



OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

MEMORANDUM

SUBJECT: 2024 RCRA Expedited Settlement Agreement Program

FROM: Rosemarie A. Kelley, Director
Office of Civil Enforcement

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I-Jung Chiang, Acting Director
Office of Site Remediation and Enforcement

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Kathryn Caballero, Director
Federal Facilities Enforcement Office

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TO: Regional Counsels
Enforcement and Compliance Assurance Division Directors
RCRA Enforcement Managers
Federal Facility Program Managers
RCRA Corrective Action Branch Managers
Land, Chemicals and Redevelopment Division Directors

With this memorandum, we are approving the 2024 Resource Conservation and Recovery Act (RCRA) Expedited Settlement Agreement ("2024 RCRA ESA" or "RCRA ESA") Program for certain violations of RCRA. The pilot for expedited settlements was signed on September 13, 2021, and allowed the use of ESAs until September 2024. The 2024 RCRA ESA Program makes ESAs eligible to all RCRA-regulated facilities regardless of type or size (i.e., eligibility is based on the type and number of violations, not on the violator's size or presumed sophistication) and is a tool to more efficiently resolve cases that involve certain violations of RCRA and is consistent with the [2014 Revised Guidance on the Use of Expedited Settlement Agreements](#). By finalizing the 2024 RCRA ESA Program, we are concluding the 2021 RCRA ESA Pilot ("2021 Pilot ESA" or "Pilot") that was approved in September 2021. The 2024 RCRA ESA Program rescinds and replaces the RCRA ESA Policy dated September 30, 2013, which established an expedited settlement process for resolving specific RCRA Subtitle C violations.

Please direct questions about the RCRA ESA Program to Ann Stephanos at stephanos.ann@epa.gov or Andrea Brady at brady.andrea@epa.gov, both with OECA's Waste and Chemical Enforcement Division. For specific questions regarding corrective action, please contact Catherine Hatt at hatt.catherine@epa.gov with OECA's Office of Site Remediation Enforcement and for federal facility

enforcement, please contact Logan Senack senack.logan@epa.gov with OECA's Federal Facilities Enforcement Office.

Attachments:

2024 RCRA Expedited Settlement Agreement Program

Model Notice Letter for Expedited Settlements of RCRA Violations

Model Expedited Settlement Agreement

Model Injunctive Relief Worksheet

2024 RCRA Expedited Settlement Agreement (ESA) Program

1. Purpose and Goals

The 2024 RCRA ESA Program makes ESAs eligible to all RCRA-regulated facilities regardless of type or size (i.e., eligibility is based on the type and number of violations, not on the violator's size or presumed sophistication) and promotes compliance with RCRA by providing an expedited case resolution mechanism in situations where environmental harm is potentially less significant, and violations are easily identified and easily corrected. The 2024 RCRA ESA is intended to compel faster compliance at more facilities to limit future environmental impacts, thereby allowing the Agency to maintain a broader enforcement presence within a very large, regulated universe. The RCRA ESA Program will also allow the Agency to focus more of its resources on cases that have the most significant impact on human health and the environment.

2. Introduction

The Environmental Protection Agency (EPA) has many civil enforcement tools at its disposal to respond to violations of RCRA. These include notices of violation, administrative complaints, referrals to the Department of Justice, and expedited settlement agreements consistent with this 2024 RCRA ESA Program.

ESAs are a form of a Consent Agreement and Final Order (CAFO), 40 C.F.R. §22.13(b) and 40 C.F.R. §22.18(b). An ESA is a nonnegotiable expedited settlement used in the defined circumstances set forth herein.

Please note that this document identifies internal Agency policies and recommended procedures for EPA employees in coordinating Agency enforcement activities. This document is not a rule or regulation, and it may not apply to a particular situation based upon the circumstances. This document does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. It does not create any judicially enforceable rights or obligations substantive or procedural in any person and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. EPA reserves the right to act at variance with this policy and to change it at any time without public notice.

3. Covered Violations

Each case must be evaluated in accordance with the case development process to determine whether a case is eligible for resolution through a RCRA ESA. This process includes: (1) evaluating the violator's Significant Non-Complier (SNC) status; (2) determining whether the specific violations at issue are easily detected and easily corrected, and do not pose a current or likely imminent and substantial endangerment to human health or the environment; and (3) calculating the penalty using the RCRA ESA penalty values, which must total less than the \$20,000 penalty cap.

SNC Status: SNCs are not eligible for an ESA. Thus, the first step in determining whether a case is eligible under the 2024 RCRA ESA Program is to evaluate the alleged violations and determine whether the violator is an SNC using the [2003 Hazardous Waste Enforcement Response Policy](#) (RCRA ERP). According to the RCRA ERP, "SNCs are those violators who 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 RCRA statutory or regulatory requirements.” The case team should document whether the specific facts of a case warrant an SNC determination and consider appropriate enforcement options.

Easily Detected/Easily Correctable Violations That Do Not Pose an Imminent and Substantial

Endangerment: If the specific facts of a case do not result in an SNC determination, then the second step is to determine whether all the violations are easily detected, easily correctable, and do not pose a current or likely imminent and substantial endangerment to human health or the environment. If, based on the case-specific facts, the case team decides that all the violations, including violations of cleanup requirements or corrective action orders or permits, meet this description, then the case may be eligible for an ESA.

Additional Considerations:

- If the violations include failure to respond to a Request for Information or provide records pursuant to Section 3007 of RCRA, then the facility is not eligible for an ESA.
- A facility in a case that is subject to other guidance that requires notification, consultation, or concurrence with Headquarters, may still be eligible for an ESA. In a case that is subject to other guidance, a facility may still be eligible for an ESA following notification, consultation, or concurrence with headquarters, as appropriate.

4. Increased Penalty Cap

The final step in determining whether an ESA is appropriate in a specific case is to calculate the penalty. The penalty cap for the 2024 RCRA ESA Program is \$20,000.

The penalty amount per violation is \$1,250 and multiple, related violations can be compressed as described in the [2003 RCRA Civil Penalty Policy](#).

If the region includes a failure to file a report in the biennial reporting system (BRS) as a violation, then the penalty for that violation is \$2,500 in accordance with the BRS ESA program. If the region wants to include BRS violations as part of this 2024 RCRA ESA Program, then the penalty for the total number of violations, including the BRS violation, must still be \$20,000 or lower.

This maximum penalty cap will not be adjusted annually to reflect inflation. According to the annual amendments to the EPA’s Civil Penalty Policies to Account for Inflation, EPA’s inflation memorandums do not modify the EPA’s Expedited Settlement Agreement penalty policies.

To document the above analysis, the enforcement team should record how EPA determines whether each facility is eligible for an ESA, as well as EPA’s calculation of the penalty. However, this analysis is internal and should not be provided to Respondent.

5. Repeat Violators

This 2024 RCRA ESA Program provides the discretion to issue an ESA to a repeat violator, consistent with the 2014 Revised Guidance on the Use of Expedited Settlement Agreements, which lifted the prohibition on the use of ESAs to remedy violations by repeat violators.

The 2024 RCRA ESA Program defines a repeat violator as a facility that has received an informal Notice of Violation (NOV) or an ESA within the past five years, entered into a CAFO within the past five years, or was identified as an SNC but has returned to compliance within the past five years. Regions may only issue a second ESA after the facility has attained compliance with the first enforcement action. An ESA can only be used once for a repeat violator in a five-year period.

Under the 2024 RCRA ESA Program, a minimum 10% increase in penalty for history of non-compliance should be applied for repeat violators while still maintaining the penalty cap of \$20,000 (the penalty for each ESA is still less than would be calculated under the 2003 RCRA Civil Penalty Policy). The option to issue an ESA to a repeat violator applies to any violations otherwise eligible for an ESA under the RCRA ESA Program, including violations of cleanup requirements or corrective action orders or permits.

6. Timeliness of Response

To encourage timely resolution, the 2024 RCRA ESA Program requires that Respondents have 30 days from receipt of the ESA offer letter to adequately respond before the ESA is automatically withdrawn without prejudice.

Regions are expected to pursue traditional enforcement if the Respondent declines or does not adequately respond to the offer of settlement. An adequate response includes returning the signed agreement, paying the penalty, and certifying that the violation(s) has been corrected. The expectation that regions will move to traditional enforcement after any extension is important so that if the Respondent fails to meet the ESA deadlines, cases do not languish, and the region may proceed promptly to traditional enforcement.

EPA may grant an extension of no more than 60 days if the facility makes the request in writing no later than 10 days before the end of the initial 30-day compliance period and demonstrates that it is technically infeasible or impracticable to correct the violations within 30 days. As EPA cannot anticipate every situation in which a facility may need more than 30 days, such requests will be decided on a case-by-case basis, depending on the reason for the request and if the facility demonstrates that it is technically infeasible or impractical to correct the violations within 30 days.