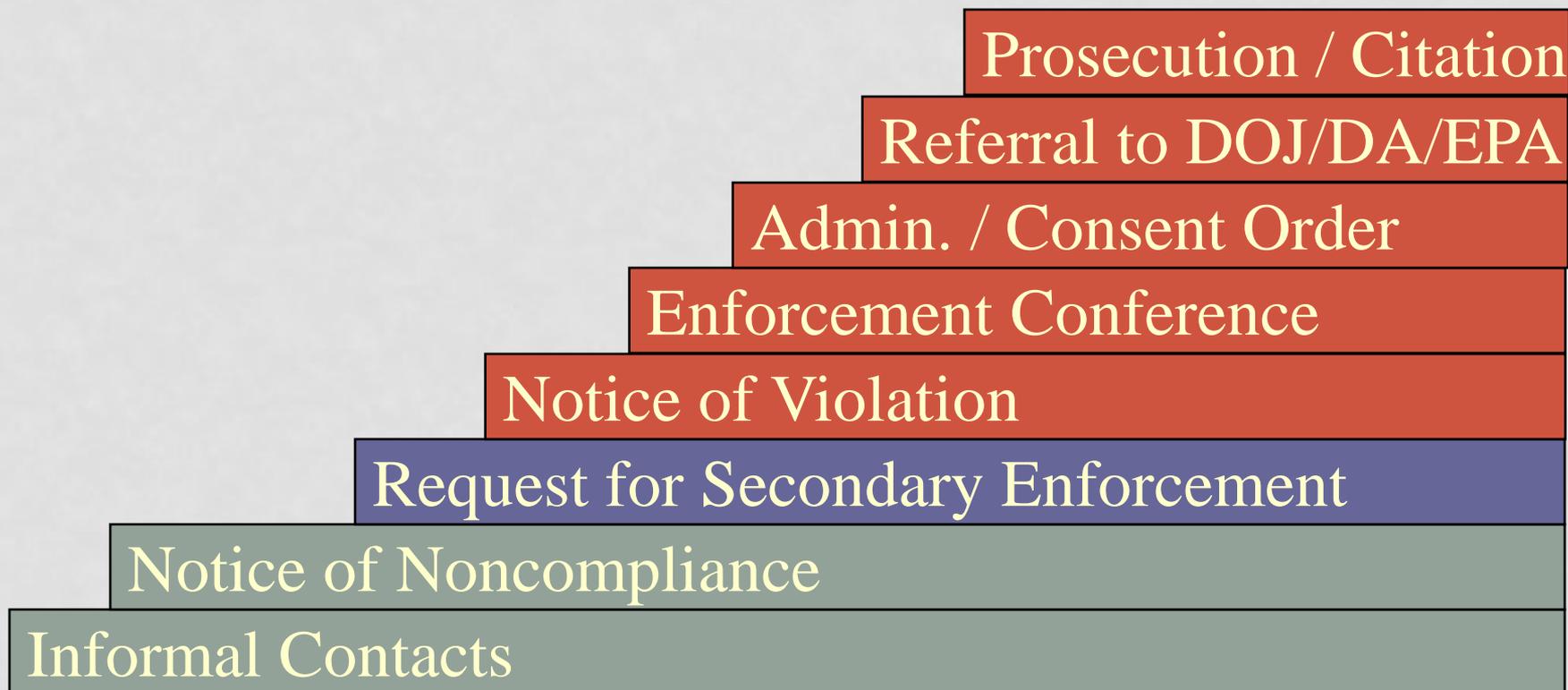
WISCONSIN DEPARTMENT OF NATURAL RESOURCES

STEPPED ENFORCEMENT
CASE STUDIES

April, 2013

Saji Villoth, Environmental Enforcement Specialist
Southeast Region

Stepped Enforcement



Environmental Enforcement Role

- Starts informally but becomes more formal and legal as the steps progress
 - Most cases are resolved through use of Notices of Violation and Enforcement Conferences - Typically about 10% of cases will escalate to Orders and/or Referrals
- 2010 Statewide actions (Civil)
 - 461 NOVs Issued
 - 232 Enforcement Conferences Held
 - 51 Cases Referred to DOJ



10 Year Average (Rounded)

- Notices of Violation = 500
- Enforcement Conferences = 300
- Referrals = 65
- Penalties = 2.5 Million

INFORMAL CONTACTS

(FIRST STEPS)

- Program Staff
 - Contacts
 - Phone calls, site visits, interviews, inspections and complaints
 - Documentation
 - Facility contact forms, letters, file memos, case activity reports, samples and photos



NOTICE OF NONCOMPLIANCE (NON)



- Issued by Program Staff
 - Letter sent to violator
 - Advises of problems
 - Requests correction
- Program decision based on seriousness of alleged violations & individual case facts
- As soon as appropriate response is lost
 - Don't wait any longer than necessary

REQUEST FOR SECONDARY ENFORCEMENT (EE REQUEST FORM)

- Decision to pursue further enforcement action is made by Program Staff, Supervisors and EE Specialist
 - EE will review for:
 - Consistency
 - Proofs
 - Elements of the offense

NOTICE OF VIOLATION

- Formal letter issued by EE staff which:
 - **States the violations**, and permit, statute or code citation
 - **Gives brief description of violations** and circumstances
 - **Warns of possible prosecution and penalties**
 - **Requests information**, documentation or response within set time period (10 days) or by specific date (June 16, 2012)
 - Invites violator to an **enforcement conference**
 - Includes **Notice of Claim** for governmental units

Case Study

Increase enforcement level to Notice of Violation

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
Southeast Region Headquarters
2300 N. Dr. Martin Luther King, Jr. Drive
Milwaukee WI 53212-3128

Scott Walker, Governor
Cathy Stepp, Secretary
John Hammen, Acting Regional Director
Telephone 414-263-8500
FAX 414-263-8606
TTY Access via relay - 711



June 27, 2011

[REDACTED], Registered Agent

Casetrack No. 2011-SEEE [REDACTED]

[REDACTED]
New Berlin, WI 53146

NOTICE OF VIOLATION

The Department has reason to believe that [REDACTED] is in violation of solid waste storage, open burning, industrial stormwater and wetland fill regulations at the facility located at [REDACTED], Waukesha County.

On June 1, 2011, Department staff inspected your facility in response to complaints. The following potential violations were documented at the [REDACTED] site:

NR 500.06 License applications. Unless otherwise specified, no person may operate or maintain a solid waste facility without a license from the department. A submittal for initial licensing or relicensing of any solid waste facility shall include:

NR 502.08 Solid waste processing facilities.

(1) GENERAL.

(a) Unless exempt under [sub. \(2\)](#), no person may operate or maintain a solid waste processing facility unless the person complies with the general requirements in [s. NR 502.04](#), and has obtained a plan of operation approval as specified in [sub. \(4\)](#) and an operating license from the department.

NR 216.21 Applicability and exclusions.

(2) CATEGORIES. This subchapter applies to discharges originating from the industrial facilities belonging to categories identified in [pars. \(a\)](#) and [\(b\)](#).

To discuss these violations, a meeting has been scheduled for:

Date: July 6, 2011

Time: 11:30 AM

Place: Waukesha Service Center
141 NW Barstow, Waukesha

This meeting is your chance to present your side of this matter. In order to make this meeting as productive as possible, please bring with you with any documents, contracts or other records, or any person qualified to help resolve this matter.

Sincerely,

ENFORCEMENT CONFERENCE

- Program Staff, EE specialist, violator, violator's attorney
- Meeting with violator on a scheduled date, encouraged to bring any consultants, contractors, etc. who can help the discussion
- Typically held at a Department office

ORDERS

- Use an Order to:
 - Set a Schedule for Action
 - Revoke a Permit
 - Require Submittal of Documents
- Types of Orders
 - Unilateral or Administrative Order
 - **Administrative Forfeiture Order**
 - Public Water Supply, s. 281.99(1), Wis. Stats.
 - Consent Order
 - Emergency Order

REFERRALS

- Recommendation by the Department to prosecute for violations
- Who Prosecutes?
 - Wisconsin Department of Justice
 - District Attorney
 - EPA
- Civil
- Criminal – Willful / Negligent

CASE STUDY



FAILING BMPS



DISCHARGES INTO WETLANDS



Section 283.31(1), Wis. Stats: The discharge of any pollutant into any waters of the state or the disposal of sludge from a treatment work by any person is unlawful unless such discharge or disposal is done under a permit issued by the department under this section or s. 283.33.

- Section 283.01(11), Wis. Stats: Definitions. In this chapter: **"Person"** means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.

Evidence / Elements



NEW DEVELOPMENTS WITH MS4 PERMITS

USEPA looking at the DNR's MS4 permitting process, so DNR staff will need to put additional focus on MS4 permitting in 2013.



MS4 PERMITS

1. Illicit Discharge & Detection

- a. Respond to observed or reported illicit discharges to the MS4 or from MS4 outfalls
- b. Call DNR spill hotline:
 - a. Call 1-800-847-9367, 24 hours a day.
 - b. Text us at TIP 411 (847411). Text: TIPWDNR [space] followed by the tip.
 - c. Email us your violation at le.hotline@wisconsin.gov

2. Construction Site Erosion Control

- a. Issue permits to construction sites including permits (or equivalent) for municipal projects
- b. Inspect active construction sites on routine basis and based on complaints
- c. Use appropriate enforcement mechanisms to correct problems
- d. Document inspections and enforcement actions

3. Post-Construction Storm Water Management

- a. Enforce long term maintenance agreements for privately owned storm water facilities

For information on MS4 modeling and permitting:

Check the DNR Website at: <http://dnr.wi.gov/topic/stormwater/>

Or contact you local stormwater staff which can be found at:

<http://dnr.wi.gov/topic/stormwater/contacts.html>



CONTACTS

- For more information:
- General website: dnr.wi.gov
- General contacts for water regulations questions:
 - Southeastern, South-central & Northeastern regions:
 - Deborah.lee@wisconsin.gov
 - Northern & West-Central regions:
 - Lynn.hudacek@wisconsin.gov

