

**From:** [BACHMAN Jeff](#)  
**To:** [ROOT Jenny](#)  
**Subject:** FW: last email on potential changes to Div. 12 for WQ FW: Action needed: Your input on outstanding Div. 12 enforcement rule revisions  
**Date:** Tuesday, January 07, 2014 12:32:21 PM

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**From:** BROWN Courtney  
**Sent:** Wednesday, October 31, 2012 11:17 AM  
**To:** NOMURA Ranei; KOSS Leah  
**Cc:** LOBOY Zach; ADES Dennis R; BACHMAN Jeff  
**Subject:** RE: last email on potential changes to Div. 12 for WQ FW: Action needed: Your input on outstanding Div. 12 enforcement rule revisions

It sounds like we have agreed on an approach for the less than one acre revision but the proposed stormwater plan revision is not settled. How about if we have a conference call on that issue? In early December?

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**From:** NOMURA Ranei  
**Sent:** Friday, October 26, 2012 6:01 PM  
**To:** BROWN Courtney; KOSS Leah  
**Cc:** LOBOY Zach; ADES Dennis R; BACHMAN Jeff  
**Subject:** RE: last email on potential changes to Div. 12 for WQ FW: Action needed: Your input on outstanding Div. 12 enforcement rule revisions

I originally thought you were suggesting a meeting about the less than one acre issue, not the overall enforcement approach. My apologies! I've been trying to crunch DMR data all day and the data beat me.

I will check in with Zach when he gets back in the office to see if he wants to do something like this. He's out sick today and I expect him in Monday but I can't be sure. He's also really booked next week then off on vacation for two weeks so he might not be the best bet. Alternatively, it looks like there is a WQ PMT meeting next Tuesday 10/30 and there may be room on the agenda. *Let me know if you want me see if this is possible.*

If it helps, I think the regional managers understand the theory but they work in the practical and their concerns are directly are based on past experiences that they don't want repeated. They all seem familiar with the enforcement guidance and Div. 12, I've heard the guidance needs revision from most of them, and they have questions about why some things are classed one way versus another or are in different penalty matrices. I know I've been a pain by adding to their questions but I think the documentation will be helpful to at least get the minds in a closer vicinity to one another!

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**From:** NOMURA Ranei  
**Sent:** Friday, October 26, 2012 3:43 PM  
**To:** BROWN Courtney; BACHMAN Jeff  
**Cc:** LOBOY Zach; KOSS Leah; ADES Dennis R  
**Subject:** RE: last email on potential changes to Div. 12 for WQ FW: Action needed: Your input on outstanding Div. 12 enforcement rule revisions

I don't think we need to meet. I think the managers agree in concept with Jeff's approach (at least from what I heard over the last couple of discussions). They don't want businesses in this group but I do think they would prefer a broader definition of "residential uses" than just home construction and "construction activities" doesn't quite cover all of the residential uses that they are thinking about so if OCE can find a balance, that would be great. If OCE doesn't think that is a good idea, I think the managers would just want an explanation so they can make an informed decision.

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**From:** BROWN Courtney  
**Sent:** Friday, October 26, 2012 10:42 AM  
**To:** NOMURA Ranei; BACHMAN Jeff  
**Cc:** LOBOY Zach; KOSS Leah; ADES Dennis R  
**Subject:** RE: last email on potential changes to Div. 12 for WQ FW: Action needed: Your input on outstanding Div. 12 enforcement rule revisions

At some point (before we finalize our recommended revisions to Division 12) I think a face-to-face meeting between all of us would be a good idea. This mini-discussion (while somewhat tongue-in-cheek, I presume) illustrates to me how far away we (OCE and the programs/regions) are from a meeting of the minds on the theoretical underpinnings enforcement generally as well as how DEQ's enforcement schemes (the rules, the guidance, the matrices, etc.) work. I think it would be good for us (OCE) and you (the regions/programs) to fully explain ourselves. I think that we all want the same thing: enforcement rules and policies that are fair, consistent, protective of state waters, and easy to implement but also sensitive to prevailing economic realities, right?

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**From:** NOMURA Ranei  
**Sent:** Thursday, October 25, 2012 4:27 PM  
**To:** BACHMAN Jeff  
**Cc:** LOBOY Zach; BROWN Courtney; KOSS Leah; ADES Dennis R  
**Subject:** RE: last email on potential changes to Div. 12 for WQ FW: Action needed: Your input on outstanding Div. 12 enforcement rule revisions

I think your argument makes sense. To be clear, however, these are not people that buy a piece of property to run mud races through. They live on the property and it's big enough that they can run ATVs, motorcycles, or mountain bikes all over the place. Some of them consider a motor cross track in their backyard for them and their friends a major improvement!

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**From:** BACHMAN Jeff  
**Sent:** Thursday, October 25, 2012 4:16 PM  
**To:** NOMURA Ranei  
**Cc:** LOBOY Zach; BROWN Courtney; KOSS Leah; ADES Dennis R  
**Subject:** RE: last email on potential changes to Div. 12 for WQ FW: Action needed: Your input on outstanding Div. 12 enforcement rule revisions

I would limit it to residential uses only. If people buy a piece of property so they and their friends can run mud races through it, I see that as fundamentally different than someone who is developing property to live on it or improving property they already live on. People need a place to live. They don't have to entertain themselves in a manner that damages resources that belong to all the people of the state. I also don't think we should base our rules on the most exceptional situation we can think of or ever confront. We will never develop a rule that will work perfectly in all situations. The matrices are supposed to capture who the violator is with smaller fish on the smaller matrices, but they also reflect to some degree the potential for harm. I currently have a case against a plating shop with four employees who because they are large quantity generator are on the \$8,000 matrix. There are facilities with dozens and even hundreds of employees who are SQGs but they are on the \$6,000.

We as a society attach special value to home ownership and we try to promote it in many ways. That's why I am comfortable with putting them on a smaller matrix even though the property owner may be a multimillionaire while somebody who has a lot less resources but who is building a commercial building would be on a higher matrix. The multimillionaire is going to be the exception, not the norm.

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**From:** NOMURA Ranei  
**Sent:** Thursday, October 25, 2012 3:47 PM  
**To:** BACHMAN Jeff  
**Cc:** LOBOY Zach; BROWN Courtney; KOSS Leah; ADES Dennis R  
**Subject:** RE: last email on potential changes to Div. 12 for WQ FW: Action needed: Your input on outstanding Div. 12 enforcement rule revisions

I think it depends on how you define commercial. Zach left earlier today but I know one of the issues he's brought up is the property owner that lets motorcycles race through his property and doesn't collect a dime because he's either racing too or his friends race.

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**From:** BACHMAN Jeff  
**Sent:** Thursday, October 25, 2012 3:42 PM  
**To:** NOMURA Ranei  
**Cc:** LOBOY Zach; BROWN Courtney; KOSS Leah; ADES Dennis R  
**Subject:** RE: last email on potential changes to Div. 12 for WQ FW: Action needed: Your input on outstanding Div. 12 enforcement rule revisions

I have offered an alternative. If folks are in agreement on the concept, Courtney or I will draft language.

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**From:** NOMURA Ranei  
**Sent:** Thursday, October 25, 2012 12:08 PM  
**To:** BACHMAN Jeff  
**Cc:** LOBOY Zach; BROWN Courtney; KOSS Leah; ADES Dennis R  
**Subject:** RE: last email on potential changes to Div. 12 for WQ FW: Action needed: Your input on outstanding Div. 12 enforcement rule revisions

Please work on an alternative! We were just trying to get something on paper within the current framework and that was the best I could do without adding definitions to Div. 12.

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**From:** BACHMAN Jeff  
**Sent:** Thursday, October 25, 2012 11:59 AM  
**To:** NOMURA Ranei; KOSS Leah; BROWN Courtney; ADES Dennis R  
**Cc:** LOBOY Zach  
**Subject:** RE: last email on potential changes to Div. 12 for WQ FW: Action needed: Your input on outstanding Div. 12 enforcement rule revisions

Looking at the notes below, I don't think the use of "owner" gets us where we want to be. I think if we limited it to disturbances related to an owner/occupant's residential use of the property we could address the concerns. I'm not sure why we would want to put disturbances related to agricultural use of the property on a lower matrix. I thought we were trying to distinguish between disturbances arising from commercial use of the property from personal residential use of the property.

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**From:** NOMURA Ranei  
**Sent:** Thursday, October 25, 2012 11:41 AM  
**To:** KOSS Leah; BROWN Courtney; BACHMAN Jeff; ADES Dennis R  
**Cc:** LOBOY Zach  
**Subject:** FYI: last email on potential changes to Div. 12 for WQ FW: Action needed: Your input on outstanding Div. 12 enforcement rule revisions

Below is the latest from the WQ managers on the proposals discussed in Jeff's earlier email. I have not received input from Denny but I'm including him on this email to see if he has anything to add.

Also, the onsite program has additional revisions they would like to pursue. I need to take a look at a couple of emails from the staff but their general suggestions are in the spreadsheet, which you can find at [X:\RNOMURA\2012 Div 12 Revisions](#). I've highlighted the spreadsheet so one can easily tell where the WQ managers want to move forward: green is "yes," yellow is "maybe," red is "no."

And one more thing for Jeff (so you know I didn't forget) – the number for bacteria exceedances... I had a conversation with Ron Doughten about developing some sort of level of exceedance for bacteria and he did not have one to recommend because the exposure pathways are complex. Also, I contact Dick Nichols and he confirmed that the reclaimed/recycled water was classified

differently than “regular” discharges because the risk of exposure was believed to be higher. I’ve also spoken to Mer, Hamlin, Gasik, and Scott Hoatsen at the lab but no one in ER yet. I haven’t pursued this much further because I need to get manager approval to use more of their staff’s time or at least bring it up as a topic for the senior permit team. I’m still plugging along, though, and have an email almost ready to go to the wastewater managers. I will copy you on it when it goes out.

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**From:** FOSTER Eugene P  
**Sent:** Friday, October 12, 2012 1:03 PM  
**To:** NOMURA Ranei; ADES Dennis R  
**Cc:** LOBOY Zach; NIGG Eric; MRAZIK Steve; GEIST Gregory; FOSTER Eugene P  
**Subject:** RE: Action needed: Your input on outstanding Div. 12 enforcement rule revisions

The recommendation to “Carve out” disturbances of less than 1 acre from the \$8,000 matrix and move to lower matrix from Steve, Greg, Eric, and Zach makes sense to me. I support the recommendation.

The language you suggested works for me, does it work for the others?, *“Any violation of a WQ statute, rule, permit, license, or related order committed by a person who disturbs less than one acre of land and is the owner of the disturbed land.”*

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**From:** NOMURA Ranei  
**Sent:** Friday, October 12, 2012 12:35 PM  
**To:** ADES Dennis R; FOSTER Eugene P  
**Cc:** LOBOY Zach; NIGG Eric; MRAZIK Steve; GEIST Gregory  
**Subject:** Action needed: Your input on outstanding Div. 12 enforcement rule revisions

Zach, Steve, Greg, and Eric: FYI, but if I have misrepresented our discussions in any way, please feel free to clarify.

Denny and Gene: I have polled the regional managers responsible for the issues and now I need to get your input.

1) **FOR DENNY**

Move failure to develop or implement 1200-A and 1200-Z stormwater management plan from Class II to Class I.

Zach, Greg, and Eric do not support moving all stormwater management plans to Class I violations. They did not see any compelling reason to make this change especially when there are concerns that the renewed 1200-Z permit is more complicated to correctly implement. They are open to reconsidering this move when they have more experience with implementing the new 1200-Z.

2) **FOR GENE**

“Carve out” disturbances of less than 1 acre from the \$8,000 matrix and move to lower matrix.

Zach, Greg, Eric, and Steve agree that moving this subset of activities to a lower matrix is a good idea. They agree with Jeff that we are more likely to take formal enforcement action on these sites because they cause instream violations while a variety of permittee violations may initiate enforcement action (e.g., failure to monitor). However, they support moving this subset of activities to the \$1,000 matrix (rather than the \$6000 as proposed by OCE) because an NPDES permittee with construction activity between 1 and 5 acres could also cause an instream violation and are in the \$2500 matrix.

Ranei's Note: There was some discussion in the larger Div. 12 manager meeting on 9/28, Friday afternoon of the \$1000 matrix being used mostly for "residential owner-occupant" violations; however, the "residential owner-occupant" definition would not work for WR activities (Pam's retired guy in Coos Bay didn't have a home on his site to occupy yet and Pamela's motorcycle activity was on agricultural property). *"Residential owner-occupant" means the person who owns or otherwise possesses a single family dwelling unit, and who occupies that dwelling at the time of the alleged violations. The violation must involve or relate to the normal uses of a dwelling unit.* As an alternative, the UST program has "Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility" in the \$1000 matrix. Following this example, I would propose something like the following:

*Any violation of a WQ statute, rule, permit, license, or related order committed by a person who disturbs less than one acre of land and is the owner of the disturbed land.*