

**Sacramento County  
Environmental Management Department**

**WELL ORDINANCE ENFORCEMENT POLICY**



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**I. Statutory Authority**

Sections 13801(c) and (d) of the California Water Code mandate that every county, city, and water agency adopt a well ordinance that meets or exceeds the standards contained in the Department of Water Resources' (DWR) Bulletin 74-81 (and subsequent revisions), or the State Water Resources Control Board's (SWRCB's) Model Well Ordinance will take effect in those jurisdictions. In November of 1992, Sacramento County revised its existing well ordinance (Sacramento County Code, Chapter 6.28) to bring it into substantial conformance with DWR standards and the SWRCB's Model Well Ordinance. Sacramento County's well ordinance was further revised in 2002 to comply with an additional Water Code mandate to include standards for geothermal heat exchange wells. The 2002 revisions also included administrative penalty provisions consistent with Government Code Section 53069.4, which authorized 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 6.28.120 sets forth administrative enforcement procedures for violations of Chapter 6.28, and it sets the maximum penalty for violation of any provision of the Chapter at \$10,000 per well 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 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 regulated entity to compliance in a timely manner; (2) eliminate economic benefit; (3) punish violators, and (4) deter future noncompliance. Within SCEMD, the Water Protection Division (WPD) is responsible for initiating and implementing appropriate enforcement actions for violations of well 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 WPD 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:

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1. The issuance of adequate and proper notices to the Respondents describing the violations;
  2. Possible use of photographs depicting the violations;
  3. The clear and complete documentation of any interviews with witnesses;
  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 WPD 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 WPD Supervisors to discuss potential enforcement actions.
  3. WPD Supervisors shall:
    - a. Determine whether alleged violations of the well ordinance 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. Conduct inspections of regulated entities and/or respond to notifications or complaints that allege violations of the well ordinance.
  - b. Prepare and issue notices of violation to regulated entities that are in violation of the well ordinance.
  - c. 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 violations.
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 Water Protection 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 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 that 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 6.28 that does not include any of the following:
  - 1. A violation 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. A violation that is a chronic violation or 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 applicable regulatory requirements;
  - 4. A violation that results in an emergency response from a public agency;
  - 5. A violation that enables the violator to significantly benefit economically from the noncompliance, either by reduced costs or competitive advantage;
  - 6. 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.

- F. “Notice of Defense.” A request for a hearing is referred to as a “Notice of Defense” (NOD).
- G. “Respondent.” A Respondent is the entity that is the alleged violator.
- H. “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 the Sacramento County Code, Section 6.28.120 to impose administrative penalties.
- 2. The goal of the AEO is, among other things, to return a regulated entity to compliance in a timely manner; eliminate economic benefit; punish the violator; 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 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 Water Protection 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 Water Protection 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 Water Protection 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**

<b>AEO Process Alternative</b>	<b>When to Use</b>	<b>Disadvantages</b>
"Show Cause" Letter	<ol style="list-style-type: none"> <li>1. When a Respondent is not a repeat violator, does not have a history of noncompliance, and has not been recalcitrant or uncooperative.</li> <li>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.</li> </ol>	Timeframes for filing a notice are not started and therefore a deadline has not been established.
"Consent Order"	<ol style="list-style-type: none"> <li>1. The violations are less serious, simple and easily understood.</li> <li>2. The compliance issues are straightforward and no compliance schedule is required.</li> <li>3. The Respondent is not a recalcitrant or repeat offender.</li> <li>4. The anticipated penalties are relatively small and prompt settlement is expected.</li> </ol>	<ol style="list-style-type: none"> <li>1. Provides no opportunity for discussion of complex compliance issues.</li> <li>2. Difficult to use if case involves multi-agency enforcement.</li> </ol>
"Draft Unilateral Order"	<ol style="list-style-type: none"> <li>1. The violations are serious and/or complex.</li> <li>2. The compliance issues are complex requiring a compliance schedule.</li> <li>3. Prompt settlement is not expected.</li> </ol>	The timeframes for filing a notice of defense are not triggered and thus, a deadline is not established.
"Stipulation and Order"	<ol style="list-style-type: none"> <li>1. A "Draft Unilateral Order" has been issued and the Respondent has then requested settlement discussions.</li> <li>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 violations cited in the "Draft Unilateral Order."</li> </ol>	

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"Final Unilateral Order"	<ol style="list-style-type: none"> <li>1. The Respondent is a repeat violator or has a history of noncompliance.</li> <li>2. The violations pose an imminent and substantial threat to public health or the environment; or</li> <li>3. The violations have resulted in a significant environmental release.</li> </ol>	Doesn't allow for consideration of the Respondent's response prior to formal public action.
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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 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.

**"Show Cause" Letter**

Who	Steps/Tasks	Documentation
SCEMD Personnel	1. Receives notification of the violation, or completes an inspection of the site and confirms violation.	Chronology
	2. Enforcement action should be considered if: <ol style="list-style-type: none"> <li>a. Inspection/investigation revealed ongoing violation(s);</li> <li>b. Inspection/investigation revealed a pattern of repeat violations or recalcitrant behavior.</li> </ol>	"Notice of Violation"
	3. Collect evidence (photos, samples, etc.) and present findings to WPD Supervisor. ▼	

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<b>Who</b>	<b>Steps/Tasks</b>	<b>Documentation</b>
WPD Supervisor	4. Reviews evidence. 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
WPD 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
	<b>IF GREEN RETURN RECEIPT CARD IS RECEIVED, GO TO STEP 11. IF DOCUMENTS ARE RETURNED AS UNDELIVERABLE, CONTINUE TO STEP 9.</b>	
Clerical	9. Routes returned documents to WPD Supervisor for corrective action	
WPD Supervisor	10. Researches alternate addresses and re-submits to Clerical.  <b>RETURN TO STEP 8</b>	
Clerical	11. Files green return receipt card with case file documents.	
WPD 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"
Clerical	16. If agreement is reached, collect and distribute penalty and other monies.	
WPD Supervisor	17. Direct re-inspection as needed to confirm 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.

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- 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 violations.
  - (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. Receives notification of the violation, or completes an inspection of the site and confirms violation.	Chronology
	2. Enforcement action should be considered due to: a. Inspection/investigation revealed ongoing violation(s); b. Inspection/investigation revealed a pattern of repeat violations or recalcitrant behavior.	“Notice of Violation”
	3. Collect evidence (photos, samples, etc.) and present findings to WPD Supervisor.	
WPD Supervisor	4. Reviews evidence. If enforcement action is warranted, makes recommendations to Division Chief regarding: 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 WPD Supervisor to prepare case documents.	
SCEMD Personnel	6. Prepares case file including draft “Consent Order.”	Draft “Consent Order”
WPD 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”

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<b>Who</b>	<b>Steps/Tasks</b>	<b>Documentation</b>
	<p><b>IF GREEN RETURN RECEIPT CARD IS RECEIVED, GO TO STEP 11.</b></p> <p><b>IF DOCUMENTS ARE RETURNED AS UNDELIVERABLE, CONTINUE TO STEP 9.</b></p>	
Clerical	9. Routes returned documents to WPD Supervisor for corrective action	
WPD Supervisor	10. Researches alternate addresses and re-submits to Clerical.  <b>RETURN TO STEP 8</b>	
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.	
WPD 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 re-inspection as needed to confirm compliance.	
	16. Send confirmation letter to Respondent indicating satisfactory compliance.	

3. "Draft Unilateral Order." Under this alternative, SCEMD will send a "Draft Unilateral Order" to the Respondent with a cover letter. The cover letter will state why the Draft Order is being sent and provide the Respondent with a specified number of days to enter into settlement discussions to resolve the violations. The failure of the Respondent to respond to the letter will result in the issuance of a "Final Unilateral Order."
  - a. The "Draft Unilateral Order" is substantially the same as a "Final Unilateral Order," except that it has not been signed. It is similar to the "Show Cause" alternative because it initiates settlement discussions with the Respondent.
  - b. When to use. "Draft Unilateral Orders" are appropriate for the following circumstances:
    - (1) Serious and/or complex violations.
    - (2) Complex compliance issues are present and a compliance schedule is required; and
    - (3) Prompt settlement is not anticipated.

**“Draft Unilateral Order”**

Who	Steps/Tasks	Documentation
SCEMD Personnel	1. Receives notification of the violation, or completes an inspection of the site and confirms violation.	Chronology
	2. Enforcement action should be considered due to: a. Inspection/investigation revealed ongoing violation(s); b. Inspection/investigation revealed a pattern of repeat violations or recalcitrant behavior.	“Notice of Violation”
	3. Collect evidence (photos, samples, etc.) and present findings to WPD Supervisor.	
WPD Supervisor	4. Reviews evidence. If enforcement action is warranted, makes recommendations to Division Chief regarding: a. Appropriate case referral. b. If Administrative Enforcement is recommended, whether to utilize the “Draft Unilateral Order” alternative.	
Division Chief	5. Makes decision regarding the above issues. If “Draft Unilateral Order” alternative is used, directs WPD Supervisor to prepare case documents.	
SCEMD Personnel	6. Prepares case file including “Draft Unilateral Order.”	“Draft Unilateral Order”
WPD 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 “Draft Unilateral Order” and sends via “proof of service” certified mail.	“Draft Unilateral Order”
	<b>IF GREEN RETURN RECEIPT CARD IS RECEIVED, GO TO STEP 11. IF DOCUMENTS ARE RETURNED AS UNDELIVERABLE, CONTINUE TO STEP 9.</b>	
Clerical	9. Routes returned documents to WPD Supervisor for corrective action.	
WPD Supervisor	10. Researches alternate addresses and re-submits to Clerical.  <b>RETURN TO STEP 8</b>	
Clerical	11. Files green return receipt card with case file documents.	
WPD Supervisor	12. If business wishes to settle and not have settlement discussions, issue “Final Unilateral Order” (See Section V.C.5) or “Stipulation and Order” (See Section V.C.4).	“Final Unilateral Order” or “Stipulation and Order”
	13. If the Respondent requests settlement discussions, ask them to provide evidence of why they are not in violation. Reconsider violation(s) based on their evidence.	
	14. If an agreement is reached after Step 13, complete a “Stipulation and Order.”  ▼	“Stipulation and Order”

<b>Who</b>	<b>Steps/Tasks</b>	<b>Documentation</b>
Clerical	15. If agreement is reached, collect and distribute penalty and other monies. <b>GO TO STEP 17</b>	
WPD Supervisor	16. If agreement is not reached, with concurrence of Division Chief, issue a "Final Unilateral Order" (See Section V.C.5)	"Final Unilateral Order"
	17. Direct re-inspection as needed to confirm compliance.	
	18. Send confirmation letter to Respondent indicating satisfactory compliance.	

4. "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 "Draft 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 "Draft 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 "Draft Unilateral Order" has already been issued for the violation or violations in question and the business has requested settlement discussions after service of the "Draft 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 violations cited in the "Draft Unilateral Order."

**"Stipulation and Order"**

<b>Who</b>	<b>Steps/Tasks</b>	<b>Documentation</b>
SCEMD Personnel	1. Receives notification of the violation, or completes an inspection of the site and confirms violation.	Chronology
	2. Enforcement action should be considered if: <ol style="list-style-type: none"> <li>a. Inspection/investigation revealed ongoing violations;</li> <li>b. Inspection/investigation revealed a pattern of repeat violations or recalcitrant behavior.</li> </ol>	"Notice of Violation"
	3. Collect evidence and present findings to WPD Supervisor.	



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<b>Who</b>	<b>Steps/Tasks</b>	<b>Documentation</b>
WPD Supervisor	4. Reviews evidence. If enforcement action is warranted, makes recommendations to Division Chief regarding: a. Appropriate case referral. b. If Administrative Enforcement is recommended, "Draft Unilateral Order" alternative is used.	
Division Chief	5. Makes decision regarding the above issues. If "Draft Unilateral Order" alternative is used, directs WPD Supervisor to prepare case documents.	
SCEMD Personnel	6. Prepares case file including "Draft Unilateral Order."	"Draft Unilateral Order"
WPD 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 "Draft Unilateral Order" and sends via "proof of service" certified mail.	"Draft 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 WPD Supervisor for corrective action	
WPD Supervisor	10. Researches alternate addresses and re-submits to Clerical.  <b>RETURN TO STEP 8</b>	
Clerical	11. Files green return receipt card with case file documents.	
WPD Supervisor	12. If respondent wishes to settle and not have settlement discussions, issue "Final Unilateral Order" or "Stipulation and Order" (See Sections V.C.4 and V.C.5).	"Final Unilateral Order" or "Stipulation and Order"
WPD Supervisor	13. If the Respondent request settlement discussions, ask them to provide evidence of why they are not in violation. Reconsider violation(s) based on their evidence.	
	14. If an agreement is reached, complete a "Stipulation and Order."	"Stipulation and Order"
Clerical	15. If agreement is reached, collect and distribute penalty and other monies.  <b>GO TO STEP 17</b>	
WPD Supervisor	16. If agreement is not reached, with concurrence of Division Chief, issue a "Final Unilateral Order" (See Section V.C.5).	"Final Unilateral Order"
	17. Direct re-inspection as needed to confirm compliance.	
	18. Send confirmation letter to Respondent indicating satisfactory compliance.	

5. "Final Unilateral Order." Utilizing this alternative, SCEMD will issue a "Unilateral Order" to the Respondent, without prior discussion or negotiation. The "Show Cause" and "Draft Unilateral Order" alternatives anticipate the possibility of the issuance of a "Final

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 “Final Unilateral Order” alternative is appropriate under the following circumstances:
  - (1) The Respondent is a repeat violator or has a history of noncompliance with the SCEMD;
  - (2) The Respondent 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 “Final 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 “Final 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 “Final Unilateral Order.” There are two situations in which a “Final 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 “Final 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 “Final 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.

**“Final Unilateral Order”**

<b>Who</b>	<b>Steps/Tasks</b>	<b>Documentation</b>
SCEMD Personnel	1. Receives notification of the violation, or completes an inspection of the site and confirms violation.	Chronology
	2. Enforcement action should be considered due to: <ol style="list-style-type: none"> <li>a. Inspection/investigation revealed ongoing violations;</li> <li>b. Inspection/investigation revealed a pattern of repeat violations or recalcitrant behavior.</li> </ol>	“Notice of Violation”
	3. Collect evidence (photos, samples, etc.) and present findings to WPD Supervisor.	
WPD Supervisor	4. Reviews evidence. If enforcement action is warranted, makes recommendations to Division Chief regarding: <ol style="list-style-type: none"> <li>a. Appropriate case referral.</li> <li>b. If Administrative Enforcement is recommended, “Final Unilateral Order” alternative is used.</li> </ol>	
SCEMD Personnel	5. Prepares case file including “Final Unilateral Order”	“Final Unilateral Order”
WPD Supervisor and Division Chief	6. Reviews case file. <ol style="list-style-type: none"> <li>a. Determines penalties and cost recovery amounts.</li> <li>b. Determines appropriate response deadlines. Forwards to clerical</li> </ol>	
Clerical	7. Finalizes “Final Unilateral Order” and sends via “proof of service” certified mail.	“Final Unilateral Order”



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Who	Steps/Tasks	Documentation
	<p align="center"><b>IF GREEN RETURN RECEIPT CARD IS RECEIVED, GO TO STEP 10. IF DOCUMENTS ARE RETURNED AS UNDELIVERABLE, CONTINUE TO STEP 8</b></p>	
Clerical	8. Routes returned documents to WPD Supervisor for corrective action.	
WPD Supervisor	9. Researches alternate addresses and re-submits to Clerical. <b>GO TO STEP 7</b>	
Clerical	10. Files green return receipt card with case file documents.	
<b>THREE POSSIBLE OUTCOMES:</b>		
<b>OUTCOME #1 Respondent submits a Notice of Defense (NOD) and requests a stay while settlement discussions occur.</b>		
WPD Supervisor	11. If the Respondent requests settlement discussions, ask them to provide evidence of why they are not in violation. Reconsider violation(s) 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. <b>GO TO STEP 22</b>	
<b>OUTCOME #2: Respondent submits a Notice of Defense (NOD) without intent of conducting settlement discussions or settlement discussions occur without reaching agreement.</b>		
WPD 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 WPD Supervisor.	Hearing Notification letter
WPD Supervisor	18. Upon notification of the decision, prepares letter for Division Chief's signature to Respondent stating SCEMD's intention to adopt the decision. <b>GO TO STEP 20</b>	Decision Notification letter to Respondent
<b>OUTCOME #3: Respondent does not submit NOD.</b>		
<p><b>a. Order becomes final after 15 days.</b> <b>b. Rights to appeal are forfeited.</b> <b>c. Order is final and subject to enforcement.</b></p>		
WPD Supervisor	19. Prepares letter for Division Chief's signature to Respondent stating SCEMD's intention to enforce order.	Decision Notification letter to Respondent



Who	Steps/Tasks	Documentation
WPD Supervisor	20. Collect and distribute penalty and other monies.	
	21. Assigns SCEMD personnel to perform follow-up inspection as necessary to verify compliance.	Inspection report
	22. Notifies clerical when case is closed and documents ready to be filed and archived. <b>END</b>	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." At a minimum, a "Consent 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 violation. 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. Re-inspections

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

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1. To confirm that necessary actions have been completed so as to achieve compliance after any significant or major violation has been documented.
2. The affected entity has been placed in a “monitor” status. An entity that has repeated significant violations may be placed in a “monitor” status if there is reasonable doubt that the entity will remain in compliance with applicable sections of 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 not 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.

**VII. Revocation, Modification or Suspension of Permit**

- A. Grounds for Revocation, Modification or Suspension of Permit. Any permit issued pursuant to Sacramento County Code, Chapter 6.28 (Wells and Pumps), may be revoked, modified or suspended during its term, upon one or more of the following grounds:
  1. Violation of any of the terms or conditions of the permit, including nonpayment of fees.
  2. Obtaining the permit by misrepresentation or intentional failure to fully disclose all relevant facts.
  3. Violation of any provision of Sacramento County Code, Chapter 6.28 (Wells and Pumps).
- 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 Sacramento County Code, Chapter 6.28, 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 the SCEMD or appeals the Notice in accordance with Section IX 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.

**VIII. Cease and Desist Orders**

- A. Issuance. SCEMD may issue a Cease and Desist Order (Order). The Order may direct any person responsible for any violation of the requirements listed in Sacramento County Code, Chapters 6.28 (Wells and Pumps), 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 Order shall state that the recipient has a right to appeal the matter as set forth in Section IX of this policy.
  2. The Order shall state that the recipient 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.

**IX. Administrative Hearing and Appeal Process**

- A. Hearing Procedures
  1. Sacramento County Code, Chapter 6.28, Section 6.28.120.F 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 assigned the responsibility of conducting a hearing by the County Executive. The County Executive shall be authorized to assign hearing responsibilities from time to time to the following entities:

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- a. County management personnel whom the County Executive finds are qualified by training and experience to conduct such hearings;
  - b. Any person or persons, qualified by training or experience, who the County Executive may employ or who are retained by contract to conduct such hearings; or
  - c. Administrative law judges assigned to the State of California Office of Administrative Hearings.
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*].

X. 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 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 well ordinance requirements.
  - a. Assigning degrees of actual and potential harm.
    - (1) Major – the nature of the violation has the potential to 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 nature of the violation 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 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.
- c. 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.

<b>ADJUSTMENT FACTOR</b>	<b>CIRCUMSTANCES</b>
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 the 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 Respondent has violated the same requirement in different locations or units within a site.

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- b. The Respondent has violated the same requirement on different days. This would not be appropriate if the Respondent has been notified of the violation and has had sufficient time to correct the violation.
- 4. Multi-day Violations. 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 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.

<b>Degree of Cooperation/Effort</b>	<b>Adjustment Factor</b>	<b>Circumstance</b>
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 Respondent'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) Upward adjustments of up to 100% can be made if a Respondent 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 Respondent'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. For violations of Sacramento County Code, Chapter 6.28, the violator shall be liable for penalties as provided in Section 6.28.120.
2. The total penalty calculated for any single violation shall not exceed the maximum penalty specified in Section 6.28.120.A: \$10,000 per well, per day of violation.
3. The following matrix will be used to determine the initial penalty for a well ordinance violation:

**INITIAL PENALTY MATRIX – WELLS AND PUMPS**

AUTHORITY: SACRAMENTO COUNTY CODE, CHAPTER 6.28, SECTION 6.28.120	ACTUAL OR POTENTIAL HARM ▼		
EXTENT OF DEVIATION ▼	Major	Moderate	Minor
Major	<u>Maximum:</u> <b>\$10,000</b>	<u>Maximum:</u> <b>\$6,000</b>	<u>Maximum:</u> <b>\$4,000</b>
	<u>Average:</u> <b>\$8,000</b>	<u>Average:</u> <b>\$5,000</b>	<u>Average:</u> <b>\$3,000</b>
	<u>Minimum:</u> <b>\$6,000</b>	<u>Minimum:</u> <b>\$4,000</b>	<u>Minimum:</u> <b>\$2,000</b>
Moderate	<u>Maximum:</u> <b>\$6,000</b>	<u>Maximum:</u> <b>\$4,000</b>	<u>Maximum:</u> <b>\$2,000</b>
	<u>Average:</u> <b>\$5,000</b>	<u>Average:</u> <b>\$3,000</b>	<u>Average:</u> <b>\$1,500</b>
	<u>Minimum:</u> <b>\$4,000</b>	<u>Minimum:</u> <b>\$2,000</b>	<u>Minimum:</u> <b>\$1,000</b>
Minor	<u>Maximum:</u> <b>\$4,000</b>	<u>Maximum:</u> <b>\$2,000</b>	<u>Maximum:</u> <b>\$1,000</b>
	<u>Average:</u> <b>\$3,000</b>	<u>Average:</u> <b>\$1,500</b>	<u>Average:</u> <b>\$500</b>
	<u>Minimum:</u> <b>\$2,000</b>	<u>Minimum:</u> <b>\$1,000</b>	<u>Minimum:</u> <b>\$0</b>