

Certified Unified Program Agency (CUPA) INSPECTION AND ENFORCEMENT PLAN



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Chapter 1

INTRODUCTION

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

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

EMD's Inspection and Enforcement Plan (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 EMD, the Environmental Compliance Division 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. EMD personnel are each responsible for facilities located in specific assigned districts. Hazardous Materials Business Plan (HMBP) submittals from facilities are reviewed by staff dedicated to that workload. Additional, on-site technical verification is performed by EMD personnel responsible for that facility’s district. This verification is done in conjunction with the required Hazardous Materials Release Response Plan inspection.

II. Inventory of Regulated Businesses or Facilities (as of September 29, 2017):

Program Element	Number of Businesses/Facilities
Hazardous Materials Business Plans (HMBP)	4,385
Underground Storage Tank (UST) Facilities	467
Hazardous Waste Generators (RCRA and Non-RCRA)	3,167
RCRA Large Quantity Generators	53
Tiered Permitting of HW Onsite Treatment	
Permit By Rule (PBR)	5
Conditionally Authorized (CA)	2
Household Hazardous Waste Facilities (HHW)	4
Conditionally Exempt (CE)	17
Aboveground Petroleum Storage Act (APSA)	
APSA Facilities ≥ 10,000 gallons petroleum storage capacity	118
APSA Facilities < 10,000 gallons petroleum storage capacity	365
California Accidental Release Prevention (CalARP)	39
CalARP non-contiguous well sites	35

III. Frequency of Inspections

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

Program	EMD Inspection Frequency
Hazardous Materials Business Plans (H&SC § 25511(b))	Once every 3 years
UST Facilities (H&SC § 25288(a))	Annually
Hazardous Waste Generators (RCRA and Non-RCRA) (Not specified)	Once every 3 years*
* EXCEPTION: Facilities generating less than 10 gallons/80 lbs of hazardous waste annually	Complaint Basis/TBD
RCRA Large Quantity Generators (Not specified)	Once every 3 years
Appliance Recyclers (Not specified)	Once every 3 years
PBR – HHW Facilities (H&SC § 25201.4(b)(2))	Once every 3 years
Tiered Permitting (On-site HW Treatment - All) (H&SC § 25201.4(b)(2))	Once every 3 years
PBR, CA, CE (H&SC § 25201.4(b)(2))	Once every 3 years
APSA Facilities ≥ 10,000 gallons petroleum storage capacity (H&SC § 25270.5)	Once every 3 years
APSA Facilities ≥ 1,320 gallons, < 10,000 gallons petroleum storage capacity (Not specified)	Verification once every 3 years
CalARP* (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.	

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

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.** EMD seeks opportunities to conduct a single inspection that combines different programs whenever possible. For example, UST inspections will include HMBP and Hazardous Waste Generator inspections if they are due at that time. In addition, Cal-ARP inspections at well sites that handle no more than 300 pounds of chlorine will include an HMBP inspection if required.

- C. **MULTI-MEDIA INSPECTIONS.** The purpose of multi-media inspections is to coordinate, to the maximum extent feasible, EMD’s inspection and enforcement program with that of other federal, state, regional, and local agencies, which regulate facilities within Sacramento County.
 - 1. Facilities should be carefully screened prior to being selected for multi-media inspection. This approach will only work when a facility must comply with more than one discipline of environmental protection and the procedures for each discipline can be applied without intervening with each other. The following factors will be considered when determining which facilities can be inspected using multi-media techniques.
 - a. Can each regulator complete the work within a similar time frame?
 - b. Can the facility operator provide adequate escort?
 - c. Is the facility management sufficiently diverse to accept multiple exit interviews and fully understand 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.** EMD promotes integrated multi-media inspections by:
 - 1. Periodically meeting with other regulatory agencies to discuss facilities that are suitable for multi-media inspections.
 - 2. Regularly attending and participating in local Environmental Crimes Task Force meetings and actions.

V. Environmental Specialist/Technician Training

- A. **REQUIRED TRAINING.** All EMD personnel responsible for CUPA program inspections are subject to a training program that covers a variety of environmental laws and regulations. In short, personnel are expected to be knowledgeable in all issues relating to hazardous waste generation and treatment and HMBP requirements. Each EMD staff member receives extensive training in the following subject areas:
- Regulatory overview.
 - Hazardous waste classification.
 - Health and environmental effects of hazardous substances.
 - Inspection procedures and techniques.
 - Initial Hazardous Waste Operations and Emergency Response (HAZWOPER) training and subsequent refreshers.
 - Report writing.
- B. **ADDITIONAL TRAINING.** Staff assigned responsibilities in selected programs routinely receive training in specific topics that are germane to that area of required expertise. Such programs include but are not limited to, incident response, administrative enforcement, tiered permitting, and Cal/ARP which may require additional training such as:
- Hazard Chemical Identification System (HazCat) and identification procedures.
 - HazCat chemistry.
 - Sampling and instrumentation.
 - Investigation and enforcement.
 - Interviewing techniques and case development.
 - Collection and preservation of evidence.
 - Advanced Environmental Crimes Training Program (AECTP).
 - HazMat Technician Training.
- C. **UNDERGROUND STORAGE TANK (UST) INSPECTOR TRAINING REQUIREMENTS.** Some personnel are assigned inspection responsibilities for facilities that own or operate underground storage tanks (USTs). These individuals receive additional training that is tailored to regulatory requirements specific to these types of facilities. All staff conducting UST inspections shall possess a current International Code Council (ICC) Inspector Certificate and complete 16 hours of continuing education classes within a two year period. Newly hired or assigned UST inspectors shall obtain this certification within 180 days and it shall be renewed every two years.
- D. **ABOVEGROUND PETROLEUM STORAGE ACT (APSA) INSPECTOR TRAINING REQUIREMENTS:** EMD personnel may be assigned inspection responsibilities for facilities that store hazardous materials and/or hazardous waste in ASTs. All EMD inspectors are required to complete an APSA training program and pass an examination on Spill Prevention, Control, and Countermeasure (SPCC) provisions and safety requirements for APSA inspections prior to conducting an APSA inspection.

- E. **INSPECTION ROTATION.** Periodically, inspection responsibilities are rotated among personnel. This provides all members of the inspection staff with overall CUPA inspection expertise. EMD encourages new ideas and strategies to improve inspection efficiency and effectiveness.

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

There are no established PAs within Sacramento County.

VII. Facility Inspection Procedures

- A. **GENERAL PROTOCOLS.** Most facility inspections are done on an unannounced basis. In general, EMD personnel shall conduct facility inspections observing the following considerations:

1. Always maintain a professional, courteous, and respectful demeanor.
2. Safety must be a primary consideration when involved in any field work activities. Inspectors must read and become familiar with EMD Injury and Illness Protection Program (IIPP).
 - a. When in the field, wear appropriate clothing and safety equipment (approved safety foot wear, 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, EMD 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, EMD personnel may schedule an inspection in response to a contractor request.
2. Prior to performing an on-site inspection, EMD personnel will conduct an office audit of the facility that includes but is not limited to, a review of the following:
 - a. The electronic facility files 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. HMBP and any renewal HMBPs for completion and adequacy based on facility operations.
 - c. For UST Inspections - UST Facility Forms including but not limited to, Board of Equalization UST Storage Fee Account Number, UST tank Pages, written monitoring plan and financial responsibility.
 - 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, EMD personnel shall refer to the appropriate checklist while conducting the inspection. In general, upon arriving at the facility, complete the inspection performing the following tasks:
1. Conduct a visual inspection of the exterior of the facility and observe any relevant activity or physical evidence for appropriate immediate action before entering the facility (i.e., improper discharge to storm drain in a parking lot, unsafe storage, etc.).
 2. Display County issued photo identification and provide the business representative with a business card.
 3. State the nature of the visit (complaint response, routine inspection, incident response, etc.), and obtain consent to conduct an inspection. If denied entry into a facility, EMD personnel will report this to his/her Supervisor or Program Manager. The Supervisor or Program Manager will contact the facility and attempt to secure consent for entry. If entry is still denied, an inspection warrant shall be obtained.
 4. Request accompaniment during the inspection by the facility manager or other qualified business representative (owner, emergency coordinator, etc.).
 5. Perform a facility walk-through following the program-specific inspection checklists.
 6. Record inspection observations on the inspection notes form. Confirm and document the chemical inventory including types and quantities of chemicals and hazardous waste generation quantities.
 7. Review any otherwise required site-specific environmental permits or documents (i.e., industrial waste discharge permit, spill prevention control and countermeasure (SPCC) plan, etc.).
 8. Document any noted violations (i.e. photos, sampling, etc.).

NOTE: H&SC § 25185(a) authorizes EMD personnel to enter and inspect facilities; conduct necessary sampling activities; inspect and copy any records, reports or other information; photograph any waste, waste container, waste container label, waste treatment process, waste disposal site, or condition constituting a violation of law found during the inspection.

9. Discuss violations with the business representative and document any explanations or extenuating circumstances on the inspection notes form.
10. Electronically complete the Notice to Comply (NTC) 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. A separate NTC must be issued for each program element (i.e., UST, HMBP, hazardous waste).
11. Once violations are cited in an NTC, a facility has the following time to submit return to compliance documentation:
 - a. **HAZARDOUS MATERIALS BUSINESS PLANS:** Thirty (30) calendar days from the date that EMD notifies the facility of any deficiencies in any Plan submittal (H&SC § 25508(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.
 - b. **UNDERGROUND STORAGE TANKS:** Unless otherwise noted, within thirty (30) calendar days of receiving the NTC (Title 23 CCR § 2712(f)).
 - 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 to achieve compliance (H&SC § 25187.8(b)). This includes recyclers and HHW facilities.
 - d. **CALARP:** Thirty (30) calendar days after the date of the audit procedure has been completed (Title 19 CCR § 2775.2(h)).
 - e. **RE-INSPECTIONS:** Fourteen (14) calendar days for repeat violations and thirty (30) days for minor violations from the date of receipt of the NTC.

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

12. Explain the NTC to the business representative, stating that a corrective action statement may be returned via e-mail, fax or USPS and must include evidence of compliance (photos, disposal records, etc.) within the time specified. The NTC should contain an explicit statement that the facility may be subject to re-inspection at any time by EMD.

13. Record representative's name and title in the correct data fields and obtain the business representative's electronic signature.
14. Leave a copy of the NTC with the business representative along with copies of the relevant inspection checklists.

NOTE: On occasion, EMD personnel may be unable to issue the NTC at the time of inspection. In this case, EMD personnel will either mail the completed NTC to the business via "proof of service" certified mail, e-mail the NTC and request it be signed and returned, or the inspector will return in person to obtain an electronic signature. In all cases, the NTC should be delivered to the business not later than five (5) calendar days from the date of inspection.

15. Provide the business representative with appropriate educational and/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 within five (5) business days from the completion of the inspection.
2. Use Envision Connect Remote application and synchronize entries by the next business day after completion of the inspection.
3. Track the facility's compliance time by Envision Connect for violations follow-up.
4. Electronically file and index all appropriate photographs taken during the inspection within five (5) business days from the completion of the inspection, UNLESS the inspection was conducted as part of an ongoing enforcement investigation. In this case the inspection photographs will not be electronically filed and indexed until the case has been closed.
5. If Class I or II (Hazardous Waste Generator) or other significant violations were observed during the inspection and noted on the NTC, the ES shall consult with his/her supervisor about potential enforcement action.
6. Inspection notes shall be submitted for imaging within five (5) business days from the completion of the inspection, UNLESS the inspection was conducted as part of an ongoing enforcement investigation. In this case the inspection forms will not be submitted for imaging until the case has been closed.
7. Review all corrective action documentation submitted by the facility owner/operator for completeness and adequacy. Close out all appropriate violations in Envision Connect within seven (7) business days of receiving approved correction documentation.

FIGURE 1
FACILITY INSPECTION PROCEDURES

	Steps/Tasks	Documentation
General Protocol	<ol style="list-style-type: none"> 1. EMD 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, safety glasses, etc.). c. Displaying proper County-issued identification. d. Triennially, typically on an unannounced basis for HMBP, 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, EMD personnel shall review: <ol style="list-style-type: none"> a. Electronic facility files 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. For UST inspections - UST Facility Form, UST Tank Information/Monitoring Plan, UST Monitoring Site Plan, UST Certification of Financial Responsibility, UST Response Plan, UST Letter from CFO, and Owner Statement of UST Designated Operator Compliance. 	
	<ol style="list-style-type: none"> 3. Generate Hazardous Materials Application Type (HAPP) form to verify database information, including fee payment status and HMBP submittal, while performing the inspection. 	HAPP form
On-site Procedures	<p>Upon arriving at the facility, EMD personnel shall complete the inspection performing the following:</p> <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.). 	

On-site Procedures (continued)	2. Display proper photo identification and provide a business card to the business representative.	
	3. State the nature of the visit (complaint response, routine inspection, etc.), and obtain consent to do an inspection.	
	4. Request accompaniment during the inspection by the facility manager or other qualified business representative (owner, emergency coordinator, etc.).	
	5. Perform facility walk-through following the appropriate Checklist Summary of Violations.	Applicable Checklist Summary of Violations
	6. Record or document inspection observations on inspection notes form.	Inspection Notes Form
	7. Review any otherwise required site-specific environmental permits or documents (i.e., spill prevention control and countermeasure plan, etc.).	
	8. Discuss alleged violations with the business representative and document any explanations or extenuating circumstances on the inspection notes form or the Notice to Comply (NTC), as applicable.	Facility Inspection Notes
	9. Take photos of site as needed to document violations.	
	10. Using the tablet, complete the NTC recording noted violations, required corrective action and the date by which corrective action is required for each violation.	NTC
	11. Explain the NTC to the business representative, stating that a signed corrective actions statement may be e-mailed, faxed or mail in addition to evidence of compliance (photos, disposal records, etc.) within 30 calendar days.	NTC
	12. Enter the business representative's name and title in the correct data field and obtain the representative's electronic signature using the tablet.	NTC
	13. Print a copy of the NTC for the business and give to the representative with the relevant inspection checklist.	NTC Checklist Summary of Violations

	14. 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) within five (5) business days from the completion of the inspection.	HAPP form
	2. Use Envision Remote and synchronize to update all violation data by the next business day from completion of inspection.	
	3. Electronically file and index all appropriate photographs taken during the inspection within five (5) business days from the completion of the inspection, UNLESS the inspection was conducted as part of an ongoing enforcement investigation. In this case the inspection photographs will not be electronically filed and indexed until the case has been closed.	
	4. If Class I or II (Hazardous Waste Generator) or other significant violations were observed during the inspection and noted on the NTC, the ES shall consult with his/her supervisor about potential enforcement action.	
	5. Inspection notes shall be submitted for imaging within five (5) business days from the completion of the inspection, UNLESS the inspection was conducted as part of an ongoing enforcement investigation. In this case the inspection forms will not be submitted for imaging until the case has been closed.	
	6. Review all corrective action documentation submitted by the facility owner/operator for completeness and adequacy. Close out all appropriate violations in Envision within seven (7) days of receiving approved correction documentation.	

VIII. Hazardous Materials Business Plan (HMBP) Completeness Check (In-Office) Procedures

- A. **GENERAL PROCEDURE.** Unless exempted pursuant to H&SC §25507, businesses or facilities that store or manage hazardous materials in quantities equaling or exceeding regulatory established threshold amounts (55 gallon liquid, 500 pounds solid and 200 cubic feet compressed gas) are required to electronically submit an HMBP using the California Environmental Reporting System (CERS). Once submitted, such businesses or facilities are then required to annually review, update if necessary, and electronically certify the information is correct. As of January 1, 2013 EMD no longer accepts HMBPs submitted on paper.
- B. **REVIEW PROCESS.** All HMBP submittals will undergo an in-office review. Submittals will be checked for completeness and for any unusual or abnormal entries (See HMBP Review Guidelines for more information).
1. EMD staff will notify the designated facility contact via an e-mail generated from CERS if the submittal is deemed incomplete or incorrect. The required corrective action(s) will be noted on the facility's submission. The HMBP will be accepted once the required corrections have been completed and re-submitted.
 2. If a business or facility fails to respond or if their submittal is late, then the case may be forwarded to a Supervisor for possible enforcement action.
 3. HMBPs that are reviewed and considered complete will be handled as follows:
 - a. The electronic submission will be marked as accepted and an e-mail will be generated from CERS to the designated facility contact.
 - b. The appropriate data entry will be made into the Envision data base indicating that the plan has been received, reviewed and deemed complete.
 - c. The HMBP will be submitted for imaging.
- C. **FAILURE TO SUBMIT.** If a business or facility fails to electronically submit an HMBP within the required time frame, the case will be forwarded to a supervisor for possible enforcement action.

Chapter 3

ENFORCEMENT

I. Statutory Authority

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

- Hazardous Waste and Tiered Permitting Program: H&SC Chapter 6.5 (commencing with § 25100).
- Underground Storage Tank Program (UST): H&SC Chapter 6.7 (commencing with § 25280). Not including violations of corrective action requirements established by or issued pursuant to § 25296.10.
- Aboveground Petroleum Storage Act (APSA): H&SC Chapter 6.67 § 25270.5.
- Hazardous Materials Business Plan (HMBP): H&SC Chapter 6.95, Article 1 (commencing with § 25500).
- California Accidental Release Prevention Program (CalARP): H&SC Chapter 6.95, Article 2 (commencing with § 25531).

II. General Information

It is EMD's goal to achieve compliance with applicable environmental laws and regulations through an extensive inspection program, educational outreach efforts and, if necessary, the initiation of appropriate enforcement action(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) deter future noncompliance. Within EMD, the Environmental Compliance Division (ECD) is responsible for initiating and implementing appropriate enforcement actions for violations of CUPA program requirements.

- A. **TIMELINESS.** Each enforcement action is unique and comes with its own special circumstances. In order to achieve the maximum effectiveness from a specific enforcement action, EMD makes every effort to ensure timely enforcement action, however time frames will vary based on the nature and complexity of the case. If the case is to be referred to an outside enforcement agency such as the Sacramento County District Attorney's Office, the goal is to make that referral within 60 calendar days of the date of inspection or incident.

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- 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 including completing the Chain of Custody form and placing in the evidence storage locker.
 5. Maintaining an accurate chronology of events.
- C. **ROLES AND RESPONSIBILITIES.**
1. The Director of EMD (or designee) shall review and sign any actions taken against a Respondent where a penalty of \$100,000.00 or more will be assessed.
 2. Chief, Environmental Compliance Division (or designee), shall:
 - a. Review and sign AEOs, Stipulations and Orders, Consent Agreements and any 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 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 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 an NTC to operators who are in violation of environmental laws enforced by EMD.
 - c. Draft enforcement documents when appropriate.

III. Guidelines for Case Referral to Outside Agencies

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

- A. **REFERRALS.** The following are examples of case situations that may warrant referral to an outside agency for possible enforcement action:
 1. Criminal prosecution may be warranted.
 2. Multiple locations (facilities) are involved that may suggest an industry or companywide pattern of non-compliance.
 3. The case requires additional investigation that is beyond the capability of EMD.
 4. The case stems from a Sacramento County Environmental Crimes Task Force operation/investigation.
 5. Chronic or recalcitrant violators who have had multiple administrative actions taken against them.
- B. **EVALUATION.** The Chief of the Environmental Compliance Division (or designee) will evaluate each case regarding the factors listed above and determine whether the case will be referred to an outside enforcement agency. Consultation with the Director of EMD and/or 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(e)(1)).
2. **ADMINISTRATIVE ENFORCEMENT.** Administrative enforcement allows EMD to pursue action independent of an outside prosecutorial agency. EMD determines the appropriate penalty based on the circumstances of the violation and the violator and statutory or regulatory penalty criteria. EMD may set the penalty and the time frame for the violator's return to compliance. If the alleged violator chooses to contest the case, EMD schedules a hearing at which there is the opportunity to refute the allegations and present any mitigating factors that may affect the penalty.
3. **ADMINISTRATIVE ENFORCEMENT ORDER (AEO).** This includes any of the order variations including the Consent Order, Expedited Consent Order, Stipulation and Order, and Unilateral Order.
4. **MINOR VIOLATION.** The failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the Unified Program that EMD is authorized to implement or enforce pursuant to H&SC § 25404(a)(3), and does not otherwise include any of the following:
 - a. A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.
 - b. A knowing, willful and/or intentional violation.
 - c. A violation that is a chronic violation, or is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, EMD shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.
 - d. A violation that results in an emergency response from a public agency.
 - e. A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.
 - f. A class I violation (hazardous waste) as defined in H&SC § 25110.8.5.

- g. A class II violation (hazardous waste) committed by a chronic or a recalcitrant violator, as defined in Title 22 CCR § 66260.10.
 - h. A violation that hinders the ability of EMD to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.
5. **RESPONDENT.** A respondent is the person, business or facility that is the alleged violator.
6. **SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP).** An environmentally beneficial project 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, EMD shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to the requirements of the H&SC.
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 violator (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 businesses that:
 - (1) Fail to comply with an enforcement order.
 - (2) Have had a previous Class I violation(s) (within three years).
 - (3) Repeat the same Class II violation within three years.
 - (4) Operate a facility without a permit or other grant of authorization.
 - (5) Dispose of hazardous waste at a non-authorized site.
 - (6) Failure to follow container/tank labeling requirements.

(7) Fail to manage ignitable, reactive, or incompatible wastes as required by Title 22 CCR § 66264 and § 66265.17(b) (1-5).

(8) Use of containers that are in poor condition.

C. **UNDERGROUND STORAGE TANK (UST) 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 a UST 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.
 - (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.
 - (3) Failure to complete the secondary containment testing requirements annually.
 - (4) Failure to conduct the annual monitoring system test.
 - (5) Failure to identify a Designated Operator (DO).
 - b. A violation that impairs the ability of a UST system to detect a liquid leak or contain a liquid release of petroleum in the manner required by law, 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, EMD shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to any requirement of Chapter 6.7 of the H&SC or of any regulation adopted pursuant to Chapter 6.7, not including the corrective action requirements in H&SC § 25296.10.
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 (AEO) Process

A. INTRODUCTION.

1. EMD is authorized by H&SC § 25404.1.1 to issue an AEO if it has determined that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that EMD is authorized to enforce or implement pursuant to Chapter 6.11, Division 20 of the H&SC and to impose administrative penalties.
2. The goal of the AEO is, among other things, to return a facility to compliance in a timely manner; eliminate economic benefit realized by the noncompliant facility, and create deterrence against future noncompliance.
3. To expedite achieving the enforcement goal throughout the AEO, EMD will encourage the respondent to enter into settlement discussions. Settlement discussions can occur at any time prior to issuance of a final order.
4. If the respondent fails to respond to an AEO within the specified amount of time, the Order becomes final and is forwarded to the office of the Sacramento County Counsel to apply for a clerk's judgment requesting the amount of the penalty in the Order be awarded to EMD. Once a clerk's judgment is received it is forwarded to the Sacramento County Department of Revenue and Recovery for collection of the judgment.

B. CASE DISPOSITION GUIDANCE.

1. Based on information provided by the Environmental Specialist, supervisors will review each case and provide recommendation(s) to the Environmental Compliance Division Chief (or designee) regarding whether:
 - a. The case should be referred to an outside agency for enforcement action or;
 - b. The case should be handled through the AEO process.
2. The Chief of the Environmental Compliance Division (or designee) will review the supervisor's recommendation(s) and determine the proper disposition of the case and, if necessary, the appropriate AEO option to be utilized.
3. If the case alleges violation(s) that may involve fines and/or penalties that exceed \$100,000.00, the Chief of the Environmental Compliance Division will confer with the Director of EMD prior to making a final decision regarding case disposition.

- C. AEO OPTIONS. Depending on the circumstances of each case, H&SC § 25187 provides multiple options for initiating, issuing, and settling administrative orders. Table 1 should be consulted when considering the appropriate option.

TABLE 1 - AEO OPTIONS

AEO Process Alternative	When to Use	Disadvantages
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. 	<p>Statutory timeframes for filing a notice are not started and therefore a deadline has not been established.</p>
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 EMD 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. 	<p>Doesn't allow for consideration of the business's response prior to formal public action.</p>

1. **SHOW CAUSE LETTER.** A Show Cause letter may be issued to a business, notifying it that EMD is planning to take an AEO action and encouraging the business to submit relevant information to be taken into account prior to EMD taking action. The Show Cause letter is a public document and is not enforcement confidential. It does not constitute a formal enforcement action but establishes EMD's intent to pursue formal enforcement and encourages a consensual resolution.

- a. The goal of this process is to enter into settlement discussions between the business and EMD and reach agreement on compliance, timeliness, and penalties; and formalize the agreement in writing.
 - b. The Show Cause alternative should be used when:
 - (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
 - (3) The violations have not resulted in a significant release to the environment.
2. **CONSENT ORDER.** EMD may issue a Consent Order to the business and request, in a cover letter, concurrence and signature to finalize the Order.
- a. This alternative provides a means of resolution on simple cases, where the respondent is not likely to contest the Order.
 - b. The Consent Order alternative should be used:
 - (1) For less serious, simple, and easily understood violations;
 - (2) When compliance issues are straightforward and a compliance schedule is not required;
 - (3) When the business is not a recalcitrant/repeat violator and the penalties are relatively small; or
 - (4) When prompt settlement is anticipated.
3. **STIPULATION AND ORDER.** A Stipulation and Order is a mechanism that EMD uses when it comes to an agreement (a stipulation) with a respondent after a Unilateral Order has been issued. A Consent Order can also be used.
- a. A Stipulation and Order does not require a restatement of the violations identified in the Unilateral Order and incorporates them by reference. For this reason, the use of a Stipulation and Order may be more expeditious than the use of a Consent Order, in certain situations.
 - b. The Stipulation and Order may be appropriate under the following circumstances:
 - (1) A Unilateral AEO has already been issued for the violation or violations in question and the business has requested settlement discussions after service of the Unilateral Order; or

- (2) Settlement discussions have led to an agreement with the business on compliance timelines and penalties and EMD wishes to avoid re-stating the violations cited in the Unilateral Order.
4. **UNILATERAL ORDER.** EMD will issue a Unilateral Order to a facility without prior discussion or negotiation. The Show Cause alternative anticipates the possibility of the issuance of a Unilateral Order as an outcome if a settlement cannot be reached. This alternative utilizes the issuance of a Unilateral Order as the initial step. (Unilateral Orders are not final until the “Hearing Period” has passed.)
- a. The Unilateral Order is appropriate under the following circumstances:
 - (1) The facility is a repeat violator or has a history of noncompliance with either the HWCL or other environmental or public safety laws;
 - (2) The facility has been recalcitrant or uncooperative;
 - (3) The violations pose an imminent and substantial threat to public health or the environment; 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. 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) A copy of proof of service.
 - (4) Cover letter to respondent.
 - (5) A copy of the Notice of Defense (NOD).
 - d. Serving the Order. An Order shall be served in person or by “proof of service” certified mail. If an NOD is not received within 20 calendar days of service of the Order, the Order becomes final. The additional 5 calendar days (from the 15-day statutory requirement) is to allow for mail delivery time. 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 EMD, EMD will make the appropriate amendments to the Order and send a copy to the respondent. This action does not constitute a new Order and does not create new appeal rights.
 - (2) When EMD determines that a correction is necessary. The issuance of an amended Unilateral Order in this situation requires the re-issuance of the complete service package and may create new appeal rights.
- f. **Withdrawing an Order.** If EMD decides to withdraw a Unilateral Order, a “Revocation of Enforcement Order” will be completed and mailed with return receipt requested, officially notifying the respondent that the Order is being withdrawn.

D. SETTLEMENT DISCUSSIONS/SETTLEMENT AGREEMENT.

1. Settlement discussions between EMD and the business/facility owner or operator can occur at any time in the process. Statutory time frames for requesting a hearing may be stayed by agreement between the business/facility owner or operator and EMD during the course of settlement discussions.
2. EMD will set a time and place for any settlement discussion meeting. If EMD and the business/facility owner or operator is able to reach a settlement, EMD will issue either a Consent Order or Stipulation and Order. At a minimum, a Consent Order or Stipulation and Order shall mandate:
 - a. Compliance with applicable sections of Federal, State and Local statutes, regulations and/or ordinances;
 - b. Payment of fees and/or costs due to EMD; and
 - c. Payment to EMD of any penalty assessed.
3. Failure to comply with any term of the Settlement Agreement shall void the Agreement and EMD may proceed with any and all actions lawfully available. However, so long as the Respondent faithfully performs under the Agreement, EMD shall suspend any enforcement actions associated with the subject violation. Where the Respondent has waived the right to a hearing or where EMD and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.
4. In the event that a payment plan is agreed to regarding a settlement amount, the terms of the payment plan will be specified in an Amended Stipulation and Order. Failure to meet the terms of the payment plan will cause the entire outstanding balance of the penalty amount in the original Enforcement Order to become due and payable. A copy of the Amended Stipulation and Order accompanied by a certified copy of the AEO shall constitute a sufficient showing to warrant issuance of a judgment. The copy will be certified by the employee who has been designated as the custodian of records for the open enforcement cases and forwarded to County Counsel to request a Clerks Judgment.

VI. Failure to Return to Compliance Notifications

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

- A. **CONTENT OF NOTIFICATION.** Businesses or facilities receiving an FRC 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 facility may be subject to administrative enforcement action if any subsequent re-inspection reveals uncorrected violations.
- B. **FOLLOW-UP ACTIONS.** Not later than sixty (60) calendar days of the date of the FRC letters, EMD Supervisors will review all businesses and facilities that continue to have open violations and determine if a re-inspection is warranted. 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 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. 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 EMD.

VIII. Revocation, Modification or Suspension of Permit

- A. **GROUNDS FOR REVOCATION, MODIFICATION OR SUSPENSION OF PERMIT.** Any permit issued pursuant to Sacramento County Code, Chapters 6.34 (Underground Storage of Hazardous Substances), 6.35 (Petroleum Storage in Above Ground Storage Tanks), 6.96 (Hazardous Materials Disclosure and CalARP) and 6.98 (Hazardous Waste Generation) may be revoked, modified or suspended during its term, upon one or more of the following grounds:

1. Obtaining the permit by misrepresentation or intentional failure to fully disclose all relevant facts.
 2. A change in condition that requires modification or termination of the operation in question.
 3. Violation of any provision of Sacramento County Code, Chapters 6.34 (Underground Storage of Hazardous Substances), 6.35 (Petroleum Storage in Above Ground Storage Tanks), 6.96 (Hazardous Materials Disclosure and CalARP) and 6.98 (Hazardous Waste Generation).
- B. **METHOD.** EMD may revoke, modify, or suspend a permit by issuing a written notice (Notice) stating the reasons therefore, and serving same together with a copy of the applicable Chapter of the Sacramento County Code and a Notice of Defense form upon the holder of the permit.
1. The revocation, modification or suspension shall become effective fifteen (15) calendar days after service of the Notice, unless the holder of the permit enters into a settlement agreement with EMD or appeals the Notice in accordance with Chapter 3, Section XI.A.1 of this policy.
 2. If such an appeal is filed within the stated deadline, the revocation, modification or suspension shall not become effective until a final decision on the appeal is issued.
 3. Delivery shall be deemed complete upon either personal delivery to the permit holder or through proof of service by certified mail.

IX. Notice to Cease and Desist

- A. **ISSUANCE.** EMD may issue a “Notice to Cease and Desist” (Notice). The Notice may direct the owner or operator or any other person responsible for any violation of the requirements listed in Sacramento County Code, Chapters 6.34 (Underground Storage of Hazardous Substances), 6.35 (Petroleum Storage in Above Ground Storage Tanks), 6.96 (Hazardous Materials Disclosure and CalARP) and 6.98 (Hazardous Waste Generation) to take any of the following actions:
1. Immediately discontinue any 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.
 3. Remove, replace or repair non-functioning or outdated equipment when it is believed there is imminent threat to human health or safety or the environment.

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

B. REMOVAL OF RED TAG.

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

XI. Administrative Hearing Process

A. HEARING PROCEDURES.

1. H&SC § 25404.1.1(d) allows the facility owner or operator (Respondent) to request a hearing on the Enforcement Order within fifteen (15) calendar days after service of the Enforcement Order. Statutory time frames for requesting a hearing may be stayed by agreement between the facility owner or operator and EMD during the course of settlement discussions.
2. A request for a hearing is referred to in H&SC § 25187(d) as a “Notice of Defense (NOD).” The NOD must be filed with EMD within fifteen (15) calendar days of service of the Enforcement Order. It is acceptable if the NOD is postmarked within that 15-day period. If the Respondent does not submit an NOD within the 15 days after service, the Enforcement Order becomes final.
3. The Respondent may specify in the NOD one of two hearing processes.
 - a. An Administrative Law Judge available through a CalEPA contract, or
 - b. A Sacramento County Hearing Officer who will conduct the hearing in accordance with Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.
4. If EMD receives a NOD within the fifteen (15) calendar-day response period, it must immediately notify the Sacramento County Counsel’s office and follow the procedures outlined below to schedule the hearing depending on the hearing process chosen by the Respondent.
5. The Respondent will be notified of the hearing date in writing via certified letter with a return receipt requested.
6. The hearing must commence within 90 calendar days of receipt of the NOD. This 90 day deadline may be extended upon mutual agreement.
7. EMD will be represented by County Counsel during the hearing process.
8. EMD will remain in contact with the Respondent and offer the opportunity to settle the case prior to the hearing date.
9. After the hearing, a decision shall be issued by the judge to EMD within thirty (30) calendar days. The decision is effective and final upon service. EMD will serve the respondent with a letter, including the final decision. Such Orders are effective and final upon issuance, and the business has 30 calendar days to make any payment. A copy of the Order must be served by personal service or by “proof of service” certified mail.

B. PROCEDURES TO ACCESS ADMINISTRATIVE LAW JUDGE. CalEPA has entered into a contract with the Department of General Services, Office of Administrative Hearings (OAH) to fund requested hearings on AEOs issued by CUPAs. The following is the procedure to access this contract if needed OAH agrees to provide administrative law judges, clerical support, and hearing reporters or recording devices as may be needed to conduct hearings.

1. The hearings will be conducted as requested to resolve AEOs pursuant to H&SC § 25187 and § 25404.1.1(a) for violations of Chapter 6.5 (commencing with § 25100), Chapter 6.7 (commencing with § 25280), Article 1 (commencing with § 25500) of Chapter 6.95, Article 2 (commencing with § 25531) of Chapter 6.95 and § 25270.5.
2. EMD will be represented by County Counsel during the hearing process.
3. Hearings on AEOs will be conducted pursuant to H&SC § 25404.1 and Government Code § 11400 et seq. EMD will work with County Counsel to schedule the hearing following these procedures:
 - a. Electronically submit a “Local Agency Request to Set” form to OAH. Current forms and instructions for submission can be found at: www.dgs.ca.gov/oah.
 - b. OAH Calendar Office will schedule the hearing at a place and time that is mutually agreeable to OAH, EMD, and the Respondent.
 - c. EMD will provide OAH with an electronic copy of the AEO and the Notice of Defense
 - d. EMD 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:

CalEPA/Unified Program
1001 I Street
Sacramento, CA 95812
 - e. Within thirty (30) calendar days of the hearing, OAH will provide EMD with a decision containing the findings of fact, conclusions of law and a final deposition regarding each issue contested. The decision is effective and final upon issuance to the Respondent.
 - f. EMD will issue the final Decision and Order to the Respondent and provide copies by mail to OAH and CalEPA/Unified Program.

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

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

D. CIVIL APPEAL OF THE “FINAL” ORDER.

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

XII. Administrative Penalties

A. GENERAL POLICY.

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

- d. The deterrent effect of the penalty.

B. STEPS IN DETERMINING PENALTIES.

- 1. **INITIAL PENALTY.** EMD will determine an initial penalty for each violation by considering the actual and potential harm and the extent of the deviation from hazardous waste management requirements.

- a. Assigning degrees of actual and potential harm.

- (1) **MAJOR** – the characteristics and/or amount of the substance involved present a major threat to human health or safety or the environment and the circumstances of the violation indicate a high potential for harm.

- (2) **MODERATE** – the characteristics and/or amount of the substance involved do not present a major threat and the likelihood of harm from noncompliance is not high.

- (3) **MINIMAL** – the overall threat to human health or the environment is low.

- b. A violation must involve the actual management of a hazardous substance for it to have a major potential for harm.

- c. Assigning degrees of extent of the deviation.

- (1) **MAJOR** – the act deviates from the requirement to such an extent that the requirement is completely ignored or the function of the requirement is rendered ineffective because some of its provisions are not complied with.

- (2) **MODERATE** – the act deviates from the requirement but functions to some extent.

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

- 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 EMD, the violator realized significant economic benefit as a result of the failure to comply.
 - (1) The adjustment to the initial penalty cannot exceed the statutory maximum.
 - (2) Economic benefits to consider may include avoided or delayed costs, or increased profits.
- 3. **COMBINING MULTIPLE VIOLATIONS.** A single penalty may be assessed for multiple violations for the following situations:
 - a. The facility has violated the same requirement in different locations or units within the facility.
 - b. The facility has violated the same requirement on different days. This would not be appropriate if the facility has been notified of the violation and has had sufficient time to correct the violation.
- 4. **MULTI-DAY VIOLATIONS.** On a case-by-case basis, for days following the first day of violation, the multi-day component of the penalty may be calculated by determining 2% of the adjusted initial penalty multiplied by the number of days after the initial day.
- 5. **BASE PENALTY.** The base penalty for a one day violation occurrence is the adjusted initial penalty. The base penalty for multi-day violations is the adjusted initial penalty for the first day of the violation plus the penalty for the additional days of the violation.
- 6. **TOTAL BASE PENALTY.** The total base penalty is the sum of all base penalties for all violations incurred at a given facility.
- 7. **FINAL PENALTY.** The final penalty may be determined by adjustments to the total base penalty based on the following factors.
 - a. Adjustment factors for cooperation.

TABLE 3 - ADJUSTMENTS TO FINAL PENALTY

Degree of Cooperation/Effort	Adjustment Factor	Circumstance
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 include:
 - (a) Previous violations at the site should receive more weight than previous violations at another site owned or operated by the same person.
 - (b) Recent violations should receive more weight than older violations.
 - (c) The same or substantially similar previous violations should receive more weight than previous unrelated violations.
 - (2) Specific guidance.
 - (a) Downward adjustments of up to 5% for each previous consecutive inspection with no violations can be made up to a maximum of 10%.

- (b) Downward adjustments of up to 15% can be made if the facility has an ISO 14001 certificate.
 - (c) Upward adjustments of up to 100% can be made if a facility has a consistent history of noncompliance over the past five (5) years.
 - d. Ability to pay adjustments. No adjustments for ability to pay may be made if the penalty has been adjusted upward because of failure to cooperate or because of the facility's poor compliance history. In light of these exceptions, ability to pay adjustments to the total base penalty may be made if either:
 - (1) Immediate payment of the final penalty would cause financial hardship. In this case, consideration may be given to payments extended over a certain term.
 - (2) Extending the penalty over a period of time would cause extreme financial hardship. In this case, consideration may be given to reduce the total base penalty.
8. **FINAL PENALTY.** The final penalty consists of the total base penalty with all adjustments made.

C. INITIAL PENALTIES.

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

TABLE 4 – HAZARDOUS WASTE PENALTIES

HAZARDOUS WASTE <i>Initial Penalty Matrix</i>		ACTUAL OR POTENTIAL HARM		
		Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major	Maximum	\$70,000	\$55,000	\$42,500
	Average	\$62,500	\$50,000	\$30,000
	Minimum	\$55,000	\$42,500	\$17,500
Moderate	Maximum	\$55,000	\$42,500	\$17,500
	Average	\$50,000	\$30,000	\$12,500
	Minimum	\$42,500	\$17,500	\$5,500
Minimal	Maximum	\$42,500	\$17,500	\$5,500
	Average	\$30,000	\$12,500	\$2,750
	Minimum	\$17,500	\$5,500	\$0

- Per AB 245, effective January 1, 2018 the penalties for hazardous waste violations increase from \$25,000 to \$70,000 for each day of non-compliance.

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

TABLE 5 – UST PENALTIES

UST <i>Initial Penalty Matrix</i>		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 § 25514.2, the violator shall be liable for penalties as provided in § 25515.2 (a-b).
 - a. H&SC § 25515.2(a) calls for penalties not greater than \$2,000 for each day in which the violation occurs.
 - b. H&SC § 25515.2(b) call for penalties not greater than \$5,000 for each day in which the violation occurs for any business that knowingly violates after reasonable notice of the violation.
 - c. The following matrix will be used to determine the initial penalty for an HMBP violation:

TABLE 6 – HMBP PENALTIES

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

TABLE 7 – FAILURE TO REPORT PENALTIES

Failure to Report <i>Initial Penalty Matrix</i>		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 (CALARP) PROGRAM.**

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

TABLE 8 – CALARP PENALTIES

CalARP Initial Penalty Matrix		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. **ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM.**
- a. For violations of H&SC § 25270.12.1(a), the violator shall be liable for a penalty of not more than \$5,000 for each day on which the violation continues.
 - b. If the violator commits a second or subsequent violation, a penalty of not more than \$10,000 for each day on which the violation continues may be imposed.

TABLE 9 – APSA INITIAL PENALTIES

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

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, EMD does not budget for any realized enforcement revenue. It is EMD'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 EMD fee structure.

After recovering the cost of implementing enforcement actions, EMD 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, EMD 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 EMD'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. EMD 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 and are current on their 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 Environmental Compliance Division will forward a recommendation to the Director regarding the feasibility of whether available enforcement revenue shall be returned to compliant CUPA facilities as fee offsets during the subsequent fiscal year. This recommendation shall include the following:
 - a. An analysis of costs incurred to implement Environmental Compliance 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 Environmental Compliance Division will coordinate as necessary with the Department Accounting and Finance Manager and Budget Officer to implement the offset program.