



# FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

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## MEMORANDUM

**TO:** District Directors

**FROM:** Clifford D. Wilson III, P.E., Deputy Secretary Regulatory Programs

**SUBJECT:** Compliance & Enforcement Process for DEP's Hazardous Waste Program

**DATE:** August 20, 2014

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The November 16, 2011, memorandum from the Deputy Secretary to the Regulatory Directors, provides Department guidance on appropriate responses when noncompliance is found during an inspection. In that memorandum, it was stated that "Consideration must always be given to federal delegation agreements, which may prescribe an enforcement response." Based on recent discussions with EPA, I am directing the Division of Waste Management (Division) to implement targeted process refinements that I believe will further improve consistency in our regulatory responses for our federally authorized hazardous waste program. In part, consistency will be improved by more clearly identifying the times when the Division's hazardous waste program staff should work with the District offices so we can:

- make consistent Significant Non Compliance (SNC) determinations that are supported by case-specific circumstances, and
- respond with follow-up actions and decisions that are in accord with both our Department guidance and EPA's Enforcement Response Policy (ERP) for the Resource Conservation and Recovery Act (RCRA) hazardous waste program.

To that end, the attached flow chart has been developed to illustrate the collaboration that should be implemented between the Division's program office and regulatory District staff for cases involving the identification and resolution of hazardous waste noncompliance findings.

### SNC Determinations

When classifying noncompliance findings, Department staff should begin their review using the recommended classifications that are specified in the Guidelines for Characterizing Hazardous Waste, Universal Waste, Used Oil and Drycleaner Violations. The most recent version of these guidelines is available on the RCRA Data Home page ([http://appprod.dep.state.fl.us/rcra\\_epa/](http://appprod.dep.state.fl.us/rcra_epa/)) under the RCRA Guidance drop down menu.

A case specific classification review involving the Division's program office should be initiated to facilitate consistent noncompliance classification in the following circumstances:

1. cases where the District draws a preliminary conclusion that it seems prudent to implement a response that is different than the default response listed for the noncompliance finding, or
2. the default response is listed as case-specific for the given noncompliance finding.

In cases where the District intends to classify a noncompliance finding as significant based on the existence of a pattern of repeated violations or other history of noncompliance, this background information should be noted for the Case Specific classification review. Similarly, whenever significant noncompliance findings meeting the criteria above are being timely resolved through compliance assistance efforts, such mitigating information should also be included for the Case Specific classification review.

To facilitate timely SNC determinations by no later than 150 days from the date of the noncompliance finding (Day 150), all Inspection Reports should be completed by Day 75, and any Case Specific classification reviews should be requested by Day 90. Note, for Non-SNC secondary violator cases where all potential violations will not be returned to compliance by Day 240, a reevaluation of the classification should be completed prior to Day 240. Where there may be an unresolved difference between the District and program office noncompliance classification, then the Assistant/Deputy Directors and Directors for the respective District and program office should jointly review the relevant case information. If an agreed upon classification is not reached, then the classification review information should be elevated to the Deputy Secretary's office for a final decision.

### **Enforcement Process Reviews**

If the District identifies a SNC and calculates a potential penalty above \$10,000, the District office's Assistant Director should brief the Deputy Secretary/ Assistant Deputy Secretary, and then request a Peer Review from the Program Administrator for Permitting and Compliance Assistance Program within 30 days. District staff should document penalty calculations in the penalty calculation worksheet and ensure that all enforcement cases are evaluated for both gravity and economic benefit. The penalty calculation worksheet should clearly reflect how economic benefit was considered and show how delayed or avoided costs were calculated. The District office's Assistant Director should also request an Enforcement Case Review from the Division's program office in cases where the District identified case-specific circumstances for not pursuing formal enforcement for a noncompliance finding that was nevertheless identified by the District as being a SNC.

For both Peer Reviews and Enforcement Case Reviews, District and program staff should work together to develop defensible enforcement decisions while promoting general statewide consistency for resolving noncompliance. If there are differences among the Peer Review or Enforcement Case Review recommendations, then the Assistant/Deputy Directors and Directors for the respective District and program office should jointly review the relevant case information. If a consensus approach is not reached, then the case should be elevated to the Deputy Secretary's office for a final decision.

#### **Enforcement Tracking and Case Reports**

The hazardous waste program tracks enforcement response timeframes in an on-line Facilities Pending Formal Enforcement report. All cases that have had an enforcement tracking activity (ETA) entered into the system should also have been identified as a SNC. For such cases that have not been resolved by Day 300, an explanation memo should be submitted to the Deputy Secretary's office explaining the circumstances that are delaying resolution of the case. All cases that have not been resolved by Day 360 should be case reported to OGC if an EPA ERP Justification Indicator has not been entered into the tracking system.

#### **Streamlined Review Process**

I expect the program office and District staff to base their recommendations on the same information that would be used to provide recommendations to their respective managers. I ask that Districts prepare and submit to the program office the Reviews identified above in a timely manner considering the timeframes specified in this memorandum. The program office should review the District's recommendation and return its own recommendation for the District's consideration in no more than 10 days. Districts and program office should track and work together to meet these timing expectations; however, it is anticipated that these timeframes will not be possible for all cases. In order to streamline the overall review timeframes, I encourage District and program staff to work together to understand the relevant ERP considerations early in the evaluation process. This early communication should be used to improve both the timeliness and the consistency in our approaches for resolving instances of noncompliance in the hazardous waste program.

CW/jc

Attachment: Hazardous Waste Program Compliance Review Process



