

Legal Issues for Stormwater Utilities

Oregon Association of Clean Water Agencies

Stormwater Summit

May 9, 2018

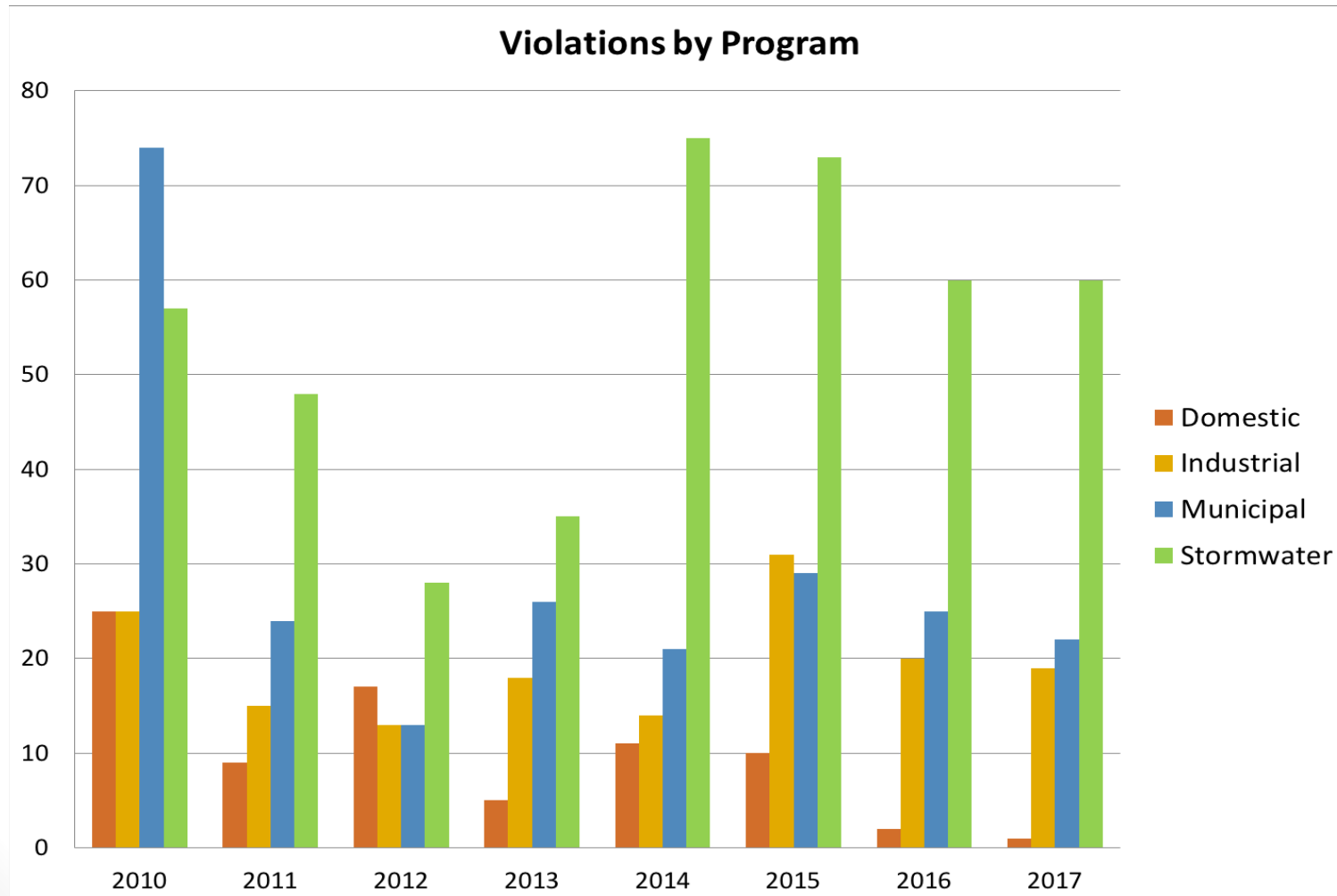
Laura Maffei, R.G.



Overview

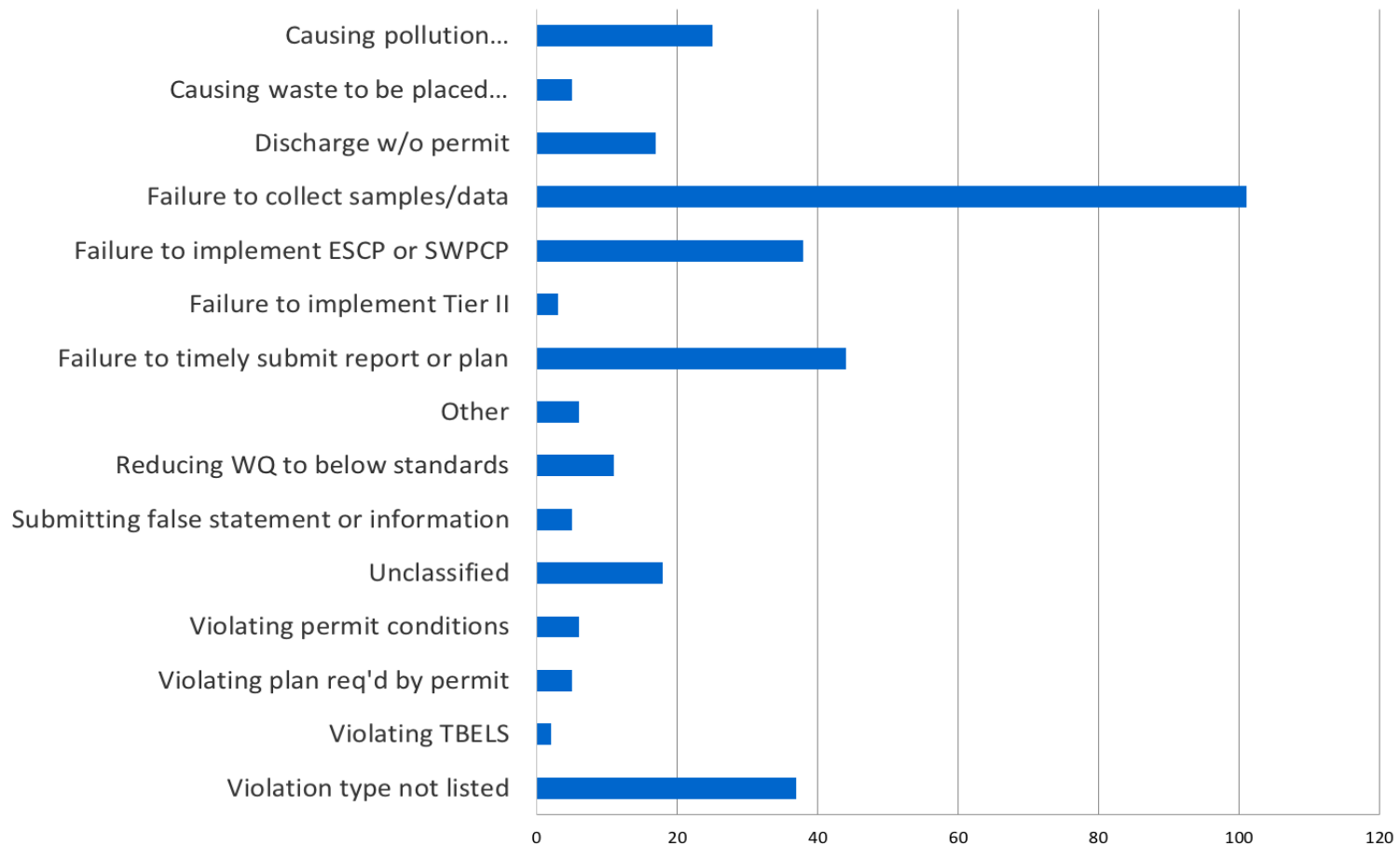
- DEQ Enforcement
- Stormwater Regulation – History
- Phase II MS4 Development

DEQ Enforcement



DEQ Enforcement - Stormwater

STORMWATER - TYPES OF VIOLATIONS
2010-2017



Stormwater Regulation – History

- Clean Water Act (1972)
 - Stormwater not included
- Legal challenges
- 1987 CWA Amendments:
 - MEP
 - Phased Approach

Stormwater Regulation – History

- Phase I MS4 Permits
 - Appealed in Oregon
- Phase II MS4 Rules in 1999
 - Six minimum control measures
 - Rule challenged
 - *Environmental Defense Center v. EPA* (9th Cir. 2003)

Stormwater Regulation – History

- Result of *EDC v. EPA* = “Remand Rule”
 - Fix procedural problems
 - No substantive challenge to MEP standard
- Final Remand Rule (e.g., Phase II MS4 rule) issued on December 9, 2016
 - General permit, individual permits or a combination
 - “Clear, specific, and measurable” requirements

Stormwater Regulation – Phase II Permitting in Oregon

- Originally, individual permits for some communities
- Phase II MS4 as a general permit
 - Existing and new permittees
 - Wide range in population base
- Permit developed over several years
 - Remand rule changes during Oregon permit development

Stormwater Regulation – Phase II Permit Conditions

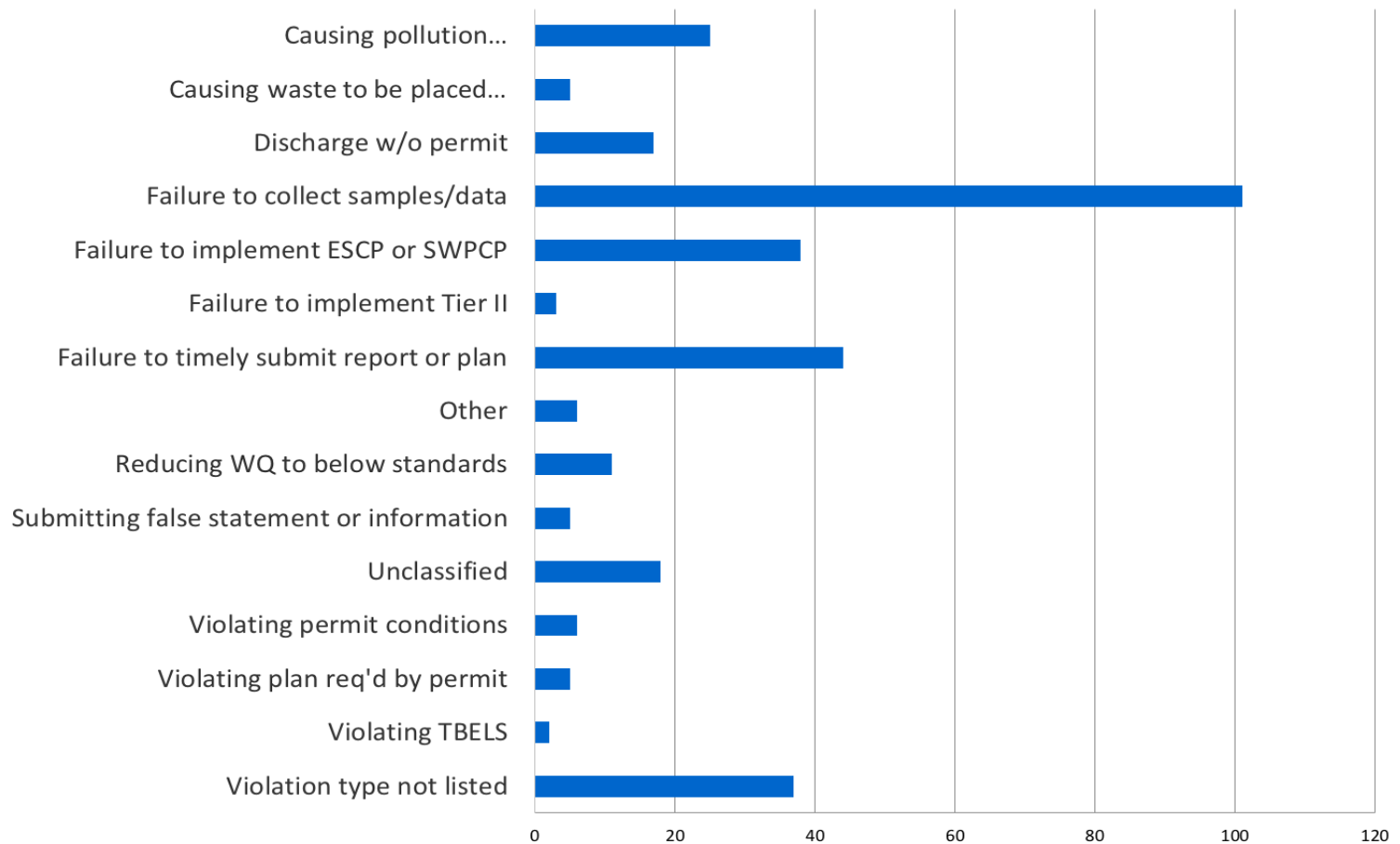
- Detailed and prescriptive
- Extensive monitoring and record-keeping obligations
 - IDDE/Septic system regulation
 - Pre- and post-construction monitoring
- MEP vs. Water Quality Standards

Citizen Suits

- Citizen enforcement in place of agency
- 60-day Notice Letter
 - Opportunity to cure?
 - DEQ enforcement?
- Settlement
 - SEP
 - Attorney fees

DEQ Enforcement - Stormwater

STORMWATER - TYPES OF VIOLATIONS
2010-2017



Questions?



Hallstatt Malamutes, 2017

Photo: Deb Blair

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