

Notes and Excerpts from the ERP on Determining the Seriousness of a Violation
in the Connecticut Hazardous Waste Program

Connecticut Department of Environmental Protection (CT DEP) has its own Enforcement Response Policy (ERP), which is used agency-wide. Because this policy applies to all the regulatory enforcement programs at CT DEP, the policy provides broad guidelines on how to: classify a violation, determine the appropriate enforcement action, and the timeliness of such enforcement action. In addition, the policy provides examples of how particular violations specific to certain CT DEP environmental programs should be classified.

CT DEP classifies RCRA violations as either High Priority Violations (HPVs) or Secondary Priority Violations (SPVs). HPVs may be further ranked as either Definitive High Priority Violations (DHPVs) or Possible High Priority Violations (PHPVs). Both DHPVs and PHPVs are considered to be very serious, and would warrant a formal enforcement action, usually with civil penalty. SPVs may or may not warrant formal actions depending on a number of factors that will be discussed below.

In general, violations involving the following situations are considered severe and should be classified as **Definitive HPVs**:

- a) Actual harm or potential threat of significant harm to public health, safety, or the environment.
- b) Prompt action needed to prevent further environmental harm caused by the violating activity.
- c) Violation involves fraudulent or criminal conduct

Additionally, violations involving the following situations are considered severe and warranting of **Possible HPV** designation:

- a) Whether the violator is a chronic or recalcitrant violator.
- Whether someone is a chronic or recalcitrant violator should be evaluated

based on case-specific information, and should involve consideration of the following:

- (i) Whether the violator has a history of repeated violations or of delay in correcting violations, and whether that history indicates a general unwillingness or inability to comply with applicable requirements.
- (ii) Whether the violator repeatedly has violations which are not quickly resolved, or whether the violator repeatedly violates the same legal requirements.

In determining whether a violator is a chronic or recalcitrant violator, the staff should also consider the compliance history of the violator in all aspects of their own program and in other DEP programs as well.

b) Whether there is a significant risk of damage to the regulatory program. An individual violation that represents a significant deviation from program requirements may warrant classification as a HPV. For example, a failure to respond promptly and meaningfully to a violation may encourage future noncompliance by the same or other parties.

c) The extent to which the violator deviates from a permit, order, consent order or judgment. Deviation may be significant either because a requirement is not met, or is not met in a timely manner, or work is not performed in the manner required. The level of deviation which is “significant” will be determined based on the facts of each case.

The following should be considered in determining the significance of the deviation:

- Failure to perform work specified in an order, consent order, judgment or permit.
- Whether the violation of the order, consent order, judgment or permit might interfere with the violator's ability to timely and fully comply with other terms of that order, consent order, judgment or permit.
- Where a compliance schedule is significantly missed, classification as a High Priority Violation is indicated unless (1) timely compliance was impossible because of an event beyond the reasonable control of the violator which was unforeseeable and the results of which could not have been avoided or repaired in order to prevent the noncompliance, and (2) the violator promptly notified the

DEP of the problem under the notification of noncompliance provision found in each order, and DEP agreed to necessary schedule changes.

d) Whether the violation gives the violator a significant economic benefit over its competitors. When a violation saves the violator a significant amount of money as compared to competitors that did comply with applicable environmental regulations, when the violation involves an unpermitted activity that allows the violator to operate at a lower cost than its competitors, or when the violator increases its profits because of noncompliance, the Department shall classify the violation as a High Priority Violation in order to remove the economic incentive for non-compliance and recoup the economic benefit conferred on the violator.

e) Whether action is necessary to halt improper construction. If the construction creates a fixed or permanent structure, the Department should act quickly if it will become difficult or impossible to remedy the violation or retrofit or reconstruct the facility to permit standards if the construction is not stopped promptly.

f) Whether the violation occurs in the context of a pre-approved Department compliance assistance initiative. When the Department has implemented a compliance assistance initiative, a violation which occurs during the course of such an initiative may be considered a High Priority Violation regardless of their environmental significance. Conversely, the Department may forego, reduce, or postpone its enforcement response if a historic violation is discovered during the course of a compliance assistance initiative.

g) Whether the violation is one of multiple violations at a site or facility. Even though a violation may not be classified as a High Priority Violation individually, when multiple violations are evaluated collectively they may merit classification as High Priority Violations, particularly if together they involve:

(i) Actual exposure or a substantial likelihood of exposure to pollutants in the air, water or soil which pose a significant threat to public health, safety, or the environment;

(ii) Significant deviation from the terms of an order, consent order, judgment or permit; or

(iii) Significant deviation from statutory or regulatory requirements.

h) Whether the Department is acting in coordination with the Environmental

Protection Agency or other governmental agencies. When the Department is working with EPA or other governmental agencies on an enforcement case, the Department may consider the enforcement strategies of such agencies or work together with such agencies in determining an appropriate enforcement response.

B. Secondary Priority Violations

SPVs are those violations which merit enforcement action by the Department for the same reasons as HPVs: the violation poses an actual or potential threat to the environment, the violator is a chronic or recalcitrant violator, there is a risk of damage to the regulatory program, the violator deviated from a permit, order, consent order or judgment, the violation gives the violator an economic benefit over its competitors, action is necessary to halt improper construction, or the violation occurs in the context of a pre-approved Department compliance assistance initiative.

Examples of RCRA Definitive HPVs include:

1. Receipt at a facility of hazardous waste from off-site for financial gain without the receiving facility first obtaining a TSDF permit.
2. Gross deviation from the storage time requirements for a generator of hazardous waste.
3. Systematic failure to comply with manifest requirements which prevents hazardous waste from being properly managed, transported and/or delivered to a permitted facility.
4. Failure to properly handle ignitable, reactive or incompatible wastes when there is a serious threat to public health and/or the environment.
5. Systematic failure to comply with land ban requirements which causes hazardous waste to be disposed of improperly.
6. Systematic failure to comply with general inspection requirements which results in potential hazards being undetected and uncorrected.

7. Failure to maintain and implement a personnel training program which is designed to help employees properly manage hazardous wastes and appropriately respond to potentially hazardous conditions or releases.
8. Systematic failure to comply with container management requirements (i.e., containers in poor condition, contents not identified, lack of secondary containment) to such a degree that there is a potential risk to public health and/or the environment.
9. Systematic failure to comply with tank requirements.
10. Gross deficiencies in contingency planning requirements.
11. Failure to clean up spills that may cause a substantial likelihood of exposure to hazardous waste or hazardous constituents.
12. Violation where the violator gains a significant economic benefit due to noncompliance.

Examples of RCRA Possible High Priority Violations:

1. Significant permit violations such as failure to conduct waste analysis on incoming waste streams for a commercial facility.
2. Failure to obtain a permit for activities that require a permit.
3. Failure to comply with hazardous waste determination requirements for wastes such that wastes are not identified and there appears to be no knowledge of the waste and its hazardous constituents.

4. Failure to comply with the 90 day storage time limit for a large quantity generator, or the 180 day storage time or 1000 kg accumulation limit for a small quantity generator.
5. Failure to significantly comply with manifest requirements, but the hazardous waste is properly handled and ultimately managed at a permitted facility.
6. General failure to comply with container and tank management requirements including labeling, dating, keeping containers closed, using containers in good condition and performing tank assessments.
7. Failure to have a closure plan addressing all hazardous waste management units at the facility.
8. Failure to establish or maintain continuous financial assurance or update financial assurance for closure and/or post closure care.
9. Failure to implement or complete closure activities under an approved closure plan.
10. Substantial deviation from export rule requirements.
11. Failure to provide adequate site security when there is a potential for exposure to hazardous wastes.