

Internal Management Directive



State of Oregon
Department of
Environmental
Quality

Subject: Hazardous Waste Management, Criteria for Applying Factors to Determine Significant Non-Complier Status	
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Approval: Wendy Wiles, LQ Administrator 	Pages: 3

Disclaimer This internal management directive represents the Department of Environmental Quality's current directions to Hazardous Waste staff on how to apply guidance, rules and regulations regarding Significant Non-Compliers. This IMD is not final agency action and does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties. This directive should not be construed as rule, although some of it describes existing state and federal laws. The recommendations contained in this directive should not be construed as a requirement of rule or statute. DEQ anticipates revising this document from time to time as conditions warrant.

**Intent/Purpose/
Statement of Need** The purpose of this policy is to define the actions Hazardous Waste (HW) and Enforcement personnel will take for facilities identified as Significant Non-Compliers (SNCs) with the goal of focusing resources on those companies and facilities who pose the greatest threat to human health and the environment. The Department of Environmental Quality (the Department or DEQ) will use the SNC designation to prioritize inspections and enforcement resources.

Authority This policy provides guidance for Hazardous Waste and Enforcement personnel in determining whether a person meets the definition of a SNC and the actions the Department will take as a result of a SNC designation. "Person" includes, but is not limited to, individuals, corporations, associations, firms, partnerships, trusts, joint stock companies, public and municipal corporations, political subdivisions, states, and their agencies, and the federal government and its agencies. A person may not appeal DEQ's determination that it is a SNC. DEQ uses the SNC designation as internal enforcement guidance for DEQ employees.

Applicability DEQ Hazardous waste inspectors, Hazardous Waste Managers, Office of Compliance and Enforcement staff

POLICY **DESIGNATING A SNC:** Throughout the inspection and enforcement process, HW and Enforcement personnel will evaluate a person's compliance status in order to designate those persons that meet the criteria to be a SNC.
SNCs are those persons which:

- Cause actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents to humans or the environment; or
- Violate the law through flagrant or willful action; or
- Are chronic or recalcitrant violators; or
- Have violation(s) which deviate substantially from the terms of a permit, order, agreement or hazardous waste statutory or regulatory requirement.

DEQ staff may use any one of these criteria to warrant designation as a SNC at any time during the enforcement process. DEQ may evaluate persons on a multi-media basis for SNC designation; however, a person may be found to be a SNC based solely on previous RCRA violations or behavior.

Actual or substantial likelihood of human or environmental exposure to hazardous waste or hazardous waste constituents:

To apply this criteria, DEQ staff should use facility-specific environmental and exposure information whenever possible. This may include evaluating potential exposure pathways and the mobility and toxicity of the hazardous waste being managed. In most cases, HW staff will make qualitative assessments of whether exposure has, or is likely to occur, which does not require a risk assessment. Environmental impact alone is sufficient cause for designating a person as a SNC, particularly when the environmental media affected require special protection (e.g., wetlands or sources of underground drinking water). Violations that involve releases of hazardous waste to the environment such as spills, illegal treatment, and illegal disposal do not automatically make a person a SNC. However, DEQ staff will qualitatively assess persons with these types of violations to evaluate whether actual or substantial likelihood of exposure occurs because of these violations.

Flagrant or willful action:

To apply this criteria, DEQ staff should review the cause of the violation that led to the current investigation. When determining whether a person acted **flagrantly**, the Department will consider the current violations and whether the person had actual knowledge that its conduct was unlawful and whether the company consciously set out to commit the violation. When determining whether the person acted **willfully**, the Department will consider whether the person had a conscious objective to cause the result of the conduct and whether the company knew or had reason to know that its actions were not lawful.

Chronic or Recalcitrant Violator:

When determining whether a person has been a **chronic** violator, the Department may consider violations from prior enforcement actions, as well as violations that were observed but not included as the basis for penalty assessment of a prior enforcement action. The Department may also consider the compliance history at other facilities of the person, or in other media programs when designating a chronic violator.

In general, a violator demonstrates **recalcitrance** through behavior or actions that constitute an unwillingness or stubborn refusal to adhere to the law. For example, a person may be identified as recalcitrant due to failure to implement required compliance actions within the timeframe specified by the Department; in such a case the person becomes a SNC once the timeframe specified has been exceeded.

Violations that deviate from permit, order, agreement or hazardous waste laws or rules:

Violations that constitute **substantial deviation** of a permit, order or regulatory requirement, are those violations of requirements that are important to the protection of the environment or human health or the integrity of the regulatory system. For example, violations that allow a person to remain outside the scope of the regulatory program, or violations of requirements that provide information essential to the integrity of the RCRA program would constitute substantial deviation.

SNC PROCESS: HW field staff will designate a person as a SNC pursuant to the above criteria and with manager concurrence, when referring alleged hazardous waste management violations for formal enforcement. The SNC designation will be reflected on the referral form with the HW staff checking the appropriate criteria box and making any necessary comments to support the SNC designation. In addition, HW staff will ensure that OHWIME is updated with the designation information.

Enforcement staff will designate a person as a SNC with HW staff and manager concurrence if during formal enforcement proceedings, the person meets one of the criteria above by failing to meet an applicable compliance date, or comply with all or part of a Pre-Enforcement Notice, Department Order, Mutual Agreement and Order, or any other order or schedule related to the person and compliance with the violations. Enforcement staff will work with HW staff to add the SNC designation to the file and HW staff will update OHWIME to reflect the SNC designation information.

RETURN TO COMPLIANCE: Once a person has returned to Compliance, it is no longer a SNC. This occurs when the person submits the required documentation to show that it is in full compliance with regulatory and/or statutory requirements or is in full compliance with a compliance schedule established in a formal enforcement action (in either an order or an agreement). If the documentation submitted does not adequately demonstrate compliance, HW field staff should re-inspect to verify compliance. When compliance is verified by field staff with manager concurrence on the issue of whether the facility is in compliance, field staff will update OHWIME to reflect the change in SNC status, regardless of any outstanding enforcement actions in other media or whether the civil penalty is paid,. At this point, the person and the facility at issue will no longer be considered a SNC.

ACTIONS AS A RESULT OF SNC DESIGNATION: Persons that receive a SNC designation are subject to the following actions:

- SNCs will receive enforcement priority over non-SNCs; and
- They will be placed on the list of facilities to be inspected. A new inspection will be conducted as soon as possible after the conclusion of the enforcement action.

History

This internal management directive updates and supersedes Hazardous Waste Policy 2001-PO-005.
