

Hazardous Waste Enforcement Procedures Manual



State of Idaho
Department of Environmental Quality



June 2023

Disclaimer

This manual is intended solely as guidance to assist the hazardous waste staff and management with making enforcement decisions. This manual does not have the force and effect of law and is not new law. If this manual conflicts with any law, the law prevails. This manual does not create a right or benefit, substantive or procedural, enforceable at law or equity by any party versus the Idaho Department of Environmental Quality (DEQ), its employees, or any other person. This manual does not substitute for any provisions, regulations, or rules. The procedures in this manual are not binding; DEQ may make other decisions consistent with applicable law. DEQ reserves the right at any time without notice to suspend, discontinue, or change any policies, practices, or procedures contained in this manual.

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Abbreviations, Acronyms, and Symbols

§	section
CFR	Code of Federal Regulations
CID	United States Environmental Protection Agency, Criminal Investigation Division
CME	compliance monitoring and enforcement
CO	consent order
DAG	Deputy Attorney General
DEQ	Idaho Department of Environmental Quality
EDMS	Electronic Document Management System
EPA	United States Environmental Protection Agency
HW	hazardous waste
HWBC	Hazardous Waste Bureau Chief
HWCES	Hazardous Waste Compliance and Enforcement Supervisor
HWMA	Hazardous Waste Management Act
IDAPA	administrative rules in Idaho in accordance with the Idaho Administrative Procedure Act
NOV	notice of violation
RA	Regional Administrator
RCRA	Resource Conservation and Recovery Act
RCO	Regional Compliance Officer
SAA	satellite accumulation area
SCO	Senior Compliance Officer
SEP	supplemental environmental project
SETS	Statewide Enforcement Tracking System
SNC	significant noncomplier
SNY	Significant Noncomplier Yes
SNN	Significant Noncomplier No
SOP	standard operating procedure
SV	secondary violators
TSDF	treatment, storage, and disposal facility
WL	warning letter
WMR	Waste Management and Remediation

Executive Summary

The *Hazardous Waste Enforcement Procedures Manual* was prepared for use by hazardous waste (HW) staff and management of the Idaho Department of Environmental Quality (DEQ).

The manual is intended to provide the following:

- Training tool for new HW staff
- Reference tool for existing HW staff
- Standard compliance and enforcement policies and procedures definitions

This manual describes the statutory authorities under which the compliance and enforcement components of the HW Bureau are implemented and provides the policies and procedures used to achieve compliance. By employing the procedures presented in this manual, staff can develop technically accurate and legally defensible enforcement actions. Adherence to the procedures in this manual promotes agency credibility by establishing a successful compliance and enforcement program that is consistent, equitable, and accountable.

The manual covers the following:

- Regulatory framework and authorities that are the foundation for the compliance and enforcement efforts taken by the HW Bureau
- Descriptions of how HW staff determine if a violation of the law occurred; how HW staff may respond to violations of the law; and the process for referring enforcement actions for violations from the regional offices to the State Office
- Informal enforcement actions
- Administrative enforcement processes, including the various tools available to HW staff for taking enforcement actions
- Civil and criminal enforcement actions, including pursuing civil or criminal enforcement actions and the process involved
- Statewide Enforcement Tracking System

This manual may be used by the regulated community and is available to the public as an educational tool for understanding the authorities under which the HW Bureau operates its compliance and enforcement programs.

As circumstances or policies change, this manual is subject to revision. DEQ reserves the right to deviate from and change this manual at any time without public notice.

1 Introduction

The Hazardous Waste (HW) Bureau is responsible for compliance and enforcement of the Hazardous Waste Management Act of 1983 (HWMA), which protects public health and the environment from improper management of hazardous waste and includes a program to track and control hazardous wastes from the time they are generated through transportation, treatment, storage, and disposal (Idaho Code § 39-4402).

The HW Bureau is responsible for permitting, compliance, inspections, and enforcement of the following:

- HW treatment, storage, and disposal facilities (TSDFs)
- HW generators
- HW transporters and transfer facilities
- HW corrective action sites
- Used oil generators and transporters including used oil collection centers, used oil aggregation points, used oil processors and refiners, used oil burners, and used oil fuel marketers

This manual describes the statutory authorities under which the compliance and enforcement components of the HW Bureau are implemented and the policies and procedures used to achieve compliance.

Appendix A lists documents registered in the Idaho Department of Environmental Quality's Electronic Data Management System (EDMS) that are referenced in this manual.

2 Regulatory Framework and Authorities

This section outlines the legal basis of HW enforcement authority and provides an overview of the relevant laws for the HW Bureau.

2.1 DEQ's Authority to Enforce Hazardous Waste Laws in Idaho

DEQ is an administrative agency created by statute. Statutes are laws enacted by the legislature and establish many of an agency's powers and functions. For additional information on the regulatory authority of DEQ, refer to the *Statewide Enforcement Procedures Manual* (EDMS 2018AGC36).

HWMA, Idaho Code § 39-4401 through § 39-4432, provides enforcement authorities specific to hazardous waste. HWMA also directs DEQ to promulgate rules consistent with the federal regulations that implement the Resource Conservation and Recovery Act (RCRA) (Idaho Code § 39-4404).

2.1.1 Resource Conservation and Recovery Act

RCRA gives the United States Environmental Protection Agency (EPA) the authority to control hazardous waste from the "cradle-to-grave." This control includes the generation, transportation, treatment, storage, and disposal of hazardous waste. To achieve this, EPA develops regulations, guidance, and policies that ensure the safe management and cleanup of solid and hazardous waste and programs that encourage source reduction and beneficial reuse. RCRA is a combination of the first federal solid waste statutes and all subsequent amendments. These statutes and amendments describe the waste management program mandated by Congress that gave EPA authority to develop the RCRA program.

The term RCRA is often used interchangeably to refer to the statutes and amendments, regulations, and EPA policy and guidance. The difference is that EPA regulations carry out the congressional intent by providing explicit, legally enforceable requirements for waste management. These regulations are found in 40 CFR 239 through 282.

2.1.2 Program Delegation

Idaho received the authority to administer the RCRA program in Idaho through program delegation. Delegation means the state has applied for and received the approval to administer and implement a program. To administer the program, DEQ must have authority in place to apply regulations that are at least as stringent as the federal RCRA regulations. The Idaho Legislature passed the following statutes that grant the authority for the state to administer the RCRA program:

- Chapter 44, Title 39, Idaho Code – Hazardous Waste Management Act
- Chapter 58, Title 39, Idaho Code – State Hazardous Waste Facility Siting Act

The RCRA regulations are incorporated by reference through “Rules and Standards for Hazardous Waste” (IDAPA 58.01.05). IDAPA 58.01.05 implements the HMWA and Hazardous Waste Facility Siting Act.

2.1.3 Statute of Limitations

The HWMA contains a 2-year statute of limitations, pursuant to [Idaho Code § 39-4413\(3\)\(c\)](#):

No civil or administrative proceeding may be brought to recover for a violation of this chapter or any permit, standard, regulation, condition, requirement or order issued or promulgated pursuant to this chapter more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation.

To pursue violations of the HWMA or the Hazardous Waste Siting Act, DEQ must enter an administrative action, such as a consent order (CO) or file a civil complaint in district court within 2 years from the day the violation was observed, discovered, or otherwise brought to DEQ’s attention. Issuing a notice of violation (NOV) will not pause the statute of limitations. The statute of limitations does not necessarily start on the date the violation occurs, but the date DEQ *discovered, or should have discovered*, the violation, such as during a site visit, the date a complaint is received, or the date an entity self-reports. A violation may be discrete, a one-time

occurrence, or a continuing violation where the violation consists of an ongoing event. When questions arise regarding whether a violation is discrete or continuing, HW staff should discuss with the Attorney General's Office before developing an enforcement action.

Criminal violations of the HWMA are also subject to a statute of limitations. For misdemeanors, the prosecuting entity must file the criminal complaint within 1 year from the date the crime occurs (Idaho Code § 19-403). For felonies, the prosecuting entity must file the criminal complaint or indictment within 5 years from the date the crime occurs (Idaho Code § 19-402).

Because DEQ is subject to a statute of limitations, it is imperative that HW staff make enforcement decisions and take enforcement actions in a timely manner. HW staff should seek the assistance of the Attorney General's Office for statute of limitations questions or concerns.

2.1.3.1 Tolling Agreements

If DEQ is approaching the statute of limitations on a potential violation, the agency may consider entering into a tolling agreement with the person or entity. The decision to enter into a tolling agreement is made on a case-by-case basis based on the circumstances surrounding the violation and the facility or entity's willingness to continue negotiating.¹ In a tolling agreement, the person or entity agrees to waive their right to claim that the action cannot be brought due to the expiration of the statute of limitations. The tolling agreement is usually for a fixed amount of time, such as 6 months or 1 year. If a tolling agreement cannot be entered into, DEQ must enter a CO or initiate a civil or criminal action before the statute of limitations expires. Otherwise, DEQ is barred from enforcing violations that are beyond the 2-year statute of limitations. The tolling agreement gives both parties additional time to negotiate an informal or administrative resolution of the violations without pursuing a civil or criminal action.

HW staff must seek the assistance of the Attorney General's Office for negotiating and entering into tolling agreements. A draft tolling agreement is prepared by the HW enforcement staff for Deputy Attorney General (DAG) review. After review, the draft tolling agreement is sent to the facility for signature. After the facility signs, the DAG signs and dates the tolling agreement making it effective.

3 HW Bureau Organization

The HW Bureau is headquartered in the State Office and includes the following staff:

- HW Bureau Chief (HWBC)
- HW Permit Supervisor
- Two Senior HW Permit Writers
- Two HW Permit Writers
- HW Compliance and Enforcement Supervisor (HWCES)

¹ No statutory definition exists for a tolling agreement. However, courts have found these agreements to be an enforceable type of contract.

- HW Senior Compliance Officer (SCO)
- HW Rules and Policy Coordinator
- Federal Facilities Agreement/Consent Order Supervisor
- HW Data Analyst
- Senior WAG Coordinator

Enforcement work at the State Office involves the HWBC, HWCES, and SCO. In addition to the State Office staff, compliance staff are located throughout the regional offices. Each regional office houses at least one staff member with HW compliance and inspection hours, referred to in the manual as regional compliance officers (RCOs). The RCOs typically have compliance-related hours from multiple DEQ programs and projects and spend only a portion of their working hours on hazardous waste. The Boise Regional Office is an exception; it has two RCOs entirely dedicated to hazardous waste. The RCOs may be supervised by a regional manager or may be the regional manager themselves. The regional administrator (RA) supervises the regional managers and participates in formal enforcement activities.

The HWCES creates an inspection workplan before the start of each state fiscal year. The inspection workplan includes proposed entities to receive HW inspections throughout Idaho. The workplan is distributed to EPA to meet our program delegation and grant obligations. The RCOs are responsible for conducting the workplan inspections. In addition to the workplan inspections, the RCOs are also responsible for investigating HW complaints, and conducting compliance assistance visits. The RCOs are responsible for identifying potential violations during these compliance-related activities and referring violations to the State Office for either informal or formal enforcement (section 6).

4 Violation Determination

This section discusses how to evaluate the information needed to make a violation determination and define the types of enforcement responses.

4.1 Determining Violations

The HW staff must evaluate all the information collected to determine if a potential violation has occurred. All apparent violations must be documented with as much supporting evidence as possible, including photographs, checklists, copies of entity documents, inspection notes, entity statements and emails, self-reporting records, phone logs, and the Preliminary Inspection Form. The HW staff begin the process by determining what regulatory requirements apply. After the apparent violations are identified in a draft inspection report or other compliance-related correspondence, the information is reviewed by the HWCES. The HWCES, with input from the HWBC, proposes edits or concurs with the apparent violations. Some deficiencies may not rise to the level of violations due to insufficient supporting evidence, or specificity of the regulations. DEQ notifies the regulated entity of any apparent violations through the final inspection report or other compliance-related correspondence.

An apparent violation determination involves using the language in the applicable statute, rule, CO, or permit condition (i.e., a regulatory requirement) as a guide to determine whether the information collected demonstrates that a violation occurred. Inspectors should also use HW inspection checklists to assist with identifying violations. Using this approach, HW staff should have a good understanding of what regulatory requirement was violated and how it was violated. An explanation of how the operations observed or records reviewed fail to comply with a regulatory requirement is required in the compliance-related correspondence. Common violation citations are provided in EDMS 2019BCA19.

The HW staff must base their compliance determination on factual information, including but not limited to, information collected during an inspection, through a complaint response, report review, noncompliance with a CO requirement, or self-reporting by a person or entity. Staff should rely upon HW Bureau interpretations, regulatory guidance, policies, procedures, and past division actions whenever possible in determining if a statute, rule, permit, or CO was violated. Using factual information avoids the perception that decisions are made in an arbitrary or capricious manner. Without factual information, an action will not be enforceable. Each violation must be reviewed on its own merit, accounting for case-specific considerations.

Extenuating circumstances are considered in making the final compliance determination. Determining whether extenuating circumstances exist at the time of the inspection or record review may have a significant effect on the HW Bureau's ability to determine if a violation occurred. An extenuating circumstance may include the following:

1. Facility shutdown or nonoperational due to annual maintenance activities.
2. Unavailability of a responsible company official to answer questions during the inspection.
3. Act of Nature event out of the control of the entity (e.g., flood, fire, storm).
4. Facility is in the process of modifying a permit condition or waiting a review or response from DEQ on a technical or regulatory issue.

HW staff must document the extenuating circumstance, to the extent possible, along with the apparent violations. An extenuating circumstance may still result in a violation, depending on the situation. Each violation must be reviewed on its own merits, accounting for case-specific considerations. In making the determination, extenuating circumstances may also be considered. While it is important to identify the specifics of a case, it is equally important to ensure program consistency by comparing each violation with similar violations cited in past program actions.

4.2 Citing Violations

Violations are first documented in inspection reports or compliance-related correspondence. The HW Bureau cites violations in inspection reports in the following format:

Violation No. X: DESCRIPTION HEADER

IDAPA 58.01.05.00XX, Rules and Standards for Hazardous Waste [40 CFR 2XX.XXX].

IDAPA 58.01.05.00XX incorporates by reference 40 CFR 2XX.XXX which states in relevant part:

“CITATION FROM FEDERAL RULES”

At the time of the DATE inspection, FACILITY NAME failed to DESCRIBE HOW THE FACILITY WAS NOT IN COMPLIANCE IN ABOVE CITATION.

When citing violations, the HW staff must demonstrate the following:

5. DEQ identified a violation of a regulatory requirement on a specified date.
6. Entity handles hazardous waste. The entity generates, accumulates, transports, treats, stores, and/or disposes of hazardous wastes, used oil, or universal waste.
7. Waste handled by the entity is subject to the hazardous waste, used oil, or universal waste rules. The waste is a solid waste that meets the definition of hazardous waste, used oil, or universal waste without exclusions or exemptions.
8. Entity failed to comply with a provision of a permit, rule or regulation, or CO. Staff must demonstrate how the facility deviated from this requirement and support this determination through evidence such as photographs, facility records, facility representative statements, and/or inspector observations. Inspector observations must be accompanied by supporting evidence where possible.

4.3 Types of Violations

Violations are categorized using a variety of metrics. First, the period of noncompliance for a violation must be determined or estimated. Violation periods are categorized into the following groups:

1. **Discrete**—A violation resulting from an individual, distinct, or separate circumstance (i.e., one-time occurrence). The violation is not observed or documented as ongoing.
2. **Continuing**—A violation resulting from an ongoing, persistent, or enduring circumstance or situation. The violation is observed or documented as ongoing over an extended period that is substantiated by records.
3. **Recalcitrant**—A violation noted during a previous inspection or review. The violation might be characterized as recalcitrant based on DEQ’s knowledge of

identical violations identified during a previous inspection or review of the location or facility. A recalcitrant violation can be either discrete or continuing but has been repeatedly identified and reported to the person or entity.

After the period of noncompliance is assessed, the violations are categorized according to severity. The HW Bureau uses three categories of severity:

1. **Major** violations deviate substantially from the regulatory requirement and create imminent or potential danger to human health or the environment. Major violations usually result in larger penalties.
2. **Moderate** violations deviate significantly from most but not all of the regulatory requirements, resulting in a less significant potential for danger to human health or the environment. Moderate violations usually result in smaller penalties.
3. **Minor** violations deviate somewhat from the regulatory requirements. Little or no potential danger exists to human health and the environment resulting from minor violations, and the minimum penalty is imposed.

Minor violations are not always met with enforcement. For example, a violation may be corrected at the time of the inspection; HW staff will note the violation in the inspection report as observed, but the HW Bureau may not issue an enforcement action. Minor violations are most often addressed with an informal enforcement action (section 7). More egregious or reoccurring violations, such as major or moderate violations, may require formal enforcement (section 8). Egregious violations are discussed in section 4.3.1.

4.3.1 Significant Noncompliers

Significant Noncompliers (SNCs) are those violators that have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, agreement or from HWMA statutory or regulatory requirements. A SNC should be addressed through formal enforcement.

The following determination criteria are used for HW SNCs:

- Causing actual exposure to hazardous waste or hazardous waste constituents
- Causing substantial likelihood of exposure to hazardous waste or hazardous waste constituents
- Chronic or recalcitrant violations
- Failure to perform activities stipulated in a permit, CO, or decree
- Substantial deviation from statutory or regulatory requirements

4.3.1.1 Exposure to Hazardous Waste

In evaluating whether there has been actual or likely exposure to hazardous waste or hazardous waste constituents, HW staff should consider both environmental and human health concerns. Environmental impact or a substantial likelihood of impact alone is sufficient to cause a violator

to be a SNC, particularly when the environmental media affected requires special protection (e.g., wetlands or underground sources of drinking water). Additionally, when deciding whether a violator meets this criterion, HW staff should consider the potential exposure of workers to hazardous waste or hazardous waste constituents. Many of RCRA's hazardous waste requirements are designed to protect the individuals who work with or near hazardous waste. The protection of these workers should be valued as highly as the protection of the general public.

Under this criterion, HW staff need not identify significant damage to the environment or human health to justify a SNC classification. The fact of exposure or a substantial likelihood of exposure is sufficient to satisfy this criterion. Even in situations involving a minor release, the type of hazardous waste involved (e.g., mobility, exposure to air) or the location of the release (e.g., located in a populated area or in a building to which the public has access) may lead HW staff to conclude this criterion has been met.

HW staff are reminded to look beyond actual releases to threatened releases. A threatened release is sufficient to meet this criterion if substantial likelihood exists that the release would result in exposure to hazardous waste or hazardous waste constituents. Releases that might otherwise be considered insignificant should be examined in the larger context of the overall management of hazardous waste. If a minor release, taken together with other factors, suggests an ongoing threat of future releases, then HW staff should determine that this criterion has been met.

The following are examples of violations that would cause either an actual exposure or a substantial likelihood of exposure to hazardous waste and would warrant classifying the violator as a SNC:

- Violator did not determine the waste it generates is a hazardous waste, and the waste is not managed properly.
- Violator disposed of hazardous waste in violation of the Land Disposal Restrictions (40 CFR 268.40).
- Facility did not have an adequate groundwater monitoring system.
- Violator failed to comply with the requirements for storing ignitable, reactive, or incompatible wastes (40 CFR 264 and 265.17).

These examples are illustration only and are not a complete list. In situations where HW staff have general or site-specific questions about the appropriate classifications, they should consult with the DAG and appropriate EPA regional office.

4.3.1.2 Chronic or Recalcitrant Violators

For chronic or recalcitrant violators, HW staff should attempt to obtain and consider multimedia information. In many cases, the evaluation provides insight into the overall environmental management practices and may indicate whether a violator is responsive to an informal enforcement action. If practicable, HW staff should consider previous violations by the same individual or entity at other locations. In weighing the violations that make up a regulated

entity's compliance history, HW staff should give the heaviest weight to similar violations and to multiple violations of the same process or unit.

While there is no set period for evaluating the violator's past conduct, misconduct occurring less than 7 years ago should be weighted more than misconduct occurring beyond a 7-year period. HW staff should consider but give less weight to violations of other media requirements. Similarly, staff should consider but give less weight to violations by the same regulated individual or entity at other locations. The exception to this last principle is where the previous violation was identical to the one currently identified. In such cases, the previous violation should be given considerable weight.

4.3.1.3 Substantial Deviation from Requirements

With respect to substantial deviation from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements, the HW staff make a judgment call based on the totality of circumstances associated with the violator. HW staff should keep in mind the following principles when making this determination.

First, HW staff should not consider the size or financial viability of a business when determining whether the violator is a SNC. After the inspector discovers a violation, the size and viability of the business should be factors in deciding the appropriate relief sought in any formal enforcement action that ensues.

Second, HW staff should focus on the importance of the requirement violated and how substantially the violator failed to comply with it. For instance, violations that enable a violator subject to Subtitle C to remain outside the scope of the regulatory program are, by their very nature, substantial deviations from the regulatory program. When applying this principle, HW staff do not necessarily need to evaluate the percentage of the total applicable requirements that were violated. The more important the requirement in terms of furthering HMWA's statutory or regulatory purposes or procedures, the less HW staff should tolerate deviation from the requirement without formal enforcement.

The following are examples of violations that constitute substantial deviations from the terms of a permit, order, agreement, or other statutory or regulatory requirements and warrant designating the violator as a SNC:

- Spills or releases of hazardous waste or hazardous waste constituents to the environment without a permit or variance.
- Violator did not have adequate financial assurance (40 CFR 264 and 265.143).
- Violator is operating as a TSDF without a permit or interim status.
- Facility failed to manifest its waste (40 CFR 262.20, Subpart B).
- Violator offered waste to a transporter without an EPA ID number.

These examples do not comprise a complete list. Other violations should be considered and discussed as part of a case-by-case discussion with the Attorney General's Office.

Third, in marginal situations, HW staff should consider any steps the violator has taken to expeditiously come into compliance before discovery by DEQ and to mitigate any risks resulting from its violation. In some circumstances, the deviation from the requirements may not be considered substantial if the violator, on its own initiative, identifies the violation soon after the violation begins, takes steps to resolve the violation as expeditiously as possible, and mitigates any potential harm to the environment or the regulatory program. The HW Bureau, using its enforcement discretion and applying best professional judgment, assesses the circumstances involved to determine the severity of the deviations.

4.3.1.4 Documenting SNC Determinations

For all identified violations, the HWCES or designee, must complete a SNC determination form (EDMS 2022BCD25). On the form, identify the violations that constitute a SNC under any of the definitions and file the completed form in the entity enforcement case file. For any SNC entities found, follow the additional tracking instructions in section 9.2.

4.3.2 Secondary Violators

EPA's December 2003 RCRA Civil Enforcement Response Policy also describes a secondary violators (SV) class in addition to SNC. SVs pose no actual threat or a low potential threat of exposure to hazardous waste or constituents. A violator classified as an SV (i.e., non-SNC) should not have a history of recalcitrant or noncompliant conduct. For the HW Bureau's purposes, entities with violations that do not qualify as SNC are considered SVs.

5 Responding to Violations

Once HW inspection staff determines a violation occurred, it is referred to the State Office for an appropriate action. Enforcement is any action taken by the agency notifying a regulated entity or person they are not complying with rules, statute, or permits and directing the entity to take action to remedy the noncompliance.

5.1 Determining Appropriate Response

The magnitude, frequency, duration, and degree of recalcitrance of a violation determines the response:

1. Take no immediate action.
2. Pursue an informal response.
3. Pursue an administrative response (NOV and CO).
4. Refer the case to the Attorney General's Office for civil or criminal enforcement.
5. Refer the case to other relevant local, state, or federal enforcement agencies for enforcement consideration.

The magnitude or seriousness of the violations is based on the impact to human health and/or the environment, individually and collectively. The seriousness or magnitude of a violation is

referred to as the gravity of the violation. When making a determination, the relevant regional office or the State Office staff consider the gravity of the violation based on the impact to human health and the environment, as well as any applicable policies or procedures. Gravity considerations include the following:

1. Weighing the severity of individual violations based on their actual or potential for harm to human health and the environment
2. Degree to which the violation deviates from the regulatory requirement
3. Significance of compliance with the requirement in achieving the goal of the statute or regulation

The HW staff consider the following factors when determining the appropriate enforcement recommendation:

- Amount and toxicity of the pollutant or substance released, emitted, discharged, treated, disposed, or improperly managed.
- Potential harm to the public resulting from noncompliance.
- Sensitivity of the receptors and/or the environment impacted or potentially impacted by the release, emission, discharge, treatment, disposal, or improper management.
- Relevant compliance history of the person or entity and their responsiveness to correcting previous violations.
- Responsiveness and/or cooperation exhibited by the person or entity in correcting discrepancies during an inspection/compliance monitoring activity or shortly after, constituting an objective good faith effort to comply based on the circumstances.
- Whether circumstances beyond the control of the person or entity exist, such as equipment failure, unpredictable accidents, severe weather, or natural disasters.
- Degree of negligence exhibited by the person or entity.
- Degree of support for, commitment to, and implementation of environmental programs by the person or entity (i.e., training opportunities, designated environmental staff, required resources available, environmental programs in place, good housekeeping, and good recordkeeping systems).
- Events resulting in known harm to public health or the environment require prompt formal enforcement action. Harmful events include releases or exposure of hazardous waste constituents to employees, the public, or the environment.
- For violations that do not constitute a SNC, DEQ may offer compliance assistance, and may deploy an escalating informal response process to bring regulated entities back into compliance. DEQ reserves discretion when initiating an informal response so an informal response may begin with the highest level of informal enforcement (i.e., warning letter). Refer to section 5.1.3.3 for descriptions of compliance and technical assistance and to section 7 for descriptions on the specific types of informal enforcement actions.

After initially determining the proposed course of action, the HW staff provides the enforcement referral to the State Office HWCES for concurrence. If the State Office takes the lead on an inspection or compliance monitoring activity, the State Office discusses any enforcement decisions with the appropriate regional office.

5.1.1 Informal Enforcement

Informal enforcement is typically the first step in the enforcement process. Informal enforcement is used to notify a regulated entity of requirements they may be unaware of, isolated incidents out of their control, minor, or first-time violations where a warning is appropriate.

Informal enforcement does not require the DEQ director's signature and is issued by the RCO or HWCES. Informal enforcement addresses minor or low priority violations and does not assess a penalty. Violations addressed through informal enforcement may be resolved expeditiously, involve low costs to the person or entity, and require minimal oversight by the HW Bureau. Informal enforcement is an effective tool for gaining compliance without resorting to a NOV or other proceeding.

Informal enforcement serves two purposes:

1. To notify the person or entity of the apparent deficiencies and/or violations that were observed during an inspection, through a complaint response, report review, person or entity self-reporting, and other methods to identify deficiencies and violations
2. To request corrective measures be implemented within a given time frame to mitigate the deficiencies and/or violations

Section 7 describes the specific types of informal enforcement responses.

5.1.2 Formal Enforcement

5.1.2.1 Administrative Enforcement

Administrative enforcement is a more formal process beginning with a referral to the HWCES. The referral identifies and substantiates the claims for violations and requests the appropriate administrative enforcement action. Administrative enforcement actions require the DEQ director's signature and may assess penalties.

Section 8 describes the specific types of administrative enforcement actions, and section 6 provides additional information on the referral process.

5.1.2.2 Civil Enforcement

Civil enforcement occurs when all reasonable attempts to resolve the violation through the administrative enforcement process are exhausted and the parties cannot come to agreement. Civil enforcement is a court action brought in district court by the Attorney General's Office, in consultation with DEQ. All parties are bound to the rules of the courts (*Idaho Rules of Civil Procedure* and *Idaho Rules of Evidence*). Section 8.2.1 provides additional information on civil enforcement.

5.1.2.3 Criminal Enforcement

Criminal violations occur when a person or entity has knowingly, willfully, intentionally, or with criminal negligence acted in violation of the law. If criminal violations exist, DEQ may refer the enforcement action to the Idaho Attorney General's Office, Criminal Division, EPA's Criminal Investigation Division, or other entities for further criminal investigation and/or prosecution of the violation. In any case, the HW Bureau remains involved with the case to the extent requested. For additional information on criminal enforcement referrals, see EDMS 2016ADG33 and 2018AGC36. Section 8.2.2 provides additional guidance on criminal enforcement.

5.1.3 Other Response Options

The tools described in this section are also available under the HMWA to help achieve compliance in certain circumstances.

5.1.3.1 Enforcement Discretion

Occasionally, certain apparent violations do not align with or translate into HW Bureau's preferred or typical enforcement response. In these instances, the bureau may use its discretion and forgo an enforcement response or delay an informal response or administrative enforcement action. Use of discretion is under the direct oversight of the HWCES. The HW Bureau's decision for using discretion must be properly documented and preserved using a file note or other documentation in EDMS. Enforcement discretion does not excuse the violation; the person or entity may still be subject to enforcement by DEQ or EPA.

5.1.3.2 Permit Modifications and Termination

Permit violations may be resolved through the permitting process. When operational changes no longer necessitate a specific permit condition governing a particular activity, modifications to the permit may resolve situations of noncompliance. In these cases, the enforcement staff can coordinate with the permittee and HW permitting staff to make modifications to the permit, which may resolve related violations. Modifying permit conditions can be included as a condition in a CO, or depending on the circumstances, the permit modification itself may serve to satisfactorily resolve the violation.

5.1.3.3 Compliance and Technical Assistance

Compliance assistance with environmental requirements is often accomplished through education and outreach efforts. This assistance includes communicating to a person or entity aspects of a deficiency, explaining regulatory requirements and permit requirements, or providing guidance on how to comply with a particular permit condition. HW staff can assist with voluntary compliance through the following:

- Conducting compliance assistance visits
- Providing telephone consultations, with follow-up as needed
- Developing and distributing user-friendly regulatory guides and industry-specific pollution prevention information

- Sponsoring and participating in workshops and seminars
- Working with trade groups
- Referring the facility to DEQ's Pollution Prevention Specialist
- Assisting with permitting requirements
- Recommending training opportunities
- Referring inquiries to other local, state, or federal agencies for relevant information

HW staff use compliance assistance through verbal or electronic notifications/requests (phone call, email) to inform a regulated entity of a problem, informally explain regulatory requirements and permit requirements, or provide guidance on how to comply with a particular permit condition. For example, the HW staff may explain the hazardous waste manifesting requirements and provide resources to assist in completing these types of documents. Compliance assistance is documented in the facility's EDMS folder. The HWCES may use documented compliance assistance to demonstrate the facility did not make a good faith effort to comply.

5.2 Common Hazardous Waste Violations

The matrix below summarizes common hazardous waste violations and potential enforcement responses. The violations were selected based on frequency found in RCRAinfo (section 9.2). The matrix responses are organized based on violation type and severity. This list is not all inclusive. The HW Bureau reserves the right to deviate from the list as needed (section 5.1.3.1). HW staff preparing enforcement referrals should reference Table 1 when selecting an appropriate enforcement response recommendation.

Table 1. Violation response matrix.

Noncompliance	Circumstances	Range of Response
Hazardous Waste—General		
Release to environment	No known harm or potential for harm, small quantity, low toxicity, isolated event	WL, NOV/CO
	No known harm or potential for harm, frequent or continued violations	SNC designation, NOV/CO, civil or criminal referral
	Known harm or potential for harm, and/or routine or systematic releases	SNC designation, NOV/CO, civil or criminal referral
	Immediate impacts to human health/emergency, knowingly committed violation	SNC designation, civil or criminal referral
Hazardous waste treatment	Isolated event, in compliance with majority of other requirements, no known harm or potential for harm	WL, NOV/CO
	Ongoing part of process, noncompliance with other hazardous waste requirements	SNC designation, NOV/CO, civil or criminal referral
	Known harm, and/or knowingly committed violation	SNC designation, NOV/CO, civil or criminal referral
Improper hazardous waste disposal	Isolated event, in compliance with majority of other requirements, no known harm or potential for harm	Email/phone call, WL, NOV/CO
	Ongoing part of process, noncompliance with other hazardous waste requirements	SNC designation, NOV/CO, civil or criminal referral
Failure to comply with hazardous waste transportation requirements	Isolated or infrequent violation with no known harm	Phone call/email, WL
	Isolated or infrequent with known harm	SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
	Continuing violations with or without harm, noncompliance with majority of other hazardous waste regulations	SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
Failure to submit report (annual or biennial)	Isolated or infrequent, good faith effort to comply	Phone call/email, WL
	Frequent or continued violations, noncompliance with other hazardous waste requirements	WL, SNC designation, NOV/CO
Failure to obtain EPA ID number	Isolated event, good faith effort to comply	Phone call/email, WL, NOV/CO
	Knowing and willful failure to comply, noncompliance with other hazardous waste requirements	SNC designation, NOV/CO, Civil or criminal referral

Noncompliance	Circumstances	Range of Response
Failure to conduct waste determinations	Isolated or infrequent, good faith effort to comply	Phone call/email, WL, NOV/CO
	Ongoing, beneficial to facility economically, harm or potential for harm	WL, SNC designation, NOV/CO, civil or criminal referral
Failure to use hazardous waste manifest appropriately	Isolated or infrequent violation with no known harm	Phone call/email, WL
	Isolated or infrequent with known harm	SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
	Continuing violations with or without harm, noncompliance with majority of other hazardous waste regulations	SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
Satellite Accumulation Areas		
SAA location not near point of generation, SAA volume exceedance	Isolated or infrequent violation	Phone call/email, WL
	Continuing violations, noncompliance with other hazardous waste requirements	WL, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
Container/Tank Management		
Container/tank labeling	Isolated or infrequent violation	Phone call/email, WL
	Continuing violations, noncompliance with other hazardous waste requirements	WL, SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
Open containers	Isolated or infrequent violation with no known harm or potential for harm	Phone call/email, WL
	Isolated or infrequent with known harm or potential for harm	WL, SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
	Continuing violations with or without harm or potential for harm, noncompliance with majority of other hazardous waste regulations	SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
Container accumulation time	Isolated or infrequent	Phone call/email, WL
	Continuing violations, noncompliance with other hazardous waste requirements	WL, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
Container condition (damaged or leaking)	Isolated or infrequent violation with no known harm or potential for harm	Phone call/email, WL
	Isolated or infrequent with known harm or potential for harm	WL, SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)

Noncompliance	Circumstances	Range of Response
	Continuing violations with or without harm, noncompliance with majority of other hazardous waste regulations	SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
Container inspections	Isolated or infrequent	Phone call/email, WL
	Continuing violations, noncompliance with other hazardous waste requirements	WL, SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
Tank requirements	Isolated or infrequent	Phone call/email, WL
	Continuing violations, noncompliance with other hazardous waste requirements	WL, SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
Air Emissions (Subpart AA, BB, and CC)		
Air emissions	Isolated or infrequent violation with no known harm	Phone call/email, WL
	Isolated or infrequent with known harm or potential for harm	WL, SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
	Continuing violations with or without harm, noncompliance with majority of other hazardous waste regulations	SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
Universal Waste		
Universal waste labeling Universal waste container requirements Universal waste accumulation time	Isolated or infrequent violation with no known harm	Phone call/email, WL
	Isolated or infrequent with known harm	WL, SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
	Continuing violations with or without harm, noncompliance with majority of other hazardous waste regulations	SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)

Noncompliance	Circumstances	Range of Response
Preparedness and Prevention		
Arrangements with local authorities Aisle space Contingency plan Emergency coordinator Emergency equipment Emergency info posting	Isolated or infrequent violation with no known harm	Phone call/email, WL
	Isolated or infrequent with known harm	WL, SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
	Continuing violations with or without harm, noncompliance with majority of other hazardous waste regulations	SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
Recordkeeping		
Land disposal restrictions Manifest retention Training	Isolated or infrequent violation with no known harm	Phone call/email, WL
	Isolated or infrequent with known harm	WL, SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
	Continuing violations with or without harm, noncompliance with majority of other hazardous waste regulations	SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
Used Oil		
Release/failure to cleanup	Confined to site, no known harm	Phone call or email, or WL
	Released to environment, isolated incident, no known harm	WL, SNC designation, NOV/CO, civil or criminal referral
	Released to environment, known harm	SNC designation, NOV/CO, civil or criminal referral
Used oil filters Used oil container labeling Used oil testing Used oil burning	Isolated or infrequent violation with no known harm	Phone call/email, WL
	Isolated or infrequent with known harm	WL, SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)
	Continuing violations with or without harm, noncompliance with majority of other hazardous waste regulations	SNC designation, NOV/CO, civil or criminal referral (if resulted in harm to employee or public)

Notes: Warning letter (WL), notice of violation (NOV), consent order (CO), significant noncomplier (SNC), satellite accumulation area (SAA)

5.3 Multimedia Violations

Under certain circumstances, an investigation may reveal violations involving more than one program office, or an entity may be out of compliance with multiple DEQ programs during the same period. In these instances, DEQ may choose to implement a joint enforcement action. The

decision to pursue joint enforcement streamlines the enforcement action for the entity and provides additional compliance context for penalty calculations.

5.3.1 Referring Multimedia Violations

If egregious violations of other DEQ media programs are identified during a hazardous waste compliance activity, refer these violations to the appropriate compliance program contact at DEQ. For example, if a review of an HW inspection detects both hazardous waste and potential air quality violations, refer the potential air quality violations to the regional office Air Quality Program for investigation. Inform the HWCES of any egregious violations discovered by RCOs during HW compliance activities that are referred to other programs. The hazardous waste violations are addressed as a typical violation (section 6). The HWCES coordinates with the other program for a formal enforcement action.

5.3.2 Enforcing Multimedia Violations

In some instances, formal enforcement from multiple programs may be initiated against an entity during the same period. In these cases, DEQ may decide to pursue a joint enforcement action. Typically, the program with the more egregious violations serves as the lead of the enforcement action; however, both programs should be involved in the administrative enforcement action process (section 8). Prioritize the decision to pursue joint enforcement unless the action is not feasible. An example of a joint response that is not feasible includes violations where an immediate resolution is required, but the joint enforcement process may delay enforcement action. Coordinate decisions about multimedia enforcement actions with the program bureau chiefs, RAs, and division administrators.

During multimedia enforcement activities, the HWCES serves as the lead. The HWCES coordinates applicable enforcement process activities between the other programs, regional office, and HWBC (section 8).

6 Referral Process

Once the HW staff determine an enforcement action is warranted and regional office review is complete, the RCO or SCO compiles a referral form (EDMS 2021BCD26 and 2022BCD5) and submits it electronically to the State Office HWCES. If an enforcement action involves multiple divisions that want to combine enforcement actions, State Office staff discuss combining enforcement actions and which division will take the lead (section 5.3). Within 2 weeks of receiving the referral form, the HWCES determines if the State Office agrees with the referred action and informs the regional office.

6.1 Preparing the Enforcement Referral Form

Formal enforcement documents should be conspicuously labeled as *Enforcement Confidential* and treated as a confidential enforcement and/or attorney-client communication during pending enforcement action. Informal enforcement referrals do not require enforcement

confidential designation. If public records are requested related to the enforcement action, consult with the Attorney General's Office to determine whether a referral package is exempt from disclosure. Once the enforcement action is resolved, it is unlikely the information contained in the referral form will remain confidential.

6.1.1 Enforcement Referral Form

There are two enforcement referral form templates: formal (EDMS 2022BCD5) or informal (EDMS 2021BCD26). The RCO or SCO will select the form template based on the proposed enforcement action (Figure 1).

In the enforcement referral form and associated documents, provide the following information for the inspection or compliance monitoring activities:

- Enforcement action requested
- Responsible party
- List or reference to documents that indicate potential violations, including the dates the violations occurred or were discovered, what rule/permit/agreement term was potentially violated, and any associated EDMS record numbers, including email and phone call correspondence among DEQ programs, any other agency, and with the facility
- Steps taken by HW Bureau or the referring agency to provide compliance (including compliance assistance type, facility response, and dates of assistance and response)
- Previous relevant compliance history
- Degree of cooperativeness exhibited by the person or entity
- DEQ's statement on the overall compliance status of the person or entity
- All documents pertinent to the case and a list of all EDMS numbers of the documents (e.g., inspection reports and associated evidence, justifications, written correspondence, phone logs, emails, and memoranda)

Enter the referral form in EDMS according to the Standard Operating Procedure (SOP) "*RCRA Compliance and Enforcement TRIM SOP Rev 2 2013-12-18*" (EDMS 2011BCK2) and mark as confidential. HW staff should complete the enforcement referral within 15 days of issuing the inspection report, or within 60 days of identifying the violation. HW staff may extend this timeline in unique cases; however, to preserve statutory limitations, the referral should not be more than 1 year after the violation was discovered. After the referral is completed and routed through the regional office review process, it is emailed to the HWCES.

The decision to proceed with a formal enforcement action is made by the HWCES in consultation with State Office and regional office staff. Whether the State Office decides to proceed will be communicated to the regional office.

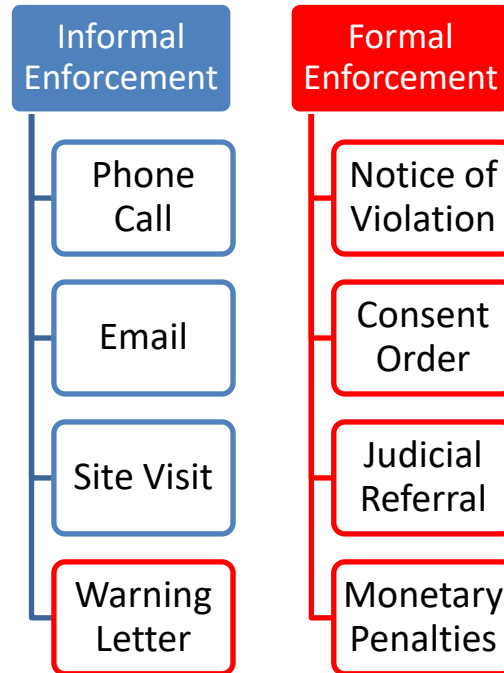


Figure 1. Enforcement types.

7 Informal Enforcement Action

The HW staff may use various informal enforcement options instead of, or before, initiating an administrative enforcement action.

Informal enforcement is typically the first step in the enforcement process. DEQ reserves the right to initiate formal enforcement without prior informal enforcement based in part on the severity, negligence, or the intent behind a violation.

7.1 No Immediate Action

The HW staff may encounter circumstances that delay an informal response or formal enforcement action. For example, a file review may reveal noncompliance with a permit condition or hazardous waste rule; the HW staff may choose to address this discovery later, during a compliance evaluation inspection. If the HW Bureau's resources become constrained by workload and preclude immediate action, the HW staff will focus enforcement actions on those violations posing the greatest risk to public health and the environment.

7.2 Verbal or Written Notifications

To address minor violations of HWMA, HW staff may use verbal or written correspondence, such as phone calls, emails, informal letters, or in-person communication. This type of informal enforcement is reserved for minor discrete violations corrected during the inspection, or violations identified during compliance assistance visits. HW staff must maintain records of the

noncompliance correspondence including file notes, phone logs, copies of emails, or letters in EDMS.

7.3 Warning Letters

A warning letter (WL) (EDMS 2022BCD13) can be used to gain compliance. If a WL is not successful at gaining compliance, it becomes part of the supporting documentation in an administrative enforcement action. WLs are drafted by the HWCES or designee. The WL is reviewed by the regional office and the HWBC before issuance. After review, the WL is emailed to the regulated entity. The HWCES registers a PDF of the email transmittal in the applicable EDMS enforcement folder. The HWCES may choose to issue the WL via certified mail in contentious cases, when the entity does not use email correspondence, or in cases that may result in formal enforcement.

The WL serves two purposes:

1. To identify to the person or entity apparent deficiencies and/or violations observed or discovered
2. To request corrective measures be implemented within a given time frame to mitigate the deficiencies and/or violations

WLs are reserved for addressing minor or low-priority discrete deficiencies and/or violations and do not assess a penalty. The deficiencies and/or violations addressed in a WL can be resolved expeditiously with low costs and minimal oversight by the HW Bureau.

At a minimum, the WL should complete the following:

- Notify the person or entity that they are violating rules, regulations, standards, permit, or CO conditions.
- Describe the rules, regulations, standards, permit, or CO conditions the person or entity is not complying with.
- Inform the person or entity that a written response to the WL is required and must include evidence or documentation that the deficiencies and/or violations have been resolved or provide a timeline and steps the person or entity will take to resolve them.
- Attach relevant educational information and correspondence.

The RCO or SCO who referred the violation is responsible for monitoring the compliance status after the WL is issued. When the HW staff determines the entity has fully remedied the violations cited in the WL, the HW staff emails the HWCES to issue a Return to Compliance letter (EDMS 2022BCD17). The HWCES or designee prepares a draft Return to Compliance letter for regional office review. After the review, the HWCES or designee emails the letter to the regulated entity. The HWCES or designee registers a PDF of the email transmittal in the applicable EDMS enforcement folder.

If a response is required and the regulated person or entity fails to respond either in writing or verbally to the warning letter, HW staff, typically the regional office, should attempt to contact

and work with the person or entity to resolve the deficiency or violation. If the person or entity fails to cooperate with the regional office or inadequately responds to the WL, the HW Bureau may move to the administrative enforcement process (section 8).

In some cases, the regulated entity may have returned to compliance by the time the WL is drafted. If that is the case, a combined WL and Return to Compliance letter (EDMS 2022BCD14) may be appropriate. The draft combined WL and Return to Compliance letter is reviewed by the regional office and HWBC. After review, the letter is emailed to the regulated entity.

7.4 Letter in Lieu of Notice of Violation

Instances may occur where violations warrant an administrative enforcement action, but the statutory limit has expired, or will expire before an action is feasibly issued. In these cases, the HW Bureau may choose to issue a letter in lieu of a NOV (EDMS 2022BCD19). The letter denotes the violations and requests a return to compliance. The letter is drafted by the HWCES and reviewed by the HWBC and regional office before issuance. Violations addressed in a letter in lieu of a NOV cannot be enforced upon with administrative enforcement; the letter in lieu of a NOV is a voluntary compliance request. HW staff should discuss with the Attorney General's Office whether the violation may be considered a discrete or continuous violation, which may affect the statutory limit.

8 Formal Enforcement Actions

8.1 Administrative Enforcement Action

When HW staff determine that any person or entity is likely in violation of any provision of HWMA and/or any of the federal environmental protection laws implemented by DEQ, or rules, permits, or orders issued or promulgated pursuant to the same, HW staff may begin an administrative enforcement action.

8.1.1 Authority for Administrative Enforcement Action

Pursuant to the HMWA, [Idaho Code § 39-4413](#), DEQ has the authority to bring administrative enforcement actions against any person or entity DEQ has determined is in violation of any provision of the HWMA or any rule, permit, or order issued thereunder. Idaho Code § 39-4413 describes the administrative enforcement process under HWMA of an administrative enforcement action: (1) issuing the NOV, (2) scheduling and holding a compliance conference, and (3) entering into a CO.

8.1.2 Purpose of Administrative Enforcement Action

Administrative enforcement is a more informal process than the civil or criminal enforcement processes and involves less investment by technical and legal staff. If DEQ maintains more control of the outcome through the negotiation process, a resolution can often be reached

more quickly than through the judicial system. The administrative process allows DEQ to use regulatory flexibility when warranted. Settlements through the administrative enforcement process may result in a lower negotiated penalty.

8.1.3 Notices of Violation

A NOV is a formal, legal means of informing the responsible person or entity that an alleged violation has occurred. A NOV is signed by the DEQ director. HWMA, [Idaho Code § 39-4413\(1\)\(a\)](#) requires the following elements in a NOV:

1. Notification of the apparent violations (specifically citing the legal provisions violated) discovered by DEQ resulting from an inspection or a compliance review.
2. Assessment of civil penalties for each violation.
3. Invitation to negotiate a CO that prescribes the terms and conditions the person or entity must follow to resolve the violation and return to compliance.

The NOV informs the recipient of an opportunity to confer with DEQ in a compliance conference concerning the alleged violation within 20 days of receiving the notice unless a later date is agreed to. The notice requires a response within 15 days of receipt of the NOV. In the HW Bureau, the NOV is always followed by the negotiation and issuance of a CO.

Issuing a NOV is reserved for more serious, ongoing, or recalcitrant hazardous waste violations. These types of violations may require more complex and more costly corrective measures than violations cited in a WL and may include lengthy time frames to return the recipient to compliance. The NOV may also address additional minor or moderate violations identified as part of an inspection or compliance review.

8.1.3.1 Drafting the NOV

The NOV is drafted by the HWCES or designee. The HWCES reviews the formal enforcement referral form for accuracy after it is received. Items, such as the listed responsible party, are verified. A NOV may be issued to a business, an entity (e.g., homeowners association), a permittee, an individual, or an operator. If the NOV is issued to a business or entity, HW staff should check the [Idaho Secretary of State's](#) website to find the correct legal name (as opposed to a “doing business as” name). When the responsible party does not own the real property where the violation occurred, DEQ may also issue the NOV to the owner of the real property or provide a copy of the NOV to the property owner.

After the enforcement referral form is verified, the HWCES drafts the NOV using the Generator Notice of Violation (EDMS 2022BCD20) or Permitted Facility Notice of Violation (EDMS 2022BCD18) templates. The HWCES selects the template based on the applicable hazardous waste handler status. The violations cited in the NOV typically mirror those in the inspection report or compliance correspondence; however, the violation regulatory citations and evidence must be reassessed for accuracy. In addition to the NOV, the HWCES also drafts penalty calculations using the penalty calculate template (EDMS 2022BCD12) and the *PS20-12 HWMA Civil Penalty Policy* (EDMS 2016ADU11[v2]). Penalties are discussed in section 8.1.8.

The NOV and penalty calculations, in all stages of preparation, are considered *enforcement confidential* documents. These documents are released to the public only after the NOV is signed by the DEQ director and is received by the recipient, pursuant to the Idaho Public Records Act (Idaho Code § 74-101, et seq.).

8.1.3.2 NOV Routing and Review Process

Once the Enforcement Referral Form is sent from the regional office to the HWCES, the NOV routing and review process proceeds as follows:

1. **Enforcement Referral**—Upon receiving the referral form, the HWCES assesses the violations to determine if the State Office agrees with the proposed enforcement response. The HWCES arranges for additional meetings or phone calls with the regional office and HWBC if disagreements exist about the enforcement approach.
2. **Draft NOV**—If sufficient grounds to proceed are identified, the HWCES or designee completes the first draft of the NOV and associated penalty calculations. The goal for completing a draft NOV is 2 months after receiving the referral.
3. **HWBC Review of Draft NOV**—After the NOV is drafted, the HWCES emails the NOV to the HWBC for review. When a designee creates the first NOV draft, the NOV is first emailed to the HWCES for review, and then emails to the HWBC. The HWBC provides a review and emails the document back to the HWCES for revisions. The review timeline for the HWBC review depends on complexity of the document and business needs at the time of review. Typically, the NOV is reviewed within 14 days.
4. **DAG Designation**—The HWCES emails the lead DAG for an attorney assignment after making the initial revisions to the NOV draft. This designation request may be made earlier in the process if questions arise during the referral or writing process. The email briefly describes the enforcement action and the expected date the DAG will receive a copy of the NOV for review. The lead DAG designates an appropriate DAG for the case in response to the email request.
5. **Regional Review of Draft NOV**—After the HWBC reviews the NOV and provides revisions in response to comments, the HWCES emails the NOV to the RCO and/or regional manager, and RA for review. The email summarizes major changes between the inspection report citations and enforcement document. The regional office review period lasts for 7 days. The HWCES provides revisions in response to the regional office comments.
6. **DAG Review of Draft NOV**—After the HWBC and regional office staff review the NOV, the HWCES emails the NOV to the designated DAG for review. The document is accompanied by supporting material, including the enforcement referral form. The DAG review period lasts for 14 days. The HWCES provides revisions in response to the DAG comments.
7. **Final Review of NOV**—After the DAG review and revisions, the HWCES emails the final copy to the HWBC, regional office, and DAG for final agreement. The email summarizes major changes resulting from the DAG review. This final review period lasts for 7 days. The HWCES provides revisions in response to the final comments.

8. **HWCES Routes NOV for Signature**—After the HWBC, regional office staff, and DAG approve the NOV, the HWCES drafts the NOV transmittal memo (EDMS 2022BCD15). The HWCES emails the memo, NOV, and penalty calculations to the HWBC, DAG, and Waste Management and Remediation (WMR) division administrator to initial the memo using Adobe Sign. After the initials are received, the HWCES emails the memo, NOV, and penalty calculations to the DEQ director for signature. The DEQ director signs the NOV using Adobe Sign. This process is typically completed within 1 week, although it can be extended if the director has additional questions or is unavailable.
9. **HWCES Transmits NOV to Entity**—After receiving the signed NOV, the HWCES mails the NOV with a cover letter (EDMS 2022BCD16) to the facility via certified mail. If using certified mail is not feasible due to mail restrictions, the HWCES consults with the DAG to consider using email. The HWCES must contact the facility inspection contact to notify them that the enforcement action is being mailed. This contact ensures a positive relationship with the entity contact and allows them to brief staff on the impending enforcement. In addition, the HWCES emails the entity a courtesy copy of the NOV and penalty calculations. The email also notifies the regional office and State Office HW staff. The NOV requires a response from the entity within 15 days of receiving the hard-copy document. The HWCES enters the signed NOV, certified mail receipt, and NOV cover letter into EDMS according to the HW Bureau EDMS SOP (EDMS 2011BCK2).
10. **HWCES Schedules Compliance Conference**—The entity must contact the HWCES within 15 days of receiving the NOV to request a compliance conference. The HWCES uses Outlook calendars to determine a date and location for the compliance conference. Conference attendees include the HWCES, HWBC, RCO or SCO who referred the violations; the regional manager; and the entity and their requested staff. The conferences take place at the State Office, regional office, or using Microsoft Teams. The associated DAG participates in the compliance conference only if the facility has legal counsel present during the conference. Once the details are finalized, the HWCES schedules the compliance conference using an Outlook meeting and emails the invitation to attendees. If the conference takes place in person, two conference rooms are scheduled. The primary conference room facilitates the conference with the entity. The second conference room serves as a caucus room for negotiations.
11. **HW Program Conducts Compliance Conference**—The HWCES is the lead negotiator at the compliance conference. The RCO provides background, clarification, and direction for understanding the inspection, record review, or nature and extent of the violations that led to issuing the NOV. The RCO records the compliance conference minutes and files the compliance conference minutes in the entity's enforcement file in EDMS.
12. **Facility Refuses Compliance Conference**—If the facility refuses to schedule or attend a compliance conference, the HWCES coordinates with the DAG and HWBC on next steps.

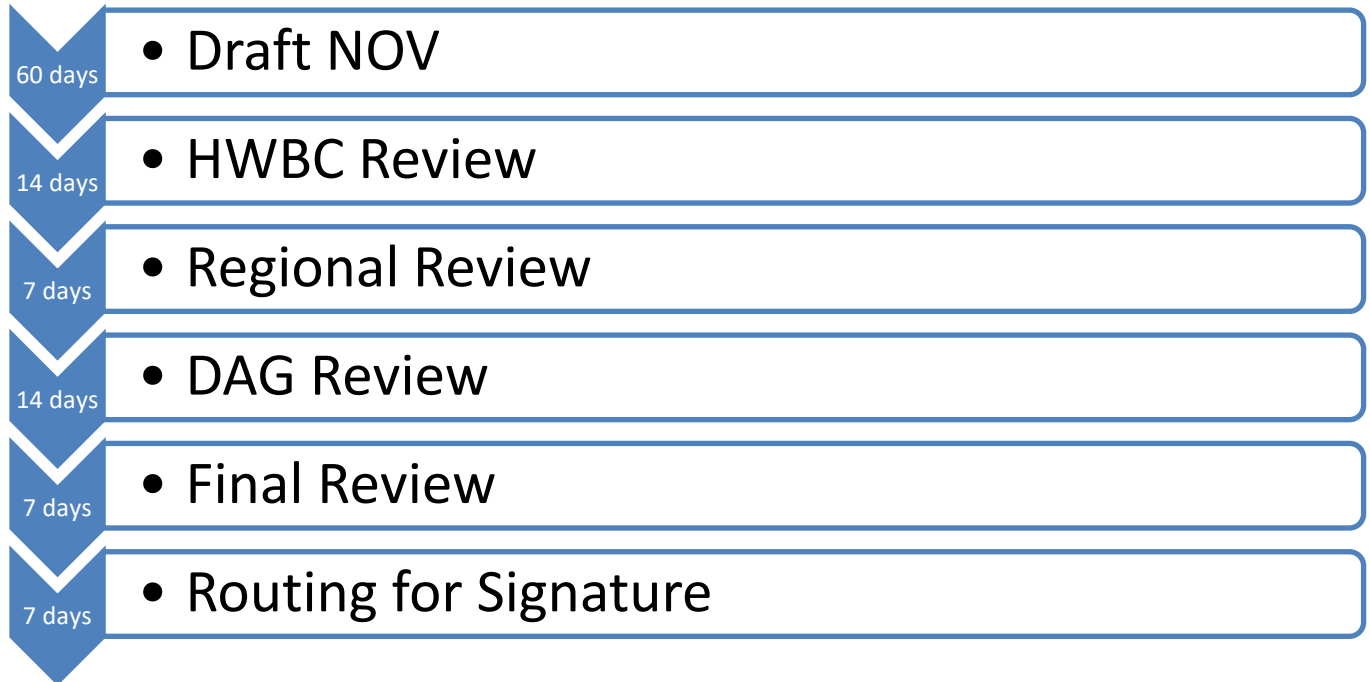


Figure 2. Notice of violation routing timeline.

The typical NOV routing process is approximately 6.5 months; however, this timeline may be expediated or extended based on various factors.

8.1.4 Compliance Conference and Negotiation

Pursuant to the HMWA, [Idaho Code § 39-4413\(A\)\(1\)\(c\)](#), the compliance conference allows the entity to explain the circumstances of the alleged violation cited in the NOV and, where appropriate, propose a remedy for damage caused by the alleged violation and ensure future compliance. A compliance conference occurs before an agreement is entered into. If the recipient and DEQ agree on a plan to remedy damage caused by the alleged violation and ensure future compliance, they may enter into a CO formalizing their agreement. The CO may include a provision for payment of any civil penalty and a scheduled time frame for compliance.

8.1.4.1 Scheduling Compliance Conference

If a NOV is issued, the recipient has 15 days from receiving the hard-copy NOV to contact DEQ to request and schedule a compliance conference. As specified in the HWMA, the conference must be held within 20 days or a later date if agreed upon by both parties. If a NOV was not issued, the HWCES will contact the entity regarding attending a compliance conference to discuss entering a CO. The HWCES should also inform the entity that the conference is their opportunity to present additional information to resolve the alleged violation. Encourage the recipient to be prepared to present their case, including good faith efforts made to resolve the noncompliance.

The HWCES uses the Outlook calendar to identify potential dates. DEQ attendees include the HWCES, HW staff who observed or discovered the noncompliance to provide background

information and clarification and to take notes for the file record, the HWBC, regional manager, and RA if requested. When scheduling a compliance conference with the appropriate DEQ staff and entity, determine if the entity will be represented by an attorney and if that attorney will be present at the conference. If so, DEQ must be represented by the Attorney General's Office at the conference. Notify the entity of this policy when the compliance conference is scheduled.

Compliance conferences are typically held at the State Office in Boise or via virtual call. If the recipient does not wish to travel to the State Office to attend the compliance conference and would like to meet in person, the HWCES should offer to hold the meeting at the nearest DEQ regional office. For the compliance conference, the HWCES schedules two conference rooms. The first room is used for the compliance conference. The second room is used to provide a private caucus room during negotiations. If a second conference room is not available, DEQ staff can find an alternative location to caucus (e.g., outside.)

Once the compliance conference is scheduled, the HWCES sends a confirmation letter or email confirming the date, location, list of DEQ attendees, and any special considerations that have been agreed upon. If the meeting is held in person, the HWCES should also email the name and information of attendees to the DEQ front desk staff.

8.1.4.2 Preconference Meeting

Before the compliance conference, the HWCES holds a preconference meeting between regional office personnel, HWBC, and for permitted facilities, the HW permitting staff. A DAG may be requested to attend the preconference meeting. In the meeting, discuss all critical aspects of the enforcement action to determine the goals of the compliance conference, explain the format of the conference and roles, establish the enforcement *bottom line* for negotiation purposes, and discuss various negotiation strategies to anticipate the person's or entity's response to violations and the assessed penalties, if any.

8.1.4.3 Conducting the Compliance Conference

When the compliance conference begins, the HWCES takes the lead, introduces participants, and documents individuals attending the meeting. The HWCES explains the purpose of the compliance conference, which is providing the person or entity with an opportunity to explain circumstances surrounding the alleged violation, negotiate the terms and conditions of the CO to resolve the violations, and discuss the assessed penalty, if any. A typical script is included below:

The purpose of the compliance conference is to provide an opportunity for us to discuss each violation and for you to present information showing how the violations have been addressed, or to explain the circumstances of the violations, or to present information showing a violation did not occur. We also like to discuss how you will maintain compliance in the future.

In this meeting, we will identify, discuss, and negotiate terms and conditions of a consent order to resolve the alleged violations in the NOV and agree on a final monetary penalty.

A compliance conference may last a few hours or a few days, depending on the number of alleged violations and the complexity of the issues involved. If it appears the entity is not willing to enter into a CO or is not negotiating in good faith, DEQ may elect to pursue civil action in district court to compel compliance (section 8.2.1). HWMA, [Idaho Code § 39-4413\(A\)\(1\)\(e\)](#) states if the parties cannot reach an agreement within 60 days of the receipt of the NOV, DEQ's director may commence and prosecute a civil enforcement action. If the entity is negotiating in good faith, the HWCES may elect to continue with negotiations past 60 days. If negotiations require additional time, the HWCES may pursue a tolling agreement to avoid violating the statute of limitations (section 2.1.3.1).

During the compliance conference, the HWCES may suggest the parties break from negotiations to caucus. Caucusing provides a brief period for the parties to discuss issues privately before continuing to work towards settlement. At the end of the compliance conference, the HWCES summarizes and documents each party's position and agreed time frames for submitting additional information. The person or entity may need to provide additional information to DEQ to support their case or may request that DEQ provide additional information.

By the end of the compliance conference, the HWCES determines whether the person or entity is willing to enter into a CO. If so, the HWCES explains that DEQ will draft the CO, including the conditions agreed to by the parties during the compliance conference and any changes that may affect any assessed penalty. The HWCES explains that the person or entity will have the opportunity to review, comment on, and factually correct the draft CO, along with any other required steps before executing the CO. Negotiations may continue until both parties agree on the terms and conditions of the CO.

If negotiations are unsuccessful, the HWCES may refer the case to the Attorney General's Office for filing a civil action (section 8.2.1).

8.1.5 Drafting Consent Orders

Pursuant to the HMWA, [Idaho Code § 39-4413](#), if the NOV recipient and DEQ agree on a plan to remedy damage caused by the alleged violations and to ensure future compliance, they may enter into a CO formalizing their agreement. The HWCES or designee drafts the CO (EDMS 2019ADN3).

The HW Bureau typically enters into a CO with an entity to (1) address violations cited in the NOV and/or (2) establish the requirements the person or entity must perform to address an issue of noncompliance. The CO may include a provision providing for payment of an assessed civil penalty. A CO precludes any civil enforcement action for the same alleged violation.

8.1.5.1 Consent Order without Notice of Violation

In some situations, a CO may be negotiated without the prior issuance of a WL or NOV. The discretion to negotiate a CO in these cases lies with the HWCES, regional office, Attorney General's Office, and HWBC. The CO may still provide for stipulated penalties, payment of penalties, performance of supplemental environmental projects (SEP), and other sanctions.

A CO negotiated directly without prior issuance of a NOV can result in agreeing to corrective measures that immediately address or stabilize the situation. This results in minimizing the threat to the public and the environment. In instances where the person or entity is willing to commit necessary resources to address any noncompliance issues or to ensure compliance, retaining the flexibility to move directly to a negotiated CO may prove effective in resolving the matter expeditiously and to the benefit of all.

Issuing a CO without a NOV may be an option under certain scenarios:

1. A person or entity performs environmental assessments or audits at its facility resulting in the discovery of violations or releases into the environment.
2. The person or entity recognizes its responsibility to comply with environmental regulations and is committed to further investigating and mitigating the area of concern.
3. The person or entity promptly notifies DEQ of the area of concern and of their intent to mitigate the area of concern. The person, entity, or DEQ may request to enter into a CO with DEQ oversight and a statement of resolution.
4. A person or entity promptly notifies DEQ of a hazardous waste release into the environment, response, and corrective action.

8.1.5.2 Compliance Schedules in the Consent Order

Including compliance schedules in COs ensures the person or entity demonstrates progress in achieving compliance. The HW Bureau considers the amount of time necessary to achieve compliance when setting schedules. Time limits are discussed by the HWCES and the entity during the compliance conference, and an agreed-upon schedule is set. A short time frame may be set for submitting documentation that must be developed by the entity. A longer time frame may be set for cleanup actions or planning/modifications that need to be taken if such delayed action would not pose an imminent threat to human health, public safety, or the environment. Penalties are normally required to be paid within 15 days of the execution of the CO (section 8.1.8).

8.1.5.3 Consent Order Routing and Review Process

Once DEQ and the alleged violator have come to a tentative agreement on resolving the problems, CO production, routing, and review proceeds as follows (Figure 3).

1. **Review Staff**—To maintain efficiency and consistency, the same staff that reviewed the NOV will review the ensuing CO. The team consists of the HWBC, regional manager and/or RCO, RA, and DAG. For permitted facilities, the applicable HW permitting staff also continue to participate.
2. **Collection and Distribution of Documents**—The entity submits the necessary documents to the HWCES to prepare a CO (e.g., SEP proposals and corrective actions). The HWCES distributes the documents to other reviewers and files them in the EDMS enforcement folder.
3. **First Draft of CO**—The HWCES or designee drafts the CO based on the agreements reached during the compliance conference. The goal is to draft the CO within 60 days of the compliance conference.
4. **HWBC and Regional CO Review**—The HWCES emails the draft CO to the HWBC, regional office staff, and applicable permitting staff. In the email, the HWCES identifies any complex or controversial issues connected with the draft CO. The review period is 14 days. After review, the HWCES incorporates the HWBC and regional revisions. If comments conflict, the HWCES uses professional judgment to determine which comment to incorporate, subject to approval by the state or regional office.
5. **DAG CO Review**—After the regional and HWBC reviews, the draft CO is emailed to the DAG for review. Any conflict or complex issues addressed in the draft are identified in the email to the DAG. This review period is typically 14 days. After the DAG's review, the HWCES incorporates the agreed upon changes into the CO.
6. **Entity CO Review**—The HWCES emails the draft CO to the entity for review. This review period typically lasts 14 days but can be extended at the reasonable request of the entity. The entity is encouraged to provide proposed revisions using tracked changes. The HWCES revises the draft CO by incorporating the agreed-upon changes from the entity review, if appropriate. If the changes cannot be incorporated, the HWCES follows up with the entity and arranges for additional negotiation. The DAG is consulted when making revisions.
7. **Final Draft Review**—After the changes from the entity review are incorporated, the HWCES emails the draft CO to the reviewers for a final review. The review period is 7 days.
8. **Final Draft to Entity**—After all changes are incorporated, the final draft CO is emailed to the entity for a final review. If the entity states they are ready to sign the document, the HWCES begins the signature process.
9. **HWCES Routes for Signature**—The HWCES routes the CO to the facility for signature using Adobe Sign.
10. **If Facility provides Signed CO** —The HWCES prepares a CO transmittal memo (EDMS 2023BCD4) and emails the signed CO and transmittal memo HWBC, DAG, and WMR division administrator for memo signature. The signed CO and memo

are then emailed to the DEQ director for signature. The HWCES notifies the team members of the date the CO is effective, registers the signed CO into EDMS according to the EDMS SOP, and provides the EDMS record number to the team members. The HWCES emails the fully executed CO to the facility and copies the associated DEQ staff. A hard copy is provided to the facility at their request.

11. **If Facility Refuses to Sign Consent Order**—If the facility refuses to sign the CO, the HW Bureau is required to determine the next step. The case may be referred to the Attorney General’s Office for filing a civil complaint, or it may be referred to EPA for enforcement under federal statutes. In either case, the HW Bureau, with input from the regional office and WMR division administrator, makes this determination.

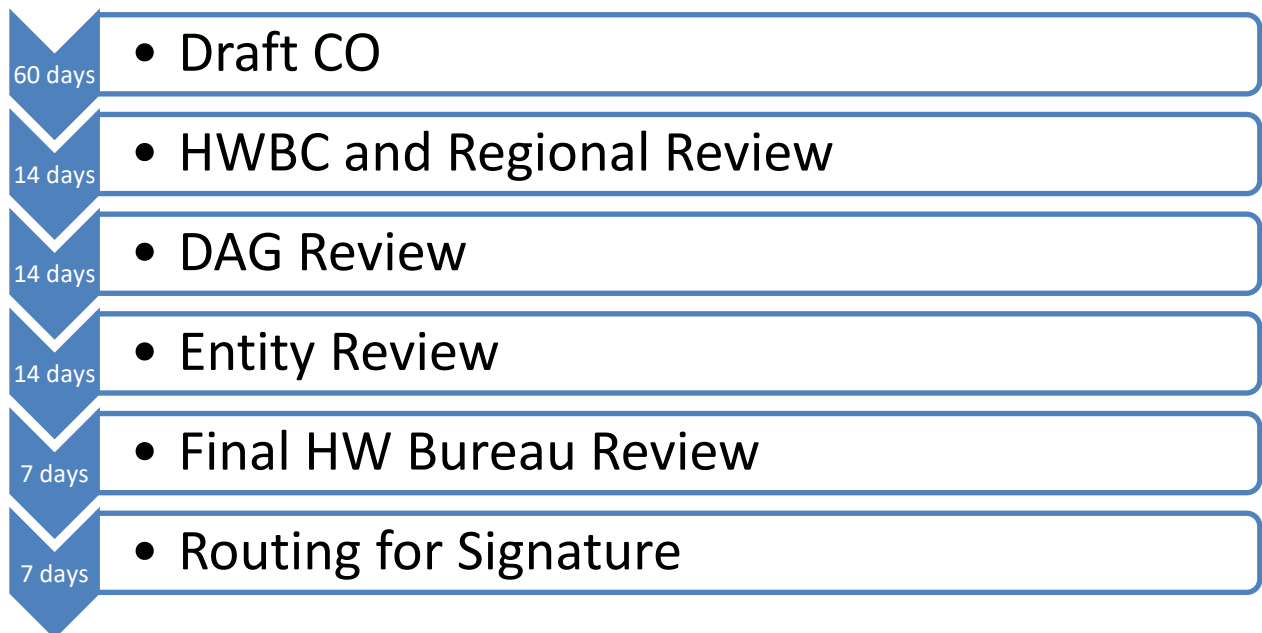


Figure 3. Consent order routing timeline.

After the terms and conditions are informally agreed upon through the revision process (occurs through email drafts), the HWCES emails the CO to the entity for signature. After facility signature, the HWCES drafts the transmittal memo (EDMS 2023BCD4), signed by the WMR division administrator, HWBC, and DAG, and the memo and CO is sent to the DEQ director for signature using Adobe Sign. Once the CO is signed by the entity and DEQ director, it becomes legally binding. The HWCES files the CO and memo in EDMS and emails the CO to the entity. The email to the entity explicitly calls out the date of the DEQ director’s signature as the date of execution and is a reminder of any applicable penalty payments or immediate milestones.

If a payment of civil penalty is required, the HWCES forwards a one-page penalty tracking sheet (EDMS 2019ADN2) to DEQ’s Financial Office and enters the payment schedule along with any compliance milestones into the Statewide Enforcement Tracking System (SETS). Payments received by the Financial Office are entered into the accounting system. The Financial Office emails the HWCES when penalty payments are received and includes the payment receipt. The

HWCES enters the necessary information into SETS and registers the payment receipt into DEQ's EDMS. If a scheduled penalty is amended, the HWCES must notify the Financial Office with the following information:

- Name of respondent
- Penalty due date
- Original penalty amount and amended penalty amount
- Reason for adjustment

8.1.5.4 News Releases

Although not part of DEQ's standard process, the HW Bureau may issue a news release about the person or entity that has entered into an agreement with DEQ to demonstrate to the public that the person or entity is committed to returning to compliance. The HW Bureau may also issue a news release on their successful return to compliance. Cases that may warrant a news release include high-profile entities such as HW TSDFs, high-profile impacts to human health and the environment, or high public-interest. News releases may also be issued at the request of EPA Region 10. The WMR division administrator and HWBC decide if a news release is warranted.

The HWCES drafts the news release. The news release is reviewed by the appropriate regional office staff and approved by the HWBC and WMR division administrator. Once the content is approved, the news release ([News Release Request form](#)) is submitted to Communications and Outreach for posting.

8.1.6 Consent Order Management

Executed COs are managed by the applicable regional office. The CO compliance schedule submissions are submitted to the DEQ point of contact designated in the CO, typically the regional office manager. The regional office manager may assign the RCO with entering the submissions into EDMS and completing any document review and necessary response. The regional office with jurisdiction is responsible for monitoring the person's or entity's compliance with all conditions agreed to in the CO. The regional office ensures the submissions meet the requirements outlined in the CO, requests revisions as appropriate, and files the submissions and correspondence in EDMS. The regional office must meet all DEQ reviews and response time frames specified in the CO and update the compliance status in SETS.

8.1.6.1 Compliance Schedule Extensions

If justified, the HW Bureau may grant an extension to the terms and actions due dates established in the CO compliance schedule. The entity must submit a written extension request to the designated DEQ point of contact noted in the CO. In the extension request, the entity must document that the extension is necessary and justified. The regional office performs a completeness review on the extension request. If the documentation is not acceptable, a revision is promptly requested, or the extension request may be denied. The process for granting an extension varies depending on the length of time of the requested extension.

These procedures are followed when processing an extension request:

1. For the HW Bureau to consider the extension request, the entity must provide the request in writing to the designated DEQ point of contact in the CO; emails are acceptable. The request must include the proposed timeline and justification for the extension. The regional office manager or RCO coordinates with the regional office staff for approval.
2. The RA or designee may extend the timeline for first-time extensions that result in an extension of 6 months or less.
 - a. Extensions may be granted after a thorough review of the file and all pertinent regional office staff have provided input.
 - b. If the time extension is deemed appropriate, the RA or designee forwards a copy of the signed extension letter to the HWCES, HWBC, and WMR division administrator.
 - c. The regional office registers the signed extension letter into EDMS and makes the appropriate updates in SETS.
 - d. If the regional office considers denying the extension, they must inform the State Office, and coordinate with the HWCES and HWBC on the response.
3. For extensions exceeding 6 months and requests beyond the first extension regardless of whether they resulted in an extension of 6 months or less, the regional office must email a copy of the written request and related documents to the HWCES.
 - e. The HWCES schedules a meeting with the regional office staff, appropriate State Office staff, and WMR division administrator to determine the appropriate course of action.
 - f. The final determination letter is emailed from the point of contact noted in the CO. The HWCES files the signed document into EDMS and makes the appropriate updates in SETS.

8.1.6.2 Consent Order Noncompliance

Compliance schedules that are not met may be addressed by the HW Bureau in several ways. The first response is for the regional office staff to call the responsible party and inform them of the missed deadline. If the schedule is then met within a short time frame (typically 5–10 working days), it is unlikely that formal action will be taken. If the schedule is not met within the extended period, the regional office staff refers the entity to the HWCES for a WL. The WL explains that the deadline was missed and must be met within 5 working days. If the responsible party does not respond to the noncompliance letter, legal action may ensue.

If the person or entity does not comply with the terms of the CO, DEQ may seek and obtain, in any appropriate district court, specific performance of the CO and other relief as authorized by HWMA.

8.1.7 Consent Order Termination and Amendment

8.1.7.1 Consent Order Termination

After the regional office determines the CO conditions and terms have been completed to DEQ's satisfaction, or for other reasons, the RCO notifies the entity the CO is eligible for termination. The entity must submit a written request for CO termination. The RCO files the termination request in EDMS and notifies the HWCES. The HWCES or designee drafts a termination letter and emails the letter for review to the HWBC, RCO, regional office manager, and the permitting staff if applicable. After sign-off from reviewers, the HWCES emails the termination letter to the WMR division administrator for signature. The HWCES files the signed termination letter in EDMS and emails the termination letter to the entity, unless a hard copy is requested via US mail. Copies are distributed to the DAG and relevant DEQ offices.

Once the HWCES sends the termination letter to the entity, the enforcement case is considered resolved, and the HWCES closes the case in SETS.

8.1.7.2 Amendments

If justified, DEQ may amend an administrative enforcement document. Amendments to the scope, terms, or conditions other than extensions of time must be made through a formal amendment process. This process mirrors the existing processes for enforcement referrals and developing a CO (section 8.1.5). RO staff must work with the HWCES to formally amend a CO.

8.1.8 Penalties

Penalties serve as deterrence, ensure fair and equitable treatment of the regulated community, and limit the economic benefit of noncompliance.

8.1.8.1 Monetary

To assist in the penalty calculation and assessment process, the HW Bureau developed the policy, *PS20-12 Hazardous Waste Management Act Civil Penalties* (EDMS 2016ADU11[v2]). The goals of penalty assessment are as follows:

- **Deterrence**—The penalty assessed must not only recover any economic benefit gained by the person or entity but also impose an additional monetary or other burden commensurate with the gravity of the violation.
- **Fair and equitable treatment of the regulated community**—Extenuating or aggravating circumstances must be considered. Adjustments may be made to the penalty for the degree of willfulness, history of noncompliance, degree of cooperation, and ability to pay.
- **Swift resolution of environmental problems**—Retaining the flexibility to reduce penalties when the person or entity has remedied or begun to remedy the problem provides incentives for swift remediation. Disincentives to delay the resolution process can be provided by per-day fines for continuing violations.

The HWMA gives the HW Bureau the authority to assess civil penalties for violating statutes, rules, permits, or orders. The HWMA provides for the assessment and collection of penalties of up to \$10,000 per violation per each day of continuing violation (HWMA penalty policy, EDMS 2021BCJ1).

The penalty calculation system consists of (1) determining a gravity-based penalty for a particular violation, (2) considering economic benefit of noncompliance where appropriate, and (3) adjusting the penalty for special circumstances. Two factors are considered in determining the gravity-based penalty:

1. Potential for harm
2. Extent of deviation from the statutory or regulatory requirement

The policy provides guidelines for adjusting a penalty based on extenuating or special circumstances. HW staff take the following into account:

1. Violator's good faith effort to comply with the requirements
2. Degree of willfulness and/or negligence on the part of the violator
3. History of noncompliance (typically an upward adjustment for recalcitrant behavior)
4. Violator's ability to pay
5. Economic benefit of the violation.
6. Any unique or unanticipated factors

The HW Bureau uses a worksheet (EDMS 2022BCD12) to assist staff in calculating the assessed penalty, documenting the justification for the penalty, and documenting penalty adjustments that may occur after compliance conference negotiations. In addition to the worksheet, the HWCES or designee should review previous inspection reports and enforcement documents for the regulated entity to identify history of noncompliance. The HWCES or designee should consider previous HW enforcement cases with similar violations to ensure penalties are consistent. When calculating the economic benefit of a penalty, the HWCES or designee uses available economic information related to the violation, such as [EPA's BEN model](#) to calculate the violator's economic benefit from delaying or avoiding pollution control expenditures.

Penalties are normally required to be paid in full within 15 days of executing the CO. If the entity indicates paying the penalty in full within 15 days would constitute an economic hardship, the HW Bureau may consider negotiating a penalty payment plan. Payment plans require monthly payments and should not exceed 12 months, except in unusual circumstances.

Additional information on formulating penalties is found in the penalty policy (EDMS 2021BCJ1).

Penalty Justifications

When calculating penalties for violations, the HWCES must document the rationale for determining the assessed penalty amount on the penalty calculation worksheet (EDMS 2022BCD12).

The HWCES is responsible for ensuring the penalty is appropriate, fair, and consistent with penalties assessed for violations at other facilities with similar circumstances. The penalty assessment should be fully justified based on the supporting information for the violations.

The penalty calculation worksheet is reviewed by the appropriate regional office staff, HWBC, WMR division administrator, DAG, and DEQ director during the NOV review process.

After enforcement negotiations and settlement, if penalties are adjusted, justification for the adjustment is documented on the penalty worksheet and filed in EDMS.

Stipulated Penalties

Stipulated penalties are fixed or adjustable sums of money that a person or entity agrees to pay if the terms of an order or agreement are violated. Application of stipulated penalties may be based on the number of violations, period of noncompliance of the violation, and/or the severity of the violation. Stipulated penalties are an effective enforcement tool for encouraging compliance with these agreements.

Stipulated penalties may also be included in a CO when penalties have been waived, in full or in part, based on a person's or entity's good faith efforts, inability to pay, or other factors.

Cost Recovery

Pursuant to HWMA, [Idaho Code § 39-4414](#), DEQ may seek reimbursement of certain expenses incurred through enforcement activities. Idaho Code § 39-4414(2) states the following:

- Any person who violates this chapter or any permit, standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter may be assessed for:
- (a) The state's costs for any nonroutine investigations, inspections, monitoring, or surveys which lead to evidence of the violation;
 - (b) The state's costs, including the reasonable value of attorneys' services, for preparing and litigating the case;
 - (c) The state's costs for mitigating, removing, correcting or terminating adverse effects upon soil, air, or water quality resulting from the violation;
 - (d) The state's costs for impounding, storing, and disposing of contaminated property;
 - (e) Compensation for damages to publicly held resources including but not limited to, land, water, recreational uses, wildlife, fish and aquatic life to restore the resource to its highest previous use;
 - (f) Compensation for damages to privately held resources including, but not limited to, livestock, land, water, or other personal property, and compensation for court costs allowed by statute, reasonable attorney's fees for trial preparation and trial of the case, and all other reasonable costs of trial preparation and trial of the case;
 - (g) Compensation for damages to personal health and compensation for court costs allowed by statute, reasonable attorney's fees for trial preparation and trial of the case, and all other reasonable costs of trial preparation and trial of the case;
 - (h) The imposition or computation of costs may take into account the seriousness of the violation and good faith efforts to comply with the law.

Through the Financial Office, the HWCES sets up a specific accounting code to allow accurate tracking of staff hours and expenses incurred. The decision to include cost recovery in an

administrative enforcement document is discussed with the HWBC, WMR division administrator, and Attorney General's Office.

8.1.8.2 Ability to Pay

If the regulated entity states they do not have the ability to pay a proposed penalty, the HWCES or designee evaluates the ability to pay using [EPA's ABEL model](#) or [EPA's INDIPAY model](#) for individuals. The ABEL model evaluates a corporation or partnerships' ability to afford compliance costs, cleanup costs, or administrative penalties. To use the ABEL model, the HWCES requests 3 to 5 years of the entity's federal tax returns. The HWCES determines the appropriate model to use based on the circumstances of the violations. A business owner may also be personally liable for penalties, even if the corporation does not have the ability to pay.

8.1.8.3 Supplemental Environmental Project

The person or entity may propose that another environmentally beneficial activity or SEP be included in the terms of a CO if, during the process of negotiating a CO, any of the following become apparent:

- The person or entity has corrected all violations, leaving only the issue of penalty payment to negotiate.
- The person or entity is willing to perform actions above and beyond the regulatory requirements.
- Both parties agree extenuating circumstances exist that prevent the violation from being corrected.

[Idaho Code § 39-108\(5\)\(b\)](#) and [§ 39-4414\(1\)\(c\)](#) define a SEP as follows:

- An environmental beneficial project that the person is not otherwise required to perform, by any federal, state, local law or regulation, or agreement that:
 - Prevents pollution
 - Reduces the amount of pollutants reaching the environment
 - Contributes to public awareness of environmental matters
 - Enhances the quality of the environment

In evaluating a particular SEP proposal, the Idaho Legislature concluded that DEQ may give preference to projects that:

- Relate to the violation or the objectives of the underlying statute that was violated
- Enhance the quality of the environment in the general geographic location where the violations occurred

A SEP proposal must, at a minimum, include the following:

- Time frame, including specific dates, for implementing the SEP
- Methods of record keeping used to document implementation and expenditures expected in conducting the SEP
- Projected budget for the project, including a breakdown of costs for equipment, labor, and capital

- Nature and amount of any tax benefits to be claimed by the person or entity resulting from SEP implementation

Each proposed SEP will be evaluated by the HWCES, HWBC, WMR division administrator, RCO, regional manager, RA, and Attorney General’s Office for compliance with the provisions provided in the DEQ Policy Statement PS20-13, “Supplemental Environmental Projects” (EDMS 2014ADU8[v3]). The policy also contains an example of SEP language for a CO. Additional information is found in *Incorporating Pollution Prevention into Enforcement* (EDMS 2017AGC17).

Once a SEP has been successfully negotiated and included as part of a CO, the HWCES monitors completion of the SEP activities as part of the terms and conditions agreed to in the CO using the SEP submission/approvals template (EDMS 2023BCD3) and documents the activities in SETS.

SEP proposals for assessed stipulated penalties from issued COs must be approved by the Attorney General’s Office and DEQ director. To obtain approval, the HWCES emails the DEQ director and deputy director to explain the penalty and discuss the SEP proposal including main objectives and benefit to the community (SEP proposal approval letter template (EDMS 2023BCD6). For historical examples, see the SEP proposals for stipulated penalties assessed under the Idaho National Laboratory (INL) Notice of Non-Compliance Consent Order (NON-CO) Fifth Modification.

8.2 Civil and Criminal Environmental Enforcement Actions

DEQ has options for taking an enforcement action to court. This section discusses when civil or criminal actions are warranted, how to refer a case for civil or criminal enforcement, provides an overview of the civil and criminal enforcement process, and describes the respective roles of DEQ staff and the Attorney General’s Office during a civil or criminal enforcement. Figure 4 provides an overview of the enforcement process.

8.2.1 Civil Enforcement Action

Civil enforcement involves a court action brought in district court by the Attorney General’s Office, in consultation with DEQ. Civil enforcement actions are reserved for situations where the case cannot be resolved through cooperation or when immediate action is needed. In a civil action, DEQ can seek penalties and an injunction to compel compliance.

8.2.1.1 Authority for Civil Enforcement Actions

Pursuant to the HWMA, [Idaho Code § 39-4413\(3\)](#), DEQ has the authority to pursue a civil action in district court:

The attorney general may commence and prosecute in district court a civil enforcement action. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have violated any provision of this chapter or any rule, regulation, permit, condition, requirement, consent

order, or order which has become effective pursuant to this chapter. Such action may be brought to compel compliance with any provision of this chapter or with any rule, regulation, permit or order promulgated hereunder, and for any relief or remedies authorized in this chapter. The director shall not be required to initiate or prosecute an administrative action before the attorney general may commence and prosecute a civil enforcement action. In addition, the attorney general may delegate this authority regarding civil enforcement actions to the prosecuting attorney of the county where a civil enforcement action may arise..

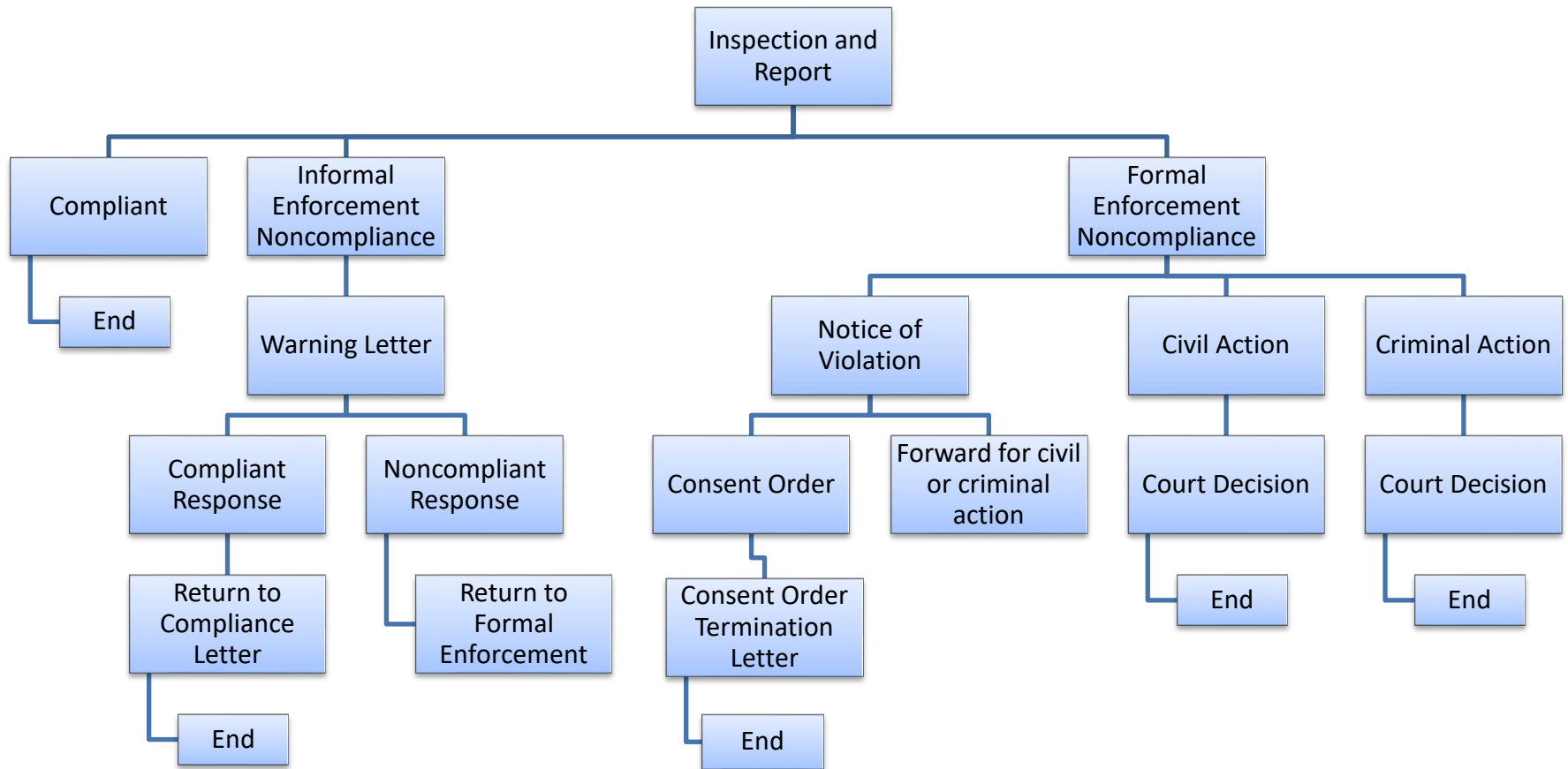


Figure 4. Enforcement process overview.

8.2.1.2 Purpose of Civil Enforcement Action

Civil action is used to compel compliance and obtain penalties for violating statutes, rules, orders, or permits. This action is more resource intensive than an administrative enforcement action and requires a significant time commitment from DEQ staff and DAGs to pursue the case. Although civil cases rarely go to trial, each case should be managed with the assumption that it may. These cases are often settled late in the litigation process after a considerable cost has been incurred by all parties.

Civil actions are most often initiated when all reasonable attempts to resolve the violation through the administrative enforcement process have been exhausted, and the parties cannot come to agreement, or the person or entity has shown little or no willingness to resolve a past violation and/or pay a penalty.

A civil action can also be initiated without first pursuing the administrative enforcement process. The following are circumstances under which DEQ may choose to pursue civil enforcement in lieu of administrative enforcement or when administrative enforcement has proven unsuccessful:

- Person or entity fails to schedule a compliance conference within 15 days of receiving the NOV, or after the expiration of a reasonable time frame granted by DEQ.
- Person or entity has demonstrated a history of noncompliance or recalcitrant behavior, has created unnecessary delays, is uncooperative, or generally does not negotiate in good faith to remedy a current or past violation.

DEQ may bring a civil action for an immediate injunction in an emergency presenting imminent and substantial threat to human health and/or the environment, when time is unavailable to negotiate, or if the person or entity is not willing to negotiate an acceptable remedy. The injunction asks the court to halt any discharge, emission, or other activity violating the law.

8.2.1.3 Preparing a Judicial Referral

Judicial referrals (EDMS 2023BCD7) are prepared by the HWCES; reviewed and approved by the appropriate RA, HWBC, and WMR division administrator; and then routed to the Attorney General's Office. The Attorney General's Office is responsible for conferring with appropriate DEQ staff to determine whether to file a civil complaint in district court. After receiving the referral, the DAG seeks concurrence from DEQ's director that a complaint should be filed.

The HW Bureau should refer a case for civil action as quickly as possible because of the 2-year statute of limitations. The Attorney General's Office may need significant time to prepare the case for filing in court. The Attorney General's Office cannot file a civil case if the statute of limitations has passed (section 6). For more information on civil enforcement action, see the *Statewide Enforcement Procedures Manual* (EDMS 2018AGC36[v1]).

8.2.2 Criminal Enforcement Action

Criminal enforcement involves prosecuting a person for committing a crime. Criminal enforcement is reserved for the most grievous violations of environmental laws. Criminal cases may be distinguished from civil cases by their greater magnitude, willfulness, negligence, and/or fraudulence.

In a criminal action, the state or federal government seeks to punish a person, typically through imprisonment and/or fines. HWMA, *Idaho Code § 39-4415*, provides that a person is guilty of a misdemeanor punishable by a fine and potential imprisonment for the following:

- Knowingly making any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used to comply with the HWMA
- Knowingly violating any provision of this chapter or any permit, standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter

In addition to a misdemeanor punishable by a fine, a person may be subjected to a higher penalty and potential imprisonment if they knowingly release any *hazardous air pollutant* or an *extremely hazardous substance* into the ambient air and know at the time that they place another person in imminent danger of death or serious bodily injury (Idaho Code § 39-117).

A person committing a criminal violation of an environmental protection law may have committed other misdemeanor or felony crimes such as fraud, conspiracy, or creating a public nuisance. Federal environmental statutes enforceable by EPA and the US Department of Justice make certain environmental violations felonies.

In Idaho, the following agencies are authorized to investigate and prosecute criminal environmental crimes:

- Idaho Attorney General Office's Criminal Division
- Idaho Department of Law Enforcement
- County Prosecutors' Offices
- United States Attorney's Office, District of Idaho
- Idaho Department of Environmental Quality
- US Environmental Protection Agency Criminal Investigations Division (CID)

The EPA CID investigates criminal violations for most environmental regulations for all media in Idaho. Idaho does not have a state criminal investigation program that solely prosecutes violations of environmental laws, but the AG's Criminal Division may prosecute environmental violations, among other crimes.

The ultimate prosecution of violations of environmental laws in Idaho is conducted by the AG's Criminal Division, local county prosecutor's office, or the US Attorney's Office. DEQ does not have dedicated criminal investigators but will rely on, and coordinate with, criminal

investigators with the AG's Criminal Division, county prosecutors' offices, and other appropriate entities (e.g., EPA CID).

If HW staff suspect violations may be criminal in nature, they should refer them to the HWCES for appropriate escalation. The HWCES will follow the appropriate procedures from the DEQ's *Enforcement Procedures Manual* (EDMS 2018AGC36[v1]).

9 Records Management

DEQ enforcement records may include documents generated by DEQ employees and documents maintained by DEQ. Proper records management ensures information necessary to support enforcement actions is preserved. Records maintained by DEQ may be subject to public review under the Idaho Public Records Act, *Idaho Code § 74-101, et seq.*

9.1 Records Management

When bringing an enforcement action, DEQ relies on documents created and maintained by staff. Records relevant to an enforcement action may include field notes, inspection reports, internal memorandums, emails, phone logs, letters, permits, documents submitted by an external person or entity, and previous enforcement documents. These documents must be managed properly. Lack of necessary documentation may preclude an enforcement action.

DEQ's *PS18-05 Policy for Records Management* (EDMS 2013ADU3) states that all DEQ records must be retained according to the record's classification, record type, and retention period identified in the approved *DEQ Record Retention Schedule* (EDMS 2010AIC3). The *DEQ Records Management Manual* outlines the procedure for actively managing DEQ documents (EDMS 2012ADG7[v4]). Records should be retained in electronic format and managed through DEQ's EDMS. HW Bureau staff and RO staff should refer to the *RCRA Compliance and Enforcement TRIM SOP Rev 2 2013-12-18* (EDMS 2011BCK2).

9.2 RCRAInfo

RCRAInfo is the automated data information system used to track hazardous waste handlers and their compliance, permitting, corrective action, and financial assurance activities. The Compliance Monitoring and Enforcement (CME) Module tracks inspection, violation, and enforcement activities. The HW data analyst maintains the data in RCRAInfo. WLs, NOVs, COs, and SNC evaluations must all be entered into RCRAInfo.

The HWCES or designee generates a *RCRA CME Combined Eval, Viol, Enf* form for each enforcement activity (EDMS 2012BCD5). The HWCES or designee emails the form to the HW data analyst for entry into RCRAInfo. For a WL, a single form is created. For an administrative enforcement action, the HWCES or designee creates a form for the NOV and CO. The HWCES or designee submits an updated form for all enforcement activities with the return to compliance information. The return to compliance information should reflect the actual date a facility

resolved a violation. An updated form should also be submitted to the HW data analyst when a CO is terminated.

For SNC violations, the HWCES or designee completes a “Significant Noncomplier Yes” (SNY) CME form in addition to the SNC determination form. The HWCES emails the SNY form to the HW data analyst. The SNY form designates the facility in SNC in RCRAInfo. SNC determination instructions are provided in section 4.3.1.4. After the facility returns to full physical compliance for the SNC violations, the HWCES or designee emails a “Significant Noncomplier No” (SNN) CME form to the HW data analyst. The HWCES or designee verifies the correct entry using the PDF report provided by the HW data analyst. The HW data analyst logs the completed RCRAInfo forms in EDMS after entry into RCRAInfo. Instructions for entry are found in the *RCRAInfo Compliance Monitoring and Enforcement Handbook* (EDMS 2012BCB2).

10 Statewide Enforcement Tracking System

The agency-wide SETS is used to track compliance with the milestones in the enforceable orders (COs, compliance schedule orders, and court orders) resulting from an administrative or civil enforcement action. SETS is not used to track the administrative enforcement action process or to develop the enforcement order. The HWCES or designee inputs the executed orders into SETS. The orders are assigned to a regional remediation manager, who may delegate compliance tracking to an RCO. The ROs tracks compliance with the milestones and refers the order for termination. The HWCES or designee terminates the order in SETS.

DEQ staff can access [SETS](#) for specific instructions on using the application under Help in the SETS menu and at EDMS 2018ABL2.

Appendix A. EDMS Records

Table A-1. Applicable compliance and enforcement record numbers.

Record Number	Title
2022BCB7	Accumulation Extension Approval Letter Template
2022BCD22	Consent Order Cover Letter Template 2022-12-29
2022BCD23	Consent Order Milestone Extension Approval Letter Template 2022-12-29
2023BCD1	Consent Order Submission Response Letter - With requested changes 2022-12-29
2023BCD2	Consent Order Submission Response Letter - Without requested changes 2022-12-29
2019ADN3	Consent Order Template
2022BCD21	Consent Order Termination Letter Template 2022-12-29
2023BCD4	Consent Order Transmittal Memo Template
2019BCA19	CITATIONS (40 CFR, Idaho Code)
2012ADG7[v4]	DEQ Records Management Manual
2010AIC3	DEQ Record Retention Schedule
2016ADG33	Enforcement Procedures Manual Revision - Section 6 Criminal Enforcement Actions
2022BCD20	Generator Notice of Violation Template 2022-12-29
2018AGC36[v1]	Final DEQ Enforcement Procedures Manual-June 25, 2020
2023BCD7	Judicial Referral Form Template
2022BCD19	Letter in Lieu of Notice of Violation Template 2022-12-29
2022BCD16	Notice of Violation Cover Letter Template 2022-12-29
2022BCD15	Notice of Violation Transmittal Memo Template 2022-12-29
2022BCD12	Penalty Calculation Worksheet Template 2022-12-29
2019ADN2	Penalty Tracking Sheet for Financial-October 21, 2019
2022BCD18	Permitted Facility Notice of Violation Template 2022-12-29
2013ADU3	PS18-05 Policy for Records Management
2016ADU11[v2]	PS20-12 Hazardous Waste Management Act Civil Penalties
2014ADU8[v3]	PS20-13 Supplemental Environmental Projects
2012BCD5	RCRA CME Combined Eval, Viol, Enf
2011BCK2	RCRA Compliance and Enforcement TRIM SOP Rev 2 2013-12-18
2012BCB2	RCRAInfo Compliance Monitoring & Enforcement (CM&E) Handbook
2022BCD17	Return to Compliance Letter Template 2022-12-29
2023BCD6	SEP Proposal Approval Letter 2023-02-06
2023BCD3	SEP Report and Extension Approval Letter template 2023-01-17
2022BCD25	SNC Determination Form Template 2022-12-30
2018ABL2	Statewide Enforcement Tracking System (SETS) User Guide
2022BCD13	Warning Letter Template 2022-12-29
2022BCD14	Warning-Return to Compliance Letter Template 2022-11-29