

# **Certified Unified Program Agency (CUPA) INSPECTION AND ENFORCEMENT PLAN**

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## **Environmental Management Department (EMD) Environmental Compliance Division**

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## Chapter 1

### INTRODUCTION

As a Certified Unified Program Agency (CUPA), the Environmental Compliance Division of the Sacramento County Environmental Management Department (EMD) is responsible for inspection and enforcement activities associated with the following program elements:

- **HAZARDOUS MATERIALS BUSINESS PLANS (HMBP), HAZARDOUS MATERIALS MANAGEMENT PLAN (HMMP), HAZARDOUS MATERIALS INVENTORY STATEMENT (HMIS)**. Authority: California Health & Safety Code (H&SC), Division 20, Chapter 6.95, Article 1 and Title 19 of the California Code of Regulations (CCR).
- **UNDERGROUND STORAGE TANK (UST) PROGRAM**. Authority: H&SC, Division 20, Chapter 6.7 and Title 23 CCR.
- **HAZARDOUS WASTE GENERATOR PROGRAM**. Authority: H&SC, Division 20, Chapter 6.5 and Title 22 CCR.
- **TIERED PERMITTING OF HAZARDOUS WASTE ON-SITE TREATMENT**. Authority: H&SC, Division 20, Chapter 6.5, Title 22 CCR.
- **ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM**. Authority: H&SC, Division 20, Chapter 6.67,
- **CALIFORNIA ACCIDENTAL RELEASE PREVENTION (CALARP) PROGRAM**. Authority: H&SC, Division 20, Chapter 6.95, Article 2 and Title 19 CCR.

EMD's Inspection and Enforcement Plan (IEP) satisfies the requirements of Senate Bill 1082 (H&SC, Chapter 6.11, § 25404 et. seq.), which created the Unified Program in 1993. This IEP has been developed to ensure the implementation of coordinated, efficient, and effective inspection and enforcement procedures regarding compliance with the programs listed above.

## Chapter 2

# INSPECTIONS

### I. General Information

Within EMD, the Environmental Compliance Division is responsible for all inspections of facilities eligible for regulation within the CUPA programs listed previously. For inspection workload distribution, Sacramento County has been divided into districts that incorporate one or more zip codes. EMD personnel are each responsible for facilities located in specific assigned districts. Hazardous Materials Business Plan (HMBP) submittals from facilities are reviewed by staff dedicated to that workload. Additionally, on-site technical verification is performed by EMD personnel responsible for that facility’s district. This verification is done in conjunction with the required Hazardous Materials Release Response Plan inspection.

### II. Inventory of Regulated Businesses (Per Self Audit - September, 2024):

Program Element	Number of Businesses/Facilities
Hazardous Materials Business Plans (HMBP)	4,981
Underground Storage Tank (UST) Facilities	471
Hazardous Waste Generators (RCRA and Non-RCRA)	3,573
RCRA Large Quantity Generators	63
Tiered Permitting of HW Onsite Treatment	24
Permit By Rule (PBR)	5
Conditionally Authorized (CA)	4
Household Hazardous Waste Facilities (HHW)	4
Conditionally Exempt (CE)	12
Aboveground Petroleum Storage Act (APSA)	
APSA Facilities ≥ 10,000 gallons petroleum storage capacity	135
APSA Facilities < 10,000 gallons petroleum storage capacity	378
California Accidental Release Prevention (CalARP)	36
CalARP non-contiguous well sites	28

### III. Frequency of Inspections

EMD has established the following inspection frequency schedule. Minimum mandated inspection frequencies are in parentheses.

Program	EMD Inspection Frequency
<b>Hazardous Materials Business Plans</b> (H&SC § 25511(b))	Once every 3 years
<b>UST Facilities</b> (H&SC § 25288(a))	Annually
<b>Hazardous Waste Generators (RCRA and Non-RCRA)</b> (Not specified)	Once every 3 years
<b>RCRA Large Quantity Generators</b> (Not specified)	Once every 3 years
<b>Appliance Recyclers</b> (Not specified)	Once every 3 years
<b>PBR – HHW Facilities</b> (H&SC § 25201.4(b)(2))	Once every 3 years
<b>Tiered Permitting (On-site HW Treatment - All)</b> (H&SC § 25201.4(b)(2))	Initial within 2 years and once every 3 years after that
<b>PBR, CA, CE</b> (H&SC § 25201.4(b)(2))	Once every 3 years
<b>APSA Facilities ≥ 10,000 gallons petroleum storage capacity</b> (H&SC § 25270.5)	Once every 3 years
<b>APSA Facilities ≥ 1,320 gallons, &lt; 10,000 gallons petroleum storage capacity</b> (Not specified)	Verification once every 3 years
<b>CalARP*</b> (CCR Title 19 § 2775.3)	Once every 3 years
* <b>Note:</b> Cal/ARP facilities will also have an audit conducted periodically which includes both an inspection and review of the Risk Management Plans submitted under Chapter 4.5, Article 3 of the H&SC.	

**MORE FREQUENT INSPECTION (MFI) STATUS.** Facilities that warrant more frequent inspections for compliance monitoring as determined by EMD will be inspected annually and the facility will be billed for the inspection. MFI facilities will be evaluated after each inspection to consider removal from the MFI program.

#### IV. Provisions to Promote Integrated Joint, Combined, and Multi-Media Inspections

- A. **JOINT INSPECTIONS.** Joint inspections do not occur because there are no Participating Agencies within Sacramento County.
  
- B. **COMBINED INSPECTIONS.** EMD seeks opportunities to conduct a single inspection that combines different programs whenever possible. For example, UST inspections will include HMBP and Hazardous Waste Generator inspections if they are due at that time. In addition, Cal-ARP inspections at well sites that handle no more than 300 pounds of chlorine will include an HMBP inspection if required.
  
- C. **MULTI-MEDIA INSPECTIONS.** The purpose of multi-media inspections is to coordinate, to the maximum extent feasible, EMD’s inspection and enforcement program with that of other federal, state, regional, and local agencies, which regulate facilities within Sacramento County.
  - 1. Facilities should be carefully screened prior to being selected for multi-media inspection. This approach will only work when a facility must comply with more than one discipline of environmental protection and the procedures for each discipline can be applied without intervening with each other. The following factors will be considered when determining which facilities can be inspected using multi-media techniques.
    - a. Can each regulator complete the work within a similar time frame?
    - b. Can the facility operator provide adequate escort?
    - c. Is the facility management sufficiently diverse to accept multiple exit interviews and fully understand the potential compliance and enforcement issues that may need to be addressed?
    - d. Is the size and physical layout of the facility such that inspections cannot be completed in an efficient manner?
  
- D. **INTEGRATED INSPECTIONS.** EMD promotes integrated multi-media inspections by:
  - 1. Periodically meeting with other regulatory agencies to discuss facilities that are suitable for multi-media inspections.
  - 2. Regularly attending and participating in local Environmental Crimes Task Force meetings and activities.

## V. Environmental Specialist/Technician Training

- A. **REQUIRED TRAINING.** All EMD personnel responsible for CUPA program inspections are subject to a training program that covers a variety of environmental laws and regulations. In short, personnel are expected to be knowledgeable in all issues relating to hazardous waste generation and treatment and HMBP requirements. Each EMD staff member receives extensive training in the following subject areas (Title 27 section 15260(b) every three years except number 12, which shall be conducted annually):
1. Statutory and regulatory overview for all Unified Program elements, including federal regulations, state statutes and regulations and any applicable local ordinances.
  2. Classification, identification, and chemistry of hazardous materials and hazardous waste.
  3. Health and environmental effects of hazardous substances, including chemical exposure and route of entry.
  4. Sampling methodologies and use of instrumentation for detection and sampling of hazardous substances.
  5. Conducting inspections and enforcement actions and writing inspection reports and notices of violation.
  6. Interviewing, case development, and collection and preservation of evidence.
  7. Hazardous materials and hazardous waste permitting, inspection and enforcement duties and responsibilities pursuant to state law and regulation, and to local ordinances and resolutions.
  8. Inspection techniques and scheduling, including evidence collection, chain of custody, sample preservation, and interviewing.
  9. Administration practices within hazardous materials and hazardous waste program.
  10. Monitoring equipment, data evaluation and interpretation of the results as related to hazardous materials and hazardous waste analysis.
  11. Field staff health and safety training includes planning field inspection, safety equipment, on-site procedures, decontamination and hazard recognition and avoidance.
  12. Health and safety training as specified in 8 CCR section 5192(e) (annually).

13. Witness training.

14. Rules of evidence and the administrative hearing process.

- B. **UNDERGROUND STORAGE TANK (UST) INSPECTOR TRAINING REQUIREMENTS.** Some personnel are assigned inspection responsibilities for facilities that own or operate underground storage tanks (USTs). These individuals receive additional training that is tailored to regulatory requirements specific to these types of facilities. All staff conducting UST inspections shall possess a current International Code Council (ICC) Inspector Certificate and complete 16 hours of continuing education classes within a two-year period. Newly hired or assigned UST inspectors shall obtain this certification within 180 days, and it shall be renewed every two years.
- C. **ABOVEGROUND PETROLEUM STORAGE ACT (APSA) INSPECTOR TRAINING REQUIREMENTS:** EMD personnel may be assigned inspection responsibilities for facilities that store hazardous materials and/or hazardous waste in Above Ground Storage Tanks (ASTs). All EMD inspectors are required to complete an APSA training program and pass an examination on Spill Prevention, Control, and Countermeasure (SPCC) provisions and safety requirements for APSA inspections prior to conducting an APSA inspection. All staff conducting APSA inspections shall complete 6 hours of continuing education classes within a three-year period thereafter.
- D. **ENFORCEMENT COORDINATOR/STAFF OR SUPERVISORS TRAINING REQUIREMENTS:** Staff who conduct and/or oversee enforcement activities (every 3 years):
1. Penalty Assessment
  2. Negotiation Techniques
- E. **INCIDENT RESPONDER TRAINING REQUIREMENTS:**
1. Hazmat Technician
  2. ICS
  3. Sampling
- F. **INSPECTION ROTATION.** Periodically, inspection responsibilities may be rotated among personnel. This provides all members of the inspection staff with overall CUPA inspection expertise. EMD encourages new ideas and strategies to improve inspection efficiency and effectiveness.

## VI. **Coordination of Inspection/Enforcement with Participating Agencies (PAs)**

There are no established PAs within Sacramento County.

## VII. Facility Inspection Procedures

- A. **GENERAL PROTOCOLS.** In general, facility inspections should be conducted on an unannounced basis to understand how a business operates in real time. However, there may be inspections that require a scheduled inspection, such as larger businesses that have EHS personnel, or businesses that have security requirements. EMD personnel shall conduct facility inspections observing the following considerations:
1. Always maintain a professional, courteous, and respectful demeanor.
  2. Safety must be a primary consideration when involved in any field work activities. Inspectors must read and become familiar with the EMD Injury and Illness Protection Program (IIPP).
    - a. Appropriate safety equipment must be worn when in the field (approved safety footwear, hard hats, etc.).
    - b. Always be aware of your surroundings. Never enter an area where unknown hazards are likely.
    - c. If safety issues arise, discontinue the inspection, document the situation and speak with your supervisor/manager immediately.
  3. Always prominently display County-issued identification.
- B. **PRE-INSPECTION PROCEDURES.**
1. At the beginning of each quarter, EMD personnel will review his/her district list of assigned facilities and place priority on those facilities with the oldest date of the last completed inspection. For UST inspections, EMD personnel may schedule an inspection in response to a contractor request.
  2. Prior to performing an on-site inspection, EMD personnel will conduct an office audit of the facility that includes but is not limited to, a review of the following:
    - a. The electronic facility files to become familiar with facility operations and previous inspection and/or enforcement history. Be sure to note any open violations or a pattern of repeat violations. Review notes section in database to verify the facility is not marked “Check with Supervisor” prior to conducting the inspection. If the previous inspection was conducted by another Environmental Specialist (ES), contact that staff member as necessary to gain familiarization with the facility and to note any unique issues.
    - b. HMBPs in the California Environmental Reporting System (CERS) for completion and adequacy based on facility operations.

- c. Hazardous Waste Tracking System (HWTS) to determine the facility has a valid EPA ID#, review hazardous waste manifests, determine hazardous waste generator status.
  - d. UST Facility Data including but not limited to, Board of Equalization UST Storage Fee Account Number, UST Tank Data, written monitoring plan and financial responsibility.
  - e. Any appropriate industry and/or regulatory background information needed to perform the inspection (i.e., process or equipment familiarization).
3. Verify database information, including permit status, contact information, etc. If changes are required, update the database.
- C. **ON-SITE PROCEDURES.** Depending on the facility, EMD personnel shall refer to the appropriate checklist while conducting the inspection. In general, upon arriving at the facility, complete the inspection performing the following tasks:
1. Conduct a visual inspection of the exterior of the facility and observe any relevant activity or physical evidence for appropriate immediate action before entering the facility (i.e., improper discharge to the storm drain in a parking lot, unsafe storage, etc.).
  2. Display County issued photo identification and provide the business representative with a business card.
  3. State the nature of the visit (complaint response, routine inspection, incident response, etc.), and obtain consent to conduct an inspection. If denied entry into a facility, EMD personnel will report this to his/her supervisor or Program Manager. The Supervisor or Program Manager will contact the facility and attempt to secure consent for entry. If entry is still denied, an inspection warrant shall be obtained.
  4. Request accompaniment during the inspection by the facility manager or other qualified business representative (owner, emergency coordinator, etc.).
  5. Perform a facility walk-through following the program-specific inspection checklists.
  6. Record inspection observations on the inspection notes form. Confirm and document the chemical inventory including types and quantities of chemicals and hazardous waste generation quantities.
  7. Review any otherwise required site-specific environmental permits or documents (i.e., industrial waste discharge permit, Spill Prevention Control and Countermeasure (SPCC) Plan, etc.).

8. Document violations using photos, samples, or other evidence collected during the inspection.

**NOTE:** The following code sections give EMD personnel the authority to conduct an inspection for each program:

- Hazardous Waste (H&SC § 25185(a))
- Hazardous Materials (H&SC § 25511)
- CalARP (H&SC § 25534.5, 25511)
- UST (H&SC § 25289)
- APSA (H&SC § 25270.5)

These sections authorize EMD personnel to enter and inspect facilities; conduct necessary sampling activities; inspect and copy any records, reports or other information; photograph any waste, waste container, waste container label, waste treatment process, waste disposal site, or condition constituting a violation of law found during the inspection.

If samples need to be taken to prove a violation, contact the Enforcement Supervisor or Program Manager for approval. A member of the Incident Response or Enforcement Team, who has received training on sampling, will be dispatched to assist. All samples will be taken to a state certified lab on contract by EMD. If the sampling is beyond the scope of EMD’s capability, EMD will request sampling assistance from DTSC and/or the Sacramento City and Sacramento Metro Fire Hazardous Materials Response Teams (HMRTs).

If consent is denied or withdrawn at any time, the inspector must leave the facility and contact their supervisor to discuss further options including, but not limited to, an inspection warrant. The notation on the inspection notes page should include the time at which consent was denied or withdrawn, and the name and title or position of the person denying or withdrawing consent to conduct the inspection.

9. Discuss violations with the business representative and document any explanations or extenuating circumstances on the inspection notes form.
10. Electronically complete the Official Inspection Report recording noted violations, violation classification, required corrective actions, and the date by which corrective action is required for each violation. List each cited violation and include how each may be brought into compliance.
11. Once violations are cited in an Official Inspection Report, a facility has the following time to submit return to compliance documentation:

For all programs: No established times except for minor violations which require thirty (30) calendar days from the date of receipt of the Inspection Report to achieve compliance (H&SC § 25404.1.2(c)(1)). For all non-minor violations, a

default of 14-days will be used. In some cases, where human health, safety and the environment are impacted/threatened, a shorter time frame may be given.

EMD will honor a five (5) day grace period for submission of return to compliance documentation to account for weekends, holidays, and mailing time. EMD **does not** grant extensions to due dates cited in the Inspection Report. Violations will remain open until proof of corrective action has been received.

12. Explain the violations cited in the Official Inspection Report to the business representative, stating that a corrective action statement may be returned via e-mail, fax or USPS and must include evidence of compliance (photos, disposal records, etc.) within the time specified. The Official Inspection Report contains a statement that the facility may be subject to re-inspection at any time by EMD if compliance documentation is not received by the due date.
13. Record representative's name and title in the correct data fields and obtain the business representative's electronic signature.

**NOTE:** EMD personnel may be unable to issue the Inspection Report at the time of inspection. In this case, EMD personnel will either mail the completed Official Inspection Report to the business via "proof of service" certified mail, e-mail the Official Inspection Report and request it be signed and returned, or the inspector will return in person to obtain an electronic signature. In most cases, the Official Inspection Report should be delivered to the business no later than five (5) calendar days from the date of inspection. If issued after the inspection date, add the date the Inspection Report was issued in the comment section.

14. Leave a copy of the Official Inspection Report with the business representative along with copies of the relevant inspection checklists and appropriate educational and/or reference materials.

D. **INSPECTION FOLLOW-UP.** After completing the on-site inspection, the ES shall perform the following tasks:

1. If necessary, update the database for facility classification status changes within five (5) business days from the completion of the inspection.
2. Track the facility's compliance time using the "Open Violations" report.
3. If Class I were observed during the inspection and noted on the Inspection Report, the ES shall consult with his/her supervisor about potential enforcement action.
4. The Official Inspection Report and all associated documents including inspection notes, photographs, etc., shall be submitted for imaging within ten (10) business days from the completion of the inspection, UNLESS the inspection was conducted as part of an ongoing enforcement investigation.

5. Review all corrective action documentation submitted by the facility owner/operator for completeness and adequacy. Close out all appropriate violations within ten (10) business days of receiving approved correction documentation.
6. There may be circumstances beyond EMDs control that could cause the timeframes listed above to be extended (i.e. natural disasters, global pandemics, etc.) If that situation occurs, an explanation will be documented in the comments section of the Official Inspection Report and the Inspection Notes page.

**FIGURE 1**  
**FACILITY INSPECTION PROCEDURES**

	<b>Steps/Tasks</b>	<b>Documentation</b>
<b>General Protocol</b>	<ol style="list-style-type: none"> <li>1. EMD personnel shall conduct facility inspections:                             <ol style="list-style-type: none"> <li>a. With a professional, courteous, and respectful demeanor.</li> <li>b. Wearing site-appropriate safety equipment (steel-toed safety boots, hardhats, safety glasses, etc.).</li> <li>c. Displaying proper County-issued identification.</li> <li>d. Triennially, typically on an unannounced basis for HMBP, HW and Cal-ARP; annually for UST facilities.</li> </ol> </li> </ol>	
<b>Pre-inspection Procedures</b>	<ol style="list-style-type: none"> <li>1. Review District list to determine sites needing inspection by oldest inspection date (quarterly).</li> <li>2. Before performing the on-site inspection, EMD personnel shall review:                             <ol style="list-style-type: none"> <li>a. Electronic facility files to become familiar with facility operations and inspection history, including open violations.</li> <li>b. Business Plan or Emergency Response Contingency Plan for completion and adequacy based on facility operations.</li> <li>c. Hazardous Waste Tracking System (HWTS) to determine the facility has a valid EPA ID#, review hazardous waste manifests, determine hazardous waste generator status.</li> <li>d. For UST inspections - UST Facility Form, UST Tank Information/Monitoring Plan, UST Monitoring Site Plan, UST Certification of Financial Responsibility, UST Response Plan, UST Letter from CFO, and Owner Statement of UST Designated Operator Compliance.</li> <li>e. If appropriate, review documents from other regulatory agencies (i.e., discharge history at the Sacramento County Wastewater Source Control, Sacramento Metropolitan Air Pollution Control District, etc.).</li> </ol> </li> </ol>	
<b>On-site Procedures</b>	<p>Upon arriving at the facility, EMD personnel shall complete the inspection performing the following:</p>	

	<b>Steps/Tasks</b>	<b>Documentation</b>
<b>On-site Procedures (continued)</b>	1. Observe any relevant activity or physical evidence before entering the facility for appropriate immediate action (i.e., improper discharge to storm drain in parking lot, unsafe storage, etc.).	
	2. Display County issued photo identification and provide a business card to the business representative.	
	3. State the nature of the visit (complaint response, routine inspection, etc.), and obtain consent to do an inspection.	
	4. Request accompaniment during the inspection by the facility manager or other qualified business representative (owner, emergency coordinator, etc.).	
	5. Perform facility walk-through following the appropriate inspection Checklist.	Applicable Inspection Checklist
	6. Record or document inspection observations on inspection notes form.	Inspection Notes Form
	7. Review any otherwise required site-specific environmental permits or documents (i.e., spill prevention control and countermeasure plan, etc.).	
	8. Discuss alleged violations with the business representative and document any explanations or extenuating circumstances on the inspection notes form or the Inspection Report, as applicable.	Facility Inspection Notes
	9. Take photos of site as needed to document violations.	
	10. Using the tablet, complete the Inspection Report recording noted violations, required corrective action and the date by which corrective action is required for each violation.	Inspection Report
	11. Explain the Inspection Report to the business representative, stating that a signed corrective actions statement may be e-mailed, faxed or mail in addition to evidence of compliance (photos, disposal records, etc.) within the specified time frame.	Inspection Report
	12. Enter the business representative’s name and title in the correct data field and obtain the representative’s electronic signature using the tablet.	Inspection Report
	13. Print or email a copy of the signed Inspection Report for the business and give to the representative with the relevant inspection checklist.	Inspection Report Checklist Summary of Violations

	Steps/Tasks	Documentation
	14. Provide the business representative with appropriate educational or referral materials.	Handouts: <ul style="list-style-type: none"> <li>• Handbooks</li> <li>• Waste Haulers List</li> <li>• Hazardous Materials Plan and Instruction</li> <li>• Educational materials</li> </ul>
<b>Inspection Follow-up</b>	After completing the on-site inspection, EMD personnel shall:	
	1. Electronically file and index all appropriate photographs taken during the inspection. 2. Inspection reports / notes shall be submitted for imaging within ten (10) business days from the completion of the inspection, UNLESS the inspection was conducted as part of an ongoing enforcement investigation. In this case the inspection photographs, forms, documents, etc. will not be electronically filed and submitted for imaging until the case has been closed.	
	3. If Class I violations were observed during the inspection and noted on the Inspection Report, the ES shall consult with his/her supervisor about potential enforcement action. 4. Review all corrective action documentation submitted by the facility owner/operator for completeness and adequacy. Close out all appropriate violations within ten (10) days of receiving approved correction documentation.	
	5. Inspection notes shall be submitted for imaging within ten (10) business days from the completion of the inspection, UNLESS the inspection was conducted as part of an ongoing enforcement investigation. In this case the inspection forms will not be submitted for imaging until the case has been closed.	
	6. Review all corrective action documentation submitted by the facility owner/operator for completeness and adequacy. Close out all appropriate violations within seven (10) days of receiving approved correction documentation.	

## VIII. Complaint Response

The Environmental Compliance Division (ECD) receives complaints from the public, through the County’s 311 Complaint System, and CalEPA’s Environmental Complaint Management System. Regardless of the source of the complaint ECD will investigate each complaint thoroughly and in a timely manner.

- A. **COMPLAINTS FROM THE GENERAL PUBLIC**. If the complaint comes directly from the public in person, by phone call, or e-mail, the complainant will be directed to contact 311. If the complaint comes from another public agency the complaint shall be directed to a CUPA supervisor. The CUPA supervisor will assign the complaint to the district specialist or technician for follow up. If the complaint comes from another agency and is an emergency situation the information will be forwarded to the on-call IR team member. In both cases the district specialist/technician or IR team member will follow up on the complaint and create a complaint in Health Space. Upon completion of the complaint the specialist/technician or IR team member will contact their supervisor and inform them of the resolution. The Supervisor should read the complaint report and provide any comments. Upon completion the specialist will close out the complaint in Health Space. This would include providing closure notes and placing the status in Health Space to 02 closed. The Specialist must enter the time spent on a specific complaint on their daily using the complaint number. Complaints should be completed and closed in Health Space within 3 days of being received.
- B. **311 COMPLAINTS (GENERAL COMPLAINTS)**. If the complaint comes from the County 311 system, the following procedures will be completed:

Initial complaints from 311 are populated in the Health Space database. EMD receives two types of complaints. General complaints and IR complaints. IR complaints are discussed in section C. For general complaints EC admin staff will assign the complaint to the district specialist and notify their supervisor.

The specialist will follow up on the complaint and will complete the complaint form provided in Health Space. Upon completion of the complaint, the specialist will contact their supervisor and inform them of the resolution. The supervisor should read the complaint report and provide any comments. Upon completion the specialist will close out the complaint in Health Space. This would include providing closure notes and placing the status in Health Space to 02 closed.

The specialist/technician must enter the time spent on a specific complaint on their daily using the complaint number.

Complaints should be completed and closed in Health Space within 3 days of being received.

- C. **311 COMPLAINTS (INCIDENT RESPONSE)**. EMD maintains an Incident Response (IR) Team that responds to emergencies and priority complaints. In most cases the IR team member will be notified by 311 by phone directly. In other instances, the notification may come from EC admin staff. In either case the complaints from 311 are populated in the Health Space database.

The IR Team Member will follow these procedures when a complaint is received. Contact the responsible party to confirm the incident information.

Determine whether to respond to the physical location of the incident or handle the incident over the phone. The decision is made using many factors including but not limited to the following: the type of hazard material/waste involved, the quantity of the material/waste, the effects on human health/safety and the environment, the location and/or the responsible party.

Resolve the incident using EMD's regulatory authorities and/or refer the incident to other agencies with applicable authorities.

The IR team member will follow up on the complaint and will complete the IR complaint form provided in Health Space. Upon completion the IR team member will close out the complaint in Health Space. This would include providing closure notes and placing the status in Health Space to 02 closed.

The IR team member must enter the time spent on a specific complaint on their daily using the complaint number.

Complaints should be completed and closed in Health Space within 24 hours of being received, including weekends.

- D. **CALEPA ENVIRONMENTAL COMPLAINT MANAGEMENT SYSTEM**. If the complaint comes from the CalEPA Environmental Complaint Management System the following procedures will be completed:

Initial complaints are received via e-mail by the Incident Response Supervisor and Division Chief. After review, the e-mail will be forwarded by the supervisor to the appropriate district specialist/technician based on the nature of the complaint. The complaint e-mail includes a secure link to a findings form that contains questions designed to determine the disposition of the complaint.

The district specialist will create a complaint in Health Space.

The specialist/technician will follow up on the complaint and complete the complaint form provided in Health Space. Upon completion of the complaint the specialist will contact their supervisor and inform them of the resolution. The Supervisor should read the complaint report and provide any comments. Upon completion the

specialist will close out the complaint in Health Space. This would include providing closure notes and placing the status in Health Space to 02 closed.

The specialist/technician must enter the time spent on a specific complaint on their daily use of the complaint number.

Complaints should be completed and closed in Health Space within 3 days of being received.

The assigned specialist/technician will close out the complaint in the CalEPA Complaint system by submitting their findings.

## IX. Sampling Protocols and Laboratory Analysis

Gathering evidence is crucial to supporting conclusions resulting from the inspection process and is necessary for any enforcement action whether administrative, civil, or criminal. If samples need to be taken while investigating a complaint, contact the Enforcement Supervisor or Program Manager for approval. A member of the Incident Response or Enforcement Team, who has received training on sampling, will be dispatched to assist. All samples will be taken to the state certified lab on contract by EMD. If the sampling is beyond the scope of EMD's capability, EMD will request sampling assistance from DTSC and/or the Sacramento City and Sacramento Metro Fire Hazardous Materials Response Teams (HMRTs). The following methods explain the procedural aspects of gathering evidence and collecting samples.

### A. Types of evidence:

1. Demonstrative Evidence: Describes or documents a condition or occurrence. Examples include: Photos, videos, maps, diagrams, documents, reports, records, sample analytical reports
2. Testimonial Evidence: A statement made by a witness to support facts. Examples include: an inspector's observations
3. Physical Evidence: Concrete and tangible (available to touch, feel, look or smell). Examples include: samples (not including the analytical results), containers, products, vehicles.

B. **Sampling:** Sampling is a process of drawing a representative unit from a particular medium or substance which is representative of the condition or medium of the substance be sampled.

C. **Sampling Equipment:** Sampling equipment will vary by program and media being sampled. It is important to collect samples of suspected pollutants from the source.

Prior to leaving for the sampling location, the specialist shall ensure to obtain all necessary sampling equipment.

Equipment shall include, but not be limited to, the following:

- Sampling Jars/Labels
- Sampling scoops, basters, etc.
- Gloves
- Safety Glasses
- Tyvek Overalls/Booties
- Half Face Respirator
- Chain of Custody Forms
- Ziplock Bags
- 4-Gas Meter

If a sample of an unknown material/waste is required, further assistance will be requested from either the Fire Department’s Hazardous Materials Response Team (HMRT) or DTSC.

- D. **Chain of Custody:** A Chain of Custody is a term applied to the preservation of evidence in its original condition through its successive custodians. When conducting sampling, EMD Specialists shall abide by the Chain of Custody procedures set by the lab used to process the sample. Samples are preserved during transportation and storage to prevent degradation or modification of the chemicals in the sample. For example, using ice/refrigeration. Another example would be putting sample jars into their own separate plastic bags to minimize cross contamination between containers and the cooler itself. The analysis of all samples obtained will be performed by a state certified laboratory pursuant to CA H&SC, Chapter 6.5, section 25198.
- E. **Sample/Evidence Storage:** EMD maintains a locked Sample/Evidence storage cabinet where samples and evidence may be securely stored. A Chain of Custody form must accompany the samples or evidence. The key is held by the Enforcement Coordinator and/or the Enforcement Supervisor.
- F. **Photo Evidence:** It is common practice for EMD Specialists to document violations using digital photos. All photos are obtained by use of a county assigned cell phone and are to be handled in accordance with Chapter VII, paragraph D.3 of this IEP.

## X. Hazardous Materials Business Plan (HMBP) Procedures

- A. **GENERAL PROCEDURE.** Unless exempted pursuant to H&SC §25507, businesses or facilities that store or manage hazardous materials in quantities equaling or exceeding regulatory established threshold amounts (55-gallon liquid, 500 pounds solid and 200 cubic feet compressed gas) are required to electronically submit/certify an HMBP using the California Environmental Reporting System (CERS). Every business

or facility subject to HMBP reporting must submit an initial plan. Once submitted, such businesses or facilities are then required to annually review, update if necessary, and electronically certify the information is correct. Businesses or facilities are subject to an annual submittal and cannot annually certify their HMBP regardless of quantities stored if any of the following applies: is subject to Emergency Planning and Community Right-to-Know Act (EPCRA) Tier II reporting requirement, qualifies for APSA reporting, stores Extremely Hazardous Substances (EHSs, EPCRA Section 302) in quantities 500 pounds or the threshold planning quantity, whichever is lower (40 CFR Part 355, Appendices A and B, or "List of Lists"), and/or is a UST facility that was not in compliance at all times during the preceding calendar year. These businesses or facilities are subject to an annual submittal requirement.

If subject to HMBP requirements, EMD will e-mail the designated facility representative 60 days prior to the due date to inform the facility that the initial HMBP or an annual certification is required.

- B. **REVIEW PROCESS.** All HMBP submittals will undergo an in-office review. Submittals will be checked for completeness and for any unusual or abnormal entries (See HMBP Review Guidelines in the TEAMS folder for more information).
1. EMD staff will notify the designated facility contact via an e-mail generated from CERS if the submittal is deemed incomplete or incorrect. The required corrective action(s) will be noted on the facility's submission. The HMBP will be accepted once the required corrections have been completed and re-submitted.
  2. If a business or facility fails to respond or if their submittal is late, then the case may be forwarded to a Supervisor for possible enforcement action.
  3. HMBPs that are reviewed and considered complete will be handled as follows:
    - a. The electronic submission will be marked as accepted and an e-mail will be generated from CERS to the designated facility contact.
- C. **FAILURE TO SUBMIT.** If a business or facility fails to electronically submit an HMBP within the required time frame, an inspection will be conducted. If the business or facility fails to submit the HMBP within the required time frame, the case may be forwarded to a supervisor for possible enforcement action.
- D. **FEDERAL FACILITY EXEMPTION.** EMD will follow the recommendations of the CalEPA Unified Program Guidance Letter 14\_07. If a Business Plan is submitted to CERS for a federal facility with a Status Code FE for their 52 PE Code, the District Specialist will follow the recommendations from Cal-EPA.
1. Do not reject the Business Plan submittal.
  2. Do not review the Business Plan submittal for completeness.

3. Change the submittal status of the Business Plan submittal in CERS to “accepted” and add the following language in the comment field: *“This submittal is “accepted” in accordance with the Unified Program Guidance Letter 14-07. The submittal has not been reviewed for completeness by the UPA as there is no requirement in law to review and to validate this data. Neither the UPA nor CalEPA attests to the completeness or validity of the information. The chemical inventory submission does not relieve the facility from emergency planning efforts with police, fire, hospitals, emergency service providers and local emergency responders or agencies.”*

## Chapter 3

# ENFORCEMENT

### I. Statutory Authority

Pursuant to H&SC § 25404.1.1, if the Sacramento County Environmental Management Department (EMD) determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance or other requirement that EMD is authorized to enforce or implement, EMD may issue an Administrative Enforcement Order (AEO) requiring that the violation be corrected and impose an administrative penalty. This authority can be used to address violations of the following requirements:

- Hazardous Waste and Tiered Permitting Program: H&SC Chapter 6.5 (commencing with § 25100).
- Underground Storage Tank Program (UST): H&SC Chapter 6.7 (commencing with § 25280). Not including violations of corrective action requirements established by or issued pursuant to § 25296.10.
- Aboveground Petroleum Storage Act (APSA): H&SC Chapter 6.67 § (commencing with § 25270).
- Hazardous Materials Business Plan (HMBP): H&SC Chapter 6.95, Article 1 (commencing with § 25500).
- California Accidental Release Prevention Program (CalARP): H&SC Chapter 6.95, Article 2 (commencing with § 25531).
- Unified Program: H&SC Chapter 6.11, § 25404.1.1(a)(6)

### II. General Information

It is EMD's goal to achieve compliance with applicable environmental laws and regulations through an extensive inspection program, educational outreach efforts and, if necessary, the initiation of appropriate enforcement action. The goal of any enforcement action is to: (1) return the facility to compliance in a timely manner; (2) eliminate economic benefit realized by the noncompliant facility; and (3) deter future noncompliance. Within EMD, the Environmental Compliance Division (ECD) is responsible for initiating and implementing appropriate enforcement actions for violations of CUPA program requirements.

- A. **TIMELINESS.** Each enforcement action is unique and comes with its own special circumstances. To achieve the maximum effectiveness from a specific enforcement action, EMD makes every effort to ensure timely enforcement action, however time frames will vary based on the nature and complexity of the case. If the case is to be referred to an outside enforcement agency such as the Sacramento County District

Attorney’s Office, the goal is to make that referral within 60 calendar days of the date of inspection or incident.

**B. DOCUMENTATION.** Proper documentation forms the basis for any contemplated enforcement action. This must include:

1. Issuing adequate and proper notices to the party responsible and citing the appropriate violations.
2. Use of photographs depicting the violations.
3. Clearly and completely documenting interviews with employees and/or witnesses.
4. Sampling or otherwise preserving physical evidence including completing the Chain of Custody form and placing it in the evidence storage locker.
5. Maintaining an accurate chronology of events.

**C. ROLES AND RESPONSIBILITIES.**

1. The Director of EMD (or designee) shall review and sign any actions taken against a Respondent where a penalty of greater than \$150,000.00 will be assessed and may choose to sign other actions at the Director’s discretion.
2. Chief, Environmental Compliance Division (or designee):
  - a. Review and sign AEOs, Stipulations and Orders, Consent Agreements and any other documents generated for respondents.
  - b. Pursuant to guidance outlined in this IEP, confer with supervisors and determine which cases should be referred to outside enforcement agencies for action.
  - c. Conduct informal conferences with the respondents for the purpose of explaining or negotiating the penalty.
  - d. Attend monthly enforcement meetings and routinely meet with all Supervisors to discuss potential enforcement actions.
3. Supervisors:
  - a. Determine whether alleged violations require consideration for the initiation of formal enforcement action.
  - b. Ensure that staff understands enforcement procedures and prepares potential formal enforcement actions in accordance with the provisions of this manual and appropriate statutes.

- c. Review and approve enforcement documents prepared by staff within their respective units.
4. Enforcement Coordinator:
- a. Track all current and pending enforcement actions for the Environmental Compliance Division. Completed Administrative Enforcement Orders will be entered into the database as enforcement actions and uploaded to CERS. Complete the Formal Enforcement Summary and email to the Enforcement Supervisor.
  - b. Track penalty payment plans and Supplemental Environmental Projects (SEPs) to ensure they are completed in a timely manner.
  - c. Schedule monthly enforcement meetings. and track enforcement cases and payment plans. Discuss potential pending enforcement cases.
  - d. Update the IEP at least annually or as significant changes occur.
  - e. Act as the Custodian of Records for all enforcement documents. If a business fails to respond to an Administrative Enforcement Order, or fails to comply with the conditions in the Stipulation and Order, the Administrative Enforcement Order will be forwarded to County Counsel to apply for a Clerks Judgment for the full amount of the Administrative Enforcement Order. The Clerks Judgement will be forwarded to Department of Revenue and Recovery for collections.
  - f. Maintain the evidence locker and ensures key is kept in a secure location.
  - g. Attend and participate in the Environmental Crimes Task Force meetings run by the Office of the District Attorney.
5. Environmental Specialists or Compliance Technicians:
- a. Conduct inspections of regulated businesses/facilities and/or respond to complaints that allege violations of environmental laws and/or regulations.
  - b. Prepare and issue an Inspection Report to operators who are in violation of environmental laws enforced by EMD.
  - c. Draft enforcement documents when appropriate.

### III. Guidelines for Case Referral to Outside Agencies

To the extent possible, EMD will utilize administrative enforcement options to achieve compliance with applicable laws and regulations. However, cases will occur where action by outside agencies such as the Sacramento County District Attorney’s office or the State Attorney General is appropriate.

- A. **REFERRALS.** The following are examples of situations that may require a referral to an outside agency for possible enforcement action:
  - 1. Criminal prosecution may be warranted.
  - 2. Multiple locations (facilities) are involved that may suggest an industry or companywide pattern of non-compliance.
  - 3. The case requires additional investigation that is beyond the capability of EMD.
  - 4. The case stems from a Sacramento County Environmental Crimes Task Force operation/investigation.
  - 5. Chronic or recalcitrant violators who have had two administrative actions taken against them.
  - 6. Cases that may have a potential conflict of interest or involve multiple agencies and need to be prosecuted by a neutral third party.
- B. **EVALUATION.** The Chief of the Environmental Compliance Division (or designee) will evaluate each case regarding the factors listed above and determine whether the case will be referred to an outside enforcement agency. Consultation with the Director of EMD and/or other relevant agencies may be needed under some circumstances.

### IV. Definitions

- A. **GENERAL.**
  - 1. **FORMAL ENFORCEMENT.** Formal enforcement is an action that mandates compliance and initiates a civil, criminal, or administrative process that results in an enforceable agreement or Order. Enforceable means the instrument creates an independent, affirmative obligation to comply and imposes sanctions for the prior failure to comply. Sanctions include fines and penalties as well as other tangible obligations, beyond returning to compliance, that are imposed upon the regulated business (Title 27 CCR § 15110(e)(1)).
  - 2. **ADMINISTRATIVE ENFORCEMENT.** Administrative enforcement allows EMD to pursue action independent of an outside prosecutorial agency. EMD determines the appropriate penalty based on the circumstances of the violation and the violator

and statutory or regulatory penalty criteria. EMD may set the penalty and the time frame for the violator's return to compliance. If the alleged violator chooses to contest the case, EMD schedules a hearing at which there is the opportunity to refute the allegations and present any mitigating factors that may affect the penalty.

3. **ADMINISTRATIVE ENFORCEMENT ORDER (AEO).** This includes any of the order variations including the Consent Order, Stipulation and Order, and Unilateral Order.
4. **MINOR VIOLATION.** The failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the Unified Program that EMD is authorized to implement or enforce pursuant to H&SC § 25404(a)(3), and does not otherwise include any of the following:
  - a. A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.
  - b. A knowing, willful and/or intentional violation.
  - c. A violation that is a chronic violation or is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, EMD shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.
  - d. A violation that results in an emergency response from a public agency.
  - e. A violation that enables the violator to benefit economically from the non-compliance, either by reduced costs or competitive advantage.
  - f. A class I violation (hazardous waste) as defined in H&SC § 25110.8.5.
  - g. A class II violation (hazardous waste) committed by a chronic or a recalcitrant violator, as defined in Title 22 CCR § 66260.10.
  - h. A violation that hinders the ability of EMD to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.
5. **RESPONDENT.** A respondent is the person, business or facility that is the alleged violator.
6. **SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP).** An environmentally beneficial project that a business agrees to undertake in settlement of an enforcement action, in lieu of or addition to monetary penalties, but which the respondent is

not otherwise legally required to perform. A SEP will never be more than 50% of the total penalty.

7. **FINAL ORDER.** For purposes of this guidance, an AEO that has been formally issued, with consent (Consent Order/Stipulation and Order) or without the consent (Unilateral Order) of the respondent and has become final.

**B. HAZARDOUS WASTE GENERATOR PROGRAM.**

1. **CLASS I VIOLATION.** Any of the following:

- a. A deviation from the requirements of the H&SC or any regulation, standard, requirement, or permit, or interim status document condition adopted pursuant to the H&SC that is any of the following:

- (1) The deviation represents a significant threat to human health or safety or the environment because of one or more of the following:

- (a) The volume of the waste.

- (b) The relative hazard of the waste.

- (c) The proximity of the population at risk.

- (2) The deviation is significant enough that it could result in a failure to accomplish any of the following:

- (a) Ensure that hazardous waste is destined for, and delivered to, an authorized hazardous waste facility.

- (b) Prevent releases of hazardous waste or constituents to the environment during the active or post closure period of facility operation.

- (c) Ensure early detection of releases of hazardous waste or constituents.

- (d) Ensure adequate financial resources in the case of releases of hazardous waste or constituents or to pay for facility closure.

- (e) Perform emergency cleanup operations of, or other corrective actions for releases.

- (3) Environmental Specialists must notify their supervisor when a Class 1 violation is cited.

2. **CLASS II VIOLATION.** A deviation from the requirements specified in Hazardous Waste Control Law (HWCL), or regulations, permit, or grant of authorization, or conditions, standards, or requirements adopted pursuant to HWCL, that is not a Class I violation.

Typically, a violation that is identified as Class II is a minor violation that has been repeatedly noted and documented on previous inspections. In determining whether a violation is chronic or a violator is recalcitrant, EMD shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to the requirements of the H&SC.

**C. UNDERGROUND STORAGE TANK (UST) PROGRAM.**

1. **SIGNIFICANT VIOLATION.** A significant violation is defined in 23 CCR section 2717 and includes the failure of a person to comply with any requirement of H&SC Chapter 6.7 or any regulation adopted pursuant to Chapter 6.7, not including the corrective action requirements in H&SC § 25296.10 and 23 CCR, Article 11, Chapter 16, that is any of the following:
  - a. A violation causing, or threatens to cause a liquid release of petroleum from a UST system (23 CCR section 2717(a)(1).
  - b. A violation that impairs the ability of a UST system to detect a liquid leak or contain a liquid release of petroleum in the manner required by law (23 CCR section 2817(a)(2).
  - c. A chronic violation or a violation that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, EMD shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to any requirement of Chapter 6.7 of the H&SC or of any regulation adopted pursuant to Chapter 6.7, not including the corrective action requirements in H&SC § 25296.10.
  - d. Environmental Specialists must notify their supervisor when a Significant Violation is cited.
2. **IMMINENT THREAT TO HUMAN HEALTH OR SAFETY OR THE ENVIRONMENT.** A condition that creates a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce or mitigate the actual or potential damage to human health or safety or the environment.

**V. Administrative Enforcement Order (AEO) Process**

**A. INTRODUCTION.**

1. EMD is authorized by H&SC § 25404.1.1 to issue an AEO if it has determined that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that EMD is authorized to enforce or implement pursuant to Chapter 6.11, Division 20 of the H&SC and to impose administrative penalties.

2. The goal of the AEO is, among other things, to return a facility to compliance in a timely manner; eliminate economic benefit realized by the non-compliant facility and create deterrence against future noncompliance.
3. After an AEO is issued, EMD will encourage the respondent to enter settlement discussions. Settlement discussions can occur at any time prior to an Administrative Hearing.
4. If the respondent fails to respond to an AEO within the specified amount of time, the Order becomes final and is forwarded to the office of the Sacramento County Counsel to apply for a clerk’s judgment requesting the amount of the penalty in the Order be awarded to EMD. Once a clerk’s judgment is received it is forwarded to the Sacramento County Department of Revenue and Recovery for collection of the judgment.

**B. CASE DISPOSITION GUIDANCE.**

1. Based on information provided by the Environmental Specialist, supervisors will review each case and provide a recommendation to the Environmental Compliance Division Chief (or designee) regarding whether:
  - a. The case should be referred to an outside agency for enforcement action or;
  - b. The case should be handled through the AEO process.
2. The Chief of the Environmental Compliance Division (or designee) will review the supervisor’s recommendation(s) and determine the proper disposition of the case and, if necessary, the appropriate AEO option to be utilized.
3. If the case alleges violation(s) that may involve fines and/or penalties exceeding \$150,000.00, the Chief of the Environmental Compliance Division will confer with the Director of EMD prior to making a final decision regarding case disposition.
4. For more sensitive or complex cases, the Director may require an enforcement summary be prepared to brief the County Executive Team on EMD’s intent to take enforcement action.

- C. **AEO OPTIONS.** Depending on the circumstances of each case, there are multiple options for initiating, issuing, and settling administrative orders. Table 1 should be consulted when considering the appropriate option.

**TABLE 1 - AEO OPTIONS**

AEO Process Alternative	When to Use	Disadvantages
<b>Show Cause Letter</b>	1. When a business or facility is not being cooperative and additional information is required before pursuing an enforcement action.	Statutory timeframes for filing a notice are not started and therefore a deadline has not been established.  Time consuming and adds extra steps to the AEO process.
<b>Notice of Intent Letter</b>	1. When an Administrative Enforcement Action will be issued, management may require an additional notification to ensure EMD has met its obligation to inform the appropriate individuals at the facility.	Statutory timeframes for filing a notice are not started and therefore a deadline has not been established.  Time consuming and adds extra steps to the AEO process.
<b>Consent Order</b>	1. The violations are less serious, simple and easily understood. 2. The compliance issues are straightforward and no compliance schedule is required. 3. The business is not a recalcitrant or repeat offender. 4. The anticipated penalties are relatively small and prompt settlement is expected.	Statutory timeframes for filing a notice are not started and therefore a deadline has not been established.
<b>Stipulation and Order</b>	1. An Unilateral Order has been issued and the business has then requested settlement discussions. 2. Settlement discussions have led to an agreement with the business on compliance timelines and penalties and EMD does not wish to restate the violations cited in the Unilateral Order.	None

<p><b>“Final” Unilateral Order</b></p>	<ol style="list-style-type: none"> <li>1. The business is a repeat violator or has a history of noncompliance.</li> <li>2. The violations pose an imminent and substantial threat to public health or the environment; or</li> <li>3. The violations have resulted in a significant release to the environment.</li> </ol>	<p>Doesn’t allow for consideration of the business’s response prior to formal public action.</p>
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1. **SHOW CAUSE LETTER.** A Show Cause letter may be issued to a business, notifying it that EMD is planning to take an AEO action and encouraging the business to submit relevant information to be considered prior to EMD taking action. The Show Cause letter is a public document and is not enforcement confidential. It does not constitute a formal enforcement action but establishes EMD’s intent to pursue formal enforcement and encourages a consensual resolution.
  - a. The goal of this process is to enter settlement discussions between the business and EMD and reach agreement on compliance, timeliness, and penalties; and formalize the agreement in writing.
  - b. The Show Cause alternative should be used when the business is being uncooperative, and more information is required before pursuing an enforcement action
  
1. **NOTICE OF INTENT LETTER.** A Notice of Intent (NOI) letter may be issued to a business when EMD has determined enforcement is required. This is different from a Show Cause letter in that a decision to issue an AEO has already been made. Management may require an additional notification to ensure EMD has met its obligation to inform the appropriate individuals at the facility.
  
3. **CONSENT ORDER.** EMD may issue a Consent Order to the business and request, in a cover letter, concurrence and signature to finalize the Order.
  - a. This alternative provides a means of resolution on simple cases, where the respondent is not likely to contest the Order.
  - b. The Consent Order alternative should be used:
    - (1) For less serious, simple, and easily understood violations;
    - (2) When compliance issues are straightforward, and a compliance schedule is not required;
    - (3) When the business is not a recalcitrant/repeat violator and the penalties are relatively small; or
    - (4) When prompt settlement is anticipated.

4. **STIPULATION AND ORDER.** A Stipulation and Order is a mechanism that EMD uses when it comes to an agreement (a stipulation) with a respondent after a Unilateral Order has been issued.
  - a. A Stipulation and Order does not require a restatement of the violations identified in the Unilateral Order and incorporates them by reference. For this reason, the use of a Stipulation and Order may be more expeditious than the use of a Consent Order, in certain situations. EMD includes the violations in the Stipulation and Order for easy reference.
  - b. The Stipulation and Order may be appropriate under the following circumstances:
    - (1) A Unilateral AEO has already been issued for the violation or violations in question and the business has requested settlement discussions after service of the Unilateral Order; or
    - (2) Settlement discussions have led to an agreement with the business on compliance timelines and penalties.
5. **UNILATERAL ORDER (ADMINISTRATIVE ENFORCEMENT ORDER).** EMD will issue a Unilateral Order to a facility without prior discussion or negotiation. The Show Cause alternative anticipates the possibility of the issuance of a Unilateral Order as an outcome if a settlement cannot be reached. This alternative utilizes the issuance of a Unilateral Order as the initial step. (Unilateral Orders are not final until 20 days after the Order has been served (received) and where EMD has not received a Notice of Defense.
  - a. The Unilateral Order may be appropriate under the following circumstances, including but not limited to:
    - (1) The facility is a repeat violator or has a history of noncompliance with either the HWCL or other environmental or public safety laws;
    - (2) The facility has been recalcitrant or uncooperative;
    - (3) The violations pose an imminent and substantial threat to public health or the environment;
    - (4) The violations have resulted in a significant release to the environment; and/or
    - (5) It has been deemed appropriate by EMD.
  - b. The Unilateral Order can be a necessary escalation when settlement is not achieved with the Show Cause alternative.
  - c. When preparing a Unilateral Order, the following documents must be included in the package served on the respondent:

- (1) A copy of the signed Unilateral Order.
- (2) Any exhibits or attachments referred to in the Unilateral Order.
- (3) A copy of proof of service.
- (4) Cover letter to Respondent.
- (5) A copy of the Notice of Defense (NOD).
- (6) A proposed Stipulation and Order may be included in the AEO package.

d. **Serving the Order.** An Order shall be served in person or by “proof of service” certified mail. If the Respondent does not contact EMD and an NOD is not received within 20 calendar days of service of the Order, the Order becomes final. The additional 5 calendar days (from the 15-day statutory requirement) is to allow for mail delivery time. EMD will attempt to contact the Respondent before the expiration of the 20 days to give the Respondent an opportunity to resolve the matter before the Order becomes final.

e. **Amending a Unilateral Order.** There are two situations in which a Unilateral Order may be amended:

- (1) When the respondent files a request for amendment that is agreed to by EMD, EMD will make the appropriate amendments to the Order and send a copy to the respondent. This action does not constitute a new Order and does not create new appeal rights.
- (2) When EMD determines that a correction is necessary. The issuance of an amended Unilateral Order in this situation requires the re-issuance of the complete service package and creates new appeal rights.

f. **Withdrawing an Order.** If EMD decides to withdraw a Unilateral Order, a “Revocation of Enforcement Order” will be completed and mailed with return receipt requested, officially notifying the respondent that the Order is being withdrawn.

**D. SETTLEMENT DISCUSSIONS/SETTLEMENT AGREEMENT.**

1. Settlement discussions between EMD and the business/facility owner or operator can occur at any time in the process. Statutory time frames for requesting a hearing may be stayed by agreement between the business/facility owner or operator and EMD during settlement discussions.
2. EMD will set a time and place for any settlement discussion meeting. If EMD and the business/facility owner or operator can reach a settlement agreement, EMD will issue either a Consent Order or Stipulation and Order. At a minimum, a Consent Order or Stipulation and Order shall mandate:

- a. Compliance with applicable sections of Federal, State and Local statutes, regulations and/or ordinances;
  - b. Payment of fees and/or costs due to EMD;
  - c. Payment to EMD of any penalty assessed;
  - d. Payment of SEP if applicable.
3. Failure to comply with any term of the Settlement Agreement shall void the Agreement and EMD may proceed with all actions lawfully available. However, so long as the Respondent faithfully performs under the Agreement, EMD shall suspend any enforcement actions associated with the subject violation. Where the Respondent has waived the right to a hearing or where EMD and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.
  4. If a payment plan is agreed to regarding a settlement amount, the terms of the payment plan will be specified in an Amended Stipulation and Order. Failure to meet the terms of the payment plan will cause the entire outstanding balance of the penalty amount in the original Unilateral Order to become due and payable. A copy of the Amended Stipulation and Order accompanied by a certified copy of the - Unilateral Order shall constitute a sufficient showing to warrant issuance of a Clerks Judgment. The copy will be certified by the employee who has been designated as the custodian of records (Enforcement Coordinator) and forwarded to County Counsel to request a Clerks Judgment.

## **VI. Failure to Return to Compliance (FRC) Notifications**

**Due to a software change, FRC letters are not currently being mailed. This process will resume in the future.**

On a quarterly basis, EMD will identify facilities with violations that have not been corrected within stipulated deadlines. These businesses and facilities will be issued a “Failure to Return to Compliance” (FRC) letter stating the record of their failure to either correct the noted discrepancies or to submit documentation proving corrective actions have been completed.

- A. **CONTENT OF NOTIFICATION.** Businesses or facilities receiving an FRC letter will be provided with the following information:
  1. The date of their most recent inspection.
  2. Notification that they are subject to re-inspection and they will be liable for the cost.

3. Notification that the facility may be subject to administrative enforcement action if any subsequent re-inspection reveals uncorrected violations.
- B. **FOLLOW-UP ACTIONS.** Not later than sixty (60) calendar days of the date of the FRC letters, EMD Supervisors will review all businesses and facilities that continue to have open violations and determine if a re-inspection is warranted. The Supervisor will discuss the open violations with the specialist during their quarterly meetings to determine the next course of action.

## VII. Re-inspections

- A. **DEFINITION.** A re-inspection is defined as a field inspection conducted outside the required regulatory frequency.
- B. **GENERAL.** Re-inspections may conduct at the expense of the facility when compliance documentation has not been received within the specified amount of time.

## VIII. Revocation, Modification or Suspension of Permit

- A. **GROUNDS FOR REVOCATION, MODIFICATION OR SUSPENSION OF PERMIT.** Any permit issued pursuant to Sacramento County Code, Chapters 6.34 (Underground Storage of Hazardous Substances), 6.35 (Petroleum Storage in Above Ground Storage Tanks), 6.96 (Hazardous Materials Disclosure and CalARP) and 6.98 (Hazardous Waste Generation) may be revoked, modified or suspended during its term, upon one or more of the following grounds:
  1. Obtaining the permit by misrepresentation or intentional failure to fully disclose all relevant facts.
  2. A change in condition that requires modification or termination of the operation in question.
  3. Violation of any provision of Sacramento County Code, Chapters 6.34 (Underground Storage of Hazardous Substances), 6.35 (Petroleum Storage in Above Ground Storage Tanks), 6.96 (Hazardous Materials Disclosure and CalARP) and 6.98 (Hazardous Waste Generation).
- B. **METHOD.** EMD may revoke, modify, or suspend a permit by issuing a written notice (Notice) stating the reasons therefore, and serving same together with a copy of the applicable Chapter of the Sacramento County Code and a Notice of Defense form upon the holder of the permit.
  1. The revocation, modification or suspension shall become effective fifteen (15) calendar days after service of the Notice, unless the holder of the permit enters into a settlement agreement with EMD or appeals the Notice in accordance with Chapter 3, Section XI.A.1 of this policy.

2. If such an appeal is filed within the stated deadline, the revocation, modification or suspension shall not become effective until a final decision on the appeal is issued.
3. Delivery shall be deemed complete upon either personal delivery to the permit holder or through proof of service by certified mail.

## **IX. Notice to Cease and Desist**

A. **ISSUANCE.** The Director may issue a “Notice to Cease and Desist” (Notice). The Notice may direct the owner or operator or any other person responsible for any violation of the requirements listed in Sacramento County Code, Chapters 6.34 (Underground Storage of Hazardous Substances), 6.35 (Petroleum Storage in Above Ground Storage Tanks), 6.96 (Hazardous Materials Disclosure and CalARP) and 6.98 (Hazardous Waste Generation) to take any of the following actions:

1. Immediately discontinue any prohibited discharge of a hazardous material.
2. Immediately discontinue any other violation of this chapter.
3. Satisfactorily remediate the area affected by the violation.

B. **REQUIREMENTS.**

1. The Notice shall state that the recipient or the owner or operator may be liable for all enforcement costs incurred by the County in correcting the violation.
2. Delivery shall be deemed complete upon either personal delivery to the recipient or through proof of service by certified mail.

## **X. Red Tag Procedures (USTs only)**

A. **AFFIXING RED TAG.**

1. Upon discovery of a significant violation that poses an imminent threat to human health or safety or the environment, an Environmental Specialist may immediately affix a red tag to the top of the fill pipe of the non-compliant UST system (H&SC § 25292.3(a), CCR § 2717.1(a)).
2. Upon discovery of a significant violation that does not pose an imminent threat to human health or safety or the environment and that is not otherwise exempt pursuant to § 2717.4, an Environmental Specialist may issue a notice of violation to the owner or operator. If the owner or operator fails to correct the violation within seven (7) calendar days from the receipt of the notice, EMD may affix a red tag to the top of the fill pipe of the non-compliant UST system (H&SC § 25292.3(b), CCR § 2717.1(b)).
3. Before affixing a red tag, the Environmental Specialist shall document the product level in the tank. No Owner or Operator shall deposit into or withdraw from a UST

system that has a red tag affixed to its fill pipe, except to empty the UST pursuant to a directive issued in accordance with H&SC § 25292.3, subparagraph (A) of paragraph (2) of subdivision (a). (H&SC § 25292.3(c)(1)(C) & (d), CCR § 2717.1(c),(e),(f)).

**B. REMOVAL OF RED TAG.**

1. Upon notification by the owner or operator that the significant violation has been corrected, an Environmental Specialist shall inspect the UST system within five (5) calendar days to determine whether the system continues to be in violation. If it is determined that the system is no longer in significant violation, the Environmental Specialist will immediately remove the red tag (H&SC § 25292.3(f), CCR § 2717.2(a)).
2. Upon removal of the red tag from a UST system, the Environmental Specialist will document the product level in the tank (CCR § 2717.2(b)).

**XI. Administrative Hearing Process**

**A. HEARING PROCEDURES.**

1. H&SC § 25404.1.1(d) allows the facility owner or operator (Respondent) to request a hearing on the Enforcement Order within fifteen (15) calendar days after service of the Enforcement Order. Statutory time frames for requesting a hearing may be stayed by agreement between the facility owner or operator and EMD during the course of settlement discussions.
2. A request for a hearing is referred to in H&SC § 25187(d) as a “Notice of Defense (NOD).” The NOD must be filed with EMD within fifteen (15) calendar days of service of the Enforcement Order. It is acceptable if the NOD is postmarked within that 15-day period. If the Respondent does not submit an NOD within the 15 days after service, the Enforcement Order becomes final.
3. The Respondent may specify in the NOD one of two hearing processes.
  - a. An Administrative Law Judge available through a CalEPA contract, or
  - b. A Sacramento County Hearing Officer who will conduct the hearing in accordance with Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.
4. If EMD receives a NOD within the fifteen (15) calendar-day response period, it must immediately notify the Sacramento County Counsel’s office. EMD will contact the Respondent to schedule a settlement meeting. If an agreement cannot be reached follow the procedures outlined below to schedule the hearing depending on the hearing process chosen by the Respondent.
5. The Respondent will be notified of the hearing date in writing via certified letter with a return receipt requested.

6. The hearing must be scheduled within 90 calendar days of receipt of the NOD (H&SC 25404.1.1(e)). This 90-day deadline may be extended upon mutual agreement.
  7. EMD will be represented by County Counsel during the hearing process.
  8. EMD will remain in contact with the Respondent and may offer the opportunity to settle the case prior to the hearing date.
  9. After the hearing, a decision shall be issued by the judge to EMD within thirty (30) calendar days. The decision is effective and final upon service. EMD will serve the respondent with a letter, including the final decision. Such Orders are effective and final upon issuance, and the business has 30 calendar days to make any payment. A copy of the Order must be served by personal service or by “proof of service” certified mail.
- B. PROCEDURES TO ACCESS ADMINISTRATIVE LAW JUDGE.** CalEPA has entered into a contract with the Department of General Services, Office of Administrative Hearings (OAH) to fund requested hearings on AEOs issued by CUPAs. The following is the procedure to access this contract if needed. OAH agrees to provide administrative law judges, clerical support, and hearing reporters or recording devices as may be needed to conduct hearings.
1. The hearings will be conducted as requested to resolve AEOs pursuant to H&SC § 25187 and § 25404.1.1(a) for violations of Chapter 6.5 (commencing with § 25100), Chapter 6.7 (commencing with § 25280), Article 1 (commencing with § 25500) of Chapter 6.95, Article 2 (commencing with § 25531) of Chapter 6.67 (commencing with § 25270).
  2. EMD will be represented by County Counsel during the hearing process.
  3. Hearings on AEOs will be conducted pursuant to H&SC § 25404.1 and Government Code § 11400 et seq. EMD will work with County Counsel to schedule the hearing following these procedures:
    - a. Electronically submit a “Local Agency Request to Set” form to OAH. Current forms and instructions for submission can be found at: [www.dgs.ca.gov/oah](http://www.dgs.ca.gov/oah).
    - b. OAH Calendar Office will schedule the hearing at a place and time that is mutually agreeable to OAH, EMD, and the Respondent.
    - c. EMD will provide OAH with an electronic copy of the AEO and the Notice of Defense.
    - e. Within thirty (30) calendar days of the hearing, OAH will provide EMD with a decision containing the findings of fact, conclusions of law and a final

deposition regarding each issue contested. The decision is effective and final upon issuance to the Respondent. EMD will accept the decision as final and will not appeal.

- f. EMD will issue the final Decision and Order to the Respondent and provide copies by mail to OAH and CalEPA/Unified Program.

**C. PROCEDURES TO SCHEDULE A HEARING WITH THE SACRAMENTO COUNTY HEARING OFFICER.**

1. Notify County Counsel of the receipt of the Notice of Defense.
2. County Counsel will contact the designated Sacramento County Hearing Officer to schedule a hearing.
3. The Respondent will be notified of the hearing date in writing via certified letter with a return receipt requested.
4. The hearing must commence within 90 calendar days of receipt of the NOD. This 90 day deadline may be extended upon mutual agreement.
5. EMD will be represented by County Counsel during the hearing process.
6. EMD will remain in contact with the Respondent and offer the opportunity to settle the case prior to the hearing date.
7. After the hearing, a decision shall be issued by the Hearing Officer to EMD within thirty (30) calendar days. Such Orders are effective and final upon issuance, and the business has 30 calendar days to make any payment. A copy of the Order must be served by personal service or by “proof of service” certified mail.

**D. CIVIL APPEAL OF THE “FINAL” ORDER.**

1. Within thirty (30) calendar days after service of a copy of a Decision and Order issued by EMD, the Respondent may file with the Superior Court, a Petition for Writ of Mandate for Review of the Decision and Order. The filing of such Petition for Writ of Mandate (Petition) does not stay any penalties assessed.
2. Any Respondent that fails to file the Petition within this thirty (30) calendar day period may not challenge the Decision and Order (Government Code § 11523).

## **XII. Administrative Penalties**

### **A. GENERAL POLICY.**

1. The following will be considered when calculating the amount of an administrative penalty:
  - a. The nature, circumstances, extent, and gravity of the violation;
  - b. The violator’s efforts to prevent, abate, or clean up conditions posing a threat to public health or the environment;
  - c. The violator’s ability to pay; and
  - d. The deterrent effect of the penalty.

### **B. STEPS IN DETERMINING PENALTIES.**

1. **INITIAL PENALTY.** EMD will determine an initial penalty for each violation by considering the actual and potential harm and the extent of the deviation from hazardous waste management requirements.
  - a. Assigning degrees of actual and potential harm.
    - (1) **MAJOR** – the characteristics and/or amount of the substance involved present a major threat to human health or safety or the environment and the circumstances of the violation indicate a high potential for harm.
    - (2) **MODERATE** – the characteristics and/or amount of the substance involved do not present a major threat and the likelihood of harm from noncompliance is not high.
    - (3) **MINIMAL** – the overall threat to human health or the environment is low.
  - b. A violation must involve the actual management of a hazardous substance for it to have a major potential for harm.
  - c. Assigning degrees of extent of the deviation.
    - (1) **MAJOR** – the act deviates from the requirement to such an extent that the requirement is completely ignored or the function of the requirement is rendered ineffective because some of its provisions are not complied with.
    - (2) **MODERATE** – the act deviates from the requirement but functions to some extent.

(3) **MINIMAL** – the act deviates from the requirement but functions nearly as intended.

h. For requirements with several components, consider the extent of the violation in terms of the most significant component.

2. **ADJUSTED INITIAL PENALTY.**

a. All adjusted initial penalties are totaled to determine the base penalty for the business or facility (22 CCR § 66262.67(c)). After the total base penalty for a business or facility has been calculated, final adjustments are made by considering the following four factors:

- The level of violator Cooperation and Effort to return to compliance;
- The Prophylactic Effect of the penalty;
- The Compliance History of the violator; and
- The violator’s Ability to Pay

b. The initial penalty may be adjusted based on the violator’s intent in committing the infraction. The following factors will be considered as a basis for adjustment.

**TABLE 2 – PENALTY ADJUSTMENT CRITERIA**

ADJUSTMENT FACTOR	CIRCUMSTANCES
<b>Downward adjustment of 100%</b>	Violation was completely beyond the control of the violator.
<b>Downward adjustment of 0 to 50%</b>	Violation occurred even though good faith efforts to comply with regulations were made.
<b>No adjustment</b>	Violation indicated neither good faith efforts nor intentional failure to comply.
<b>Upward adjustment of 50 to 100%</b>	Violation was the result of intentional failure to comply.

c. Economic Benefit Adjustment. The initial penalty may be increased if, in the opinion of EMD, the violator realized significant economic benefit as a result of the failure to comply.

(1) The adjustment to the initial penalty cannot exceed the statutory maximum.

(2) Economic benefits to consider may include avoided or delayed costs, or increased profits.

3. **COMBINING MULTIPLE VIOLATIONS.** A single penalty may be assessed for multiple violations for the following situations:

- a. The facility has violated the same requirement in different locations or units within the facility.
  - b. The facility has violated the same requirement on different days. This would not be appropriate if the facility has been notified of the violation and has had sufficient time to correct the violation.
4. **MULTI-DAY VIOLATIONS.** On a case-by-case basis, for days following the first day of violation, the multi-day component of the penalty may be calculated by determining 2% of the adjusted initial penalty multiplied by the number of days after the initial day.
  5. **BASE PENALTY.** The base penalty for a one-day violation occurrence is the adjusted initial penalty. The base penalty for multi-day violations is the adjusted initial penalty for the first day of the violation plus the penalty for the additional days of the violation.
  6. **TOTAL BASE PENALTY.** The total base penalty is the sum of all base penalties for all violations incurred at a given facility.
  7. **FINAL PENALTY.** The final penalty may be determined by adjustments to the total base penalty based on the following factors.
    - a. Adjustment factors for cooperation.

**TABLE 3 - ADJUSTMENTS TO FINAL PENALTY**

Degree of Cooperation/Effort	Adjustment Factor	Circumstance
<b>Extraordinary</b>	Downward adjustment of up to 25 %	Violator exceeded minimum requirements in returning to compliance or returned to compliance faster than requested.
<b>Good Faith</b>	No adjustment	Violator demonstrated a cooperative effort.
<b>Recalcitrance</b>	Upward adjustment of up to 25 %	Violator failed to cooperate, delayed compliance, created unnecessary obstacles to achieving compliance, or the compliance submittal failed to meet requirements.

Degree of Cooperation/Effort	Adjustment Factor	Circumstance
<b>Refusal</b>	Upward adjustment of 50 to 100 %	Violator intentionally failed to return to compliance with regulations or to allow cleanup operations to take place. This does not include refusal to allow inspection.

- b. Adjustment to create a preventive or deterrent effect. The total base penalty may be adjusted upward or downward to ensure that the penalty is sufficient to provide a deterrent effect on both the violator and/or the regulated community as a whole.
- c. Adjustment for compliance history. The total base penalty may be adjusted upward or downward based on the facility’s compliance history.
  - (1) General considerations include:
    - (a) Previous violations at the site should receive more weight than previous violations at another site owned or operated by the same person.
    - (b) Recent violations should receive more weight than older violations.
    - (c) The same or substantially similar previous violations should receive more weight than previous unrelated violations.
  - (2) Specific guidance.
    - (a) Downward adjustments of up to 5% for each previous consecutive inspection with no violations can be made up to a maximum of 10%.
    - (b) Downward adjustments of up to 15% can be made if the facility has an ISO 14001 certificate.
    - (c) Upward adjustments of up to 100% can be made if a facility has a consistent history of noncompliance over the past five (5) years.
- d. Ability to pay adjustments. No adjustments for ability to pay may be made if the penalty has been adjusted upward because of failure to cooperate or because of the facility’s poor compliance history. In light of these exceptions, ability to pay adjustments to the total base penalty may be made if either:
  - (1) Immediate payment of the final penalty would cause financial hardship. In this case, consideration may be given to payments extended over a certain term.

(2) Extending the penalty over a period of time would cause extreme financial hardship. In this case, consideration may be given to reduce the total base penalty.

8. **FINAL PENALTY.** The final penalty consists of the total base penalty with all adjustments made.

C. **INITIAL PENALTIES.**

1. **HAZARDOUS WASTE.** For violations of H&SC Chapter 6.5, the violator shall be liable for penalties as provided in § 25189 (a-e), 25189.2 (a-e).
  - a. The total penalty calculated for any single violation shall not exceed the amount specified in statute; \$70,000 per day, per violation (H&SC § 25189).
  - b. The following matrix will be used to determine the initial penalty for a hazardous waste violation:

**TABLE 4**  
**HAZARDOUS WASTE - INITIAL PENALTY MATRIX**

HAZARDOUS WASTE <i>Initial Penalty Matrix</i>		ACTUAL OR POTENTIAL HARM		
		Major	Moderate	Minimal
EXTENT OF DEVIATION				
<b>Major</b>	Maximum	\$70,000	\$56,000	\$42,000
	Average	\$63,000	\$49,000	\$29,400
	Minimum	\$56,000	\$42,000	\$16,800
<b>Moderate</b>	Maximum	\$56,000	\$42,000	\$16,800
	Average	\$49,000	\$29,400	\$11,200
	Minimum	\$42,000	\$16,800	\$5,600
<b>Minimal</b>	Maximum	\$42,000	\$16,800	\$5,600
	Average	\$29,400	\$11,200	\$2,800
	Minimum	\$16,800	\$5,600	\$0

2. **UNDERGROUND STORAGE TANKS (USTs).** For violations of H&SC Chapter 6.7, the violator shall be liable for penalties as provided in § 25299 (a-c).
  - a. H&SC § 25299 (a) and (b) call for penalties no less than \$500 or no more than \$5,000 per day, per violation, per UST.
  - b. For violations of H&SC § 25299 (c), the respondent is liable for no more than \$5,000 per day, per violation, per UST.
  - c. The following matrix will be used to determine the initial penalty for a UST system violation:

**TABLE 5**  
**UST - INITIAL PENALTY MATRIX**

<b>UST</b> <i>Initial Penalty Matrix</i>		<b>ACTUAL OR POTENTIAL HARM</b>		
		<b>Major</b>	<b>Moderate</b>	<b>Minimal</b>
<b>EXTENT OF DEVIATION</b>				
<b>Major</b>	Maximum	\$5,000	\$3,000	\$2,000
	Average	\$4,000	\$2,500	\$1,500
	Minimum	\$3,000	\$2,000	\$1,000
<b>Moderate</b>	Maximum	\$3,000	\$2,000	\$1,000
	Average	\$2,500	\$1,500	\$750
	Minimum	\$2,000	\$1,000	\$500
<b>Minimal</b>	Maximum	\$2,000	\$1,000	\$750
	Average	\$1,500	\$750	\$600
	Minimum	\$1,000	\$500	\$500

3. **HAZARDOUS MATERIALS BUSINESS PLAN PROGRAM (HMBP).** For violations of H&SC § 25514.2, the violator shall be liable for penalties as provided in § 25515.2 (a-b).
  - a. H&SC § 25515.2(a) calls for penalties not greater than \$2,000 for each day in which the violation occurs.
  - b. H&SC § 25515.2(b) call for penalties not greater than \$5,000 for each day in which the violation occurs for any business that knowingly violates after reasonable notice of the violation.
  - c. The following matrix will be used to determine the initial penalty for an HMBP violation:

**TABLE 6**  
**HMBP - INITIAL PENALTY MATRIX**

HMBP <i>Initial Penalty Matrix</i>		ACTUAL OR POTENTIAL HARM		
		Major	Moderate	Minimal
EXTENT OF DEVIATION				
<b>Major</b>	Maximum <i>(knowingly)</i>	\$2,000 \$5,000	\$1,200 \$3,000	\$800 \$2,000
	Average <i>(knowingly)</i>	\$1,600 \$4,000	\$1,000 \$2,500	\$600 \$1,500
	Minimum <i>(knowingly)</i>	\$1,200 \$3,000	\$800 \$2,000	\$400 \$1,000
<b>Moderate</b>	Maximum <i>(knowingly)</i>	\$1,200 \$3,000	\$800 \$2,000	\$400 \$1,000
	Average <i>(knowingly)</i>	\$1,000 \$2,500	\$600 \$1,500	\$300 \$750
	Minimum <i>(knowingly)</i>	\$800 \$2,000	\$400 \$1,000	\$200 \$500
<b>Minimal</b>	Maximum <i>(knowingly)</i>	\$800 \$2,000	\$400 \$1,000	\$200 \$500
	Average <i>(knowingly)</i>	\$600 \$1,500	\$300 \$750	\$100 \$250
	Minimum <i>(knowingly)</i>	\$400 \$1,000	\$200 \$500	\$0 \$0

**4. FAILURE TO REPORT UNAUTHORIZED SPILL OR RELEASE OF HAZARDOUS MATERIAL OR WASTE.**

- a. Pursuant to H&SC §25510, businesses or facilities shall, upon discovery, immediately report any release or threatened release of a hazardous material to EMD and the Governor’s Office of Emergency Services (CalOES). In addition, each business or facility and any employee, authorized representative, agent, or designee of the business or facility shall provide all state, city, county fire or public health or safety personnel and emergency rescue personnel with access to the facility.
- b. Pursuant to H&SC § 25515.2, any business or facility that violates these requirements are civilly liable in an amount not to exceed \$2,000 per day for each violation.

**TABLE 7**  
**FAILURE TO REPORT - INITIAL PENALTY MATRIX**

Failure to Report <i>Initial Penalty Matrix</i>		ACTUAL OR POTENTIAL HARM		
		Major	Moderate	Minimal
EXTENT OF DEVIATION				
<b>Major</b>	Maximum	\$2,000	\$1,200	\$800
	Average	\$1,600	\$1,000	\$600
	Minimum	\$1,200	\$800	\$400
<b>Moderate</b>	Maximum	\$1,200	\$800	\$400
	Average	\$1,000	\$600	\$300
	Minimum	\$800	\$400	\$200
<b>Minimal</b>	Maximum	\$800	\$400	\$200
	Average	\$600	\$300	\$100
	Minimum	\$400	\$200	\$0

**5. CALIFORNIA ACCIDENTAL RELEASE PREVENTION (CALARP) PROGRAM.**

- a. Chapter 6.95, Article 2 of the H&SC stipulates regulatory requirements that must be followed by businesses or facilities that store or maintain acutely hazardous materials in quantities above threshold levels.
- b. Pursuant to H&SC § 25540(a), a person or stationary source that violates this article shall be liable for not more than five thousand dollars (\$5,000) for each day the violation occurs.
- c. Pursuant to H&SC § 25540(b), any stationary source that knowingly violates this article after reasonable notice of the violation shall be liable in an amount not to exceed \$25,000 per day for each day in which the violation occurs.

**TABLE 8**  
**CALARP - INITIAL PENALTY MATRIX**

CalARP Initial Penalty Matrix		ACTUAL OR POTENTIAL HARM		
		Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major	Maximum <i>(knowingly)</i>	\$5,000 \$25,000	\$3,000 \$15,000	\$2,000 \$10,000
	Average <i>(knowingly)</i>	\$4,000 \$20,000	\$2,500 \$12,500	\$1,500 \$7,500
	Minimum <i>(knowingly)</i>	\$3,000 \$15,000	\$2,000 \$10,000	\$1,000 \$5,000
Moderate	Maximum <i>(knowingly)</i>	\$3,000 \$15,000	\$2,000 \$10,000	\$1,000 \$5,000
	Average <i>(knowingly)</i>	\$2,500 \$12,500	\$1,500 \$7,500	\$750 \$3,750
	Minimum <i>(knowingly)</i>	\$2,000 \$10,000	\$1,000 \$5,000	\$500 \$2,500
Minimal	Maximum <i>(knowingly)</i>	\$2,000 \$10,000	\$1,000 \$5,000	\$500 \$2,500
	Average <i>(knowingly)</i>	\$1,500 \$7,500	\$750 \$3,750	\$250 \$1,250
	Minimum <i>(knowingly)</i>	\$1,000 \$5,000	\$500 \$2,500	\$0 \$0

**6. ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM.**

- a. For violations of H&SC Chapter 6.67 (commencing with § 25270, per § 25270.12 and 25270.12.1), the violator shall be liable for a penalty of not more than \$5,000 for each day on which the violation continues.
- b. If the violator commits a second or subsequent violation, a penalty of not more than \$10,000 for each day on which the violation continues may be imposed.

**TABLE 9  
 APSA - INITIAL PENALTY MATRIX**

APSA Initial Penalty Matrix		ACTUAL OR POTENTIAL HARM		
		Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major	Maximum <i>(knowingly)</i>	\$5,000 \$10,000	\$3,000 \$6,000	\$2,000 \$4,000
	Average <i>(knowingly)</i>	\$4,000 \$8,000	\$2,500 \$5,000	\$1,500 \$3,000
	Minimum <i>(knowingly)</i>	\$3,000 \$6,000	\$2,000 \$4,000	\$1,000 \$2,000
Moderate	Maximum <i>(knowingly)</i>	\$3,000 \$6,000	\$2,000 \$4,000	\$1,000 \$2,000
	Average <i>(knowingly)</i>	\$2,500 \$5,000	\$1,500 \$3,000	\$750 \$1,500
	Minimum <i>(knowingly)</i>	\$2,000 \$4,000	\$1,000 \$2,000	\$500 \$1,000
Minimal	Maximum <i>(knowingly)</i>	\$2,000 \$4,000	\$1,000 \$2,000	\$500 \$1,000
	Average <i>(knowingly)</i>	\$1,500 \$3,000	\$750 \$1,550	\$250 \$500
	Minimum <i>(knowingly)</i>	\$1,000 \$2,000	\$500 \$1,000	\$0 \$0

**7. CONSOLIDATED PERMITS.** For violations of H&SC Chapter 6.11, the violator shall be liable for penalties as provided in § 25404.1.1(a)(6).

- a. H&SC § 25404.1.1(a)(6) calls for a civil penalty of not more than \$5,000 for each day on which the violation continues.
- d. The following matrix will be used to determine the initial penalty for operating without a Unified Program Facility Permit:

**TABLE 10**  
**CHAPTER 6.11 - INITIAL PENALTY MATRIX**

<i>Initial Penalty Matrix</i>		ACTUAL OR POTENTIAL HARM		
		Major	Moderate	Minimal
EXTENT OF DEVIATION				
<b>Major</b>	Maximum	\$5,000	\$3,000	\$2,000
	Average	\$4,000	\$2,500	\$1,500
	Minimum	\$3,000	\$2,000	\$1,000
<b>Moderate</b>	Maximum	\$3,000	\$2,000	\$1,000
	Average	\$2,500	\$1,500	\$750
	Minimum	\$2,000	\$1,000	\$500
<b>Minimal</b>	Maximum	\$2,000	\$1,000	\$750
	Average	\$1,500	\$750	\$600
	Minimum	\$1,000	\$500	\$500

## **Chapter 4**

### **Use of Enforcement Penalties**

#### **I. Background**

Pursuant to California Health and Safety Code Section 25404.1.1(i), all administrative penalties collected from enforcement actions must be deposited into a special account. These funds are designated to support the Environmental Management Department’s (EMD) activities related to enforcing the Unified Program.

While a portion of these penalties may be used to cover preliminary investigations and cost recovery tied to enforcement efforts, EMD does not rely on enforcement revenue to fund its operating budget. It is the Department’s position that such revenue should not be considered a routine or anticipated funding source for core program functions.

#### **A. TRAINING FUND**

A separate training and outreach account is supported through Supplemental Environmental Projects (SEPs) that are agreed upon during settlement meetings. These SEPs allow responsible parties to direct a portion of their penalties toward environmental education and outreach efforts that benefit the regulated community. This account supports Unified Program-related environmental training for regulated businesses and the public in Sacramento County. Training schedules are based on community needs, and use of the funds is at the discretion of the EMD Director. Establishing and maintaining this SEP-funded account strengthens EMD’s enforcement program and reinforces the Department’s mission: protecting public health and the environment through training, outreach, and education.