

**Water Resources Department
Chapter 690
Division 225
ENFORCEMENT (SEE TableFIGURE 225-1)**

690-225-0020 Investigation of Alleged Violations

(1) The Water Resources Director, upon the Director's own initiative, or upon complaint alleging violation of statutes, standards or rules governing construction, alteration, or abandonment of wells may cause an investigation to determine whether a violation has occurred. If the investigation indicates that a violation has occurred, the Director shall notify the persons believed responsible for the violation including but not limited to:

(a) Any Water Supply Well Constructor involved; or

(b) The landowner, if the violation involves construction, alteration, operation, or abandonment of a well.

(2) Enforcement and civil penalty assessment for “other than well constructors” is described in OAR 690-260.

Statutory/Other Authority: ORS 183, 536, 537 & 540

Statutes/Other Implemented: ORS 183, 536, 537 & 540

History:

WRD 2-2006, f. & cert. ef. 6-20-06

WRD 7-2001, f. & cert. ef. 11-15-01

WRD 13-1986, f. 10-7-86, ef. 11-1-86

690-225-0030 Enforcement Actions

(1) If, after notice and opportunity for hearing under ORS 183.310 to 183.550 the Director determines that one or more violations have occurred, the Director may impose one or more of the following:

(a) Provide a specified time for remedy;

(b) Assess a civil penalty in accordance with the schedule of civil penalties in OAR 690-225-0110;

(c) Suspend, revoke, or refuse to renew the licenses when one or more persons responsible for the violation hold a Water Supply Well Constructor's License;

(d) Require that a person whose license has been refused renewal pass the Water Supply Well Constructor's License examination before a new license is issued;

(e) Impose any reasonable conditions on the Water Supply Well Constructor's License to insure correction of the violation and future compliance with the law. These conditions may include but are not limited to:

(A) Fulfilling any outstanding obligations which are the result of administrative action before the constructor can offer any services or construct, alter or abandon any well;

(B) Requiring additional advance notice to be given to the Department of construction, alteration or abandonment of any well;

(C) Requiring a seal placement notice be given to the Department 24 hours in advance of placing the seal; or

(D) Any other conditions the Director feels are appropriate.

(f) Order the landowner to repair or meet other conditions on use of the well, or order discontinuance of use and proper abandonment pursuant to ORS 537.775;

(g) Make demand on the Water Well Constructor's Bond or on the Landowner's Water Well Bond. This may occur only if the Director has given the notice required in OAR 690-225-0020 to the persons responsible for the violation within three years after the date the well report is filed with the Department. If no well report has been filed, the three year limitation shall not apply until such time as a well report is filed;

(h) Take any other action authorized by law.

(2) An order may specify a schedule of escalating or cumulative sanctions to be assessed on specified dates until satisfactory correction of the violation has been completed.

(3) Any Water Supply Well Constructor whose license is suspended or revoked shall not contract for well construction services or operate well drilling machines in the State of Oregon during the suspension or revocation period.

Statutory/Other Authority: ORS 183, 536, 537 & 540

Statutes/Other Implemented: ORS 183, 536, 537 & 540

History:

WRD 2-2006, f. & cert. ef. 6-20-06

WRD 7-2001, f. & cert. ef. 11-15-01

WRD 7-1988, f. & cert. ef. 6-29-88

WRD 13-1986, f. 10-7-86, ef. 11-1-86

690-225-0040

Multiple Violations and Consolidation of Proceedings

In cases of multiple or continuing violations, each occurrence of substantially the same activity and each days continuance of a violation after the responsible party has been notified is a separate and distinct violation. Administrative enforcement proceedings for multiple violations may be consolidated into a single proceeding.

Statutory/Other Authority: ORS 183, 536, 537 & 540

Statutes/Other Implemented: ORS 183, 536, 537 & 540

History:

WRD 7-2001, f. & cert. ef. 11-15-01

WRD 13-1986, f. 10-7-86, ef. 11-1-86

690-225-0050 Factors Affecting Selection of Type and Degree of Enforcement

In selecting the appropriate type and degree of enforcement, the Director may consider the following factors:

- (1) Whether the constructor's file demonstrates a pattern of prior similar violations;
- (2) Whether the respondent has cooperated in attempting correction of any violation in a timely fashion;
- (3) The gravity and magnitude of the violation, including whether there is an immediate or long-term threat to human health or the ground water resource;
- (4) Whether the damage to the ground water resource is reversible;
- (5) Whether the violation in the instances cited was repeated or continuous;
- (6) Whether a cause of the violation was an unavoidable accident;
- (7) The opportunity and degree of difficulty to correct the violation;
- (8) The cost to the Department, except for travel costs and the initial field investigation, in attempting to gain voluntary compliance of the cited violation. The costs may be considered until the Department receives respondent's answer to the written notice and opportunity for hearing; and
- (9) Any other relevant factor.

Statutory/Other Authority: ORS 183, 536, 537 & 540

Statutes/Other Implemented: ORS 183, 536, 537 & 540

History:

WRD 7-2001, f. & cert. ef. 11-15-01

WRD 13-1986, f. 10-7-86, ef. 11-1-86

690-225-0060 Change in Enforcement Status

(1) In the interest of achieving compliance, the Director at any time may reevaluate the status of the violations and take appropriate action, including reduction of the enforcement level or remission of all or part of any civil penalties assessed.

(2) The Director may terminate proceedings against a Water Supply Well Constructor if the constructor provides acceptable evidence that:

(a) The landowner does not permit the constructor to be present at any inspection made by the Director; or

(b) That the constructor is capable of complying with recommendations made by the Director, but the landowner does not permit the constructor to comply. In such cases, the landowner is responsible for bringing the well into compliance pursuant to ORS 537.535, and if the landowner was not a party to the original enforcement proceeding the Director may initiate a proceeding to ensure that the landowner does so.

Statutory/Other Authority: ORS 183, 536, 537 & 540

Statutes/Other Implemented: ORS 183, 536, 537 & 540

History:

WRD 2-2006, f. & cert. ef. 6-20-06

WRD 7-2001, f. & cert. ef. 11-15-01

WRD 13-1986, f. 10-7-86, ef. 11-1-86

690-225-0100 Assessment of Civil Penalties

Under OAR 690-225-0030(1) the Director may at any time select the most appropriate enforcement tool, including assessment of civil penalties, to gain compliance. However, the Director shall not impose a civil penalty if compliance has been achieved in another manner prior to final decision in the proceeding.

Statutory/Other Authority: ORS 183, 536, 537 & 540

Statutes/Other Implemented: ORS 183, 536, 537 & 540

History:

WRD 13-1986, f. 10-7-86, ef. 11-1-86

690-225-0110 Schedule of Civil Penalties

(1) The amount of civil penalty shall be determined consistent with the following schedule:

(a) Not less than \$~~25~~50 nor more than \$250 for each occurrence defined in these rules as a minor violation;

(b) Not less than ~~\$50~~100 nor more than \$1,000 for each occurrence defined in these rules as a major violation;

(c) First occurrence, in a calendar year, of a missing or late start card fee shall be \$150;

(d) Second occurrence, in a calendar year, of a missing or late start card fee shall be \$250;

(e) Third, and each subsequent, occurrence, in a calendar year, of a missing or late start card fee shall be \$250 and may include suspension of the Water Supply Well Constructor's license, and any other action authorized by law.

(f) First occurrence, in a calendar year, of a missing or late exempt ~~ground water use map or~~ recording fee shall be \$150;

(g) Second occurrence, in a calendar year, of a missing or late exempt ~~ground water use map or~~ recording fee shall be \$250;

(h) Third, and each subsequent, occurrence, in a calendar year, of a missing or late exempt ~~ground water use map or~~ recording fee shall be \$250 and may include suspension of the Water Supply Well Constructor's license, and any other action authorized by law.

(2) For purposes of assessing a civil penalty, the start card fee referred to in subsections (1)(c), (d), and (e) of this rule shall not be considered late if it is received in the Salem office of the Water Resources Department within five days of the receipt of the start card, provided the start card was submitted in a timely manner as described in ORS 537.762 and OAR 690-205-0200.

(3) For purposes of assessing a civil penalty, the ~~exempt ground water use recording fee~~ referred to in ~~subsections (1)(f), (g), and (h)~~ of this rule shall not be considered late if it is received in the Salem office of the Water Resources Department within ~~five~~ days of the receipt of the ~~water supply Well Report~~, provided the ~~water supply Well Report~~ was submitted in a timely manner as described in ORS 537.765 and OAR 690-205-0210.

~~(43)~~ Table 225-1 lists minor violations of well construction standards. All other violations are declared to be major.

[ED. NOTE: Tables referenced are available from the agency.]

Statutory/Other Authority: ORS 536.090, 536.900 & 537.505 - 537.795, 2021 OL Ch. 610
Statutes/Other Implemented: ORS 536.090, 536.900 & 537.505 - 537.795, 2021 OL Ch. 610

History:

WRD 2-2006, f. & cert. ef. 6-20-06

WRD 7-2001, f. & cert. ef. 11-15-01

WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94

WRD 10-1989, f. & cert. ef. 11-20-89
WRD 7-1989(Temp), f. & cert. ef. 9-29-89
WRD 7-1988, f. & cert. ef. 6-29-88
WRD 13-1986, f. 10-7-86, ef. 11-1-86