



STATE OF UTAH

PROPOSED WATER RIGHTS ENFORCEMENT PROCESS

Enforcement Actions (73-2-25, 26, 27)

- ◆ Diverting water without a water right
- ◆ Diverting water in violation of an existing water right;
- ◆ Non-compliance with head gate and/or measuring device notice
- ◆ Non-compliance with order regarding waste of water, i.e. repair of headgates, ditches, capping or plugging of uncontrolled flowing wells

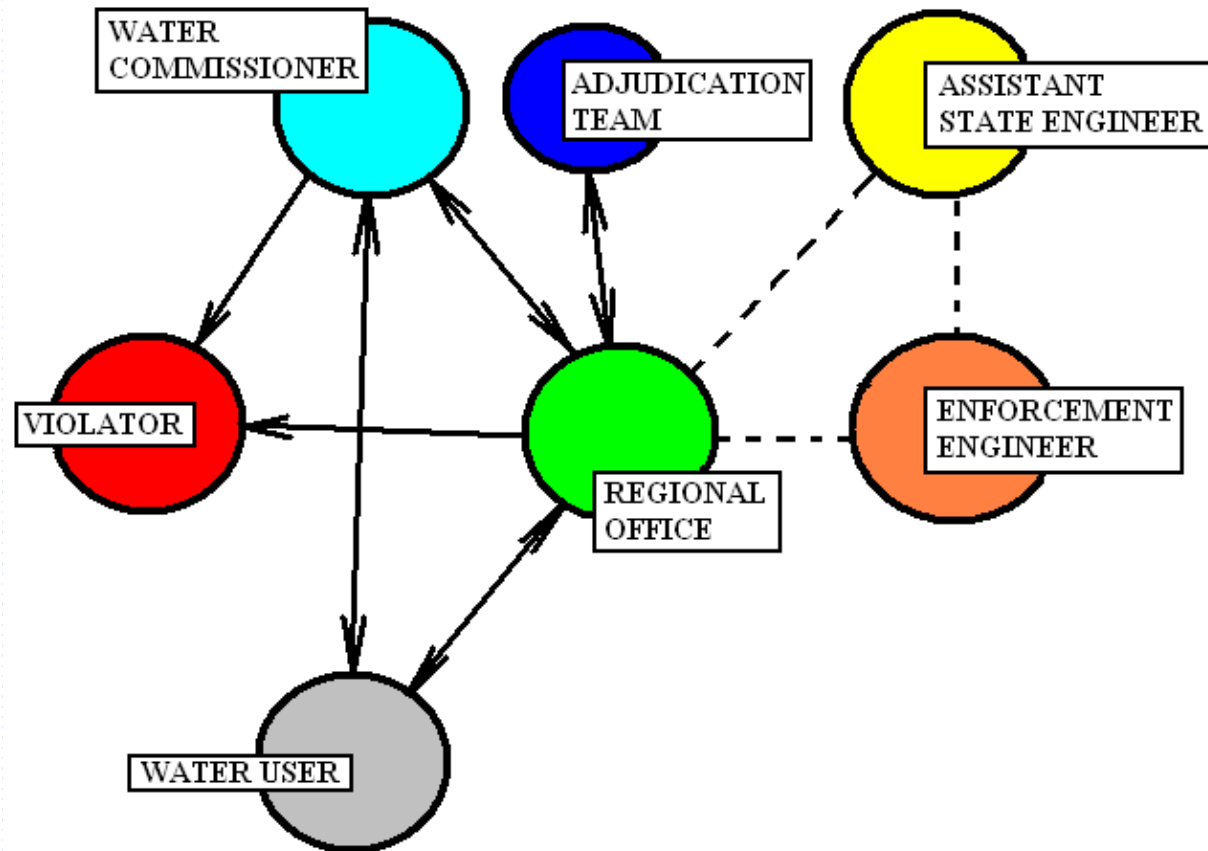
Enforcement Actions (cont.)

- ◆ Violation of a written distribution order from the state engineer;
- ◆ Violation of an order issued under Section 73-3-29 regarding the alteration of the bed or bank of a natural stream channel; or
- ◆ Violation of a notice or order regarding dam safety issued under Chapter 5a, Dam Safety.

Enforcement Process Phases

- ◆ Informal Phase
- ◆ Complaint Phase
- ◆ Investigation Phase
- ◆ NOV Phase
- ◆ Resolution Phase
- ◆ Follow-up Phase

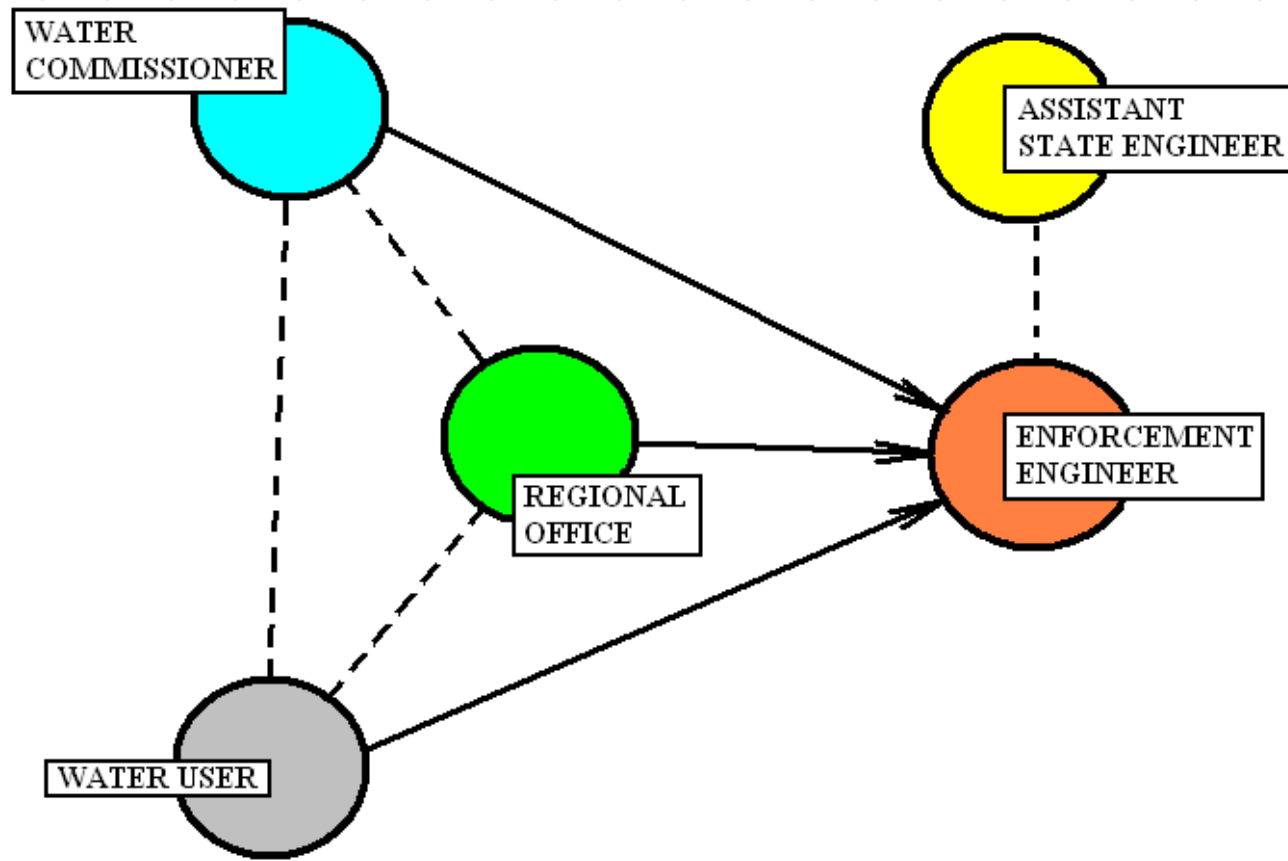
INFORMAL PHASE



Informal Actions

- ◆ Conversations with violator(s)
- ◆ Meetings with violator(s)
- ◆ Letters to violator(s)
- ◆ Warnings to violator(s)
- ◆ When to go to Complaint Phase?
 - Judgment call by Regional Office or Commissioner

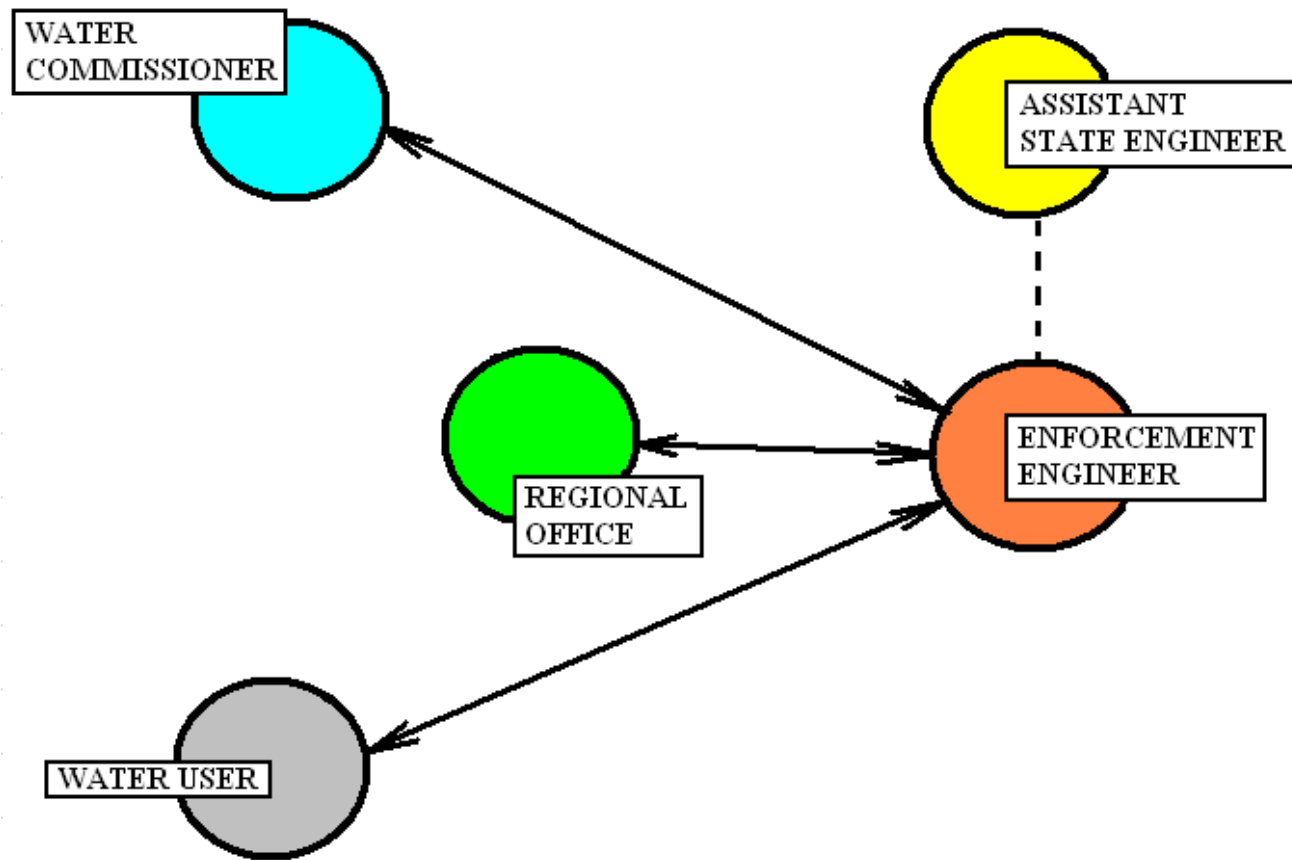
COMPLAINT PHASE



Preliminary Determination

- ◆ If the complaint is from a water user, are they willing to sign an affidavit?
- ◆ Does it constitute a violation?
- ◆ Did it occur within the past twelve months?
- ◆ Does it rise to the standard of being addressed by the state engineer?
- ◆ Does the state engineer have the resources to address the situation at this time?

INVESTIGATION PHASE



Investigation / Documentation

- ◆ Create violation file
- ◆ Determine which water rights are involved
- ◆ Determine the limiting characteristics of the water rights (uses, amounts, priority, flow, etc.)
- ◆ Determine current ownership of the water rights
- ◆ Determine who the violator is

Investigation / Documentation

(cont.)

- ◆ Field investigation to verify, document, and determine the extent of the violations (digital photos, aerial photos, measurements, etc.)
- ◆ Determine the time frame of the violation
- ◆ Determine who is affected by the violation
- ◆ Determine the economic injury or impact to those affected by the violation
- ◆ Is the violation is “knowing” or “not knowing”

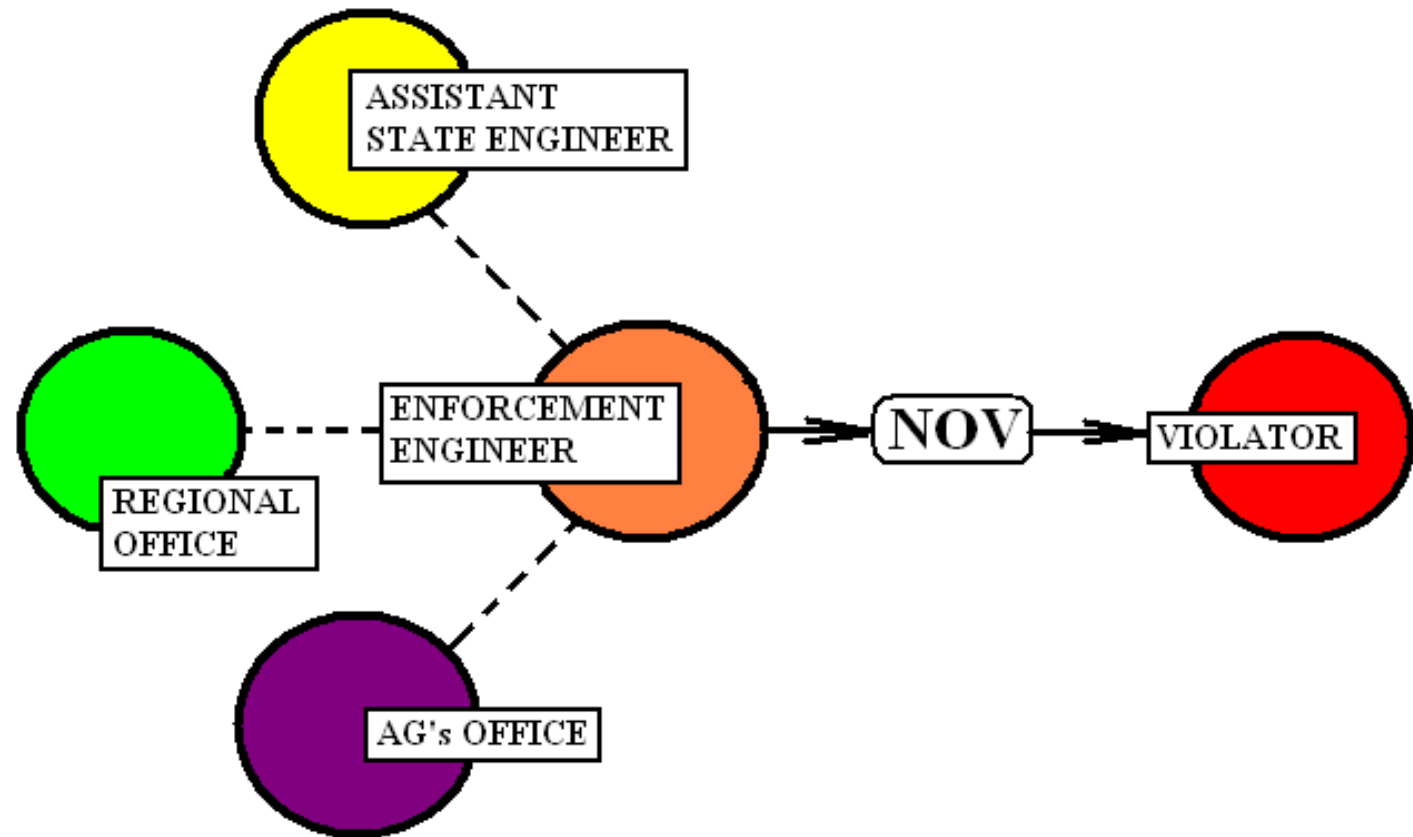
Administrative Penalties

- ◆ Up to \$1000 per day for a violation that is "not knowing"
- ◆ Up to \$5000 per day for a violation that is "knowing"
- ◆ Replacement of up to 200% of the water taken illegally
- ◆ Liability for any S.E. expense incurred in investigating and stopping violation.

Administrative Penalties

- ◆ How much water was used illegally
- ◆ What is the value of the water taken, crops grown, or damage done
- ◆ What is the cost or difficulty of replacing water taken illegally
- ◆ What is the gravity of the violation including economic injury or impact on others
- ◆ Was there an attempt to comply with the S.E. order?
- ◆ What economic benefit did the violator derive?

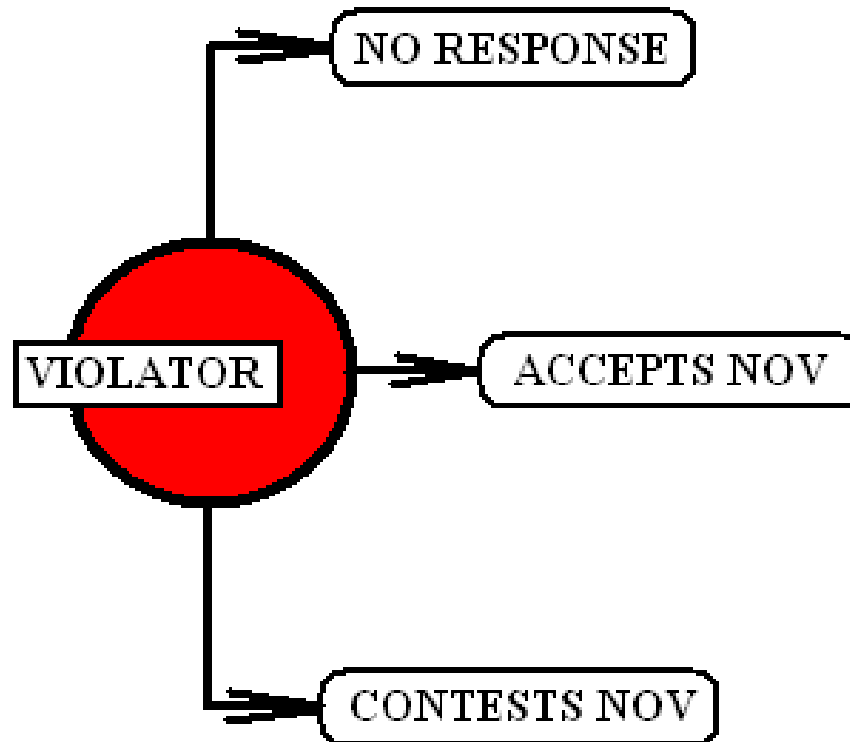
N.O.V. PHASE



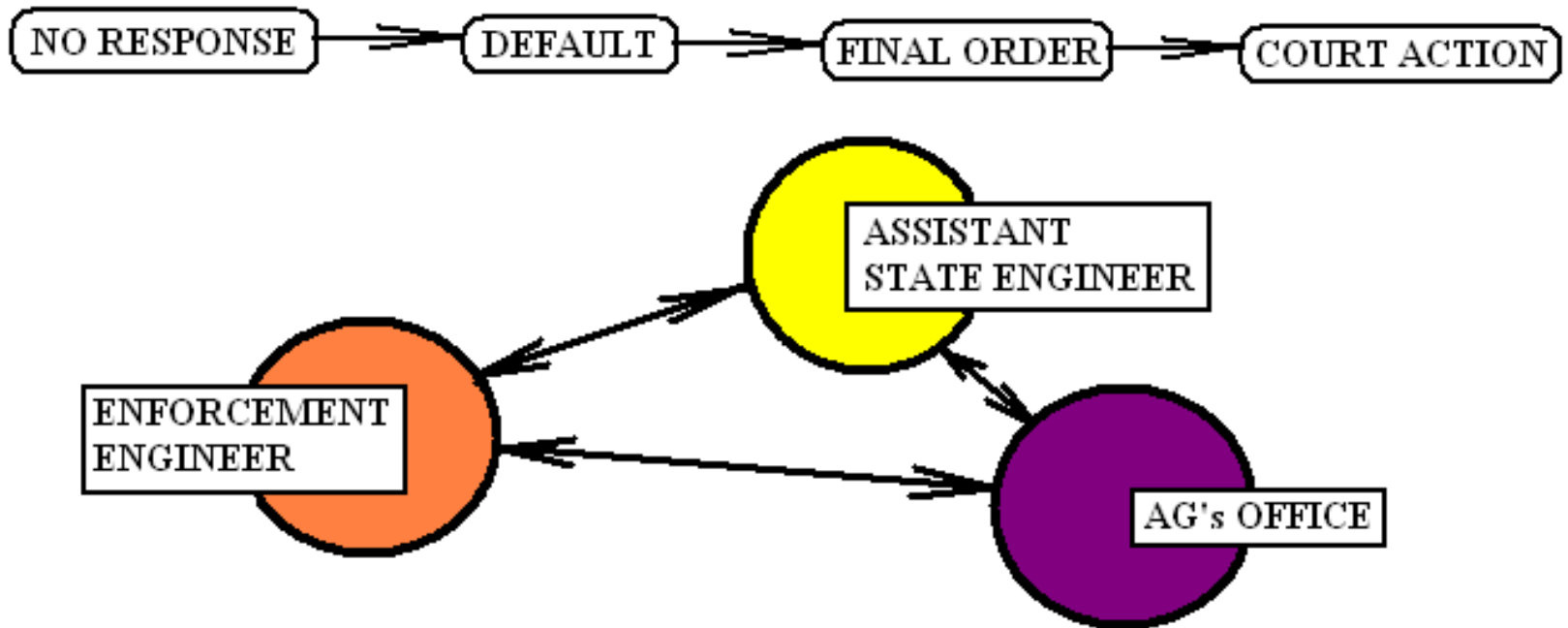
Notice of Violation

- ◆ Statement of law and jurisdiction
- ◆ Statement of alleged facts
- ◆ Violations
- ◆ Notice of penalties
- ◆ Notice that each day may be treated as a separate violation
- ◆ Order
- ◆ Notice of right to contest

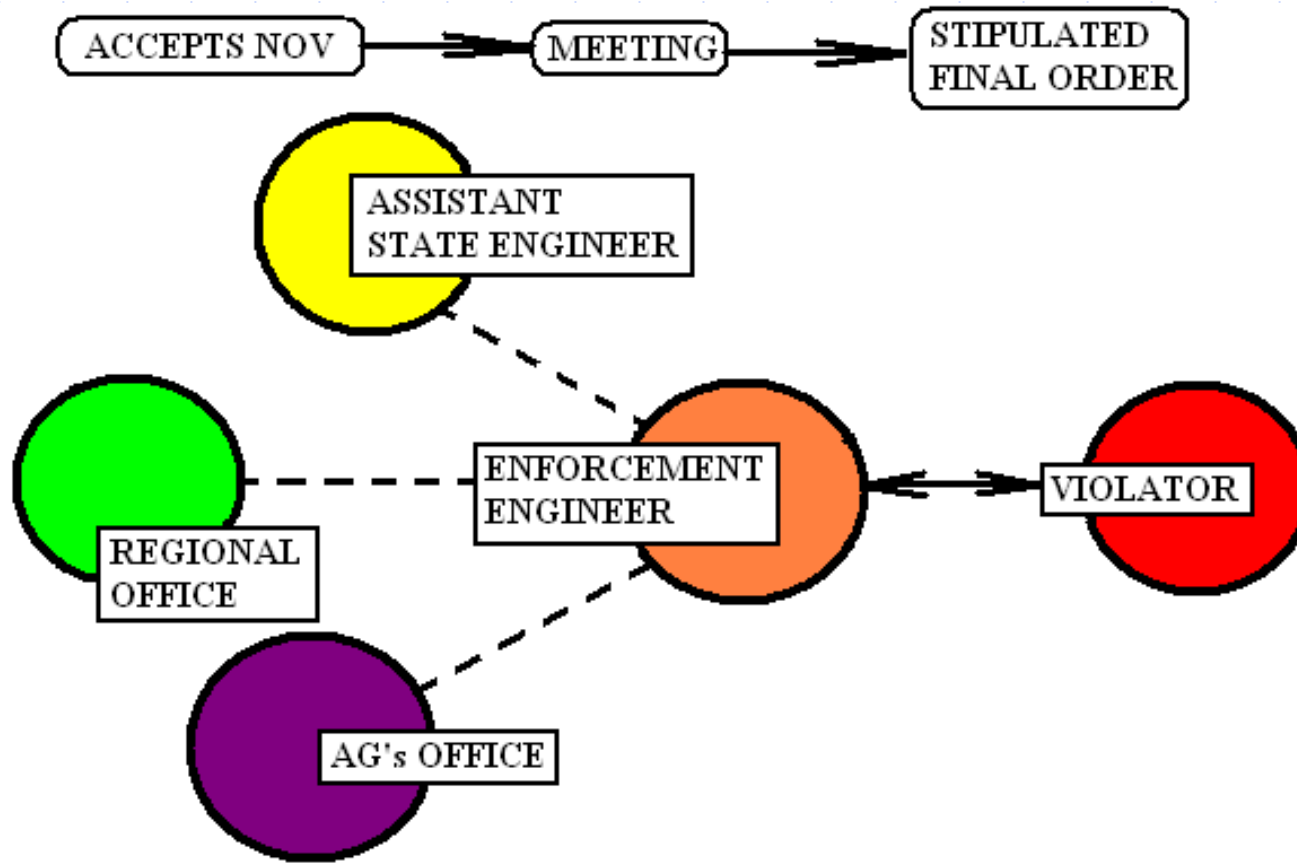
RESOLUTION PHASE



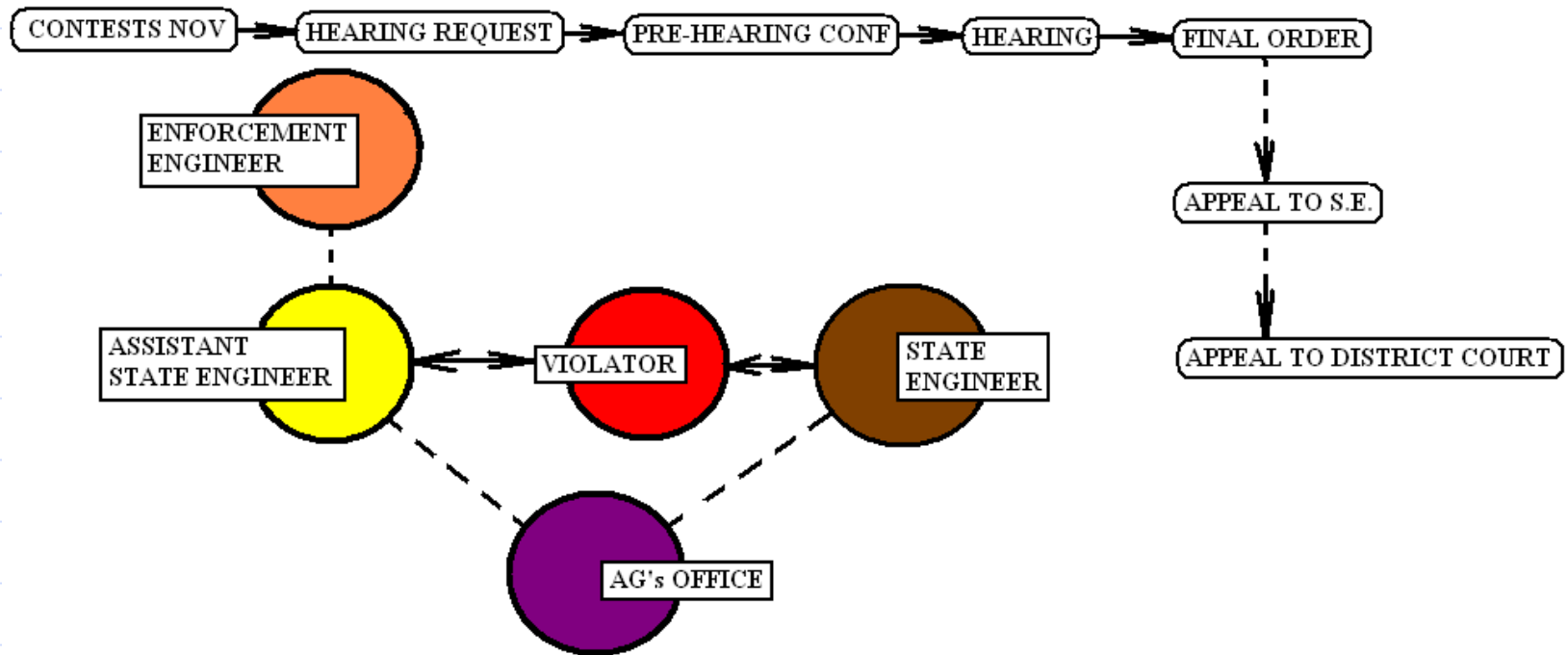
RESOLUTION PHASE (1st Alt.)



RESOLUTION PHASE (2nd Alt.)



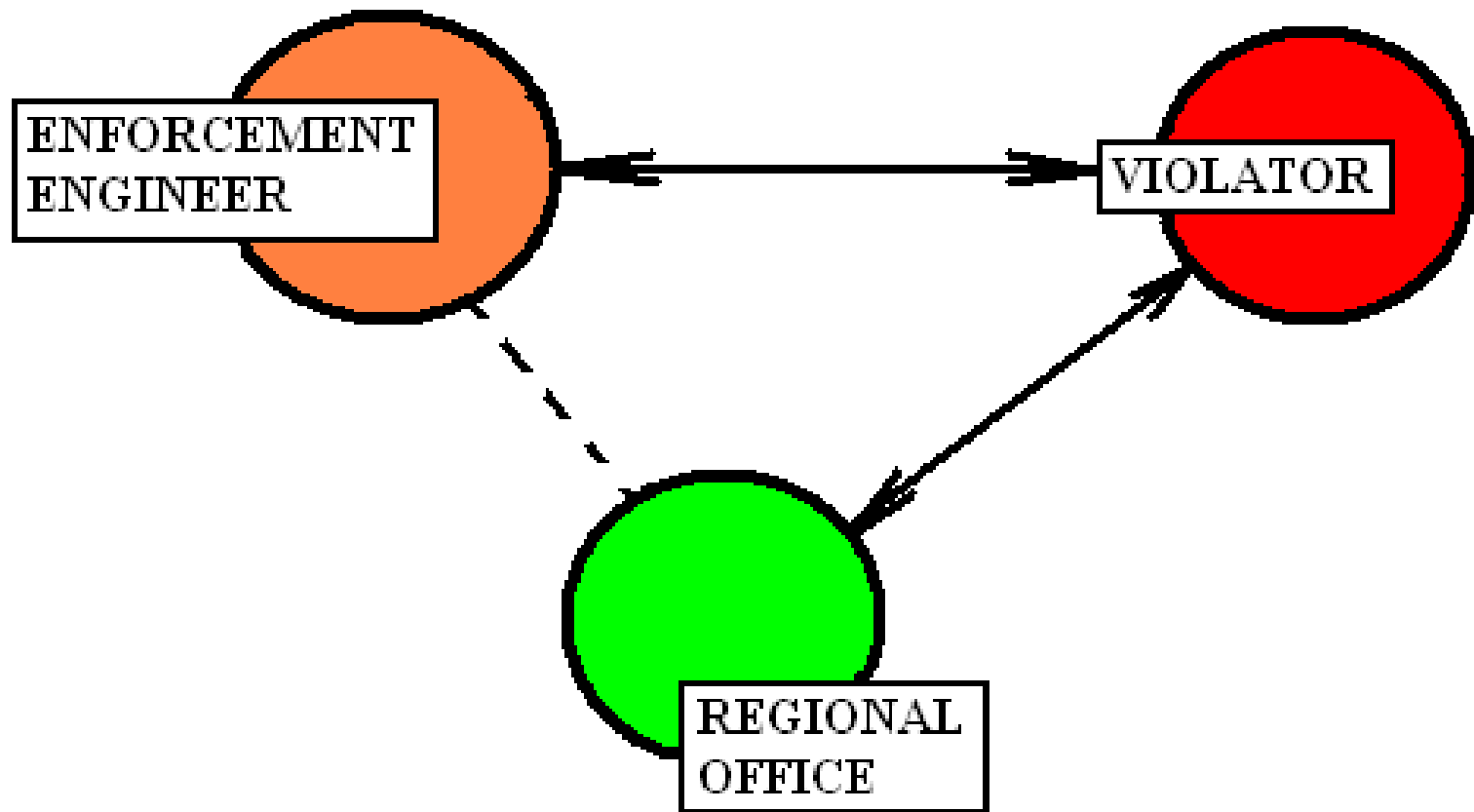
RESOLUTION PHASE (3rd Alt.)



Final Order

- ◆ Confirms alleged facts
- ◆ Confirms violations
- ◆ Confirms penalties
- ◆ Confirms order
- ◆ Sets forth conditions for ensuring compliance
- ◆ Issued by personal service or certified mail

FOLLOW UP PHASE



Ensuring Compliance

- ◆ Field Inspection
- ◆ Progress Reports from violator
- ◆ Final Compliance Report for violation file

What if they don't comply?

- ◆ Penalty continues to mount (each day a separate offense)
- ◆ Judgments are reported to credit reporting agencies
- ◆ S.E. files suit in district court for enforcement