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Colorado Department
of Public Health
and Environment

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION

SOLID WASTE

ENFORCEMENT RESPONSE POLICY

The attached policy is used by the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, in evaluating enforcement options that are appropriate for addressing violations of solid waste laws and regulations in Colorado.

Original Signed by

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Division Director

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Date

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
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I. INTRODUCTION

The goal of the inspection and enforcement program in the Solid Waste Unit is to ensure a high rate of compliance with the requirements of the Solid Wastes Disposal Sites and Facilities Act, at section 30-20-100.5, C.R.S. through 30-20-119, C.R.S., (“the Act”) and the Solid Waste Regulations, at 6 CCR 1007-2 (“the Regulations”). Taking timely, visible, and effective enforcement actions against violators will achieve this goal. A timely and effective enforcement action will return the facility to compliance as expeditiously as possible, as well as deter future non-compliance, both at the subject facility as well as at other facilities. This Solid Waste Enforcement Response Policy provides a general framework for identifying violations and violators of concern and describing timely and appropriate enforcement responses to non-compliance.

This Enforcement Response Policy does not address violations determined to be potentially criminal in nature and which are being investigated and prosecuted pursuant to State criminal authorities.

The policies and procedures set out in this document are intended solely for the guidance of Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (“the Division”) personnel. They are not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any person party in litigation with the Division. The Division reserves the right to be at variance with this policy. The Division also reserves the right to change this policy at any time with appropriate publication.

II. DEFINITIONS

A. Class I Violations:

Class I violations are violations of the Act and/or the Regulations which are determined by the Division to pose a substantial threat to human health, safety, or the environment. Class I violations also include any substantial deviation from critical elements of the Act and/or the Regulations. Examples of Class I violations include:

1. Failure to obtain a Certificate of Designation or approved Design and Operations Plan;
2. Failure to implement a required explosive gas monitoring and mitigation system;

3. Failure to comply with the terms and conditions of an issued Compliance Order;
and
4. Failure to maintain any financial assurance in accordance with the Act and the Regulations.

B. Class II Violations:

Class II violations are violations of the Act and/or the Regulations that the Division has determined do not pose a substantial threat to human health or the environment, but do merit an enforcement response to ensure that a facility achieves compliance in a timely fashion. Class II violations also include partial deviations from critical elements and substantial deviations from minor elements of the Act and/or the Regulations. Examples of Class II violations include:

1. Failure to adequately monitor for groundwater contamination or explosive gases;
2. Failure to abate nuisance conditions such as lack of odor or dust control, excessive birds and/or litter, or rodent problems;
3. Failure to submit required documentation regarding closure or corrective actions;
and
4. Failure to keep financial assurance mechanism current.

C. Class III Violations:

Class III violations are violations of the Act and/or the Regulations that the Division has determined to pose little or no threat to human health or the environment, but need to be corrected in order that the facility operate fully in compliance. Class III violations also include minor deviations from the Act and/or the Regulations. Examples of Class III violations include:

1. Failure to accurately document volumes of waste received;
2. Failure to ensure adequate daily cover is placed over a landfill; and
3. Inadequate compaction of waste placed into a landfill.

D. Informal Enforcement Action:

An informal enforcement action is an action in which the Division notifies a facility of its violations and requests actions to be taken to mitigate those violations. An informal enforcement action is not binding upon the facility and is not an enforceable instrument, however, the Division will consider a facility's response in determining whether to issue a formal enforcement action.

A Compliance Advisory is the Solid Waste Unit's mechanism for informal enforcement. The Compliance Advisory serves several purposes, and provides a facility with notice of the following:

- a) The deficiencies that the inspector(s) believes are violations of the Act and/or the Regulations;
- b) Areas of the compliance inspection that have not been completed, and are still being evaluated;
- c) Required submittals and/or corrective actions, with a timeframe for completion of these objectives;
- d) Areas of concern which the inspector believe might either be violation(s) of other environmental laws or that may lead to violation of solid waste laws;
- e) Informs the facility of the Division's process to reach resolution of the alleged violations and outstanding issues; and
- f) Informs the facility of the consequences for continued non-compliance.

The Compliance Advisory should be issued by an authorized inspector as soon as possible following the inspection. Facilities will be requested to provide a written response to the Compliance Advisory.

The Compliance Advisory should include comments regarding the specific nature of the violation(s), and, as applicable, may direct the operator to take corrective actions by a specific date or request a work plan for correction with a specific date for submittal by the operator to the Solid Waste Unit for review and approval.

The Compliance Advisory should be sent to the owner and/or operator by certified mail with return receipt requested. The letter should describe the violation(s) and reference the statute or regulation that has been violated.

The Compliance Advisory will also provide the owner and/or operator the opportunity to contact the Solid Waste Unit to set up an informal conference with Division personnel. The informal conference is an opportunity for the facility to discuss the violations alleged in the Compliance Advisory and pose any outstanding questions, and/or present information to the Division that shows that some, or all, of the issued raised in the Compliance Advisory were not violations of the Act or the Regulations.

E. Formal Enforcement Action:

A formal enforcement action is an action that mandates compliance via an enforceable agreement or order. Formal enforcement actions should always be utilized when a facility is determined to pose an imminent and substantial threat to human health, safety or the environment.

A Judicial Order, a Unilateral Compliance Order and a Compliance Order on Consent are the three types of formal enforcement mechanisms utilized by the Solid Waste Unit.

Formal enforcement actions should include:

- a) A recitation of the violations of the Act and/or the Regulations discovered at the facility; and
- b) A list of required submittals and/or corrective actions, and a schedule for completion.

Formal enforcement actions should also address liability for penalties. Determination of the appropriateness or amount of penalties is not within the scope of this policy, but is explained in the Division's *Solid Waste Penalty Policy*.

A Unilateral Compliance Order should be issued to the owner or operator of the facility as soon as possible following the inspection. At a minimum, Unilateral Compliance Orders should include the following:

- a) The findings of fact and conclusions of law for each cited violation;
- b) A list of requirements designed to bring the facility back into compliance, including schedules for completion;
- c) Invitation to request an informal conference to discuss the findings and requirements in the Order;
- d) Notice of the effective date of the Order; and
- e) Notice of the facility's liability for penalties.

A Compliance Order on Consent is a negotiated document setting forth agreements reached between the Division and facility representatives. At a minimum, a Compliance Order on Consent should include the following:

- a) A list of the alleged violations;
- b) A list of requirements designed to bring the facility back into compliance, including schedules for completion;
- c) Notice of the effective date of the Order on Consent; and
- d) Agreements made to settle any penalty claims the Division may have against the facility.

A Judicial Order is issued by a court of competent jurisdiction upon the Division's request that the Attorney General's Office bring a civil action against the facility. Civil actions brought under the Act and/or the Regulations will likely request both injunctive relief and monetary penalties.

III. APPROPRIATE ENFORCEMENT RESPONSE

The selection of an appropriate enforcement response is an integral component of the Solid Waste Unit's enforcement program. An appropriate response will achieve a timely return to compliance and serve as a deterrent to future non-compliance. This section establishes the criteria for determining when formal and informal enforcement responses are appropriate.

The owner or operator's remedial steps to correct the condition and the past compliance history of the facility should be considered when determining the appropriate response action. Chronic non-compliance for operational requirements may be construed as disregard for the regulatory program and should not be tolerated.

Compliance Advisories should be issued for all cases of non-compliance regardless of the class of violations discovered at a facility. If a work-plan is required, it should consist of a description of actions for correcting the violations and specific dates by which the actions will be completed. The nature of the violations and the response of the facility will likely determine the path forward for resolution of the issues raised in the Compliance Advisory.

Based upon the facts of the case and/or the results of the informal conference, the Division will decide a path forward for resolution, which may include one of the following: 1) no further action if the facility poses little risk and has come into compliance; 2) beginning of settlement negotiations to draft an enforceable Compliance Order on Consent; 3) drafting of a Unilateral Compliance Order; or 4) asking the Attorney General's Office to bring a civil action.

Class I Violations:

Class I violations should receive the highest priority for enforcement. These violations should receive the swiftest and strongest appropriate enforcement response. Every Class I violation should be subject to a formal enforcement response. A Unilateral Compliance Order or a Compliance Order on Consent is the preferred enforcement response for facilities with Class I violations. In extreme situations, the Division may request the facility to voluntarily stop operations until the situation is corrected or may issue a Cease and Desist Order, or may seek an injunction in Court.

Appropriate enforcement response against Class I violations will achieve the following:

- a) Compliance with all requirements of the solid waste statute and regulations;
- b) A final, enforceable order having compliance terms and schedules; and, if appropriate,
- c) Resolution of any penalty claims against the facility.

Class II Violations:

Class II violations should be considered for formal enforcement action on a case-by-case basis. Class II violations represent somewhat less serious violations and may be resolved through either a compliance advisory or a compliance order when deemed appropriate.

However, escalation to formal enforcement should always occur if an owner or operator with Class II violations fails to meet the requirements of an informal enforcement action.

The decision whether to use formal or informal enforcement against Class II violations should be based upon the following guidelines:

- 1) Formal enforcement should be used if there are numerous requirements to be met or the time frame for returning to compliance is long.
- 2) Formal enforcement must be used if penalties are appropriate.
- 3) Formal enforcement must be used if the owner or operator has failed to respond to a Compliance Advisory or has repetitive Class II violations.
- 4) Informal enforcement may be used when the actions a facility must take are few and straightforward and the facility is able to return to compliance in a short period of time

Class III Violations:

Appropriate enforcement response for Class III violations should achieve compliance with all requirements of the Act and the Regulations. Class III violations will almost always receive an informal enforcement response. However, chronic, recalcitrant, or widespread Class III violations should be considered for formal enforcement. Compliance should be achieved as quickly as possible and the violator should be made aware of which requirements need to be met. Escalation to formal enforcement may be appropriate if a violator fails to meet the requirements of an informal enforcement action.

IV. ENFORCEMENT RESPONSE TIME GUIDELINES

This section establishes response time guidelines for both formal and informal enforcement actions. These guidelines are designed to expeditiously return non-compliant facilities to compliance with all applicable solid waste rules and regulations. While recognizing that case specific circumstances may dictate exceedance of response time guidelines, every effort should be made to adhere to the guidelines set forth below.

Informal Enforcement:

The target response time for issuance of a Compliance Advisory is within twenty (20) days from the inspection date.

Formal Enforcement:

The evaluation date will be defined as the day that enforcement personnel decide that a certain enforcement response is appropriate. This decision may be made at the time of inspection, upon the inspector's return to the office or later at a case development meeting. In any case, every effort should be made to meet the following timelines for the evaluation date: 1) If a Compliance Advisory has been issued, the evaluation date should be within thirty (30) days of the compliance date requested in the Compliance Advisory; 2) If no Compliance Advisory has been issued, the evaluation date should be within ninety (90) days of the date of the inspection; or 3) If an Informal Conference is held regarding an issued Compliance Advisory, the evaluation date should be within thirty (30) days of the Informal Conference.

There are three types of formal enforcement for which this policy establishes target response times: 1) Unilateral Compliance Orders, 2) Compliance Orders on Consent, and 3) referrals to the Attorney General's Office for commencement of Civil Actions.

- 1) Unilateral Compliance Orders: a unilateral compliance order should be issued to the violator within ninety (90) days from the evaluation date.
- 2) Compliance Orders on Consent: a negotiated compliance order on consent should be fully executed within one hundred eighty (180) days from the evaluation date.
- 3) Civil Actions: a referral to the Attorney General's Office for commencement of a civil action should commence within forty-five (45) days from the evaluation date.