

## CHAPTER 8

### SMALL BUSINESS VOLUNTARY DISCLOSURE INCENTIVE

#### Section 1.     **PURPOSE**

This Rule sets forth the requirements for waiving penalties against small businesses that voluntarily disclose environmental non-compliance to the Department or discover violations through compliance assistance or outreach seminars, and then, correct those violations in accordance with this rule. It is the Department's objective to provide small businesses with an incentive to approach the agency for assistance by reducing the fear of penalties.

#### Section 2.     **DEFINITION OF A SMALL BUSINESS**

(a)     A small business includes any person, as defined in W.S. § 35-11-103(vi), with 100 or fewer employees in all of its facilities or operations, whether located in or outside of the State of Wyoming, except that:

(i)     Businesses seeking a penalty waiver for air quality violations under Article 2 of the Environmental Quality Act, W.S. §§ 35-11-201 through 212, must meet the definition of a small business stationary source found in W.S. § 35-11-209 and cannot be a major source of hazardous pollutants under W.S. § 35-11-203(a)(i)(B);

(ii)    Businesses regulated under Article 5 of the Environmental Quality Act, W.S. §§ 35-11-501 through 520, are not entitled to a penalty waiver under this rule for violations of W.S. §§ 35-11-501 through 520 if they are a large quantity generator or are classified as a treatment, storage or disposal facility under the state hazardous waste regulations; and

(iii)   Businesses under control or ownership of a large parent organization that does not qualify under this rule, are not small businesses.

(b)     The number of employees shall be calculated by determining the full-time equivalents on an annual basis and does not include contractors and consultants. The Department shall not consider employees who work less than 35 hours per week as full-time equivalents.

#### Section 3.     **QUALIFICATIONS FOR PENALTY WAIVER**

(a)     The Department will not seek civil penalties from a small business that voluntarily discloses in writing to the Department non-compliance with the Act, any rule, regulation or standard promulgated under the Act, within 60 days of discovering the violation, provided that the business has corrected the violation or corrects the violation in accordance with a compliance schedule approved by the Department. The burden will be on the business to demonstrate that it has disclosed the violation within 60 days of discovery. If the business is unable to correct the violation within 180 days or violates a compliance schedule issued by the Department establishing a shorter period for correcting the violation, the business will no longer qualify for the penalty waiver. Upon good cause shown by the small business, the Director may grant an extension of the deadline for correcting the violation.

(b) The Department will not seek civil penalties from a small business that has made a good faith effort to operate in compliance prior to discovery of the violation, as evidenced by a request for compliance assistance from the Department or attendance at one or more compliance assistance seminars; and as evidenced by prompt correction of any violations discovered through such efforts and implementation of good environmental management practices. To qualify for the waiver, the business must document its participation in compliance assistance or outreach seminars and the steps it has taken as a result to improve compliance or correct the violations. In the event that the Department believes the small business needs to take further steps to correct a violation, the Department shall issue a compliance schedule. The small business must meet the requirements of the compliance schedule to maintain the penalty waiver.

**Section 4. EXCEPTIONS TO PENALTY WAIVER**

(a) The penalty waiver is unavailable if:

(i) The Department has previously issued a warning letter, a notice of violation or taken other enforcement action against the small business for violation of the same standard disclosed to the Department;

(ii) The small business has been subject to three or more enforcement actions for any non-compliance of environmental regulations within the last 5 years;

(iii) The small business violates a Department permit or order of the Council;

(iv) The small business is under investigation for any violation of the Act at the time it discloses the violation to the Department, seeks compliance assistance from the Department or participates in an outreach seminar;

(v) The violation involves criminal conduct;

(vi) The violation results in a significant economic advantage for the business;

(vii) The violation was committed willfully;

(ix) The violation presents a significant threat or imminent and substantial endangerment to public health or the environment;

**Section 5. MANDATORY DISCLOSURE**

Notwithstanding Sections 1 through 4 above, disclosure of a violation is mandatory and not subject to a penalty waiver under this rule when the Environmental Quality Act, any rule, regulation, standard, federal law or regulation, local ordinance, order of the Council or any court, or any Department permit requires reporting of the violation to the Department.

**Section 6. LIMITATIONS OF THE RULE**

(a) Nothing in this rule diminishes the Department's authority to conduct investigations, investigate complaints, or to issue notices of violation and orders under Article 7 of the Environmental Quality Act, W.S. § 35-11-701, or to seek injunctive relief under W.S. § 35-11-115 or Article 9 of the Environmental Quality Act, W.s. §§ 35-11-901 through 904.

(b) Nothing in this rule prohibits a small business that otherwise qualifies for a penalty waiver from declining to exercise the waiver and allowing the Department to seek a penalty.