



# RCRA Enforcement

**Aram Kim**  
Environmental Specialist II  
Hazardous Waste Section  
Division of Waste Management



# *DEQ's Principles of Enforcement*

March 31, 2000

1. Compliance is the first step toward the ultimate goal of stewardship.
2. Enforcement will be balance with education, technical assistance, and incentives to achieve compliance and encourage stewardship.
3. Enforcement will be an effective deterrent against future violations.
4. Enforcement actions will increase in severity for regulated entities with poor compliance histories.
5. The cost of non-compliance should be greater than the cost of compliance.
6. Resources will be used proportional to the potential impact on human health and in keeping with statutory responsibilities.
7. DENR will support the development and use of alternative tools to traditional enforcement that achieve compliance and encourage going beyond compliance.



# *DEQ's Principles of Enforcement*

March 31, 2000

8. DENR will trust, empower, and support its employees to make enforcement decisions and use enforcement discretion where appropriate.
9. DENR will ensure that its employees are well trained and informed to make enforcement decisions which are measurably consistent.
10. Enforcement policies, procedures, pertinent data, and other critical information will be accessible to any interested party.
11. Enforcement Decisions will be defensible, documented, and proportional to the degree of potential harm.
12. DENR will foster partnerships internally and externally to realize shared responsibilities in environmental stewardship.



# *History of the Enforcement Actions*

Regulatory Reform Act of 2011

## The Regulatory Reform Act

- Became law on July 25, 2011
- Directed the Secretary of NCDEQ to develop a uniform policy for notifications of deficiencies and violations for all regulatory programs within NCDEQ
- Specified that different types of notification be based on the potential or actual level of harm to public health, the environment and the natural resources of NC
- The **Notification Policy** was to be implemented no later than February 1, 2012







## *Notification Policy*

### Three-Tiered Structure

1. Recordkeeping/paperwork violations. Little or no harm to the environment or public health.
  2. More serious infractions that could result in harm to the environment or public health
  3. Violations that have clearly impacted the environment and/or public health.
- The Policy recognizes that by using a Tiered approach, a "Tier 1" violation will be met with a less severe response than a "Tier 3" violation.



## Tier 1 Violations

- Represent minor violations
- Not committed willfully or intentionally
- Little or no harm to the environment / public health
- Minor duration and/or gravity
- Usually, the first offense by the violator
- **Ticket Notice of Violation (TNOV) will be issued**





## Tier 2 Violations

- Represent more serious violations
- Documented harm or the potential for moderate to severe harm to the environment or to public health
- Moderate duration and/or gravity
- Continued noncompliance with Tier 1 violations
- Prior history of noncompliance with regulations
- **Typically, a Standard Notice of Violation (NOV) will be issued**





## Tier 3 Violations

- Represent the most serious violations
- Documented significant harm or the high potential for harm to the environment or to public health
- Significant Duration and/or Gravity
- Committed willfully and intentionally
- Typically issued to violators with significant prior history of noncompliance with regulations
- Can also include continued noncompliance with Tier 2 violations
- **Civil Penalties, Consent Orders, Injunctions, or other compliance tools may be used**





## *Most Common Violations*

1. Waste Identification
2. Weekly Inspections
3. Permitting (Storage/Treatment)
4. Container Management
5. Labeling, Indications of the Hazards, Dates
6. Emergency Preparedness & Prevention
7. Personnel Training
8. Tank Management
9. Universal Waste Management
10. Used Oil Management



## *Types of Inspections*

The Policy is implemented after violations are discovered during a variety of site visits:

- **CAV** – Compliance Assistance Visit (technical assistance, typically no violations are issued)
- **CEI** – Compliance Evaluation Inspection (our routine inspection)
- **CMP** – Complaint Investigation (may be a citizen/employee complaint or referral from another Section/Agency, etc.)
- **FCI** – Focused Compliance Inspection (focus on a certain topic(s))



## *What's Next?*

So you've had an inspection

- The inspector will typically inform you of any violations noted during the inspection and provide you an opportunity to ask questions.
- Following the inspection, your inspector will provide you with an inspection report, typically by mail or email.
- If violations were cited:
  - If you have questions, ask them as soon as possible. Don't wait for the re-inspection!
  - Fix the violations and send documentation of the corrections to your inspector.



# *Notification Policy*

## Types of Notices

### **Different Levels of Notification of Violation:**

- Ticket Notice of Violation (TNOV)
- Standard Notice of Violation (NOV)
- Immediate Action Notice of Violation (IANOV)
- Compliance Order (CO)



## *Notification Policy*

### **Ticket NOV (TNOV)**

- Developed and issued by the Inspector conducting the inspection.
- Typically, issued for six or fewer violations, deficiencies that are easily corrected.
- The compliance schedule is usually **30 days** from the date of issue.





## *Notification Policy*

### **Standard NOV (NOV)**

- Drafted by the Inspector and reviewed and signed by Section Chief of the Hazardous Waste Section.
- Typically, issued for 6 or more violations, or for repeat violations and violations that have posed a significant potential threat to human health and the environment.
- The compliance schedule is usually **30 days** from the date issued.



## *Notification Policy*

### **Immediate Action NOV (IANOV)**

- Developed by the Inspector and are reviewed and signed by Section Chief of the Hazardous Waste Section.
- Issued for violations that pose potential immediate threats. Ex) Management of unknown materials or releases of hazardous waste.
- The compliance schedule will specify steps that must be taken to assess and remediate any contamination.
- Will appear on ECHO as a SNC and a state-led “Initial Imminent and Substantial Endangerment Order” enforcement action.



## *Notification Policy*

### **Compliance Orders with Administrative Penalty**

- Developed by Raleigh Central Office Technical Resource Unit in conjunction with the inspector.
- Are signed by Section Chief of the Hazardous Waste Section.
- Types of Orders:
  - *Short Form*
  - *Standard Form*
  - *Administrative Order on Consent*



# Compliance Orders

## Short Form and Standard Form

	Short Form	Standard
Max. penalty per violation per day	\$6,500.00	\$32,500.00
Issued for	violations that creates an imminent potential threat to human health or the environment.	significant violations that pose an <u>immediate</u> threat to human health and the environment.
Examples	<ul style="list-style-type: none"> <li>Repeat violations discovered during a re-inspection</li> <li>Non-compliance with previous NOV's</li> </ul>	<ul style="list-style-type: none"> <li>Failing to conduct and document proper waste determinations</li> <li>Operating as a TSD Facility without a permit</li> </ul>



## *Compliance Orders*

### **Administrative Orders on Consent**

- Entered into by both the Division of Waste Management and a facility.
- Typically, based either on a resolution to a Compliance Order or as a voluntary action of the facility identifying a problem.
- A stipulated penalty is typically included to recover any economic benefit gained from non-compliance as well as the cost of investigation.







## *Hazardous Waste Section Data* 2022

<b>Evaluations</b>	<b>Number</b>
Commercial Treatment, Storage, Disposal Facilities Attachment List (non-commercial TSD facilities) CEIs	9 CEIs, 425 FCIs
Large Quantity Generator CEIs	72
Small Quantity Generator CEIs	118
Citizen Complaints (CMPs)	73
Emergency Response (EMRs)	39
Compliance Assistance Visits (CAVs)	15
Compliance Schedule Evaluations (CSEs)	28
	58
<b>Enforcements</b>	<b>Number</b>
Notices of Violation (NOVs)	64
IANOVs	6
Compliance Orders	3

## *U.S. EPA Region 4*

### Hazardous Waste Enforcement Response Policy

- The policy provides the States and EPA with guidance for taking civil enforcement action in response to RCRA violations.
- The policy ensures consistent, appropriate, and timely enforcement in all the states within Region 4.
- Violators are grouped into two different categories:
  - Significant Non-Complier (SNC)
  - Secondary Violator (SV)





*Hazardous Waste Enforcement Response Policy*  
Significant Non-Compliers

- Either caused an actual exposure or a substantial likelihood of exposure.
- May be chronic or recalcitrant violators.
- Have deviated substantially from the terms of a permit, order, agreement, or from the RCRA statutory or regulatory requirements.





*Hazardous Waste Enforcement Response Policy*  
Secondary Violator

- Secondary Violators include first time violators, or facilities that pose no actual threat/low potential threat.
- These facilities may also have no history of non-compliance.
- The violations cited are of a nature to permit prompt return to compliance.



## *RCRA Civil Penalty Policy*

- Describes the calculation matrix established to determine penalty amounts.
- The penalty calculation is determined by reviewing the:
  - Potential for Harm
  - "Extent of Deviation" from a statutory or regulatory requirement
- The NC General Statute allows the Division of Waste Management to collect reasonable costs of any investigation, inspection or monitoring associated with the assessment of penalties. These investigation costs are added to the penalty amount and are not subject to appeal.





*Penalty Matrix*

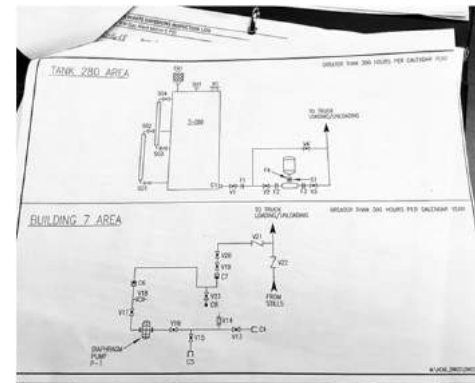
Short form Order PENALTY ASSESSMENT MATRIX		Degree of Deviation from Requirements		
		MAJOR	MODERATE	MINOR
Nature and Degree of Harm	MAJOR	\$6500 - 1300	\$5200-1000	\$3800-700
	MODERATE	\$2800-500	\$2000-300	\$1300-200
	MINOR	\$800-130	\$400-130	\$130



## Example of Penalty Calculation

### Background Info

- An unannounced Compliance Evaluation Inspection was conducted at a manufacturer of industrial chemical ingredients and products.
- The facility was notified and operating as a LQG.
- Three violations were discovered during the CEI, and the Facility was determined to be a SNC.



## Example of Penalty Calculation Violations

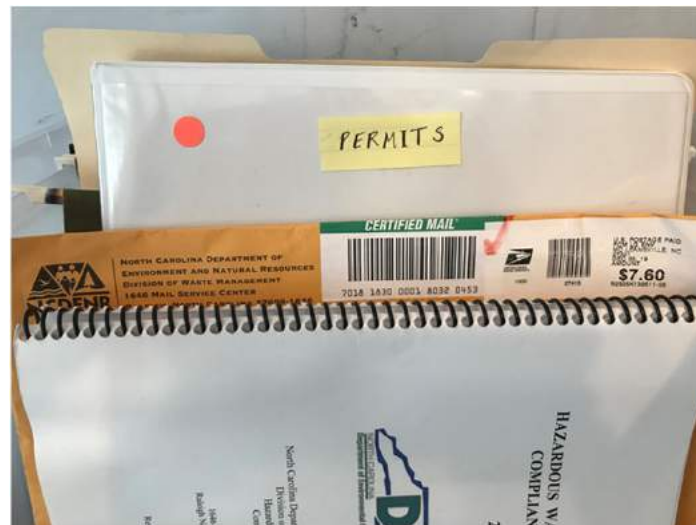
- The violations that were observed include:
  - Failure to mark each piece of equipment for a hazardous waste tank so that it can be distinguished readily from other pieces of equipment 40 CFR 262.1050(c) referenced through 262.17(a)(17).
  - Failure to accumulate hazardous waste in a tank for less-than 90-days while operating as an LQG. 40 CFR 270.10(a)(3).



## Example of Penalty Calculation

### Violations (Continued)

- Additional violation included violation of the state administrative code:
  - Failure to comply with the requirements of any person who treats, stores, or disposes of hazardous waste by failing to have a permit to store hazardous waste on-site in excess of 90-days – 15A NCAC 13A .0109(a)



## *Example of Penalty Calculation*

### Penalty Calculations

- Each group of violations went through the penalty calculation matrix:
  - Container Management violations: **\$3,900**
  - Unpermitted Storage Facility violations: **\$6,500**
- In total, the facility was assessed a penalty of **\$8,150**.
- Additionally, a storage facility fee of **\$1,680** and investigative costs of **\$762.34** were assessed.





*Civil penalties received by the State are governed by the NC State Constitution, Article IX, Sec. 7.*

**Sec. 7. County school fund; State fund for certain moneys.**

(a) Except as provided in subsection (b) of this section, all moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

(b) The General Assembly may place in a State fund the clear proceeds of all civil penalties, forfeitures, and fines which are collected by State agencies and which belong to the public schools pursuant to subsection (a) of this section. Moneys in such State fund shall be faithfully appropriated by the General Assembly, on a per pupil basis, to the counties, to be used exclusively for maintaining free public schools. (2003-423, s.1.)



## *Penalty Consequences*

- Enforcement actions are a matter of public record, and DEQ updates our website immediately for all Orders.

<https://deq.nc.gov/about/divisions/waste-management/hw/civil-penalties>

- The website identifies the facility, summarizes the violations found, and the total penalty assessed.
- This publicity may affect your corporate image and could jeopardize future opportunities such as state grants or private/government contracts.



# Penalty Consequences

Administrative Order(s) Issued	Violations	Penalty Amount	Administrative Order(s) Issued
Southern Resin, Inc. 3440 & 3438 Denton Rd; Thomasville, NC Davidson County Docket #2020-039	Failed to: <ul style="list-style-type: none"> <li>• Waste determination;</li> <li>• determine its generator category and notify as a LQG of hazardous waste;</li> <li>• Label and mark container;</li> <li>• Obtain an EPA Identification number;</li> <li>• request a 30-day extension;</li> <li>• have a RCRA storage Permit; and</li> <li>• not accumulated hazardous waste longer than the 90 days allowed.</li> </ul>	\$26,624.00 in penalty \$15,668.43 for investigative and inspection costs \$1,680.00 in fees for acting as a hazardous waste storage facility.	Signed January 5, 2022
401 West End, LLC 401 West End Blvd, Winston Salem, NC Docket #2021-047	Failed to: <ul style="list-style-type: none"> <li>• Waste determination;</li> <li>• demonstrating compliance with land disposal restrictions prior to disposal in two Subtitle D non-hazardous waste landfills;</li> <li>• use/prepare a hazardous waste manifest;</li> <li>• send for disposal to a facility that was authorized to receive hazardous waste; and</li> <li>• not received an EPA identification number.</li> </ul>	\$16,900.00 in penalty \$947.34 for investigative and inspection costs	Signed January 7, 2022

# *Other Enforcement Actions*

- Civil Action

- The Hazardous Waste Section can obtain an injunction to immediately address a violation of the rules that may be endangering human health and the environment.

- Criminal Action

- Facilities or individuals that show a knowing or willful intent on breaking environmental law. Criminal investigations are conducted in cooperation with the FBI, North Carolina State Bureau of Investigation, or EPA's Criminal Investigation Division.



## *Hazardous Waste Section Audit Policy*

### Conditions for Penalty Waiver

- Similar to the EPA Audit Policy ([65 FR 19618; April 11, 2000](#)).
- Hazardous Waste Section will not seek administrative or civil penalties beyond the economic benefit the company received if the facility meets all nine policy conditions.
- In all cases, the regulated person or entity must provide sufficient documentation to be eligible.
- When the nine conditions are not met, the Section may consider the nature and extent of any audit or compliance system in deciding the appropriate enforcement response.



## *Hazardous Waste Section Audit Policy*

### Nine Conditions Required

- Condition 1: The violation must have been discovered through either an environmental audit, or a compliance management system that reflects due diligence in preventing, detecting and correcting violations.
- Condition 2: The violation must have been identified voluntarily, and not through a monitoring, sampling, or auditing procedure that is required by statute, regulation, permit, judicial or administrative order, or consent agreement.
- Condition 3: The entity must disclose the violation in writing to NCDEQ, Hazardous Waste Section within **21 calendar days** after discovery.
  - The information is submitted to the local Hazardous Waste Section Inspector by mail or email.





## *Hazardous Waste Section Audit Policy*

### Nine Conditions Required

- Condition 4: The entity must discover the violation independently.
  - The violation must be discovered and identified before NCDEQ, or another government agency likely would have identified the problem either through its own investigative work or from information received through a third party.
- Condition 5: The entity must remedy any harm caused by the violation and expeditiously certify in writing to the Hazardous Waste Section that the violation has been corrected.
  - Correction and remediation in this context include responding to spills and carrying out any removal or required remedial actions.
- Condition 6: The entity must agree to take steps to prevent a recurrence of the violation after it has been disclosed. Preventive steps may include, but are not limited to, improvements to the entity's environmental auditing efforts or compliance management system.



## *Hazardous Waste Section Audit Policy*

### Nine Conditions Required

- Condition 7: Any disclosed violation may not be a violation that is the same or a closely related violation that occurred at the same facility within the past 3 years.
- Condition 8: Disclosed violations may not be violations that result in serious actual harm to the environment, or which may have presented an imminent and substantial endangerment to public health or the environment. When events of such a consequential nature occur, violators are ineligible for penalty relief and other incentives under the Audit Policy.
- Condition 9: The entity must cooperate with the Hazardous Waste Section and provide information to determine Policy applicability.



## *Audit Policy Example*

### Facility background

- A pharmaceutical company hired a consultant to review its hazardous waste management practices. The consultant determined that the facility had been generating hazardous waste for ten years and was operating as a SQG. However, the facility had not notified as a SQG as required.
- The facility notified as an SQG and provided documentation per Audit Policy. The facility had been operating as an un-notified SQG for three (3) years.
- The Hazardous Waste Section's Technical Resource Unit reviewed the information provided and determined that the facility was eligible to use the Audit Policy. Per the policy, the facility was not penalized beyond the economic benefit gained for non-compliance:



## *Audit Policy Example*

### Economic Benefit calculations

- Economic benefits were calculated by the Technical Resource Unit:
  - Failing to provide RCRA training to six (6) employees: **\$2,340**
  - Failing to post contingency planning information near the telephone: **\$159**
  - Failing to make emergency arrangements with local authorities: **\$206**
  - Failing to document daily inspections for three (3) years: **\$585**
  - Small Quantity Generator fees for three (3) years: **\$525**
- The facility was penalized only for the total economic benefit of **\$3,815**.
- If the facility had faced enforcement, rather than the self confessor policy, the penalty would likely be dramatically higher.



# *RCRA Enforcement*

Pollution Follows the Path of Least Regulation

Thank you for your attention!  
Questions?

