

**Sacramento County
Environmental Management Department**

**UNDERGROUND STORAGE TANK
CORRECTIVE ACTION ENFORCEMENT POLICY**



**Environmental Compliance Division
11080 White Rock Road, Suite 200
Rancho Cordova, CA 95670
(916) 875-8400**

**Phone: (916) 875-8400 • Fax: (916) 875-8513
<http://www.emd.saccounty.net>**

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I. Statutory Authority

As a Local Oversight Program (LOP) Agency, the Sacramento County Environmental Management Department (SCEMD) is responsible for corrective action oversight and enforcement activities associated with unauthorized releases of petroleum products from underground storage tanks. The LOP was created pursuant to California Health & Safety Code Section 25297.1 (b) which states in part that “the board may enter into an agreement with any local agency to perform, or cause to be performed, any cleanup, abatement, or other action necessary to remedy the effects of a release of hazardous substances from an underground storage tank with respect to which the local agency has enforcement authority pursuant to this section.” Corrective action requirements for unauthorized releases from USTs are outlined in CCR Title 23, Chapter 16, Article 11.

Enforcement authority for the Underground Storage Tank (UST) Program derives from SCEMD’s status as a Certified Unified Program Agency (CUPA): Authority: H&SC, Chapter 6.7 and CCR Title 23.

This Plan has been developed to ensure the implementation of coordinated, efficient and effective enforcement procedures regarding compliance with the corrective action requirements listed above. Government Code Section 53069.4, authorizes local agencies to make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty, as long as the local agency sets forth by ordinance the administrative procedures governing the imposition, enforcement, collection, and administrative review of those fines or penalties. (In 2003, code revisions streamlined those enforcement procedures.) Sacramento County Code, Section 6.34.020 sets forth administrative enforcement procedures for violations of Chapter 6.34, and it sets the maximum penalty for violation of any provision of the Chapter at \$10,000 per tank per day of violation.

II. General Information

It is the policy of the Sacramento County Environmental Management Department (SCEMD) to achieve compliance with applicable environmental laws and regulations through an extensive site assessment and mitigation program, educational outreach efforts and, if necessary, the initiation of appropriate enforcement action(s). The goal of any enforcement action is to: (1) return the regulated entity to compliance in a timely manner; (2) eliminate economic benefit; (3) punish violators, and (4) deter future noncompliance. Within SCEMD, the Environmental Compliance Division (ECD) is responsible for initiating and implementing appropriate enforcement actions for non-compliance with UST corrective action program requirements.

- A. **Timeliness.** In order to achieve the maximum effectiveness from a specific enforcement action, timeliness is essential. Timely enforcement is measured from the date of non-compliance with correction action directives or when the non-compliance was first detected. If an Administrative Enforcement Order (AEO) is the selected enforcement option, then the goal of the ECD is to issue a Final Order within 180 calendar days of the non-compliance with the corrective action directive. If the case is to be referred to an outside enforcement agency such as the Sacramento County District Attorney’s Office, then the goal is to make that referral within 60 calendar days of the date of non-compliance.

- B. Documentation. Proper documentation forms the basis for any contemplated enforcement action. This must include:
1. The issuance of adequate and proper notices to the Respondents describing the episode(s) of non-compliance.
 2. Potential use of photographs depicting the corrective action non-compliance.
 3. The clear and complete documentation of regulatory directives and correspondence, including U.S. Postal service, express mail, courier delivery, and e-mail correspondence, documentation of telephone conversations, and interviews with interested parties.
 4. The sampling and preservation of any available physical evidence; and
 5. The maintenance of an accurate chronology of events.
- C. Roles and Responsibilities.
1. The Director of SCEMD shall review and sign AEO's, other Orders and Stipulations, Consent Agreements and other documents generated for Respondents with a penalty assessment of \$100,000 or more.
 2. The Chief of the ECD shall:
 - a. Review and sign AEO's, other Orders and Stipulations, Consent Agreements and other documents generated for Respondents with penalty assessments less than \$100,000.
 - b. Confer with supervisors and determine which cases should be referred to outside enforcement agencies for action, pursuant to guidance outlined in this manual.
 - c. Conduct informal conferences with the Respondents for the purposes of explaining or negotiating the penalty.
 - d. Meet routinely (at least monthly) with ECD Supervisors to discuss potential enforcement actions.
 3. ECD Supervisors shall:
 - a. Determine whether alleged violations of the UST ordinance, corrective action requirements, require formal enforcement.
 - b. Ensure that staff understands enforcement procedures and prepares potential formal enforcement actions in accordance with the provisions of this manual.

- c. Review, approve, and forward all draft enforcement documents prepared by line staff.

4. Line Staff shall:

- a. Endeavor to respond to consultant and responsible party technical reports and correspondence within 60 days of receipt.
- b. Provide clear and concise comments regarding information contained in technical reports, work plans, feasibility studies, site conceptual models, monitoring reports, and other technical work products; provide responsible parties with clear direction as to what additional tasks are required to achieve site closure, and issue technical directives for performing additional work required to achieve site closure. In cases where additional work may or may not be required, negotiate in good faith with responsible parties to reach agreement on additional required work, then issue appropriate directives based on negotiated agreements.
- c. Prepare and issue notices of violation to regulated entities that are in violation of corrective action directives.
- d. Write draft enforcement documents when appropriate.

III. Guidelines for Case Referral to Outside Agencies. To the greatest extent possible, SCEMD 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 required and/or appropriate.

A. Examples of Referrals. The following are examples of situations that may warrant referral to an outside agency for possible enforcement action:

- 1. Criminal prosecution is warranted.
- 2. Multiple locations (facilities) are involved that may suggest an industry or company wide pattern of non-compliance.
- 3. The violator has displayed recalcitrant behavior involving significant non-compliance with corrective action directives.
- 4. The case requires additional investigation that is beyond the capability of SCEMD.
- 5. The case stems from a Sacramento County Environmental Crimes Task Force operation/investigation.

B. Evaluation. The Chief of the Environmental Compliance Division will evaluate each case with respect to the factors listed above and determine whether the case

will be referred to an outside enforcement agency. Consultation with the Director of SCEMD and/or the appropriate agency may be needed under some circumstances.

IV. Definitions

- A. “Administrative Enforcement.” Administrative enforcement allows the SCEMD to pursue action independent of an outside prosecutorial agency. SCEMD also determines the appropriate penalty based on the circumstances of the violation and the violator, and statutory or regulatory penalty criteria. The SCEMD may set the penalty and the time frame for the violator’s return to compliance. If the alleged violator chooses to contest the case, SCEMD schedules a hearing at which there is the opportunity to refute the allegations and present any mitigating factors that may affect the penalty.
- B. “Administrative Enforcement Order (AEO).” Includes any of the order variations described in Chapter 6.34 of the Sacramento County Code including the Consent Order, Expedited Consent Order, Stipulation and Order, and Unilateral Order.
- C. “Final Order” means, for purposes of this guidance, an AEO that has been formally issued, with (Consent) or without the consent (Unilateral) of the Respondent and has become final.
- D. “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 entity.
- E. “Minor Violation.” Means the failure of a person to comply with any provision of Chapter 6.34 that does not include any of the following:
 - 1. Non-compliance that results in injury to persons or property, or that presents a significant potential threat to human health or the environment;
 - 2. A knowing willful or intentional violation;
 - 3. Non-compliance that is chronic or that is committed by a recalcitrant responsible party. In determining whether non-compliance is recalcitrant, SCEMD shall consider whether there is evidence indicating that the non-compliant responsible party(ies) has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements;
 - 4. A violation that results in an emergency response from a public agency;
 - 5. A violation that enables the non-compliant responsible party to significantly benefit economically from the noncompliance, either by reduced costs or competitive advantage;

- 6. Non-compliance that hinders the ability of SCEMD to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.
- F. “Notice of Defense.” A request for a hearing is referred to as a “Notice of Defense” (NOD).
- G. “Respondent.” A Respondent is the person(s) or entity that is the alleged non-compliant responsible party.
- H. “Responsible Party” means one or more of the following:
 - (1) Any person who owns or operates an underground storage tank used for the storage of any hazardous substance;
 - (2) In the case of any underground storage tank no longer in use, any person who owned or operated the underground storage tank immediately before the discontinuation of its use;
 - (3) Any owner of property where an unauthorized release of a hazardous substance from an underground storage tank has occurred; and
 - (4) Any person who had or has control over a underground storage tank at the time of or following an unauthorized release of a hazardous substance.
- I. “Supplemental Environmental Project (SEP)” means an environmentally beneficial project or projects that a Respondent agrees to undertake in settlement of an enforcement action, but which the Respondent is not otherwise legally required to perform.

V. Administrative Enforcement Order Process

- A. Introduction.
 - 1. SCEMD is authorized by the Government Code, Section 53069.4 and by Chapter 6.34 of the Sacramento County Code to issue Administrative Enforcement Orders and impose administrative penalties.
 - 2. The goal of the AEO is, among other things, to return a regulated person or entity to compliance in a timely manner; eliminate economic benefit; punish the non-compliant responsible party, and create deterrence against future non-compliance with corrective action directives.
 - 3. To expedite achieving the enforcement goal throughout the administrative order process, SCEMD will encourage the Respondent to enter into settlement discussions. Settlement discussions may occur at any time – prior to issuance of a Final Order; after issuance of a Final Order; during the period before and after the appeal is heard by a Hearing Officer.

B. Case Disposition Guidance.

1. Based on information provided by line staff, supervisors will review each case and provide recommendation(s) to the Environmental Compliance Division Chief regarding whether:
 - a. The case should be referred to an outside agency for enforcement action, or;
 - b. The case should be handled through the Administrative Enforcement Order (AEO) process. If the AEO process is recommended, the supervisor will also recommend an AEO option to be pursued.
2. The Chief of the Environmental Compliance Division will review the recommendation(s) of the affected supervisor 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 that exceed \$100,000, the Chief of the Environmental Compliance Division will confer with the Director of SCEMD prior to making a final decision regarding case disposition.

C. Administrative Enforcement Order Action Options. Depending on the circumstances of each case, this document provides multiple options for initiating, settling, and issuing administrative orders. Table 1 should be consulted when considering the appropriate option to use.

Table 1

AEO Process Alternative	When to Use	Disadvantages
“Show Cause” Letter	<ol style="list-style-type: none">1. When a Respondent is not a repeat violator, does not have a history of noncompliance, and has not been recalcitrant or uncooperative.2. The non-compliance does not pose an imminent and substantial threat to public health or the environment and the non-compliance has not resulted in significant additional releases to the environment.	Timeframes for filing a notice are not started and therefore a deadline has not been established.
“Consent Order”	<ol style="list-style-type: none">1. The violations are less serious, simple and easily understood.2. The compliance issues are straightforward and no compliance schedule is required.3. The Respondent is not a recalcitrant or repeat offender.4. The anticipated penalties are relatively small and prompt settlement is expected.	<ol style="list-style-type: none">1. Provides no opportunity for discussion of complex compliance issues.2. Difficult to use if case involves multi-agency enforcement.

“Stipulation and Order”	1. A “Unilateral Order” has been issued and the Respondent has then requested settlement discussions. 2. Settlement discussions have led to an agreement with the Respondent on compliance timelines and penalties and the SCEMD does not wish to restate the non-compliance issues cited in the “Unilateral Order.” ▼	
“Final Unilateral Order”	1. The Respondent is a repeat violator or has a history of noncompliance. 2. Non-compliance poses an imminent and substantial threat to public health or the environment; or 3. Non-compliance has resulted in a significant environmental release.	Doesn’t allow for consideration of the Respondent’s response prior to formal public action.

1. “Show Cause” Letter Alternative. Under this alternative, Show Cause letter may be issued to the Respondent, notifying them that SCEMD is planning to take an AEO action and encouraging the Respondent to discuss settlement. The Show Cause letter is a public document and is not enforcement confidential. It does not constitute a formal enforcement action but establishes SCEMD’s intent to pursue formal enforcement and encourages a consensual resolution.
 - a. The goal of this process is to enter into settlement discussions between the Respondent and SCEMD and reach agreement on compliance, timeliness, and penalties; and formalize the agreement in a Final Order.
 - b. When to use. The Show Cause alternative should be used when:
 - (1) The Respondent is not a repeat violator, and does not have a history of noncompliance.
 - (2) The Respondent has not been recalcitrant or uncooperative and the non-compliance does not pose an imminent and substantial threat to public health or the environment; and non-compliance has not resulted in a significant additional release to the environment.

“Show Cause” Letter

Who	Steps/Tasks	Documentation
SCEMD Personnel	1. Recognizes non-compliance with corrective action directives either through lack of timely document submittal or request for information. Site inspection may also confirm non-compliance	Chronology/GeoTracker
	2. Enforcement action should be considered if: a. Documentation and/or site investigation revealed ongoing non-compliance; b. Document/chronology review/site inspection revealed a pattern of repeat violations or recalcitrant behavior.	“Notice of Violation”
	3. Document evidence (photos, chronology, GeoTracker) and present findings to WPD Supervisor. ▼	
ECD Supervisor	4. Reviews compliance record. If enforcement action is warranted, makes recommendations to Division Chief regarding: a. Appropriate case referral. b. If Administrative Enforcement is recommended, whether to utilize “Show Cause” letter alternative.	
Division Chief	5. Makes decision regarding the above issues. If “Show Cause” letter alternative is used, directs WPD Supervisor to prepare case documents.	
SCEMD Personnel	6. Prepares case file including draft “Show Cause” letter.	Draft “Show Cause” letter
ECD Supervisor and Division Chief	7. Reviews case file. a. Determines penalties and cost recovery amounts. b. Determines appropriate response deadline. Forwards to clerical	
Clerical	8. Finalizes “Show Cause” letter and sends via “proof of service” certified mail.	“Show Cause” letter
	IF GREEN RETURN RECEIPT CARD IS RECEIVED, GO TO STEP 11. IF DOCUMENTS ARE RETURNED AS UNDELIVERABLE, CONTINUE TO STEP 9.	
Clerical	9. Routes returned documents to WPD Supervisor for corrective action	
ECD Supervisor	10. Researches alternate addresses and re-submits to Clerical. RETURN TO STEP 8	
Clerical	11. Files green return receipt card with case file documents.	
ECD Supervisor	12. If Respondent requests, set up settlement discussions, ask them to provide information addressing alleged violations.	
	13. Discuss the parameters of a possible settlement with Division Chief prior to meeting.	
	14. If an agreement is reached, complete “Consent Order” (See Section V.C.2).	“Consent Order”
	15. If agreement is not reached, with concurrence of Division Chief, issue a “Unilateral Order” (See Section V.C.3).	“Unilateral Order”

Who	Steps/Tasks	Documentation
Clerical	16. If agreement is reached, collect and distribute penalty and other monies.	
ECD Supervisor	17. Direct staff as necessary to confirm return to compliance.	
	18. Send confirmation letter to Respondent indicating satisfactory compliance.	

2. Consent Order. Under this alternative, SCEMD may issue a Consent Order to the Respondent 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. When to use. The Consent Order alternative should be used:
 - (1) For less serious, simple, and easily understood non-compliance issues.
 - (2) When compliance issues are straightforward and a compliance schedule is not required.
 - (3) When the Respondent is not a recalcitrant/repeat violator and the penalties are relatively small.
 - (4) When prompt settlement is anticipated.

“Consent Order”

Who	Steps/Tasks	Documentation
SCEMD Personnel	1. Recognizes non-attainment of compliance dates, or completes an inspection of the site and confirms non-compliance.	Chronology; Geotracker
	2. Enforcement action should be considered due to: <ol style="list-style-type: none"> a. History of ongoing non-compliance. b. Document/chronology review revealed a pattern of repeat violations and/or recalcitrant behavior. 	“Notice of Violation”
	3. Document evidence (chronology/Geotracker/photos, etc.) and present findings to ECD Supervisor.	
ECD Supervisor	4. Reviews documentation. If enforcement action is warranted, makes recommendations to Division Chief regarding: <ol style="list-style-type: none"> a. Appropriate case referral. b. If Administrative Enforcement is recommended, whether to utilize “Consent Order” alternative. 	
Division Chief	5. Makes decision regarding the above issues. If “Consent Order” alternative is used, directs ECD Supervisor to prepare case documents.	
SCEMD Personnel	6. Prepares case file including draft “Consent Order.”	Draft “Consent Order”

Who	Steps/Tasks	Documentation
ECD Supervisor and Division Chief	7. Reviews case file. a. Determines penalties and cost recovery amounts. b. Determines appropriate response deadline. Forwards to clerical	
Clerical	8. Finalizes “Consent Order” and sends via “proof of service” certified mail. ▼	“Consent Order”
	IF GREEN RETURN RECEIPT CARD IS RECEIVED, GO TO STEP 11. IF DOCUMENTS ARE RETURNED AS UNDELIVERABLE, CONTINUE TO STEP 9.	
Clerical	9. Routes returned documents to ECD Supervisor for corrective action	
ECD Supervisor	10. Researches alternate addresses and re-submits to Clerical. RETURN TO STEP 8	
Clerical	11. Files green return receipt card with case file documents	
WPD Supervisor	12. If Respondent signs and returns “Consent Order” with payment, notifies Clerical.	
Clerical	13. If agreement is reached, collect and distribute penalty and other monies.	
ECD Supervisor	14. If agreement is not reached, with concurrence of Division Chief, issue a “Final Unilateral Order” (See Section V.C.5).	“Final Unilateral Order”
	15. Direct site reevaluation as needed to confirm compliance.	
	16. Send confirmation letter to Respondent indicating satisfactory compliance.	

3. “Stipulation and Order.” A “Stipulation and Order” is a mechanism that SCEMD should use if it comes to an agreement (a stipulation) with a Respondent after a “Unilateral Order” has been issued. A “Consent Order” may also be used.
 - a. A “Stipulation and Order” does not require a restatement of the violations identified in the “Unilateral Order.” For this reason, the use of a “Stipulation and Order” may be more expeditious than the use of a “Consent Order,” in certain situations.
 - b. When to use. The “Stipulation and Order” alternative may be appropriate under the following circumstances:
 - (1) The “Unilateral Order” has already been issued for the corrective action non-compliance in question and the responsible party(ies) has requested settlement discussions after service of the “Unilateral Order.”

- (2) Settlement discussions have led to an agreement with the Respondent on compliance timelines and penalties and SCEMD wishes to avoid restating the non-compliance issues cited in the “Unilateral Order.”

“Stipulation and Order”

Who	Steps/Tasks	Documentation
SCEMD Personnel	1. Document non-compliance evidence (chronology/Geotracker/photos, etc.) and present findings to ECD Supervisor.	Chronology/GeoTracker
	2. Enforcement action should be considered if: a. Site review revealed ongoing non-compliance with corrective action directives; b. Site review revealed a pattern of repeated non-compliance or recalcitrant behavior.	“Notice of Violation”
	3. Document non-compliance and present findings to ECD Supervisor. ▼	
ECD Supervisor	4. Reviews documentation. If enforcement action is warranted, makes recommendations to Division Chief regarding: a. Appropriate case referral. b. If Administrative Enforcement is recommended, “Unilateral Order” alternative is used.	
Division Chief	5. Makes decision regarding the above issues. If “Unilateral Order” alternative is used, directs ECD Supervisor to prepare case documents.	
SCEMD Personnel	6. Prepares case file including “Unilateral Order.”	“Unilateral Order”
ECD Supervisors and Division Chief	7. Reviews case file. a. Determines penalties and cost recovery amounts. b. Determines appropriate response deadline. Forwards to clerical	
Clerical	8. Finalizes “Unilateral Order” and sends via “proof of service” certified mail.	“Unilateral Order”
	IF GREEN RETURN RECEIPT CARD IS RECEIVED, GO TO STEP 11. IF DOCUMENTS ARE RETURNED AS UNDELIVERABLE, CONTINUE TO STEP 9.	
Clerical	9. Routes returned documents to ECD Supervisor for corrective action	
ECD Supervisor	10. Researches alternate addresses and re-submits to Clerical. RETURN TO STEP 8	
Clerical	11. Files green return receipt card with case file documents.	
ECD Supervisor	12. If respondent wishes to settle and not have settlement discussions, issue “Stipulation and Order” (See Section V.C.4.)	“Stipulation and Order”
ECD Supervisor	13. If the Respondent requests settlement discussions, ask them to provide evidence of why they are in compliance. Reconsider non-compliance based on their evidence.	
	14. If an agreement is reached, complete a “Stipulation and Order.”	“Stipulation and Order”

Who	Steps/Tasks	Documentation
Clerical	15. If agreement is reached, collect and distribute penalty and other monies. GO TO STEP 17	
ECD Supervisor	16. If agreement is not reached “Unilateral Order” is issued.	“Unilateral Order”
	17. Direct case reevaluation as needed to confirm compliance.	
	18. Send confirmation letter to Respondent indicating satisfactory compliance.	

5. “Unilateral Order.” Utilizing this alternative, SCEMD will issue a “Unilateral Order” to the Respondent, 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 the “Appeal Period” has passed.)
 - a. When to use. The “Unilateral Order” alternative is appropriate under the following circumstances:
 - (1) The Respondent has a history of noncompliance with SCEMD corrective action directives;
 - (2) The Respondent has been recalcitrant or uncooperative;
 - (3) Corrective action non-compliance poses an imminent and substantial threat to public health or the environment; or
 - (4) Corrective action non-compliance has resulted in a significant release to the environment.
 - b. As previously noted, the “Unilateral Order” can be a necessary escalation when settlement is not achieved with the “Show Cause” or “Draft Unilateral Order” alternatives.
 - c. Preparing a “Final Unilateral Order.” When preparing a “Unilateral Order,” all of the following documents must be included in the package served on the Respondent:
 - (1) A copy of the signed Order.
 - (2) All exhibits or attachments referred to in the Order.
 - (3) Statement to the Respondent.
 - (4) A copy of “proof of service”.
 - (5) Cover letter to Respondent.

- (6) Two copies of Notice of Defense (NOD).
- d. Serving the Order. The Order shall be served in person or by “proof of service” certified mail. If a Notice of Defense (NOD) is not received within 20 calendar days of service of the Order, the Order becomes final. A “proof of service” form must be completed and included in the package.
- e. Amending a “Unilateral Order.” There are two situations in which a “Unilateral Order” may be amended:
- (1) When the Respondent files a request that is agreed to by the SCEMD, SCEMD 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 the SCEMD 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 may create new appeal rights.
- f. Withdrawing an Order. If the SCEMD decides to withdraw a “Unilateral Order,” a “Notice of Dismissal” must be completed with a letter, with return receipt requested, officially notifying the Respondent that the Order is being withdrawn.

“Unilateral Order”

Who	Steps/Tasks	Documentation
SCEMD Personnel	1. Document evidence of non-compliance (chronology/Geotracker/photos, etc.) and present findings to ECD Supervisor.	Chronology/Geotracker
	2. Enforcement action should be considered due to: <ol style="list-style-type: none"> a. Ongoing pattern of non-compliance b. Inspection/investigation revealed a pattern of repeat non-compliance with corrective action directives or recalcitrant behavior. 	“Notice of Violation”
	3. Assemble documentation (photocopies of directives, screenshots, etc.) and present findings to ECD Supervisor.	
ECD Supervisor	4. Reviews documentation. If enforcement action is warranted, makes recommendations to Division Chief regarding: <ol style="list-style-type: none"> a. Appropriate case referral. b. If Administrative Enforcement is recommended, “Unilateral Order” alternative is used. 	
SCEMD Personnel	5. Prepares case file including “Final Unilateral Order”	“Unilateral Order”
ECD Supervisor and Division Chief	6. Reviews case file. <ol style="list-style-type: none"> a. Determines penalties and cost recovery amounts. 	

Who	Steps/Tasks	Documentation
	b. Determines appropriate response deadlines. Forwards to clerical	
Clerical	7. Finalizes “Unilateral Order” and sends via “proof of service” certified mail. ▼	“Unilateral Order”
	IF GREEN RETURN RECEIPT CARD IS RECEIVED, GO TO STEP 10. IF DOCUMENTS ARE RETURNED AS UNDELIVERABLE, CONTINUE TO STEP 8	
Clerical	8. Routes returned documents to ECD Supervisor for corrective action.	
ECD Supervisor	9. Researches alternate addresses and re-submits to Clerical. GO TO STEP 7	
Clerical	10. Files green return receipt card with case file documents.	
<u>THREE POSSIBLE OUTCOMES:</u>		
OUTCOME #1 Respondent submits a Notice of Defense (NOD) and requests a stay while settlement discussions occur.		
ECD Supervisor	11. If the Respondent requests settlement discussions, ask them to provide evidence of why they believe they are in compliance. Reconsider finding of non-compliance based on their evidence.	
	12. If an agreement is reached, complete a “Stipulation and Order.”	“Stipulation and Order”
	13. If agreement is reached, collect and distribute penalty and other monies. GO TO STEP 22	
OUTCOME #2: Respondent submits a Notice of Defense (NOD) without intent of conducting settlement discussions or settlement discussions occur without reaching agreement.		
ECD Supervisor	14. Prepares cover letter for Division Chief’s signature and attaches NOD received from Respondent that requests a Hearing. Once signed, entire package sent to Office of Administrative Hearing or as appropriate.	Hearing Request Letter
	15. Consults with County Counsel and prepares Hearing case file as needed.	Case file
	16. Notifies Respondent of the date, time and place of Hearing not later than 15 days prior to the scheduled Hearing date. Notification shall be made personally or via “proof of service” by certified mail.	Hearing Notification letter
Clerical	17. Mails Hearing date notification to Respondent via “proof of service” by certified mail. Forwards green receipt card to ECD Supervisor.	Hearing Notification letter
ECD Supervisor	18. Upon notification of the decision, prepares letter for Division Chief’s signature to Respondent stating SCEMD’s intention to adopt the decision. GO TO STEP 20	Decision Notification letter to Respondent
OUTCOME #3: Respondent does not submit NOD.		
a. Order becomes final after 15 days. b. Rights to appeal are forfeited. c. Order is final and subject to enforcement.		

Who	Steps/Tasks	Documentation
ECD Supervisor	19. Prepares letter for Division Chief's signature to Respondent stating SCEMD's intention to enforce order.	Decision Notification letter to Respondent
ECD Supervisor	▼	
	20. Collect and distribute penalty and other monies.	
	21. Assigns SCEMD personnel to perform follow-up Documentation review and/or inspection as necessary to verify compliance.	Case review/site inspection report
	22. Notifies clerical when case is closed and documents ready to be filed and archived. END	Case file

D. Settlement Discussions/Settlement Agreement

1. Settlement discussions between the SCEMD and the Respondent may occur at any time in the process. Time frames for requesting a hearing may be stayed by agreement between the Respondent and the SCEMD during the course of settlement discussions.
2. The SCEMD will set a time and place for any settlement discussion meeting. If the SCEMD and the Respondent are able to reach a settlement, the SCEMD will issue 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 the SCEMD; and
 - c. Payment to the SCEMD of any penalty(s) assessed.
3. Failure to comply with any term of the Settlement Agreement shall void the Agreement and the SCEMD may proceed with any and all actions lawfully available. However, so long as the Respondent well and faithfully performs under the Agreement, the SCEMD shall suspend any enforcement actions associated with the subject corrective action non-compliance. Where the Respondent has waived the right to a hearing or where the SCEMD and the Respondent have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

VI. Administrative Hearing and Appeal Process

A. Hearing Procedures

1. Sacramento County Code, Chapter 6.34, Section 6.34.115 allows the Respondent to request a hearing on the Order within 15 days after service of the Order or Notice. This timeframe cannot be extended.

2. A request for a hearing is referred to as a “Notice of Defense” (NOD). The NOD must be filed with SCEMD within 15 days of service. It is acceptable if the NOD is postmarked within that 15-day period. If the Respondent does not submit a NOD within the 15 days after service, the Order or Notice becomes final.
3. The hearing officer shall be one or more persons listed below:
 - a. A hearing officer appointed by the County Executive pursuant to Government Code section 27720 et seq.
 - b. An administrative law judge assigned to the State of California Office of Administrative Hearings pursuant to Government Code section 27727.
4. The hearing shall be conducted in accordance with Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.
5. If the SCEMD receives a NOD within the 15 calendar-day time period, it must immediately transmit the NOD to the Sacramento County Counsel who will arrange for the hearing. A cover letter must be sent to accompany the NOD.
6. The Respondent must be notified of the hearing date.
7. The hearing must commence within 90 calendar days of receipt of the NOD. This 90 day deadline may be extended upon mutual agreement.
8. The SCEMD will be represented by County Counsel during the hearing process.
9. The SCEMD will remain in contact with the Respondent and offer the opportunity to settle the case prior to the hearing date.
10. After the hearing, a proposed decision should be issued to the SCEMD within thirty (30) calendar days. To adopt the proposed decision, the SCEMD will serve the Respondent with a letter, stating that it is adopting the proposed decision. Such Orders are effective and final upon issuance, and the Respondent has 30 calendar days to make any stipulated payment. A copy of the Order must be served by personal service or by “proof of service” certified mail.

B. Civil Appeal of the “Final Order.”

1. Within thirty (30) calendar days after service of a copy of a Decision and Order issued by the SCEMD, 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 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 “Final Unilateral Order” [*Government Code §11523*].

VII. 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 actual or potential gravity of corrective action non-compliance.
 - b. The responsible party’s(ies) efforts to prevent, abate, or clean up conditions posing a threat to public health or the environment.
 - c. The responsible party’s(ies’) ability to pay.
 - d. The deterrent affect of the penalty

B. Steps in Determining Penalties

1. Initial Penalty. SCEMD will determine an initial penalty for each act of non-compliance by considering the actual and potential harm and the extent of the deviation from corrective action requirements.
 - a. Assigning degrees of actual and potential harm.
 - (1) Major – the nature of the non-compliance has the potential to present a major threat to human health or safety or the environment and the circumstances of corrective action non-compliance indicate a high potential for harm.
 - (2) Moderate – the nature of non-compliance does not present a major threat to human health or safety or the environment and the likelihood of harm from noncompliance is not high.
 - (3) Minimal – the overall threat to human health or the environment is low.
 - b. Assigning degrees of extent of the deviation.
 - (1) Major – the act of non-compliance 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 non-compliance deviates from the requirement but functions to some extent.

(3) Minimal – the non-compliance deviates from the requirement but functions nearly as intended.

c. For requirements with several components, consider the extent of the non-compliance in terms of the most significant component.

2. Adjusted Initial Penalty

a. The initial penalty may be adjusted based on the responsible party's(ies') intent in failing to achieve corrective action compliance. The following factors will be considered as a basis for adjustment.

ADJUSTMENT FACTOR	CIRCUMSTANCES
Downward adjustment of 100%	Non-compliance was completely beyond the control of the responsible party(ies.)
Downward adjustment of 0 to 50%	Non-compliance occurred even though good faith efforts to comply with regulatory directives were made.
No adjustment	Responsible party(ies) indicated neither good faith efforts nor intentional failure to comply.
Upward adjustment of 50 to 100%	Non-compliance with corrective action directives was the result of intentional failure to comply.

b. Economic Benefit Adjustment. The initial penalty may be increased if, in the opinion of the SCEMD, the non-compliant responsible party(ies) 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 include: avoided or delayed costs, or increased profits.

3. Combining Multiple Episodes of Non-Compliance. A single penalty may be assessed for multiple episodes of non-compliance for the following situations:

a. The Respondent has violated the same requirement in different locations or units within a site (for example, failed to remove free product from multiple well locations.)

- b. The Respondent has violated the same requirement during different time periods. This would not be appropriate if the Respondent has been notified of the non-compliance and has had sufficient time to correct the violation (for example, failed to submit status reports as required by a monitoring and sampling plan.)
4. Multi-day Violations. For days following the first day of non-compliance, the multi-day component of the penalty may be calculated by determining 2% of the adjusted initial penalty times the number of days after missing the initial submittal deadline.
5. Base Penalty. The base penalty for a single-day of non-compliance occurrence is the adjusted initial penalty. The base penalty for multi-day violations is the adjusted initial penalty for the first day of non-compliance violation plus the penalty for the additional days of non-compliance.
6. Total Base Penalty. The total base penalty is the sum of all base penalties for all episodes of non-compliance incurred at a given site.
7. To determine the Final Penalty, adjustments to the total base penalty may be made based on the following factors.
 - a. Adjustment factors for cooperation.

Degree of Cooperation/Effort	Adjustment Factor	Circumstance
Extraordinary	Downward adjustment of up to 25 %	Responsible party(ies) exceeded minimum requirements in returning to compliance or returned to compliance faster than requested.
Good Faith	No adjustment	Responsible party(ies) demonstrated a cooperative effort.
Recalcitrance	Upward adjustment of up to 25 %	Responsible party(ies) failed to cooperate, delayed compliance, created unnecessary obstacles to achieving compliance, or the compliance submittal failed to meet requirements.
Refusal	Upward adjustment of 50 to 100 %	Responsible party(ies) intentionally failed to return to compliance with regulations or directives to perform site assessment and mitigation operations. 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 responsible party(ies) 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 responsible party(ies) compliance history.

- (1) General considerations.

- (a) Previous non-compliance at the site should receive more weight than previous non-compliance at another site owned or operated by the same person or entity.
- (b) Recent episodes of non-compliance should receive more weight than previous episodes.
- (c) The same or substantially similar previous episodes of non-compliance should receive more weight than previous unrelated episodes.

- (2) Specific guidance.

- (a) Upward adjustments of up to 100% can be made if a responsible party(ies) 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 responsible party's(ies') 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. For violations of Sacramento County Code, Chapter 6.34.028, the violator shall be liable for penalties as provided in Section 6.34.100.
2. The total penalty calculated for any single violation shall not exceed the maximum penalty specified in the California Health & Safety Code Section 25299(d)(1), \$10,000 per day per tank per episode of non-compliance, per day of violation.
3. The following matrix will be used to determine the initial penalty for non-compliance with SCC Chapter 6.34.028, Corrective Action Requirements:

INITIAL PENALTY MATRIX – CORRECTIVE ACTION NON-COMPLIANCE

AUTHORITY: SACRAMENTO COUNTY CODE, CHAPTER 6.34, SECTION 6.34.100	ACTUAL OR POTENTIAL HARM ▼		
EXTENT OF DEVIATION ▼	Major	Moderate	Minor
Major	<u>Maximum:</u> \$10,000	<u>Maximum:</u> \$6,000	<u>Maximum:</u> \$4,000
	<u>Average:</u> \$8,000	<u>Average:</u> \$5,000	<u>Average:</u> \$3,000
	<u>Minimum:</u> \$6,000	<u>Minimum:</u> \$4,000	<u>Minimum:</u> \$2,000
Moderate	<u>Maximum:</u> \$6,000	<u>Maximum:</u> \$4,000	<u>Maximum:</u> \$2,000
	<u>Average:</u> \$5,000	<u>Average:</u> \$3,000	<u>Average:</u> \$1,500
	<u>Minimum:</u> \$4,000	<u>Minimum:</u> \$2,000	<u>Minimum:</u> \$1,000
Minor	<u>Maximum:</u> \$4,000	<u>Maximum:</u> \$2,000	<u>Maximum:</u> \$1,000
	<u>Average:</u> \$3,000	<u>Average:</u> \$1,500	<u>Average:</u> \$500
	<u>Minimum:</u> \$2,000	<u>Minimum:</u> \$1,000	<u>Minimum:</u> \$0