



COLORADO
Department of Public
Health & Environment

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COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION

SOLID WASTE

**ELIGIBILITY FOR END USERS FUND REBATE PROGRAM:
DENIAL OF PAYOUTS TO NON-COMPLIANT END USER, RETAILER, AND
PROCESSOR APPLICANTS**

This policy is used by the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, to determine eligibility when an End User, Retailer or Processor of waste tires is out of compliance with any state or federal environmental laws, rules, or regulations.

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Division Director

Date

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APPLICANTS

I. PURPOSE STATEMENT

The purpose of this policy is to create a structure for analyzing when it is appropriate to deny End Users Fund rebate payments to an applicant who is out of compliance with any state or federal environmental laws, rules, or regulations.

II. BACKGROUND

In 2014, the Colorado Legislature passed House Bill 14-1352 (“Strategies for Waste Tires”). The End Users Fund was created in section 30-20-1405, C.R.S. to provide rebate payments to End Users, Retailers, and Processors of waste tires. Section 30-20-1405 (3) (g) of the statute gives the department discretion to deny rebate payments to applicants who have violated certain laws, rules, and regulations:

The Department may deny the rebate to any person who is out of compliance with any state or federal environmental laws, rules, or regulations.

In November 2014, the Solid and Hazardous Waste Commission adopted rules for the End Users Fund. (6 CCR 1007-2) Section 10.12.6 (D) restates the statutory language and directs the Colorado Department of Public Health and Environment (the “Department”) to develop guidance for determining what compliance violations merit denial of a rebate payment.

The Hazardous Materials and Waste Management Division (“HMWMD”), per (6 CCR 1007-2) Section 10.12.6 (D), requested stakeholder comments on this policy. The HMWMD reviewed and incorporated suggestions where appropriate.

The HMWMD manages the rebate payments in consultation with the Air Pollution Control Division (“APCD”) and the Water Quality Control Division (“WQCD”). These environmental divisions ensure compliance with Colorado’s hazardous waste, solid waste, air, and water laws and regulations. The HMWMD developed this policy to create a structure for analyzing when it is appropriate to deny rebate payments to an End User, Retailer, or Processor who is out of compliance with any state or federal environmental laws, rules, or regulations.

The policies and procedures set out in this document are intended solely for the guidance of the Department and HMWMD personnel. They are not intended to and do not create rights, substantive or procedural, enforceable by any person. The HMWMD reserves the right to change this policy at any time.

III. PROCEDURE OVERVIEW

The HMWMD will deny an application from an End User, Retailer, or Processor if the HMWMD determines, prior to the rebates for the requested period being issued, that the applicant is out of compliance with any state or federal environmental laws, rules, or regulations or that the applicant was out of compliance with any state or federal environmental laws, rules, or regulations during the period for which the applicant applies for a rebate payment. Notifications received from other governmental agencies will be considered for purposes of denial of an application under this program.

For purposes of this policy, being out of compliance with any state or federal environmental law includes all of the following: Expedited Settlement Agreement(s), Order For Civil Penalty, Unilateral Compliance Order(s), Compliance Order on Consent(s), and court orders. The denied applicant will not be allowed to participate in the program until the compliance issue(s) has been fully resolved. The applicant will remain ineligible until the governmental agency whose law or regulation was violated has determined and documented that either the applicant is no longer in violation or the violation itself is no longer valid.

The HMWMD will work with other divisions in the Department and other governmental agencies to determine if the compliance violation merits denial of rebate payment(s).

IV. PROCEDURE

1. Each month HMWMD will provide a list of applicants to the APCD, WQCD, and other HMWMD personnel responsible for determining the applicant's compliance status within the Department.
2. If the HMWMD determines or if a division of the Department notifies HMWMD that an applicant is out of compliance, as described in Section III above, and the rebate has not been issued, then HMWMD will deny the applicant's application and notify the applicant in writing that the applicant is ineligible for a rebate payment until the compliance matter is resolved (see Section V for more details).
3. The applicant is ineligible for any non-compliant period until the issuing environmental division has documented all of the compliance issues have been corrected or dismissed.

4. If a monetary fine is assessed as part of a final, fully effective regulatory or judicial enforcement action, the applicant shall not be eligible for rebate payments from the signed date of the final, fully effective regulatory or judicial enforcement action until the date of issuance of the payment of the monetary fine. The applicant must provide proof that the payment was issued in full before they can be eligible to participate in the End Users Fund.
5. Any tons listed on a denied application cannot be included in a future application even after the compliance issue is corrected.
6. If an applicant has multiple locations and is out of compliance at less than all of its locations in Colorado, then HMWMD may deem an applicant ineligible at all locations in the state (see Section VI for more details).
7. To the extent that funding and spending authority remains available, if the Department determines that its determination of the compliance violation(s) was in error, then the applicant is eligible for rebate payments from the End Users Fund per 6 CCR 1007-2, Part 1, Section 10.12.

V. NON-COMPLIANT DENIAL DECISION MATRIX

The following table is a breakdown of the non-compliance notification process to determine when it is appropriate to deny rebates when an applicant is out of compliance with any state or federal environmental laws, rules, or regulations. This table demonstrates when the Department would determine eligibility to participate in the End Users Fund. This table is not all inclusive and other compliance notifications may exist that are not shown in the table.

Non-Compliance Decision Table

Scenario	Compliance Notification Issued	HMWMD Response	Applicant Response
1	Compliance Advisory or Notice of Violation is issued on current or ongoing alleged compliance violation.	Hold all current and future applications until the Compliance Advisory or Notice of Violation is closed or dismissed. Notify applicant applications being held until further notice.	Applicant should continue to submit applications as normal.
2	Compliance Advisory or Notice of Violation is issued on a past alleged compliance violation that has been resolved.	Process applications as normal.	Applicant should continue to submit applications as normal.
3	Expedited Settlement Agreement(s), Order For Civil Penalty, Unilateral Compliance Order(s), Compliance Order on Consent(s), and court orders that is issued after a Compliance Advisory or Notice of Violation for an ongoing or current compliance violation.	Deny all held applications and rebate payments due to Compliance Advisory or Notice of Violation plus any future applications received upon issuance of the Final Agency Action until it is closed or dismissed. Notify in writing the applicant of HMWMD's decision.	Applicant can continue to submit applications as normal, but they will be denied until Final Agency Action is closed or dismissed.
4	Expedited Settlement Agreement(s), Order For Civil Penalty, Unilateral Compliance Order(s), Compliance Order on Consent(s), and court orders that is issued after a Compliance Advisory or Notice of Violation for a previous compliance violation.	Deny tons end used, sold by a retailer, or processed on any current or future application from date listed on the Final Agency Action until closed. Notify application of HMWMD's decision.	Applicant can continue to submit applications as normal, but they will be denied until Final Agency Action is closed or dismissed.
5	Expedited Settlement Agreement(s), Order For Civil Penalty, Unilateral Compliance Order(s), Compliance Order on Consent(s), and court orders that is issued without a Compliance Advisory or Notice of Violation for an ongoing or current compliance violation.	All current applications denied until Final Agency Action is closed. Notify applicant of HMWMD's decision.	Applicant can continue to submit applications as normal, but they will be denied until Final Agency Action is closed or dismissed.

VI. COMPLIANCE DETERMINATION MATRIX

The following tables are a breakdown of the owner/operator relationship used to determine when it is appropriate to deny rebate payments when an applicant is out of compliance with any state or federal environmental laws, rules, or regulations. These tables demonstrate when the Department names the responsible party(s) in its compliance notifications. These tables are not all inclusive and other owner/operator relationships may exist that are not shown in the tables.

Parent/Subsidiary Table

Scenario	Owner	Operator	Application submitted by	Compliance Advisory issued to	Rebate?
1	Parent	Subsidiary A Subsidiary B	Parent	Parent (Operator @ violation location)	No
2	Parent	Subsidiary A Subsidiary B	Parent	Parent/Subsidiary A or Subsidiary B	No
3	Parent	Subsidiary A Subsidiary B	Subsidiary A	Parent/Subsidiary B	Yes
4	Parent	Subsidiary A Subsidiary B	Subsidiary B	Parent/Subsidiary A	Yes
5	Parent	Subsidiary A Subsidiary B	Subsidiary B	Parent Only	Yes
6	Parent	Subsidiary A Subsidiary B	Subsidiary B	Parent/Subsidiary B	No
7	Parent	Subsidiary A	Parent	Parent	No
8	Parent	Subsidiary A	Subsidiary A	Parent (operator @ violation location)	Yes
9	Parent	Subsidiary A	Subsidiary A	Parent/Subsidiary A	No
10	Parent	Subsidiary A	Parent	Subsidiary A	Yes
11	Parent	Sole Proprietor	Parent	Parent	No

Owner/Operator (Person) Table

Scenario	Owner/Operator	Owns	Application submitted by	Compliance Advisory issued to	Rebate?
1	Owner/Operator (Person)	Company #1	Company #1	Owner/ Company #1	No
2	Owner/Operator (Person)	Company #1 Company #2 (same address)	Company #1 or Company #2	Owner/ Company #1 or Company #2	No
3	Owner/Operator (Person)	Company #1 Company #2 (different address)	Company #1 or Company #2	Owner/ Company #1 or Company #2	No