

INSPECTION & ENFORCEMENT PLAN



**Sacramento County
Environmental Management Department
Hazardous Materials Division**

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INSPECTION & ENFORCEMENT PLAN

Table of Contents

	<i>Page</i>
Chapter 1 Introduction.....	1
Chapter 2 Inspections	2
I. General Information.....	2
II. Inventory of Regulated Businesses or Facilities.....	2
III. Frequency of Inspections	3
IV. Provisions to Promote Integrated Joint, Combined, and	
A. Multi-Media Inspections.....	4
B. Joint Inspections.....	4
C. Combined Inspections.....	4
D. Integrated Inspections	4
V. Environmental Specialist/Technician Training.....	5
A. Required Training	5
B. Additional Training	5
VI. Cross Training of Staff.....	5
A. General Training Requirements	5
B. Targeted Training Requirements.....	5
C. Inspection Rotation	5
VII. Coordination of Inspection/Enforcement with Participating Agencies (PAs)	6
VIII. Facility Inspection Procedure	6
A. General Protocols.....	6
B. Pre-Inspection Procedures.....	6
C. On-Site Procedures.....	7
D. Inspection Follow-up	9
IX. HMBP/HMBP Renewal In-Office Completeness Check Procedure	12
A. General Procedures	12
B. Review Process	12
Chapter 3 Enforcement	15
I. Statutory Authority.....	15
II. General Information.....	15
A. Timeliness	15
B. Documentation	16
C. Roles and Responsibilities	16
III. Guidelines for Case Referral to Outside Agencies	17
A. Referral Examples.....	17
B. Evaluation.....	17

Table of Contents

	<i>Page</i>
IV. Definitions.....	18
A. General.....	18
B. Hazardous Waste Generator Program.....	19
C. Underground Storage Tank Program.....	21
V. Administrative Enforcement Order Process.....	22
A. Introduction.....	22
B. Case Disposition Guidance.....	22
C. Administrative Enforcement Order Options.....	23
D. Settlement Discussions/Settlement Agreement.....	26
VI. Failure to Return to Compliance Notifications.....	27
A. Content of Notification.....	27
B. Follow-up Actions.....	27
VII. Re-inspections.....	27
A. Definition.....	27
B. General.....	28
VIII. Revocation, Modification or Suspension of Permit.....	28
A. Grounds for Revocation, Modification or Suspension of Permit.....	28
B. Method.....	28
IX. Cease and Desist Orders.....	29
A. Issuance.....	29
B. Requirements.....	29
X. Red Tag Procedures (USTs only).....	29
A. Affixing Red Tag.....	29
B. Removal of Red Tag.....	30
XI. Administrative Hearing Process.....	30
A. Hearing Procedures.....	30
B. Procedures to Access Administrative Law Judge.....	31
C. Civil Appeal of the “Final Order”.....	32
XII. Administrative Penalties.....	32
A. General Policy.....	32
B. Steps in Determining Penalties.....	33
C. Initial Penalties.....	33
Chapter 4 Enforcement Revenue Offset Program.....	43
I. Background.....	43
II. Procedures.....	43

Table of Contents

Page

Figures

<u>Figure 1.</u> Facility Inspection Procedures Process Chart	10
<u>Figure 2.</u> In-Office Completeness Check Procedure Process Chart	13

Tables

Table 1 – AEO Options	23
Table 2 – AEO Adjustment Criteria	34
Table 3 – Final Penalty Adjustment Factors	35
Table 4 – HW Penalty Matrix	37
Table 5 – UST Penalty Matrix	38
Table 6 – HMBP Penalty Matrix.....	39
Table 7 – Failure to Report Penalty Matrix	40
Table 8 – CalARP Penalty Matrix.....	41
Table 9 – AST Penalty Matrix.....	42

Chapter 1

INTRODUCTION

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

- Hazardous Materials Business Plans (HMP). Authority: California Health & Safety Code (H&SC), Chapter 6.95, Article 1 and Title 19 of the California Code of Regulations (CCR).
- Underground Storage Tank (UST) Program. Authority: H&SC, Chapter 6.7 and Title 23 CCR.
- Hazardous Waste Generator Program. Authority: H&SC, Chapter 6.5 and Title 22 CCR.
- Tiered Permitting of Hazardous Waste On-site Treatment. Authority: H&SC, Chapter 6.5, Title 22 CCR.
- Above Ground Storage Tank (AST) Program. Authority: H&SC, Chapter 6.67.
- California Accidental Release Prevention (CalARP) Program. Authority: H&SC Chapter 6.95, Article 2 and Title 19 CCR.

SCEMD's Inspection and Enforcement Plan (Plan) satisfies the requirements of Senate Bill 1082 (H&SC, Chapter 6.11, §25404 et. seq.), which created the Unified Program. This Plan 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 SCEMD, the Hazardous Materials Division (HMD) is responsible for all inspections of facilities eligible for regulation within the CUPA programs listed previously. For the purpose of inspection workload distribution, Sacramento County has been divided into districts that incorporate one or more zip codes. SCEMD personnel are each responsible for facilities located in specific assigned district(s). Hazardous Materials Business Plan submittals from facilities are reviewed by staff dedicated to that workload. Additional, on-site technical verification is performed by SCEMD 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 or Facilities (as of July 1, 2008):

Program Element	Number of Businesses/Facilities
Hazardous Materials Business Plans (HMP)	<u>3,725</u>
Underground Storage Tank (UST) Facilities	<u>505</u>
Hazardous Waste Generators (RCRA and Non-RCRA)	<u>2,804</u>
RCRA Large Quantity Generators	<u>19</u>
Recyclers	<u>4</u>
On-site Hazardous Waste Treatment (All)	<u>27</u>
Tiered Permitting of HW Onsite Treatment	
Permit By Rule (PBR)	<u>3</u>
Conditionally Authorized (CA)	<u>4</u>
Conditionally Exempt (CE)	<u>20</u>
Above Ground Storage Tank (AST) Facilities	<u>310</u>
California Accidental Release Prevention (Cal/ARP)	<u>46</u>

III. Frequency of Inspections

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

<u>Program</u>	<u>SCEMD Inspection Frequency</u>
Hazardous Materials Business Plans (Once every 3 years; H&SC, §25508(b))	Once every 3 years
UST Facilities (Annually; H&SC, §25288(a))	Annually
Hazardous Waste Generators (RCRA and Non-RCRA) (Not specified)	Once every 3 years*
* EXCEPTION: Facilities generating less than 55 gallons of hazardous waste annually	Once every 6 years
RCRA Large Quantity Generators (Not specified)	Once every 3 years
Recyclers (Not specified)	Once every 3 years
PBR – HHW Facilities (Once every 3 years; H&SC, §25201.4(b)(2))	Once every 3 years
Tiered Permitting (On-site HW Treatment (All) (Once every 3 years; H&SC, §25201.4(b)(2))	Once every 3 years
PBR, CA, CE (Once every 3 years; H&SC, §25201.4(b)(2))	Once every 3 years
AST Facilities (Once every 3 years, H&SC §25270.5)	Once every 3 years
Cal/ARP* (Once every 3 years; CCR Title 19, §2775.3)	Once every 3 years

* **Note:** Cal/ARP facilities will also have an audit conducted periodically to review the adequacy of Risk Management Plans submitted under Chapter 4.5, Article 3 of the H&SC.

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

- A. **Joint Inspections.** Since there are no Participating Agencies within Sacramento County, joint inspections do not occur.

- B. **Combined Inspections.** It is the practice of the SCEMD to seek opportunities to conduct a single inspection event that combines different program elements. Currently, Cal-ARP inspections at non-contiguous well sites that handle no more than 300 pounds of chlorine are combined with the HMP inspection. HMP inspections at all other facilities as well as Hazardous Waste Generator and UST program element inspections are routinely completed during one inspection event.

- C. **Multi-Media Inspections.** The purpose of multi-media inspections is to coordinate, to the maximum extent feasible, SCEMD'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 all of 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.** SCEMD 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 Task Force meetings and actions.

V. Environmental Specialist/Technician Training

A. Required Training. Each SCEMD staff member involved in the oversight of CUPA programs receives extensive training in the following subject areas:

- Regulatory overview.
- Hazardous waste classification.
- Health and environmental effects of hazardous substances.
- Inspection procedures and techniques.
- Initial HAZWOPER and subsequent refreshers.
- Report writing.

B. Additional Training. Staff assigned inspection and/or enforcement responsibilities in selected program(s) routinely receive training in specific topics that are germane to that area of required expertise. Such programs include incident response, tiered permitting, Cal/ARP and underground storage tanks which may require additional training in the following areas:

- HazCat classification and identification procedures.
- HazCat chemistry.
- Sampling and instrumentation.
- Investigation and Enforcement.
- Interviewing techniques and case development.
- Collection and preservation of evidence.

VI. Cross Training of Staff

A. General Training Requirements. 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, hazardous material business plan requirements, and above ground storage tanks (ASTs).

B. Targeted Training Requirements. In addition, selected personnel are assigned inspection responsibilities for facilities that own or operate underground storage tanks (USTs) or qualify for inclusion into the Cal-ARP program. These individuals receive additional training that is tailored to regulatory requirements specific to these types of facilities. Specifically, all staff conducting UST inspections shall possess a current ICC Inspector Certificate. Newly hired or assigned UST inspectors shall obtain this certification within 180 days and it shall be renewed every 24 months.

C. Inspection Rotation. Periodically, inspection responsibilities are rotated among personnel. This provides all members of the inspection staff with overall CUPA inspection expertise. SCEMD believes this increases staff motivation and encourages new ideas and strategies to improve inspection efficiency and effectiveness.

VII. Coordination of Inspection/Enforcement with Participating Agencies (PAs)

There are no established PAs within Sacramento County.

VIII. Facility Inspection Procedures

A. General Protocols. With the exception of underground storage tank inspections, facility inspections are typically done on an unannounced basis if appropriate. In general, SCEMD 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 SCEMD Health and Safety Plan.
 - a. When in the field, wear appropriate clothing and safety equipment (steel-toed safety boots, hardhats, 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 confer with your supervisor.
3. Always prominently display proper County-issued identification.

B. Pre-inspection Procedures.

1. At the beginning of each quarter, SCEMD personnel will review his/her district list of assigned facilities and place priority on those facilities with the oldest date of last completed inspection. For UST inspections, SCEMD personnel may schedule an inspection in response to a contractor request.
2. Prior to performing an on-site inspection, SCEMD personnel will conduct an office audit of the facility that includes a review of the following:
 - a. The electronic facility files in order to become familiar with facility operations and inspection history. Be sure to note any open violations or a pattern of repeat discrepancies. 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. Current Hazardous Materials Business Plans (HMBPs) for completion and adequacy based on facility operations.
 - c. When appropriate, any written monitoring plans and financial responsibility forms.
 - d. Any appropriate industry and/or regulatory background information needed to perform the inspection (i.e., process or equipment familiarization).
3. Print a Hazardous Materials Application Type (HAPP) form to verify database information, including fee status, contact information, etc.
- C. On-site Procedures. Depending on the facility, SCEMD 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 storm drain in a parking lot, unsafe storage, etc.).
 2. Display proper 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, SCEMD 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, as per the checklist. 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 any noted violations (i.e. photos, sampling, etc.).

NOTE: H&SC §25185(a) authorizes SCEMD 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.

9. Discuss violations with the business representative and document any explanations or extenuating circumstances on the inspection notes form.
10. Complete the Notice to Comply (NTC) form recording noted violations, required corrective actions, and the date by which corrective action is required for each violation. Each cited violation must be listed separately and include the manner in which each may be brought into compliance. Record Class 1 or repeat violations in the red “Priority Corrective Actions” (PCA) box on the NTC.
11. Once violations are noted either in an inspection report or audit or an office review, a facility has the following time to submit return to compliance documentation:
 - a. Hazardous Materials Business Plans: Thirty (30) calendar days from the date the Plan is returned to the facility. [H&SC §25505(a)(2)]. Other hazardous materials related violations: As appropriate depending on the violation, but in no case greater than thirty (30) calendar days from the date of the NTC form.
 - b. Underground Storage Tanks: Unless otherwise required, within sixty (60) calendar days of receiving a NTC form. [H&SC §25288(d)].
 - c. Hazardous Waste Generators: No established times except for minor violations which require thirty (30) calendar days from the date of receipt of the NTC form to achieve compliance. This includes recyclers and HHW facilities.
 - d. Cal/ARP: Thirty (30) calendar days after the date of the audit procedure has been completed [California Code of Regulations, Title 19, §2775.2(h)].
 - e. Re-inspections: Fourteen (14) calendar days from the date of receipt of the NTC form.
12. Explain the NTC form to the business representative, specifically stating that a signed corrective actions statement must be returned with evidence of compliance (photos, disposal records, etc.) within the time specified. The NTC form should contain an explicit statement that the facility may be subject to re-inspection at any time by the SCEMD.
13. Obtain the business representative’s signature, printed name and title on the NTC form.

14. Sign and date the NTC form.
15. Leave the yellow copy of the NTC form with the business representative along with copies of the relevant inspection checklists.

NOTE: SCEMD personnel may be unable to issue the NTC form at the time of inspection. This may occur if the inspector needs to consult with a supervisor or research applicable statutes or regulations concerning a potential violation. In this case, SCEMD personnel will either send the completed NTC form to the business via “proof of service” certified mail or deliver the form in person. In all cases, the NTC form should be delivered to the business not later than five (5) calendar days from the date of inspection.

16. Provide the business representative with appropriate educational or referral materials.

D. Inspection Follow-up. After completing the on-site inspection, the ES shall perform the following tasks:

1. If necessary, fill out HAPP form for facility classification status changes.
2. Enter Envision daily for the inspection and enter all noted violations within three (3) business days from the completion of the inspection.
3. Track the facility’s compliance time by Envision for violations follow-up.
4. Electronically file and index all appropriate photographs taken during the inspection.
5. If Class I or II (Hazardous Waste Generator) or other significant violations were observed during the inspection and noted on the NTC form, the ES shall consult with his/her supervisor about potential enforcement action.
6. All completed checklists, NTC forms, inspection notes, and HAPP forms must be submitted to the ES Supervisor for review within three (3) business days from the completion of the inspection.
7. After Supervisor review, completed inspection checklists, NTC forms, inspection notes, and HAPP forms shall be submitted for imaging, 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.
8. Review all corrective action documentation submitted by the facility owner/operator for completeness and adequacy. Close out all appropriate violations in Envision within seven (7) days of receiving approved correction documentation.

Figure 1

Facility Inspection Procedures

	Steps/Tasks	Documentation
General Protocol	<ol style="list-style-type: none"> 1. SCEMD personnel shall conduct facility inspections: <ol style="list-style-type: none"> a. With a professional, courteous, and respectful demeanor, b. Wearing site-appropriate safety equipment (steel-toed safety boots, hardhats, etc.), c. Displaying proper County-issued identification, d. Triennially, typically on an unannounced basis for HMP, HW and Cal-ARP; annually for UST facilities. 	
Pre-inspection Procedures	<ol style="list-style-type: none"> 1. Review District list to determine sites needing inspection by oldest inspection date (quarterly). 	
	<ol style="list-style-type: none"> 2. Before performing the on-site inspection, SCEMD personnel shall review: <ol style="list-style-type: none"> a. Electronic facility file to become familiar with facility operations and inspection history, including open violations, b. Business Plan or Emergency Response Contingency Plan for completion and adequacy based on facility operations, c. Any appropriate industry and/or regulatory background information needed to perform the inspection (i.e., process familiarization, etc.). 	
	<ol style="list-style-type: none"> 3. Generate Hazardous Materials Application Type (HAPP) form to verify database information, including fee payment status, while performing the inspection. 	HAPP form
On-site Procedures	Upon arriving at the facility, SCEMD personnel shall complete the inspection performing the following:	
	<ol style="list-style-type: none"> 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.). 	
	<ol style="list-style-type: none"> 2. Display proper photo identification and provide a business card to the business representative. 	
	<ol style="list-style-type: none"> 3. State the nature of the visit (complaint response, routine inspection, etc.), and obtain consent to do an inspection. 	
	<ol style="list-style-type: none"> 4. Request accompaniment during the inspection by the facility manager or other qualified business representative (owner, emergency coordinator, etc.). 	
	<ol style="list-style-type: none"> 5. Perform facility walk-through following the appropriate Checklist Summary of Violations. 	Applicable Checklist Summary of Violations
	<ol style="list-style-type: none"> 6. Record or document inspection observations on inspection notes form, as per the checklist. 	Checklist Summary of Violations
	<ol style="list-style-type: none"> 7. Review any otherwise required site-specific environmental permits or documents (i.e., spill prevention control and countermeasure plan, etc.). 	
<ol style="list-style-type: none"> 8. Discuss alleged violations with the business representative and note any explanations or extenuating circumstances on the inspection notes form. 	Facility Inspection Notes	

Figure 1

Facility Inspection Procedures (cont.)

	Steps/Tasks	Documentation
On-site Procedures (continued)	9. Take photos of site as needed to document violations.	
	10. Complete the Notice to Comply (NTC) form recording noted violations, required corrective action and the date by which corrective action is required for each violation.	Notice to Comply (NTC) form
	11. Explain the NTC form to the business representative, specifically stating that a signed corrective actions statement must be returned with evidence of compliance (photos, disposal records, etc.) within 30 calendar days.	NTC form
	12. Obtain the business representative's signature, printed name and title on the NTC form.	NTC form
	13. Sign and date the NTC form.	NTC form
	14. Issue a copy of the NTC form to the business representative with the relevant inspection checklist.	NTC form Checklist Summary of Violations
	15. Provide the business representative with appropriate educational or referral materials.	Handouts: <ul style="list-style-type: none"> • Handbooks • Waste Haulers List • Hazardous Materials Plan and Instruction • Educational materials
Inspection Follow-up	After completing the on-site inspection, EMD personnel shall:	
	1. Fill out HAPP form for facility classification status changes (if needed).	HAPP form
	2. Within three (3) business days from completion of inspection, enter Envision daily information and all violation data.	
	3. Electronically file and index all appropriate photographs taken during the inspection, UNLESS inspection was conducted in conjunction with an open enforcement case.	
	4. If Class I or II (Hazardous Waste Generator) or other significant violations were observed during the inspection and noted on the NTC form, the ES shall consult with his/her supervisor about potential enforcement action.	
	5. All completed checklists, NTC forms, and HAPP forms must be submitted to the ES Supervisor for review within three (3) business days from the completion of the inspection.	
	6. After Supervisor review, completed inspection checklists, NTC forms and HAPP forms shall be submitted for imaging.	
	7. Review all corrective action documentation submitted by the facility owner/operator for completeness and adequacy. Close out all appropriate violations in Envision within seven (7) days of receiving approved correction documentation.	

IX. Hazardous Materials Business Plan (HMP) or HMP Renewal Completeness Check (In-Office) Procedures

- A. General Procedure. Unless exempted pursuant to subdivision (c) (3) of §25333 of the H&SC, 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 submit a Hazardous Materials Business Plan (HMP) to the SCEMD. Once submitted, such businesses or facilities are then required to annually review and update the information contained in those plans and submit a HMP Renewal form to SCEMD.
- B. Review Process. All HMPs and HMP renewal forms will undergo an in-office review (see Figure 2). Documents will be checked for completeness and for any unusual or abnormal entries (See HMP Completeness Check/Review Procedure Manual for more information).
1. SCEMD staff will return incomplete or incorrect documents to businesses or facilities for correction. These documents will be sent via “proof of service” by certified mail. Owners/operators will be given 30 calendar days to address any noted deficiencies. In the case of a minor deficiency or questionable entry, SCEMD will attempt to resolve the issue quickly via a telephone call or through other suitable means of communication.
 - a. If a business or facility fails to respond within the 30 calendar day window or if their second submittal is either significantly insufficient or incorrect, then the case will be forwarded to a Supervisor for possible enforcement action.
 2. HMPs or HMP renewal forms that are reviewed and considered complete will be handled as follows:
 - a. The appropriate data entry will be made into the Envision data base indicating that the plan has been received, reviewed and deemed complete.
 - b. The HMP or HMP renewal form will be submitted for imaging.

Figure 2

HMBP In-Office Completeness Review Process

Who	Steps/Tasks	Documentation
Clerical	1. Receives HMP/HMP Renewal application.	
	2. Date stamps plan.	
	3. Enters received date into Envision.	
	4. Forwards application to HMP holding area.	
HMP Box	5. HMP/HMP Renewal awaits Completeness Check.	
Reg Comp Personnel	6. Checks plans for completeness. If plan is not complete or contains numerous errors, GO TO STEP 8a	
	HMP/HMP Renewal Determined to be Complete and Correct	
Reg Comp Personnel	7 a. Enters the appropriate completeness check data into Envision	
	b. Prepares plan for scanning (See Scanning Preparation Procedure) END	
	HMP/HMP Renewal Determined to be Incomplete	
Reg Comp Personnel	8 a. Enters observed deficiencies and appropriate violations into Envision.	
	b. Stamps plan as incomplete.	
	c. If deficiencies are observed after a first review, forward the plan to clerical.	
	d. If deficiencies are observed after a second review of the plan, forward the case to the Enforcement Team for possible action.	
Clerical	9 a. Generates two copies of the Notice of Incomplete Submission letter.	
	b. Mails the following to the owner/operator by "proof of service" certified mail: <ul style="list-style-type: none"> • Original incomplete HMP/HMP Renewal • Notice of Incomplete Submission Letter (30-calendar day due date) • Schedule of business plan workshop classes. 	
	c. Images letter and mailing label list once proof of service has been received.	Certified mail documents
	HMBP/HMBP Renewal Returned from owner/operator within 30-Day Due Date of the Notice of Incomplete Submission Letter	
Clerical	10. Receives HMP/HMP Renewal.	
	11. Date stamps the plan.	
	12 a. Enters the received date into Envision.	
	b. Plan is routed to the Environmental Specialist staff member originally assigned to review the plan.	

Figure 2

HMBP In-Office Completeness Review Process (cont.)

Who	Steps/Tasks	Documentation
Reg Comp Personnel	13. Check the plan for completeness (2nd review).	
	14. If plan is complete, GO TO STEP 7a If plan contains deficiencies after second review, forward case to the Enforcement Team for possible action.	
	HMP/HMP Renewal Is Not Returned within the 30 Day Due Date of the Notice of Incomplete Submission Letter	
Reg Comp Personnel	15. Forward case to a Supervisor for possible enforcement action.	

Chapter 3

ENFORCEMENT

I. Statutory Authority

Pursuant to the California Health and Safety Code (H&SC), Chapter 6.11, §25404.1.1, if the Sacramento County Environmental Management Department (SCEMD) determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that the SCEMD is authorized to enforce or implement, the SCEMD may issue an Administrative Enforcement Order (AEO) requiring that the violation be corrected and imposing 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: H&SC, Chapter 6.7 (commencing with §25280). Not including violations of corrective action requirements established by or issued pursuant to §25296.10.
- Above Ground Storage Tank Program: H&SC Chapter 6.67, §25270.5.
- Hazardous Materials Business Plans: 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).

II. General Information

It is the policy of the SCEMD 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(s). 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) punish violators and deter future noncompliance. Within SCEMD, the Hazardous Materials Division (HMD) is responsible for initiating and implementing appropriate enforcement actions for violations of CUPA 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 the inspection or incident when the violation(s) were first detected. If an

Administrative Enforcement Order (AEO) is the selected enforcement option, then the goal of the SCEMD is to issue a Final Order within 180 calendar days of the inspection or incident. 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 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 responsible party describing the violations.
2. Use of photographs depicting the violations.
3. Clearly and completely documenting interviews with witnesses.
4. Sampling or otherwise preserving physical evidence.
5. Maintaining an accurate chronology of events.

C. Roles and Responsibilities

1. The Director of SCEMD shall review AEOs, other Orders and Stipulations, Consent Agreements and other documents generated for respondents with penalty assessment of \$150,000 or more.
2. Chief, Hazardous Materials Division (or designee), shall:
 - a. Review and sign AEOs, other Orders and Stipulations, Consent Agreements and other documents generated for respondents.
 - b. Pursuant to guidance outlined in this manual, 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 purposes of explaining or negotiating the penalty.
 - d. Routinely (at least monthly) meet with all Supervisors to discuss potential enforcement actions.
3. Supervisors shall:
 - 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, approve, and forward all draft enforcement documents prepared by staff within their respective units.
4. Environmental Specialists or Compliance Technicians shall:
- 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 a Notice to Comply (NTC) to operators who are in violation of environmental laws regulated by SCEMD.
 - c. 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. Referral Examples. The following are examples of case 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 case requires additional investigation that is beyond the capability of SCEMD.
 - 4. The case stems from a Sacramento County Environmental Crimes Task Force operation/investigation.
- B. Evaluation. The Chief of the Hazardous Materials 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 SCEMD and/or the appropriate agency 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).
2. 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.
3. Administrative Enforcement Order. This includes any of the order variations including the Consent Order, Expedited Consent Order, Stipulation and Order, and Unilateral Order.
4. Minor Violation. Means 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 SCEMD is authorized to implement or enforce pursuant to H&SC Chapter 6.11, §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 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, SCEMD 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 noncompliance, either by reduced costs or competitive advantage.

- f. A class I violation (hazardous waste) as provided in Chapter 6.5 of the H&SC §25110.8.5.
 - g. A class II violation (hazardous waste) committed by a chronic or a recalcitrant violator, as provided in Title 22, §66260.10.
 - h. A violation 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.
5. Respondent. A respondent is the person, business or facility that is the alleged violator.
6. Supplemental Environmental Project (SEP). An environmentally beneficial project or projects 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.
7. Final Order. 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.

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. Examples include failure to manifest hazardous waste, use of an unregistered hazardous waste transporter and treatment, storage, or disposal at an unauthorized point.

- (b) Prevent releases of hazardous waste or constituents to the environment during the active or post closure period of facility operation. Examples would be waste stored or transported in incompatible, damaged or deteriorated containers; failure to transfer wastes from deteriorated containers into sound containers; or incompatible waste stored adjacent to each other with no physical barrier for separation.
 - (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. An example would be failure to correct violations in accordance with a schedule of compliance.
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, SCEMD 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.
3. Significant Non-Complier (SNC). A business that:
- a. Has caused actual exposure or substantial likelihood of exposure to hazardous waste or hazardous constituents; or
 - b. Is a chronic (a handler who is regularly found to have many Class I or Class II violations) or recalcitrant violator (a handler who intentionally refuses to comply with the regulatory requirements); or
 - c. Substantially deviates from the terms of a permit, order, settlement document or decree by not meeting the requirements in a timely manner and/or by failing to perform work as required by terms of permits, orders, settlement agreements, or decrees; or
 - d. Substantially deviates from statutory or regulatory requirements.
 - e. Examples of potential SNCs include, but are not limited to:
 - (1) Failure to comply with an enforcement order.
 - (2) Having previous Class I violation(s) (within three years).

- (3) Repeating the same Class II violation within three years.
- (4) Operating a facility without a permit or other grant of authorization.
- (5) Disposal of hazardous waste at a non-authorized site.
- (6) Systemic failure to follow container/tank labeling requirements.
- (7) Failure to manage ignitable, reactive, or incompatible wastes as required by Title 22, CCR, §66264 and §66265.17(b) (1), (2), (3), (4), and (5).
- (8) Systemic use of containers that are in poor condition.

C. Underground Storage Tank Program.

1. Significant Violation. 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 an underground storage tank system, including, but not limited to:
 - (1) Failure of any required overfill prevention system, where the failure is causing or threatens to cause a release; or the
 - (2) Failure of a required spill containment structure, where the failure is causing or threatens to cause a release to the environment due to a spill or overfill.
 - b. A violation that impairs the ability of an underground storage tank system to detect a liquid leak or contain a liquid release of petroleum in the manner required by law, including, but not limited to tampering with leak detection equipment so that the equipment is no longer capable of detecting a leak at the earliest possible opportunity.
 - 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, SCEMD 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 §25296.10 of the H&SC and 23 CCR, Article 11, Chapter 16.
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 damages to human health or safety or the environment.

V. Administrative Enforcement Order Process

A. Introduction.

1. SCEMD is authorized by Chapter 6.11 of the H&SC §25404.1.1 to issue an administrative enforcement order 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 SCEMD 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 noncompliant facility, and create deterrence against future noncompliance.
3. To expedite achieving the enforcement goal throughout the administrative order process, SCEMD will encourage the respondent to enter into settlement discussions. Settlement discussions can 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.
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.

B. Case Disposition Guidance.

1. Based on information provided by the Environmental Specialist, supervisors will review each case and provide recommendation(s) to the Hazardous Materials Division Chief (or designee) regarding whether:
 - a. The case should be referred to an outside agency for enforcement action (see paragraph II) or;
 - b. The case should be handled through the AEO process.
2. The Chief of the Hazardous Materials 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 that exceed \$150,000.00, the Chief of the Hazardous Materials 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, H&SC §25187 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 Options

AEO Process Alternative	When to Use	Disadvantages
Show Cause Letter	<ol style="list-style-type: none"> 1. When a business is not a repeat violator, does not have a history of noncompliance, and has not been recalcitrant or uncooperative. 2. The violations do not pose an imminent and substantial threat to public health or the environment and the violations have not resulted in a significant release to the environment. 	Statutory 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 business 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	<ol style="list-style-type: none"> 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 the SCEMD does not wish to restate the violations cited in the Unilateral Order. 	
"Final" Unilateral Order	<ol style="list-style-type: none"> 1. The business is a repeat violator or has a history of noncompliance. 2. The violations pose an imminent and substantial threat to public health or the environment; or 3. The violations have resulted in a significant release to the environment. 	Doesn't allow for consideration of the business's response prior to formal public action.

1. Show Cause Letter Alternative. Under this alternative, a Show Cause letter may be issued to a business, notifying it that SCEMD is planning to take an AEO action and encouraging the business to submit relevant information to be taken

into account prior to SCEMD 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 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 business and SCEMD and reach agreement on compliance, timeliness, and penalties; and formalize the agreement in a Final Order.
 - b. The Show Cause alternative should be used when:
 - (1) The business is not a repeat violator, and does not have a history of noncompliance.
 - (2) The business has not been recalcitrant or uncooperative and the violations do not pose an imminent and substantial threat to public health or the environment; and the violations have not resulted in a significant release to the environment.
2. Consent Order. Under this alternative, SCEMD 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.
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 can also be used.
- a. Although preferable, 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. The Stipulation and Order alternative 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 draft Unilateral AEO; or
 - (2) Settlement discussions have led to an agreement with the business on compliance timelines and penalties and SCEMD wishes to avoid re-stating the violations cited in the Unilateral Order.
4. Unilateral Order. Utilizing this alternative, SCEMD will issue a Unilateral Order to the business/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 the “Hearing Period” has passed.)
 - a. The Unilateral Order alternative is appropriate under the following circumstances:
 - (1) The business/facility is a repeat violator or has a history of noncompliance with either the HWCL or other environmental or public safety laws;
 - (2) The business/facility has been recalcitrant or uncooperative;
 - (3) The violations pose an imminent and substantial threat to public health or the environment; or
 - (4) The violations have 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 alternative.
 - c. Preparing a 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. An 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. The additional 5 calendar days (from the 15-day statutory requirement) is to allow for mail delivery time. 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 for amendment 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 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 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.

D. Settlement Discussions/Settlement Agreement.

1. Settlement discussions between SCEMD 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 SCEMD during the course of settlement discussions.
2. SCEMD will set a time and place for any settlement discussion meeting. If SCEMD and the business/facility owner or operator is able to reach a settlement, SCEMD 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 SCEMD; and

- c. Payment to 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 faithfully performs under the Agreement, the SCEMD shall suspend any enforcement actions associated with the subject violation. Where the Respondent has waived the right to a hearing or where SCEMD and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

VI. Failure to Return to Compliance Notifications

On a quarterly basis, SCEMD will identify businesses and facilities with documented minor violations that have not been corrected within stipulated deadlines. These businesses and facilities will be issued a “Failure to Return to Compliance” (FRC) notice 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 notice 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 that they will be liable for the cost.
 3. Notification that the business or facility may be subject to administrative enforcement action if any subsequent re-inspection reveals uncorrected violations.
 4. In order to avoid a re-inspection and any follow-up enforcement actions, the business or facility must provide proof of correction of all open violations to SCEMD not later than twenty (20) calendar days of the date of the FRC letter.
- B. Follow-up Actions. Not later than sixty (60) calendar days of the date of the FRC letters, SCEMD Supervisors will review all businesses and facilities that continue to have open violations for targeted re-inspections. Supervisors will direct the initiation of administrative enforcement actions for those businesses or facilities where re-inspections reveal uncorrected violations.

VII. Re-inspections

- A. Definition: A re-inspection is defined as a field inspection conducted outside the required regulatory frequency.
- B. General. Re-inspections will be conducted at the expense of the affected facility when one or more of the following conditions are present:

1. To confirm that necessary action(s) have been completed so as to achieve compliance after one or more Class I or II violations or any other violation deemed significant or major have been documented.
2. The affected facility has been placed in a “monitor” status. A facility that has repeated significant violations may be placed in a “monitor” status if there is reasonable doubt that the facility will remain in compliance with applicable sections of environmental statutes, regulations or local ordinances.
3. To confirm that necessary action(s) have been completed so as to achieve compliance after numerous minor violations or violations that have been determined not to pose a serious threat to human health and the environment have been documented and no proof of corrective action or compliance has been submitted to SCEMD.

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), 6.96 (Hazardous Materials Disclosure) 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), 6.96 (Hazardous Materials Disclosure) and 6.98 (Hazardous Waste Generation).
- B. Method. SCEMD 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 SCEMD or appeals the Notice in accordance with Chapter 3, Section IX.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. SCEMD may issue an Official 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), 6.96 (Hazardous Materials Disclosure) and 6.98 (Hazardous Waste Generation) to take any of the following actions:

1. Immediately discontinue any action that results in a violation of the requirements listed in Section I of this policy.
2. Cleanup or remediate the area or media affected by the violation.

B. Requirements.

1. The Notice shall state that the recipient has a right to appeal the matter as set forth in Section XI.A.1 of this policy.
2. 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.
3. 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, SCEMD Environmental Specialist may immediately affix a red tag to the top of the fill pipe of the non-compliant underground storage tank system (H&SC § 25292.3(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 22 CCR § 2715.3, SCEMD 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, SCEMD may affix a red tag to the top of the fill pipe of the non-compliant underground storage tank system.
3. Before affixing any red tag, the Environmental Specialist shall document the product level in the tank. No owner or operator of an underground storage tank

system may deposit or allow for the deposit of any petroleum product into a tank which has a red tag affixed.

B. Removal of Red Tag.

1. Upon notification by the owner or operator that the significant violation has been corrected, SCEMD shall inspect the underground storage tank 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, SCEMD shall immediately remove the red tag.
2. Upon removal of the red tag from an underground storage tank system, SCEMD shall document the product level in the tank.

XI. Administrative Hearing Process

A. Hearing Procedures.

1. Chapter 6.11, subsection (d), §25404.1.1 of the H&SC allows the business/facility owner or operator (Respondent) to request a hearing on the Order within fifteen (15) calendar days after service of the Order or Notice. This timeframe cannot be extended.
2. A request for a hearing is referred to in Chapter 6.11, subsection (d), §25187(d) of H&SC as a “Notice of Defense (NOD).” The NOD must be filed with SCEMD within fifteen (15) calendar days of service of the Order or Notice. 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 Respondent may specify in the NOD one of two hearing processes.
 - a. An administrative law judge available through a Cal-EPA contract, or
 - b. A hearing officer designated by SCEMD 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 SCEMD receives a NOD within the fifteen (15) calendar-day response period, it must immediately notify the Sacramento County Counsel’s office and submit a “Local Agency Request to Set” with the Office of Administrative Hearings (OAH).
5. The Respondent must be notified of the hearing date.
6. The hearing must commence within 90 calendar days of receipt of the NOD. This 90 day deadline may be extended upon mutual agreement.

7. SCEMD will be represented by County Counsel during the hearing process.
8. SCEMD will remain in contact with the Respondent and offer the opportunity to settle the case prior to the hearing date.
9. After the hearing, a proposed decision should be issued by the OAH judge to SCEMD within thirty (30) calendar days. To adopt the proposed decision, SCEMD will serve the Respondent with a letter, stating that it is adopting the proposed decision, and serves this package on the business. Such Orders are effective and final upon issuance, and the business 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. Procedures to Access Administrative Law Judge. Cal-EPA has entered into a contract with the Department of General Services, OAH to fund requested hearings on AEOs issued by CUPA’s. The following is the procedure to access this contract.

1. OAH agrees to provide administrative law judges, clerical support, and hearing reporters or recording devices as may be needed to conduct hearings.
2. The hearings will be conducted as requested to resolve AEOs pursuant to Chapter 6.5, §25187 and Chapter 6.11, subsection (a) of §25404.1.1 of the H&SC 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 6.95 and §25270.5.
3. Hearings on AEOs will be conducted pursuant to H&SC §25404.1 and Government Code §11400 et seq. To schedule a hearing:
 - a. Submit a typed “Local Agency Request to Set” form in triplicate to the following location:

Office of Administrative Hearings
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833

The current form can be found using the following link:
<http://www.oah.dgs.ca.gov/Forms/GJ+Forms.htm>

- b. The OAH Calendar Office will schedule the hearing at a place and time that is mutually agreeable to the OAH and SCEMD.
 - c. Provide the OAH with a copy of the AEO and the Notice of Defense

- d. SCEMD will provide notices of scheduled hearings to all applicable Parties according to pertinent law. A copy of the notice of scheduled hearing shall also be mailed to:

Cal-EPA/Unified Program
1001 I Street
Sacramento, CA 95812

- e. Within thirty (30) calendar days, the OAH will provide SCEMD with a proposed decision containing the findings of fact, conclusions of law and a final deposition regarding each issue contested. SCEMD can choose to adopt the OAH's proposed decision; or adopt portions of the proposed decision while revising other portions; or reject the proposed decision.
- f. SCEMD will issue the final order to the respondent and provides copies by mail to OAH and Cal-EPA/Unified Program. Case files shall be retained by OAH for a period of six (6) months, at which time OAH will notify SCEMD to pick up the case files.

C. Civil Appeal of the "Final" Order.

1. Within thirty (30) calendar days after service of a copy of a Decision and Order issued by SCEMD, the business/facility owner or operator (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).

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.
 - d. The deterrent affect of the penalty.

B. Steps in Determining Penalties.

1. Initial Penalty. SCEMD 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.
 - d. For requirements with several components, consider the extent of the violation in terms of the most significant component.

2. Adjusted Initial Penalty

- a. 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 – Adjustment Criteria

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

- b. Economic Benefit Adjustment. The initial penalty may be increased if, in the opinion of SCEMD, 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 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 times 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
Extraordinary	Downward adjustment of up to 25 %	Violator exceeded minimum requirements in returning to compliance or returned to compliance faster than requested.
Good Faith	No adjustment	Violator demonstrated a cooperative effort.
Recalcitrance	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.
Refusal	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.

- (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 §25189.2 (a-d).
 - a. The total penalty calculated for any single violation shall not exceed the amount specified in statute; \$25,000 per day, per violation (H&SC, §25189.2).
 - b. The following matrix will be used to determine initial penalty for a hazardous waste violation:

Table 4 – Hazardous Waste Penalties

HAZARDOUS WASTE Initial Penalty Matrix		ACTUAL OR POTENTIAL HARM		
		Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major	Maximum	\$25,000	\$20,000	\$15,000
	Average	\$22,500	\$17,500	\$10,500
	Minimum	\$20,000	\$15,000	\$6,000
Moderate	Maximum	\$20,000	\$15,000	\$6,000
	Average	\$17,500	\$10,500	\$4,000
	Minimum	\$15,000	\$6,000	\$2,000
Minimal	Maximum	\$15,000	\$6,000	\$2,000
	Average	\$10,500	\$4,000	\$1,000
	Minimum	\$6,000	\$2,000	\$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 Underground Storage Tank.
 - b. For violations of H&SC §25299 (c), the respondent is liable for no more than \$5,000 per day, per violation, per Underground Storage Tank.
 - c. The following matrix will be used to determine initial penalty for an underground storage tank system violation:

Table 5 – UST Penalties

UST Initial Penalty Matrix		ACTUAL OR POTENTIAL HARM		
		Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major	Maximum	\$5,000	\$3,000	\$2,000
	Average	\$4,000	\$2,500	\$1,500
	Minimum	\$3,000	\$2,000	\$1,000
Moderate	Maximum	\$3,000	\$2,000	\$1,000
	Average	\$2,500	\$1,500	\$750
	Minimum	\$2,000	\$1,000	\$500
Minimal	Maximum	\$2,000	\$1,000	\$500
	Average	\$1,500	\$750	\$250
	Minimum	\$1,000	\$500	\$0

3. Hazardous Materials Business Plan Program (HMBP). For violations of H&SC §25514.5. Any business/facility that violates Article 1, Chapter 6.95, Division 20 of the H&SC is liable for an amount not greater than \$2,000 for each day in which the violation occurs, or greater than \$5,000 for each day in which the violation occurs for any business that knowingly violates after reasonable notice of the violation.

The following matrix will be used to determine initial penalty for an underground storage tank system violation:

Table 6 – HMBP Penalties

HMBP Initial Penalty Matrix		ACTUAL OR POTENTIAL HARM		
		Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major	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
Moderate	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
Minimal	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. Businesses or facilities shall, upon discovery, immediately report any release or threatened release of a hazardous material to SCEMD and the Governor’s Office of Emergency Services Warning Center. 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 §25514.5(a) of the H&SC, 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 Penalties

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

5. California Accidental Release Prevention (Cal-ARP) 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 Chapter 6.95, Article 2, §25540(a) of the H&SC, any stationary source that violates this article shall be liable in the amount of not less than \$2,000 per day in which the violation occurs.
- d. Pursuant to Chapter 6.95, Article 2, §25540(b) of the H&SC, 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 Penalties

CalARP <i>Initial Penalty Matrix</i>		ACTUAL OR POTENTIAL HARM		
		Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major	Maximum <i>(knowingly)</i>	\$2,000 \$25,000	\$1,200 \$15,000	\$800 \$10,000
	Average <i>(knowingly)</i>	\$1,600 \$20,000	\$1,000 \$12,500	\$600 \$7,500
	Minimum <i>(knowingly)</i>	\$1,200 \$15,000	\$800 \$10,000	\$400 \$5,000
Moderate	Maximum <i>(knowingly)</i>	\$1,200 \$15,000	\$800 \$10,000	\$400 \$5,000
	Average <i>(knowingly)</i>	\$1,000 \$12,500	\$600 \$7,500	\$300 \$3,750
	Minimum <i>(knowingly)</i>	\$800 \$10,000	\$400 \$5,000	\$200 \$2,500
Minimal	Maximum <i>(knowingly)</i>	\$800 \$10,000	\$400 \$5,000	\$200 \$2,500
	Average <i>(knowingly)</i>	\$600 \$7,500	\$300 \$3,750	\$100 \$1,250
	Minimum <i>(knowingly)</i>	\$400 \$5,000	\$200 \$2,500	\$0 \$0

6. Above Ground Storage Tank (AST) Program.

- a. For violations of H&SC §25270.5, 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 – AST Initial Penalties

AST <i>Initial Penalty Matrix</i>		ACTUAL OR POTENTIAL HARM		
		Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major	Maximum <i>(knowingly)</i>	\$5,000 <i>\$10,000</i>	\$3,000 <i>\$6,000</i>	\$2,000 <i>\$4,000</i>
	Average <i>(knowingly)</i>	\$4,000 <i>\$8,000</i>	\$2,500 <i>\$5,000</i>	\$1,500 <i>\$3,000</i>
	Minimum <i>(knowingly)</i>	\$3,000 <i>\$6,000</i>	\$2,000 <i>\$4,000</i>	\$1,000 <i>\$2,000</i>
Moderate	Maximum <i>(knowingly)</i>	\$3,000 <i>\$6,000</i>	\$2,000 <i>\$4,000</i>	\$1,000 <i>\$2,000</i>
	Average <i>(knowingly)</i>	\$2,500 <i>\$5,000</i>	\$1,500 <i>\$3,000</i>	\$750 <i>\$1,500</i>
	Minimum <i>(knowingly)</i>	\$2,000 <i>\$4,000</i>	\$1,000 <i>\$2,000</i>	\$500 <i>\$1,000</i>
Minimal	Maximum <i>(knowingly)</i>	\$2,00 <i>\$4,000</i>	\$1,000 <i>\$2,000</i>	\$500 <i>\$1,000</i>
	Average <i>(knowingly)</i>	\$1,500 <i>\$3,000</i>	\$750 <i>\$1,550</i>	\$250 <i>\$500</i>
	Minimum <i>(knowingly)</i>	\$1,00 <i>\$2,000</i>	\$500 <i>\$1,000</i>	\$0 <i>\$0</i>

Chapter 4

ENFORCEMENT REVENUE OFFSET PROGRAM

I. Background.

State law (H&SC §25404.1.1(i)) requires that all administrative penalties collected from enforcement actions be applied to the benefit of the program of origin. With the exception of a relatively small amount set aside for preliminary investigation cost recovery, SCEMD does not budget for any realized enforcement revenue. It is SCEMD's position that enforcement revenue should not be formalized as a traditional revenue stream needed for the support of necessary and appropriate program activities. Thus, core program activities such as staff costs relating to inspections, documentation, staff training, business education and outreach, and Department and County level overhead are built into the SCEMD fee structure.

After recovering the cost of implementing enforcement actions, SCEMD utilizes remaining enforcement revenue and other accumulated savings to establish program specific rate stabilization reserves that are intended to meet unanticipated expenses or to offset or buffer the need for significant fee increases. It is recognized that, on occasion, the accumulated fines and penalties will exceed the amount needed for a prudent reserve. In these instances, SCEMD has received approval from the Sacramento County Board of Supervisors to return this excess revenue to complaint facilities in the form of a fee offset as part of the annual billing process.

The benefits of implementing this program are significant. The Enforcement Revenue Offset Program enhances SCEMD's enforcement program credibility by insulating the Department from accusations of basing enforcement activity on perceived funding needs, thereby providing tangible proof of the enforcement program's objectivity. This program also provides meaningful positive motivation to facilities to achieve and maintain compliant status.

II. Procedure.

1. The SCEMD enforcement revenue offset program provides for the rebate of available revenue derived from enforcement actions to eligible facilities in the same regulatory category. For example, the rebate of available revenue gained through the enforcement of Underground Storage Tank (UST) statutes and regulations would be limited to those businesses or facilities that own and operate UST systems in a compliant manner.

2. Eligible facilities are defined as facilities or businesses that have not been served with an Administrative Order or been subject to any other form of formal enforcement within the previous three fiscal years and who are assessed annual program recurring activity fees.
3. Available enforcement revenue is defined as administrative or civil penalties collected from enforcement actions adjusted for enforcement activity cost recovery and necessary supplementation to the CUPA program rate stabilization reserve.
4. Penalty revenue assessed, but not yet collected, shall be included in totals for consideration at the end of the fiscal year they are actually received.
5. Distribution will not be made if the available revenue is less than 5% of the total program revenue. For example, if annual UST inspection program revenue is \$500,000, monies received through UST program enforcement actions would not be distributed to UST program facilities unless the total (after applicable deductions) was at least \$25,000. If the available revenue fail to meet the 5% threshold, those revenues will be held over to the following fiscal year and will be reconsidered for distribution at the end of that year if additional enforcement funds are realized.
6. Not later than June 15th of each fiscal year, the Chief of the Hazardous Materials Division will forward a recommendation to the Director regarding the feasibility of whether available enforcement revenue shall be returned to complaint CUPA facilities as fee offsets during the subsequent fiscal year. This recommendation shall include the following:
 - a. An analysis of costs incurred to implement Hazardous Materials Division enforcement activities during the preceding fiscal year.
 - b. An analysis of the status of the CUPA program rate stabilization reserve with a conclusion regarding the need for additional supplementation to achieve a prudent level.
 - c. A table specifying the amount of available revenue to be distributed for each CUPA program.
 - d. A table listing the proposed fee offset for every eligible Program Element (PE).
7. Upon approval by the Director, the Chief of the Hazardous Materials Division will coordinate as necessary with the Department Accounting and Finance Manager and Budget Officer to implement the offset program.