

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

# Environmental Enforcement 101

**2022 Spring Biosolids Symposium**

[DNR.WI.GOV](http://DNR.WI.GOV)



# Outline

- Role of Environmental Enforcement Specialists
- Programs
- Stepped Enforcement Process
  - Intro
  - Why?
  - Ineffective vs. effective enforcement
  - Notices of Noncompliance
  - Notices of Violation
  - Request for Secondary Enforcement
  - Enforcement Conference
  - Post-Enforcement Conference
  - Enforcement options
- Enforcement Data and Trends



# Role of Environmental Enforcement Specialists

- Consultation / “Big picture” perspective
- Notices of Violation
- Lead enforcement conferences
- Draft enforcement documentation (e.g. Orders, Referrals)
- Liaison to DOJ
- Program Liaisons
- EE Training



# Programs

## Environmental Management

- Drinking Water
  - Public
  - Private
- Waste Management
  - Solid Waste
  - Hazardous Waste
- Remediation and Redevelopment
  - Spills
- Air Management
  - Title 5
  - Non Title 5
  - Asbestos
- Water Quality
  - Wastewater
  - Septage
- Invasive Species Management

## External Services

- Waterways and Wetlands
- Dam Safety
- Watershed
  - Storm Water
  - Nonpoint
  - CAFO



# Stepped Enforcement

- A planned series of actions that expand and intensify as the case goes on
  - To increase the motivation toward compliance
- Tailored to fit the circumstances
- May start informally but becomes more formal



# Why Use Stepped Enforcement

- It works. Data shows most violations are resolved voluntarily
- Clear documentation
- It makes the best use of limited field, enforcement and legal resources
- Can use other enforcement tools



# Ineffective Enforcement

- Inspection – verbal correction
- Inspection – verbal correction
- NON
- Citation
- NON
- Meeting
- Inspection – verbal correction
- NON, NON....



# Stepped Enforcement

- Inspection – verbal correction
  - Inspection report sent
- Inspection – verbal correction
- NON
  - No response
- NOV
- Enforcement Conference
  - Return to compliance
  - Citation, order, referral

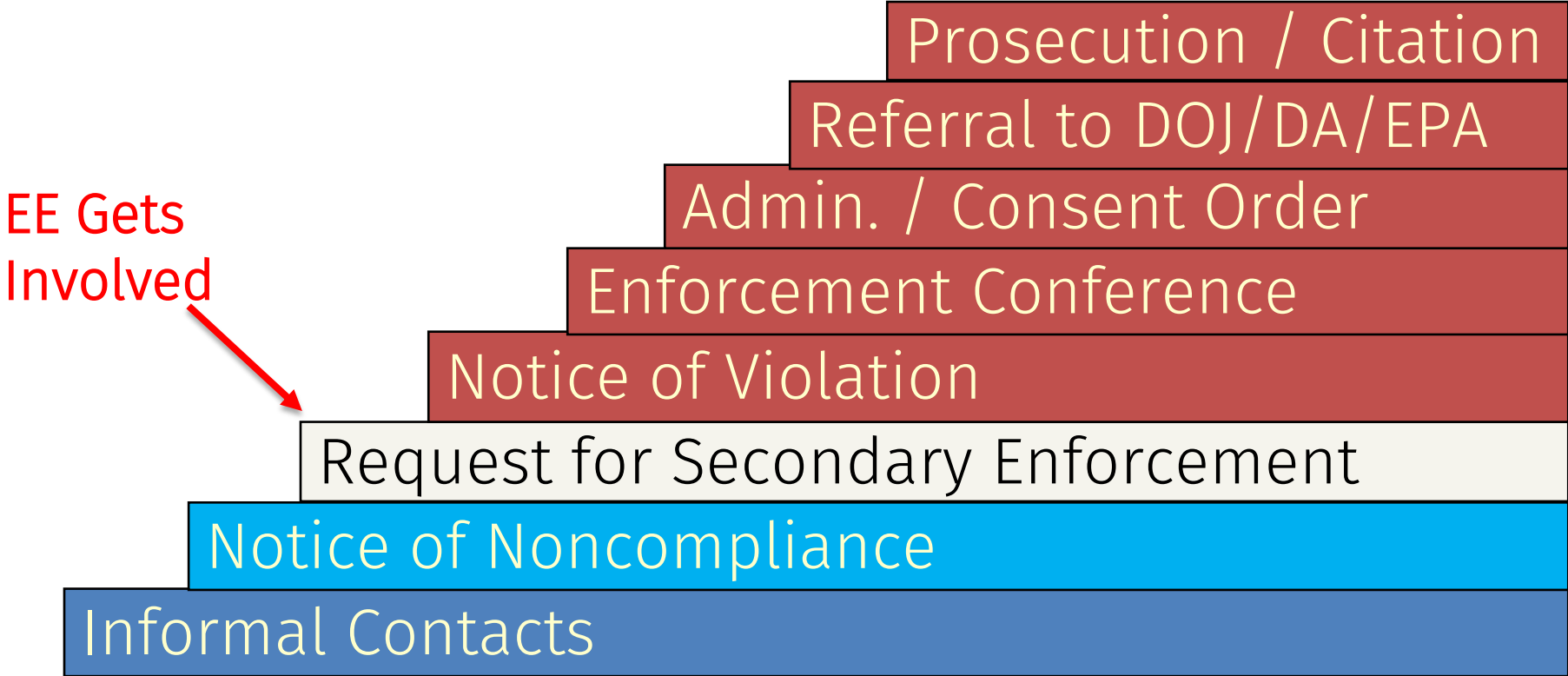


# Bottom Line

In order for enforcement actions to compel return to compliance - the actions must escalate



# Stepped Enforcement - Diagram



# Stepped Enforcement - Informal Contacts

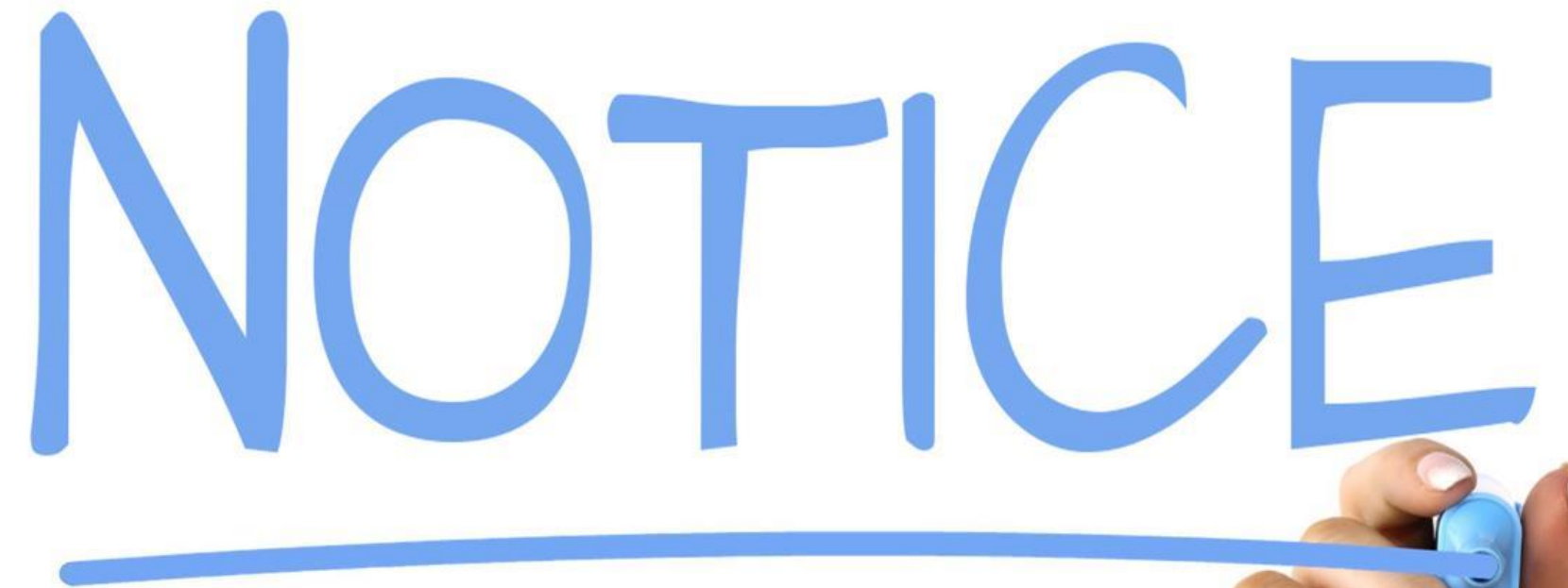
- Program Staff
  - Inspections
    - Documentation
      - Inspection Report
      - Photos/Samples
      - Case Activity Reports
    - Response
      - Letters
      - Verbal corrections



# Stepped Enforcement - Notice of Noncompliance

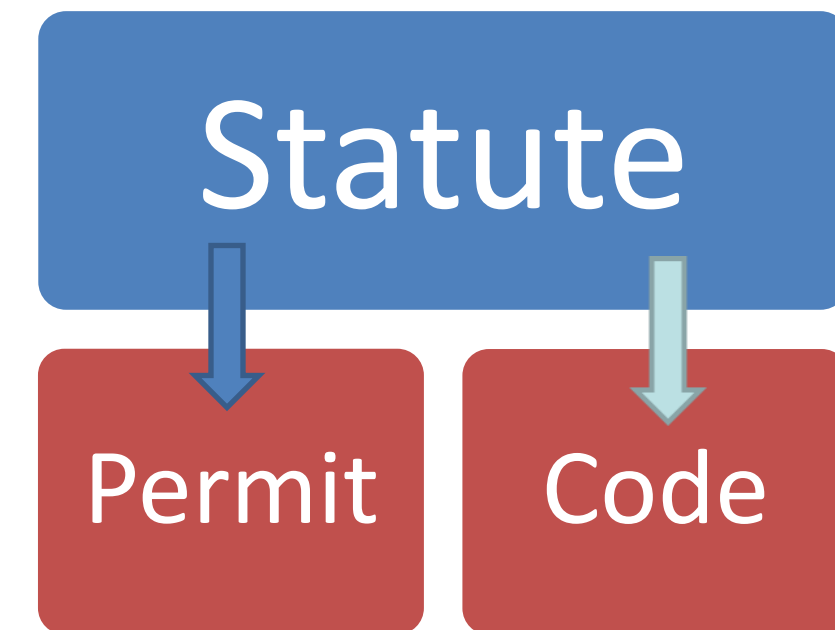
- Issued by Program Staff
  - Formal letter sent to violator
    - Advises of problems
    - Requests response by date

NOTICE

A hand holding a blue marker is shown underlining the word 'NOTICE' in a large, blue, sans-serif font. The hand is positioned at the bottom right of the word, with the marker tip touching the bottom line of the letter 'E'.

# Stepped Enforcement - Notice of Violation

- Violation(s) Section, Penalty Section
- Enforcement Conference Schedule



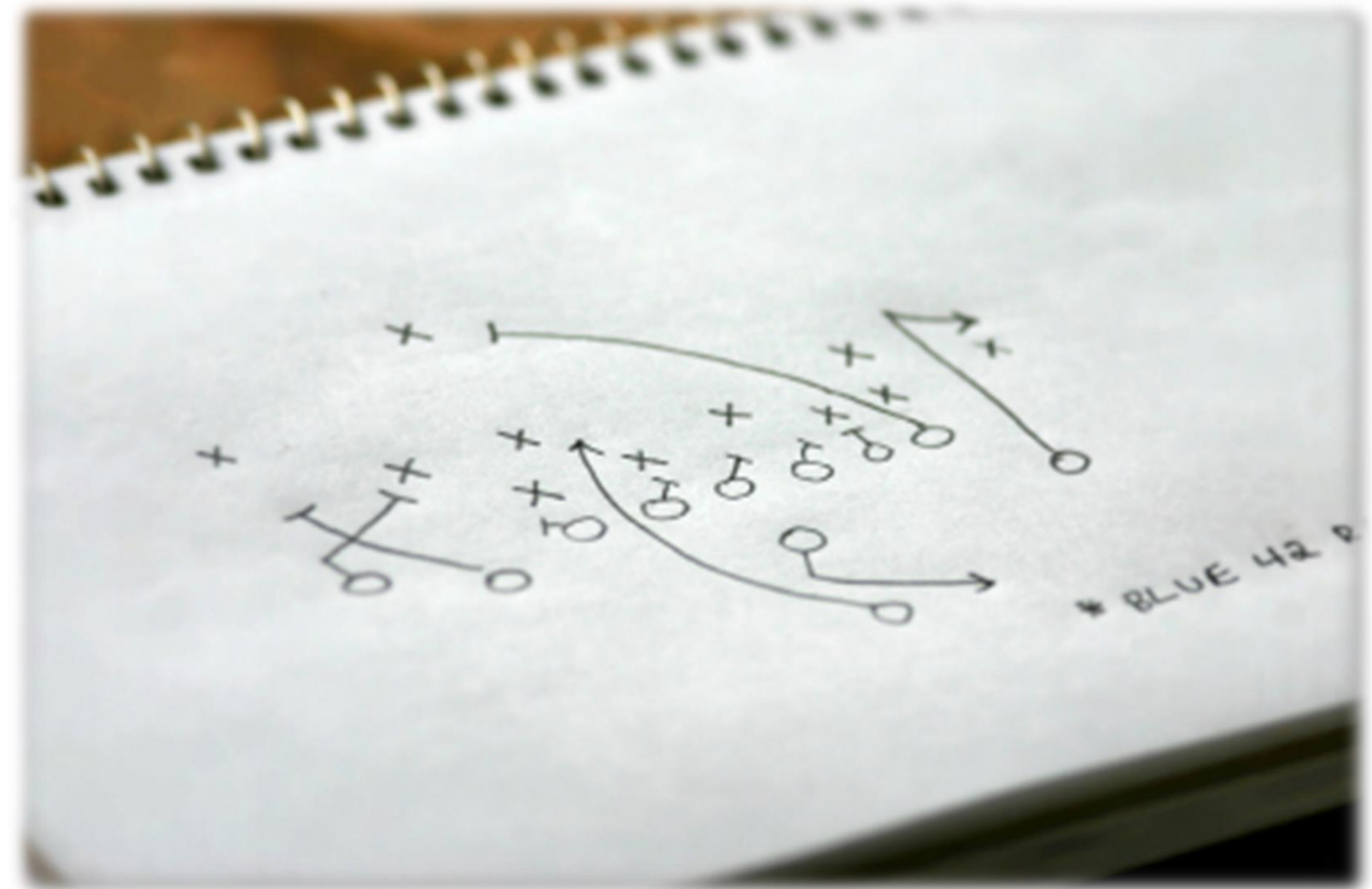
# Stepped Enforcement - Enforcement Conference

- Typically, held via Skype or conference phone; possibly face to face meeting.
- Enforcement Specialist runs the meeting
- Program staff are experts
- Who can attend
- Summary letter
  - Next steps



# Post-Enforcement Conference

- Enforcement decision
  - Options
    - Compliance Agreement
    - Some Programs
      - Orders
      - Citations
    - Referral
    - Close Out



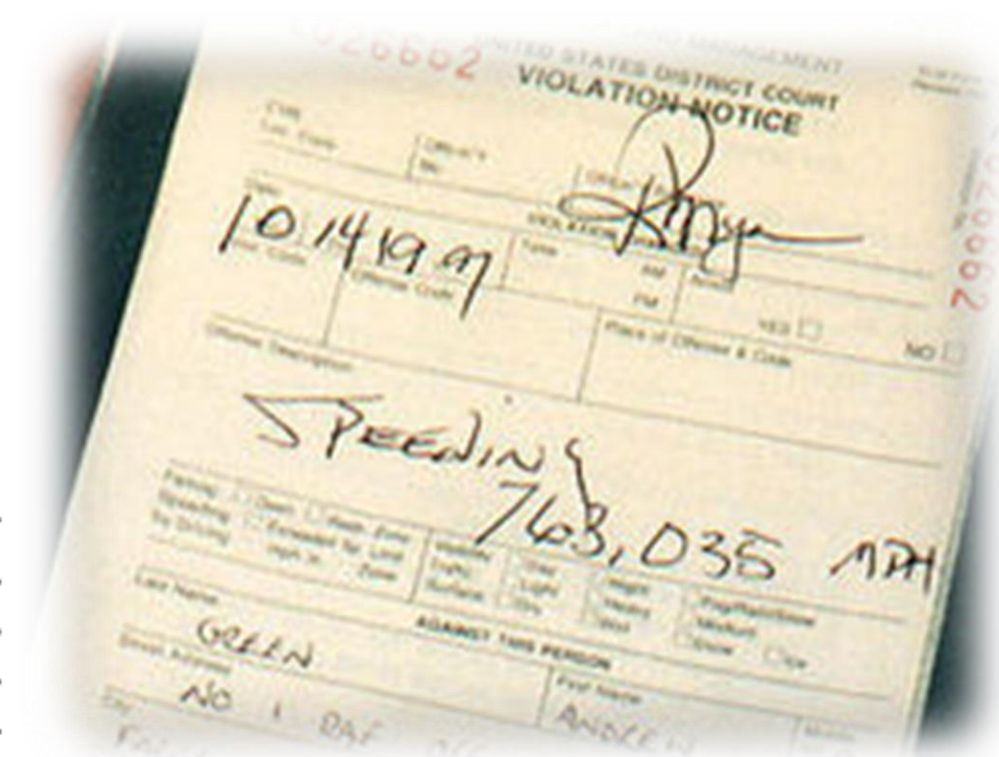
# Stepped Enforcement - Orders and Compliance Agreements

- Use an Order to:
  - Set a schedule for action
  - Revoke a permit
  - Require submittal of documents
- Types of Orders
  - Consent Order
  - Administrative Order
  - Administrative Forfeiture Order
    - Public Water Supply, s. 281.99(1), Wis. Stats.
- Compliance Agreements



# Stepped Enforcement - Citations

- Can be issued as part of secondary enforcement
- Or, at any time
- Citation authority for violations of ch. NR 113, Wis. Adm. Code



Chapter NR 113 - Servicing Septic or Holding Tanks, etc. (Septage and Industrial Wastes)						
NR 113.04(1)	Operate unlicensed business (10-5000)	500.00	130.00	137.50	100.00	867.50
NR 113.04(2)	Fail to notify of change of address (10-5000)	100.00	26.00	137.50	20.00	283.50
NR 113.04(3)	Dispose of septage contrary to ch. NR113 (10-5000)	500.00	130.00	137.50	100.00	867.50
NR 113.05	Licensing requirements (10-5000)	300.00	78.00	137.50	60.00	575.50
NR 113.06	Equip & fail to display stickers or fail to cleanup spill (10-5000)	300.00	78.00	137.50	60.00	575.50
NR 113.07	Fail to obey disposal requirements (10-5000)	500.00	130.00	137.50	100.00	867.50
NR 113.08	Fail to have site evaluation (10-5000)	300.00	78.00	137.50	60.00	575.50
NR 113.09	Fail to follow application rates (10-5000)	500.00	130.00	137.50	100.00	867.50
NR 113.11	Fail to submit site data to Dept/fail to keep proper records (10-5000)	500.00	130.00	137.50	100.00	867.50
NR 113.12	Violate septage storage requirements (10-5000)	300.00	78.00	137.50	60.00	575.50



# Stepped Enforcement : Non-renewals/Revocations

- NR 113.05(3)(d), Wis. Adm. Code: The department may not issue or renew a license for a business which has violations, as summarized in the following table, for the following; ss. NR 113.04 (1) and (2), 113.05 (3), 113.06 (1), (2) and (3), 113.07 (1) and (3), 113.09, 113.11 (1) and (3), 113.12 and s. 29.601, Stats., during the last license period. The department may not reissue a license for a period of at least one year after revocation.
- NR 114.24(1), Wis. Adm. Code: The department shall revoke an operator's certification and may not issue or renew a certificate for septage servicing for a period of 2 years if an operator has accumulated 6 or more violations of chs. NR 113, 114 or s. 29.601, Stats., in any 3 year certification period. Enforcement may be taken against the operator, the operator-in-charge responsible for the operator, or both. Each violation shall count against the business for purposes of license renewal as specified in s. NR 113.05 (3).
- Section 281.48(5), Wis. Stats: Authority to suspend or revoke licenses.
- (a) The department may and upon written complaint shall make investigations and conduct hearings and may suspend or revoke any license if the department finds that the licensee has:
  2. Made a material misstatement in the application for license or any application for a renewal thereof.
  3. Demonstrated incompetency in conducting servicing.
  4. Violated any provisions of this section or any rule prescribed by the department or falsified information on inspection forms under s. 145.20 (5).



# Stepped Enforcement - Referral to DOJ

- Recommendation by the Department to prosecute violations
- Who Prosecutes?
  - Wisconsin Department of Justice
  - District Attorney
  - EPA



# Stepped Enforcement - Case Closeout



# Stepped Enforcement - 2021

## TOTAL ENFORCEMENT ACTIONS – MONTH AND YEAR TO DATE 2021

Action	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	CY 2021 Jan. – Dec.	CY 2020 Jan. – Dec.	CY 2019 Jan. – Dec.	3-Year CY Average (2019-2021)
Cases Accepted	4	11	10	11	10	16	6	14	12	13	12	12	131	115	203	150
Notice of Violation	12	11	13	12	17	13	3	14	15	16	12	12	150	149	221	173
Enforcement Conference Orders	16	7	12	10	7	9	9	7	12	10	14	14	127	116	176	140
Referral to Prosecutor	1	3	0	6	2	2	0	1	0	1	2	2	20	13	20	18
Close Outs**	**	**	**	**	**	**	**	**	**	**	**	**	177	161	184	174



# Stepped Enforcement - Trends

Wastewater	Case Accepted	Notice of Violation	Enforcement Conference	Referral to DOJ
2020	20	25	21	0
2021	16	17	14	3

Citations	2021	2020	2019	2018	2017	2016	5 Year Average
Septage Violations	9	23	25	38	32	39	25.4



# Conclusion

- Stepped enforcement is effective
- Must escalate
- Questions? Please reach out!

