

US EPA ARCHIVE DOCUMENT

SESSION 16

RCRA ENFORCEMENT AND COMPLIANCE PROCESS:

Enforcement Response Policy



Enforcement Response Policy Documents

- ▶ These documents are program-specific
 - Clean Air Act (4)
 - Clean Water Act (1)
 - Emergency Planning & Community Right to Know Act (3)
 - Federal Insecticide, Fungicide, and Rodenticide Act (3)
 - Resource Conservation and Recovery Act (1)
 - Toxic Substances Control Act (8)



Enforcement Response Policy – RCRA

- ▶ “Hazardous Waste Civil Enforcement Response Policy” – December 2003
- ▶ Became effective on February 15, 2004
- ▶ Purpose – 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
- ▶ <http://www.epa.gov/compliance/resources/policies/civil/rcra/finalerp1203.pdf>



Classification of RCRA Violators

- ▶ Significant Non-Compliers (SNCs)
 - Caused actual exposure or a likelihood of exposure to hazardous waste or hazardous waste constituents
 - Chronic or recalcitrant violators
 - Deviate substantially from the terms of a permit, order, agreement, or from RCRA statutory or regulatory requirements

- ▶ Secondary Violators (SVs)
 - Pose no actual threat or low potential threat of exposure to hazardous waste or hazardous waste constituents
 - No history of recalcitrant or non-compliant behavior
 - Nature of violations allow prompt return to compliance with all rules and regulations



Significant Non-Compliers

- ▶ Evaluating actual or likely exposure to hazardous waste or hazardous waste constituents
 - Consider environmental impact or likelihood of impact
 - Actual or potential impact to a wetland
 - Actual or potential impact to a wellhead protection area
 - Consider the potential exposure of workers as well as the general public to a release or potential release
 - Consider a facility's history of releases which may suggest an ongoing threat of future releases



Significant Non-Compliers (cont.)

- ▶ Evaluating chronic or recalcitrant behavior
 - Obtain multi-media information
 - Provides insight into the overall environmental management practices of a violator
 - Indicates whether a violator will be responsive to an enforcement action
 - Consider similar and/or multiple violations at the same process unit
 - Consider previous violations by the same individual or entity at other locations



Significant Non-Compliers (cont.)

- ▶ Evaluating substantial deviation from the terms of a permit, order, agreement, or from RCRA statutory or regulatory requirements
 - Involves a judgment call based on the totality of circumstances associated with the violator
 - Should not consider the size or financial viability of the violator
 - Should focus on the importance of the particular requirement violated and the severity of the failure to comply
 - When determining the importance of a RCRA requirement violated, consider the direct contribution that the provision offers to protect human health and the environment
 - In marginal situations, consider any steps the violator has taken to expeditiously come into compliance prior to discovery by the government



Enforcement Response

- ▶ An appropriate enforcement response is an integral component of the RCRA enforcement and compliance assurance program

- ▶ The purpose of an enforcement response is to
 - Achieve a timely return to compliance
 - Serve as a deterrent to future non-compliance
 - Eliminate any economic advantage received through the violation (i.e., even the playing field)



Types of Enforcement Response

- ▶ Formal enforcement response
 - Written document that mandates compliance and/or initiates civil or administrative process. Results in:
 - An enforceable agreement or order
 - An appropriate sanction.

- ▶ Informal enforcement response
 - Those actions that are not formal enforcement actions that notify the violator of its violations
 - Notice of violations letter
 - Warning letter



Formal Enforcement Response Sanctions

- ▶ Formal enforcement response includes one or more sanctions
 - Penalties (monetary)
 - Recover economic benefit of non-compliance
 - Additional amount meant to reflect the gravity of the violation
 - Community service requirements
 - Permit modifications
 - Permit revocation
 - Facility shut down
 - Suspension and debarment proceedings
 - Supplemental environmental projects (SEPs)



Response Time Guidelines

- ▶ The Enforcement Response Policy establishes time guidelines designed to expeditiously return violators to compliance

- ▶ Guidelines establish response times for
 - Formal enforcement actions
 - Informal enforcement actions
 - Escalation from informal to formal enforcement actions

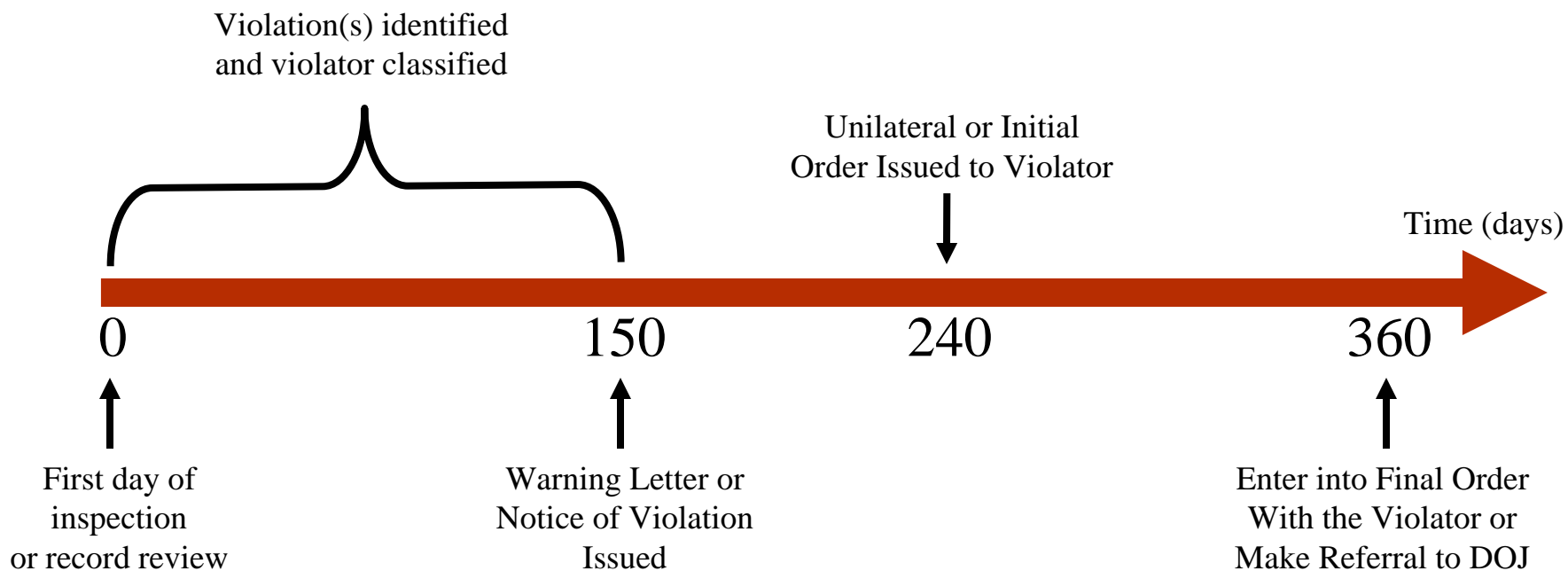


Formal Enforcement Action Response Time Guideline

- ▶ Day Zero – first day of any inspection or records review
- ▶ Date Determined – the date which the implementing agency first determines that a violation has occurred. This is no later than 150 days after Day Zero. Violator is classified as a SNC or SV.
- ▶ Day 150 – Implementing agency should issue a warning letter or notification of violations
- ▶ Day 240 – Implementing agency should issue its unilateral or initial orders
- ▶ Day 360 – Implementing agency should enter into a final order with the violator or make a referral to the Department of Justice (DOJ)



Formal Enforcement Action Response Time Guideline (cont.)

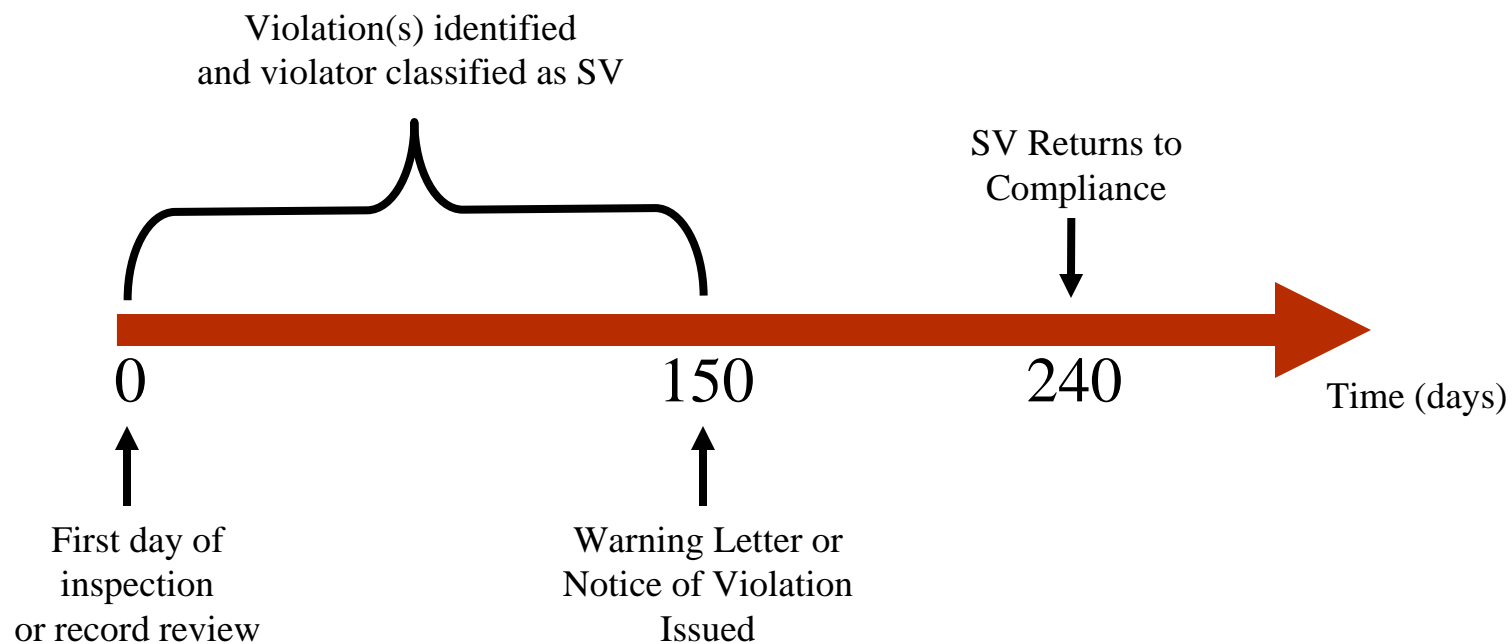


Informal Enforcement Action Response Time Guideline

- ▶ Day Zero – first day of any inspection or records review
- ▶ Date Determined – the date which the implementing agency first determines that a violation has occurred. This is no later than 150 days after Day Zero. Violator is classified as a SV.
- ▶ Day 150 – Implementing agency should issue a warning letter or notification of violations
- ▶ Day 240 – SV is required to return to compliance



Informal Enforcement Action Response Time Guideline (cont.)



Escalation from Informal to Formal Enforcement Actions

- ▶ If an SV has not returned to compliance by Day 240, the implementing agency should re-classify the violator from a SV to a SNC
- ▶ Implementing agency should issue its unilateral or initial orders
- ▶ Implementing agency should enter into a final order with the violator or make a referral to the DOJ



Exceedance of Formal Enforcement Response Time

- ▶ A ceiling of 20% per year has been established for consideration of cases involving unique factors/circumstances that may preclude the implementing agency from meeting the established response times

- ▶ Examples of factors/circumstances
 - Cases involving violations of two or more media
 - Cases involving more than one facility
 - Potential criminal conduct under investigation
 - National enforcement initiatives
 - Cases involving nationally significant issues
 - Novel legal issues or defenses
 - Site abandonment
 - Additional sampling or information requests required to confirm violations
 - Need for outside technical experts

