# HAZARDOUS WASTE

# CIVIL ENFORCEMENT RESPONSE POLICY

December 2003

This document provides guidance to employees of the U.S. Environmental Protection Agency and State enforcement agencies administering authorized hazardous waste management programs. Any statutory provisions and EPA regulations described in this document contain legally binding requirements. This document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus it does not impose legally binding requirements on EPA, States, or the regulated community, and may not be relied on to create a right or benefit, either substantive or procedural, that is enforceable by any person. This guidance may not apply to a particular situation based upon the circumstances. EPA and State decision makers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance. Therefore, interested parties are free to raise questions and objections about the substance of this guidance and the appropriateness of the application of this guidance to a particular situation. EPA and States should consider whether the recommendations in the guidance are appropriate in that situation. **EPA may revise this policy at any time without public notice and after consultation with authorized State agencies.**

## I. INTRODUCTION

The goal of the Resource Conservation and Recovery Act (RCRA) hazardous waste compliance monitoring and enforcement program is to attain and maintain a high rate of compliance within the regulated community. This goal is accomplished by establishing a comprehensive monitoring and inspection program, and addressing the most serious violators with timely, visible and effective enforcement actions. A timely and appropriate enforcement action should return the violator to compliance as expeditiously as possible, as well as deter future or potential non-compliance.

The Hazardous Waste Civil Enforcement Response Policy (ERP) sets forth response guidance for violations occurring pursuant to RCRA where the State or EPA intends to pursue civil action, including administrative or judicial action. The 2003 Hazardous Waste Civil Enforcement Response Policy supersedes previous hazardous waste enforcement response policies. These are: (1) the Enforcement Response Policy, dated December, 1984; (2) the Enforcement Response Policy, dated December 1987; and (3) the 1996 Hazardous Waste Civil Enforcement Response Policy, dated March 15, 1996.

This revision includes changes to the definition of a Significant Non-Complier (SNC) by incorporating the "Addendum to the 1996 Hazardous Waste Civil Enforcement Response Policy" that was issued on April 18, 2000. The addendum clarified the factors that should be considered in applying the three criteria for classifying a facility as a SNC. This revision also changes the definition of "Returned to Compliance" and adds two new terms, "Addressed" and "Compliance Schedule Established," to better reflect the compliance status of violators designated as a SNC.

The 2003 Hazardous Waste Civil Enforcement Response Policy will be effective on February 15, 2004.

## II. RELATIONSHIP TO OTHER AGENCY POLICY AND GUIDANCE

The ERP is one of several documents that, together, define the national RCRA hazardous waste enforcement program. The ERP provides a general framework for classifying violations and violators of concern and describes timely and appropriate enforcement responses to non-compliance. The ERP should be read in conjunction with the Office of Enforcement and Compliance Assurance (OECA) national program guidance. This guidance establishes the priorities for compliance monitoring and enforcement activities as identified by EPA Headquarters media programs, Regions and States. The guidance also encourages use of the full range of tools to achieve compliance while emphasizing timely and high quality enforcement-related activities.

Other basic guidelines utilized in the RCRA hazardous waste enforcement program



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include the Policy Framework for State/Federal Enforcement Agreements (revised August 1986, May 1992, February 1993, and July 1993) and the National Criteria for a Quality Hazardous Waste Management Program Under RCRA (July 1986) (hereinafter "National Criteria"). The Policy Framework document describes what the State/EPA enforcement agreements should address, including oversight criteria and measures, information needs and procedures for notification and consultation. The national program guidance and other RCRA guidance are made applicable to the States through the enforcement agreements.

The National Criteria establishes basic goals, objectives, and general performance expectations to assure that EPA and the States have a common understanding of what should be accomplished to effectively implement the RCRA program. The National Criteria document also outlines how performance is to be measured and describes how EPA and the States should respond when criteria are not met. The enforcement program criteria modifications contained in the 2003 ERP supersede and replace all timely and appropriate criteria outlined in the Performance Expectations section of the National Criteria document.[1] To the extent that a violator is deemed eligible for consideration under the Compliance Incentives for Small Businesses Policy, Small Communities Policy, the Voluntary Environmental Self-Policing and Self-Disclosure Policy, or the Audit Policy ("Final Revised Audit Policy Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 Fed. Reg. 10618 (May 11, 2000)), the ERP will function as a supplement to these policies.

The 2003 ERP does not address the use of an order pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), to compel corrective action; the use of an order pursuant to Section 3013 of RCRA, 42 U.S.C. § 6934, to compel monitoring, testing and analysis; or the use of an order pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, to address situations that may present an imminent and substantial endangerment to human health or the environment. In addition, the 2003 ERP does not address violations determined to be potentially criminal in nature and investigated and prosecuted pursuant to Federal or State criminal authorities. It is recognized that the administrative enforcement process may need to be delayed temporarily in order to allow full prosecution under criminal law.

## III. GENERAL PROCESS SUMMARY

This policy is intended to be a framework for decision making and to help prioritize federal and State enforcement efforts with respect to RCRA violations. EPA expects that all RCRA hazardous waste violations, whether meeting the SNC criteria or not, should be addressed by EPA or the States. EPA will use this enforcement policy to determine whether Regions and States are addressing SNCs with a timely and appropriate enforcement response. This policy is

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[1] The National Criteria document permits adjustments to Regional/State Performance Expectations. The 2003 ERP incorporates previous modifications to enforcement response criteria to encompass program developments, unique State authorities and individual State enforcement processes.



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also intended to foster and develop a more complete and accurate compliance picture and to enhance the responsibility of implementing agencies to track SNCs and address all violations. An essential part of this tracking process is assuring that all Significant Non-Compliers (SNCs) and Secondary Violators (SVs) are promptly entered into RCRAInfo.

Enforcement activities should be designed to identify violators and to expeditiously return violators to compliance. The implementing agency should address all SNCs and SVs with an appropriate enforcement response in accordance with the Response Time Guidelines of this policy.

All references to the State Attorney General's Office in this document should be interpreted as including any State attorney that possesses the authority to initiate actions in State court.

## IV. DEFINITIONS

A. Classifications of Non-Compliance: Violators are classified based on an analysis of their overall compliance with RCRA that includes prior recalcitrant behavior or a history of non-compliance. This ERP establishes two categories of violators: Significant Non-Compliers (SNCs) and Secondary Violators (SV).

1. Significant Non-Compliers (SNCs) are those violators[2] that have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements. In evaluating whether there has been actual or likely exposure to hazardous waste or hazardous waste constituents, EPA and States should consider both environmental and human health concerns. Environmental impact or a substantial likelihood of impact alone is sufficient to cause a violator to be a SNC, particularly when the environmental media affected requires special protection (e.g., wetlands or underground sources of drinking water). Additionally, when deciding whether a violator meets this criterion, EPA and States should consider the potential exposure of workers to hazardous waste or hazardous waste constituents. Many of RCRA's hazardous waste requirements are designed to protect the individuals who work with or near hazardous waste. Therefore, the protection of these workers should be valued as highly as the protection of the general public.

   Under this criterion, EPA or the State need not identify significant damage to the environment or human health to justify a SNC classification.

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[2] Violators are "persons" within the meaning of RCRA § 1004(15).



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Rather, the mere fact of exposure or a substantial likelihood of exposure is sufficient to satisfy this criterion. Additionally, even in situations involving a minor release, the type of hazardous waste involved (e.g., mobility, exposure to air) or the location of the release (e.g., located in a populated area or in a building to which the public has access) may lead EPA or the State to conclude that this criterion has been met.

EPA and States are reminded to look beyond actual releases to threatened releases. A threatened release is sufficient to meet this criterion if there is a substantial likelihood that the release would result in exposure to hazardous waste or hazardous waste constituents. Also, releases that might otherwise be considered insignificant should be examined in the larger context of the overall management of the hazardous waste. If a minor release, taken together with other factors, suggests an ongoing threat of future releases, then EPA or the State should determine that this criterion has been met.

The following are several examples of violations that would **generally** cause either an actual exposure or a substantial likelihood of exposure to hazardous waste and would warrant the violator being classified a SNC: a violator that did not determine that the waste it generates is a hazardous waste and the waste is not managed properly; a violator that disposed of hazardous waste in violation of the Land Disposal Restrictions, 40 C.F.R. § 268.40; a facility that did not have an adequate ground water monitoring system; or a violator that failed to comply with the requirements for storing ignitable, reactive or incompatible wastes, 40 C.F.R. §§ 264/265.17. **These few examples are provided for illustration only and are not meant to comprise anything approaching a complete list.** In situations where a regulatory agency has general or site-specific questions regarding the appropriate classification(s), it should consult with either the appropriate EPA Regional office and/or EPA Headquarters.

With respect to chronic or recalcitrant violators, EPA and States should use their best efforts to obtain and consider multi-media information. In many cases, the evaluation will provide insight into the overall environmental management practices and may indicate whether a violator will be responsive to an informal enforcement action. To the extent practicable, EPA or the State should also consider previous violations by the same individual or entity at other locations.

In weighing the violations that make up a regulated entity's compliance history, EPA and States should give the heaviest weight to similar violations and to multiple violations at the same process or unit. In addition, while there is no set time period for evaluating the violator's past



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conduct, misconduct occurring less than three years ago should be weighted more than misconduct occurring beyond a three year period. EPA and States should consider but give less weight to violations of other media requirements. Similarly, they should consider but give less weight to violations by the same regulated individual or entity at other locations.

The exception to this last principle is where the previous violation was identical to the one currently identified by EPA or the State. In such cases, the previous violation should be given considerable weight.

With respect to substantial deviation from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements, this criterion involves a judgment call based on the totality of circumstances associated with the violator. EPA and States should keep in mind the following principles when making this determination.

First, EPA and States should not consider the size or financial viability of a business when determining whether the violator is a SNC. After the government discovers a violation, the size and viability of the business should be factors in deciding the appropriate relief sought in any formal enforcement action that ensues.

Second, EPA and States should focus on the importance of the particular requirement violated and how substantially the violator failed to comply with it. For instance, violations that enable a violator subject to Subtitle C to remain outside the scope of the regulatory program are, by their very nature, substantial deviations from the regulatory program. When applying this principle, EPA and States do not necessarily need to evaluate the percentage of the total applicable requirements that were violated.

The more important the requirement in terms of furthering RCRA's statutory or regulatory purposes or procedures, the less EPA and States should tolerate deviation from the requirement without formal enforcement. In determining the importance of the requirement, EPA and States should consider the direct contribution that the provision offers to protect human health or the environment. Additionally, EPA and States should remember that a particular requirement may be important because the information it requires to be maintained or provided to another individual is essential to the integrity of the RCRA regulatory program.

The following are examples of violations that **generally** constitute substantial deviations from the terms of a permit, order, agreement or other RCRA statutory or regulatory requirements and warrant the violator



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being designated a SNC: the violator did not have adequate financial assurance, 40 C.F.R. §§ 264/265.143; a violator is operating as a treatment, storage or disposal facility without a permit or interim status; a facility failed to manifest its waste, 40 C.F.R. § 262.20, Subpart B; or a violator offered waste to a transporter without an EPA ID number. Once again, **these examples are not meant to comprise anything approaching a complete list.** Other violations should be considered and discussed as part of a case-by-case analysis/discussion with the Regional office.

Finally, in marginal situations, EPA and States should consider any steps the violator has taken to expeditiously come into compliance prior to discovery by the government and to mitigate any risks resulting from its violation. In some circumstances, the deviation from the requirements may not be considered substantial if the violator, on its own initiative, identifies the violation soon after the violation begins, takes steps to resolve the violation as expeditiously as possible, and mitigates any potential harm to the environment or the regulatory program.

2. Secondary Violators are violators which do not meet the criteria listed above for SNCs. Secondary Violators (SV) are violators that pose no actual threat or a low potential threat of exposure to hazardous waste or constituents. A violator classified as a SV should NOT have a history of recalcitrant or non-compliant conduct. Violations associated with a SV should be of a nature to allow prompt return to compliance with all applicable rules and regulations.

B. Enforceable means the instrument creates an independent, affirmative obligation to comply.

C. Day Zero is the first day of the inspection or record review regardless of the duration of the inspection. In situations where there are follow-up inspections at a facility, Day Zero is the first day of the first inspection.

D. Date of Determination (Day 150) is the final date to determine if formal enforcement is appropriate.

E. Formal Enforcement is a written document that mandates compliance and/or initiates a civil or administrative process, with or without appeal rights before a trier of fact, that results in (1) an enforceable agreement or order and (2) an appropriate sanction. For EPA, formal enforcement action is (1) a referral to the U.S. Department of Justice for the commencement of a civil action in the appropriate U.S. District Court, or (2) the filing of an administrative complaint, or the issuance of an order, requiring compliance and a sanction. For States, formal



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enforcement action is (1) a referral to the State's Attorney General for the commencement of a civil or administrative action in the appropriate forum, or (2) the filing of an administrative complaint, or the issuance of an order, requiring compliance and a sanction. EPA recognizes that some State hazardous waste enforcement programs are required, under State law, to issue written notices to alleged violators prior to filing a civil or administrative complaint, order or agreement. For purposes of this Policy, such notices themselves do **not** constitute formal enforcement action; rather, it is the ensuing civil or administrative complaint, order or agreement which constitutes the formal enforcement action. States can also meet response criteria and guidelines for this policy by referring violators to EPA (Note: Day Zero for EPA is the date of the referral). In the case of joint State/EPA enforcement actions, Day Zero is the date the EPA inspection report/referral is received when the State has the lead for the enforcement action. This definition is solely for the purposes of the ERP and is not relevant to the federal government's authority to take an enforcement action where a State has already commenced an enforcement action.

F. Implementing Agency is the agency undertaking the required enforcement response.

G. Informal Enforcement are those actions that are not formal enforcement actions that notify the violator of its violations.

H. Addressed means that in the case of a SV, the implementing agency has issued a non-penalty action that notifies the violator of its violations. In the case of a SNC, the implementing agency has issued a formal enforcement action that compels compliance (i.e., initial or unilateral orders) or referred the violator to the State Attorney General offices, EPA, or the Department of Justice) and imposes appropriate sanctions. If the SNC violations are addressed with an action such as an order issued under RCRA §§ 3013 or 7003 or State equivalent authority, then the implementing agency should follow-up with an action imposing sanctions.

I. Compliance Schedule Established means that the implementing agency has entered into a formal enforcement agreement or a trier of fact has issued an order, and the violator is in compliance with its schedule. Follow-up may still be required, depending on the situation. If a compliance schedule is established, then the implementing agency should monitor compliance with that schedule; if a referral is made, then the implementing agency should continue to monitor the progress of the case up to and after filing. Once these actions have been completed, and the violator is in compliance with its schedule, the violator is no longer a SNC and RCRAInfo should be updated accordingly. However, the violator in this scenario has not returned to compliance within the meaning of this policy (see Section IV., I., below).



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J. Returned to Compliance means that the violator is in full physical compliance with the regulatory and/or statutory requirements.

K. Sanctions include penalties as well as other tangible obligations, beyond returning to compliance (e.g., permit modifications), that are imposed upon the owner/operator.

## V. APPROPRIATE ENFORCEMENT RESPONSE

The selection of an appropriate enforcement response is an integral component of the RCRA enforcement and compliance assurance program. An appropriate response should achieve a timely return to compliance and serve as a deterrent to future non-compliance by eliminating any economic advantage received by the violator. This section establishes the criteria for determining when formal and informal enforcement responses are appropriate.

### A. Formal Enforcement Response

A SNC should be addressed through formal enforcement. This formal enforcement response should mandate compliance and initiate an administrative or civil action that results in an enforceable agreement or order and imposes sanctions. The formal enforcement response should seek injunctive relief that ensures that the violator resolves its violations and expeditiously returns to compliance.

#### 1. Sanctions

An enforcement response against a SNC by the implementing agency should be considered appropriate when sanctions are incorporated in the formal enforcement response. Penalties incorporated in the formal enforcement response that recover the economic benefit of non-compliance plus some appreciable amount reflecting the gravity of the violation should be considered appropriate. Additionally, if warranted by the circumstances, the implementing agency may include other sanctions against the violator. These include, but are not limited to: permit modifications, permit revocation, facility shut down, and suspension and debarment proceedings. The portion of the penalty that does not account for the economic benefit of non-compliance may be addressed through the use of Supplemental Environmental Projects (SEPs) as deemed appropriate by the implementing agency.[3]

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[3] Federal enforcement actions that include a SEP should comply with the criteria set forth in the Supplemental Environmental Projects Policy.



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2. Enforcement of Orders

A violator's failure to comply with the terms of an order requires a separate response. The implementing agency should take the appropriate steps to enforce an administrative or judicial order when a violator does not comply. In some cases, violations of an order should warrant a new SNC classification and a formal enforcement response. Guidance on enforcing orders can be found in EPA's "Manual on Monitoring and Enforcing Administrative and Judicial Orders," dated January 6, 1990. If the terms and conditions of an order are not complied with, the Regions and States should take timely action to compel full compliance with the order. If the order contains stipulated penalties, then prompt action is required to collect the stipulated penalties.[4] If the violator fails to pay the penalty or comply, then the case may be referred to DOJ and/or the EPA Finance department for collection or State Attorney General's Office, as appropriate. See 40 C.F.R. Part 13 - Claims Collection Standards. If the order has no stipulated penalty provision, then the implementing agency should take another formal enforcement action (e.g., such as a referral to DOJ or the State Attorney General's office).

B. Informal Enforcement Response

If a facility is found to be in violation but is not designated a SNC, then it is designated a SV. An informal enforcement response is the minimally appropriate enforcement response for all SVs but the implementing agency can choose to take a formal enforcement response as it deems appropriate. An informal enforcement response is a non-formal action that notifies the violator of its violations. If the violator does not come into compliance within 240 days of Day Zero, then the implementing agency should re-classify the facility as a SNC, if appropriate, in accordance with Section VI below.

## VI. RESPONSE TIME GUIDELINES

This section establishes response time guidelines for formal and informal enforcement actions. The guidelines are designed to expeditiously return violators to compliance with all applicable requirements of the Federal RCRA program or the authorized State equivalent. Response time guidelines are divided into two categories, formal enforcement actions and informal enforcement actions. The guidelines also establish response times for the escalation from an informal response to a formal enforcement response due to the violator's failure to resolve its violations and what actions an implementing agency should take when it determines that a violator has not complied with an administrative or judicial order.

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[4] See also Guidance on the Use of Stipulated Penalties in Hazardous Waste Consent Decrees, September 21, 1987 and Use of Stipulated Penalties in EPA Settlement Agreements, January 24, 1990.



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A. Day Zero

Day Zero is defined as the first day of any inspection or record review regardless of the duration of the inspection. In situations where there are follow-up inspections at a facility, Day Zero is the first day of the first inspection. For violations detected through some method other than inspection or record reviews, Day Zero is the date upon which the information (e.g., self-reported violations) becomes available to the implementing agency. In the case of a State referral to EPA pursuant to Section VII. below, Day Zero is considered the date of the referral to EPA. In the case of SV facilities that have failed to return to compliance (See Section V. B. above), Day Zero is the date that the violator is reclassified a SNC.

B. Date Determined

The Date Determined is a date no later than 150 days after Day Zero by which the implementing agency first determines that a violation has occurred. This evaluation includes determining the facility's compliance with the regulations and then determining whether the violator is a SNC or SV. To the extent that the violation(s) meet one or more of the elements of the SNC definition, the violator should be designated a SNC and subject to the appropriate formal enforcement response of this policy (see Section V.A. above). If the violations do not meet the criteria for designation as a SNC, then the violator should be designated a SV and subject to, at a minimum, an informal enforcement response of this policy (see Section V.B above). The implementing agency should enter the facility as a SNC or a SV into RCRAInfo at this time.

C. Day 150

By Day 150, the implementing agency should issue a warning letter or other appropriate notification of violations to those violators designated as SVs or SNCs to put those violators on notice of their violations. A notice of inspection or other written notification provided at the time of the inspection will be considered to have put the violator on notice. If the EPA or State determine that a facility is a SNC, this warning letter or other form of notification should advise the facility of its status. The SNC determination should also be entered into RCRAInfo by this date.

D. Day 240

By Day 240, SVs are required to return to compliance. By Day 240, the implementing agency should issue its unilateral or initial orders to the designated SNCs, if appropriate, (Orders which follow NOVs are considered initial orders in this instance.)

E. Day 360

By Day 360, the implementing agency should make a referral to the Department of Justice or State's Attorney General office or enter into a final order with the violator.



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## VII. FORMAL ENFORCEMENT RESPONSE TIME

A. Types of Formal Enforcement Actions

The timeline discussed in Section VI depicts the target response times for enforcement pursuant to RCRA. The timeline delineates separate response times for the three types of formal enforcement actions and the escalation to formal enforcement from informal enforcement. The target response times are for three types of formal enforcement actions: (1) unilateral or initial orders; (2) referrals to the Department of Justice or the Attorney General's Office; and (3) final or consent orders.

(1) Unilateral or initial orders - These are issued by the implementing agency and assert the agency's position that violations have occurred. However, the respondent/defendant is afforded the opportunity to appeal the agency's determination of violations to a trier of fact. Unilateral or initial orders should be issued by Day 240.

(2) Referrals to the Department of Justice or the State Attorney General's Office - These occur when a federal or State case is officially transmitted to those offices for action. A federal referral is considered to be initiated upon the signature of the referral package by the Regional Administrator or his/her designee, or the Assistant Administrator for OECA, as appropriate. With regard to the State's referral to the Attorney General's Office, each State agency should establish a formal process for requesting that the Attorney General's Office initiate enforcement proceedings on behalf of the State. Completion of that process would then constitute referral to the Attorney General's Office as set forth in the timeline. All referrals should be made to the appropriate agency by Day 360.

(3) Final or consent orders - These are documents for which no appeal remains before the trier of fact. These orders represent the agreement of the parties involved or the decision of a trier of fact. Final or consent orders should be signed by Day 360.

B. Exceedance of Formal Enforcement Response Time

Response times articulated in the ERP should be adhered to by the Regions and States to the greatest extent possible. However, there are recognized circumstances (see discussion below) that may dictate an exceedance of the standard response times. A ceiling of 20% per year has been established for consideration of cases involving unique factors that may preclude the implementing agency from meeting the standard response times. The 20% exceedance figure should be calculated based on the total number of civil cases (administrative and judicial) existing in the Region or State at any given time.



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In cases where response times are exceeded due to case specific circumstances, (e.g., criminal referrals) the implementing agency should initiate discussions with the appropriate contacts and develop an alternative schedule to take enforcement action. EPA HQ plans to conduct periodic evaluations of Regional and State enforcement response times for the purpose of determining appropriate ceiling levels. Authorized State programs should have response time reviews performed during evaluations conducted by the Region pursuant to 40 C.F.R. Section § 35.150. In some complex cases, more time may be required. The State should discuss with the Region that a case's complexity will require additional time as soon as those factors are determined.

EPA and States should strive to comply with the standard response times contained in the ERP. However, when the following circumstances exist, up to 20% of the Regional/State enforcement cases may exceed the standard response times:

- Cases involving violations of two or more media; (e.g., environmental protection statutes)
- Cases involving more than one facility;
- Potential criminal conduct which is under investigation;
- National enforcement initiatives;
- Cases involving nationally significant issues;[5]
- Novel legal issues or defenses;
- Site abandonment;
- Additional sampling or information requests are required to confirm the violation(s); and
- Need for outside technical experts.

C. Prioritization of Immediate Actions

The Agency recognizes that circumstances may arise where the enforcement response times specified may be insufficient to prepare and initiate the appropriate enforcement response as set forth in this policy. It is also recognized that instances may occur where immediate action is appropriate. The Agency expects that the Region or State should take priority enforcement

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[5] Requests for exceedance of the formal enforcement response times due to existence of nationally significant issues are generally reserved for EPA enforcement responses.



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action in the following situations:

- Where a release or other violation poses an immediate threat to human health or the environment.
- Where activities of the owner/operator must be stopped or redirected, such as cases in which the Agency or the State seek to immediately halt improper construction or installation of a regulated unit.
- Where the threat of a dissipation of assets would undermine closure, post-closure, or corrective action activities.
- Where there is an imminent statute of limitations deadline or bankruptcy deadline.

## VIII. INFORMAL ENFORCEMENT RESPONSE TIME

Once a determination is made to utilize an informal enforcement mechanism, the implementing agency should notify the violator of its violations with a non-penalty action. The objectives of an informal enforcement response are to compel the violator to cease its non-compliant activities and return to compliance in the shortest possible time frame.

For a violator to be considered a candidate for informal enforcement, violations should be of a nature that permit a prompt return to compliance with all applicable rules and regulations. Violators addressed through an informal enforcement response should not have a history of recalcitrant behavior or non-compliance.

If a violator is unable to return to compliance, it should immediately notify the implementing agency and provide that agency with documentation supporting the inability to correct the violations identified by the implementing agency. If the violator does not return to compliance within 240 days of the day the violations are discovered (i.e., Day Zero), then the implementing agency may re-classify the violator as a SNC in accordance with Section V.B. above. Failure to return to compliance in a timely manner or failure to notify the implementing agency of the inability to return to compliance may result in an escalation to formal enforcement.

## IX. EPA ACTION IN AUTHORIZED STATES

States with authorized RCRA programs have the primary responsibility for ensuring compliance with the RCRA program requirements. However, EPA retains the authority to take independent enforcement action in authorized States in accordance with applicable EPA enforcement authority. As a matter of practice, EPA intends to continue to consult with our State partners when considering actions.



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