

INSPECTION AND ENFORCEMENT PLAN



Colusa County Department of Development Services
Environmental Health Division
Certified Unified Program Agency (CUPA)

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1.0 Introduction

1.1 Programs: the Colusa County Environmental Health Division (CCEHD), as a Certified Unified Program Agency (CUPA), 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.
- Above Ground Petroleum Storage Act (APSA/AGT) Program. Authority: H&SC, Division 20, Chapter 6.67
- Hazardous Waste Generator Program. Authority: H&SC, Division 20, Chapter 6.5 and Title 22 CCR.
- Universal Waste Handler Program. H&SC, Division 20, Chapter 6.5 and Title 22 CCR.
- California Accidental Release Prevention (Cal-ARP) Program. Authority: H&SC, Division 20, Chapter 6.95, Article 2 and Title 19 CCR.
- Tiered Permitting of Hazardous Waste On-site Treatment. Authority: H&SC, Division 20, Chapter 6.5 and Title 22 CCR.

1.2 Authority: Senate Bill 1082 (H&SC, Division 20, Chapter 6.11, §25404 et. Seq.) created the Unified Program and required each CUPA to develop an Inspection and Enforcement Plan. This plan satisfies this requirement and has been developed to insure the implementation of coordinated, efficient and effective inspection and enforcement procedures regarding the handling of hazardous materials and/or waste.

2.0 Inspection

2.1 General Information: Within Colusa County, the CUPA is responsible for all inspections of facilities eligible for regulation within the programs listed previously. Due to limited resources for provision of these programs all CUPA staff is trained to conduct all aspects required by the Unified Program. Hazardous Materials Business Plan submittals from facilities are all reviewed by the CUPA staff. Additional, on-site technical verification is done in concert with the required Hazardous Materials Reduction Prioritization Plan inspection.

2.2 Frequency of Inspections: CUPA has established the following inspection frequency schedule.

Program Element	Inspection Frequency
Hazardous Material Business Plans (HMBP) Once every 3 years; <i>H&SC §25508(b)</i>	Once every 3 years*
Underground Storage Tank (UST) Facilities Annually; <i>H&SC §25288(a)</i>	Annually*
Above Ground Petroleum Storage Act (APSA/AGT) Facilities	Once every 3 years

(H&SC 25270.5 (a). Hazardous Waste Generators (RCRA and Non-RCRA)	Once every 3 years
RCRA Large Quantity Generators (LQGs)	Once every 3 years
Non-RCRA Large Quantity Generators (LQGs)	Once every 3 years
Recyclers	Once every 3 years
On-site Hazardous Waste Treatment Facilities	Once every 3 years
Once every 3 years; <i>H&SC §25201.4(b)(2)</i>	
Permit By Rule (PBR)- Household Hazardous Waste Facilities	Once every 3 years*
Once every 3 years; <i>H&SC §25201.4(b)(2)</i>	
Permit By Rule (PBR)	Once every 3 years*
Once every 3 years; <i>H&SC §25201.4(b)(2)</i>	
Conditionally Authorized (CA)	Once every 3 years*
Once every 3 years; <i>H&SC §25201.4(b)(2)</i>	
Conditionally Exempt (CE)	Once every 3 years*
Once every 3 years; <i>H&SC §25201.4(b)(2)</i>	
California Accidental Release Prevention (Cal-ARP)	Once every 3 years*
Once every 3 years; <i>CCR Title 19 §2775.3</i>	
Tiered Permitting	Two Years of Notification
* Minimum mandated inspection frequencies.	

2.3 Provisions for Integrated Joint, Combined and Multi-Media Inspections:

2.3.1 Definitions:

- A. Joint Inspections: CCEHD does not conduct joint inspections with any agencies at this time.
- B. Combined Inspections: It is the practice of the CUPA to seek opportunities to conduct a single inspection event that combines different program elements. Currently, HMBP and Hazardous Waste Generators are combined routinely, and if possible the Cal-ARP, UST or APSA inspections can also be combined for a single inspection event consisting of three to four program elements.
- C. Multi-Media Inspections: The purpose of multi-media inspections is to coordinate, to the maximum extent feasible, CUPA’s inspection and enforcement program with that of other federal, state, regional and local agencies, which affect regulated facilities within Colusa County.
 - 1. Facilities should be carefully screened prior to being selected for a 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 interfering with each other. The following factors will be considered when determining which facilities should 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 be addressed?
- d. Is the size of the physical layout of the facility such that inspections cannot be completed in an efficient manner?

D. Integrated Inspections: CUPA promotes integrated multi-media inspection by:

- 1. Periodically meeting with other regulatory agencies to discuss facilities that are suitable for multi-media inspections.
- 2. Regularly attending and participating in local Environmental Task Force meetings and actions.

2.4 Inspector Training Documentation: Each CUPA staff member involved in the oversight of CUPA programs will, at a minimum, receive training in the following subject areas:

- Regulatory Overview
- Hazardous waste classification
- Health and environmental effects of hazardous substances
- Inspection procedures and techniques
- Sampling and instrumentation
- Enforcement action
- Interviewing techniques and case development
- Collection and preservation of evidence
- Initial HAZWOPER and subsequent refreshers

Staff members have received over 100 hours of training in the subject areas listed above. In addition, staff assigned inspection and/or enforcement responsibilities in selected program(s) routinely receive training in specific topics that are germane to that area of required expertise. Such programs include underground storage tanks, aboveground storage tanks, and Cal-ARP. **Note: Staff newly hired may be in the process of completing the initial 100 hours of training as listed above.**

2.5 Cross-Training of Staff:

- A. General Training Requirements: All CCEHD 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 Material Business Plans (HMBPs), hazardous waste generation and treatment, Underground Storage Tanks (USTs), and Aboveground Petroleum Storage Act (APSA).
- B. Targeted Training Requirements: In addition, selected personnel are assigned inspection responsibilities for facilities that own or operate an Underground Storage Tank (UST) or qualify for inclusion into the California Accidental Release Prevention (Cal-ARP) Program.

These individuals receive additional training that is tailored to regulatory requirements specific to these facilities.

2.6 Coordination of Inspection & Enforcement with Participating Agencies (PAs):

CCEHD has the responsibility to regulate the CUPA program throughout the county. There is no Participating Agency in this county.

2.7 Facility Inspection Procedures:

2.7.1 General Protocols: With the exception of Underground Storage Tank (UST) inspections, facility visits may be done on an unannounced basis if appropriate. In general, CUPA 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. Read and become familiar with Colusa County health and safety policies.
 - a. When in the field, wear appropriate clothing and safety equipment (steel-toed safety boots, hardhats, safety glasses, hearing protection 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.

2.7.2 Pre-inspection Procedures:

1. Inspection priority is placed on those facilities with the oldest date of last completed inspection. This can be updated immediately as required. ***Note: Facilities may be inspected outside of date priority based on the CUPAs judgment of risk to public health or the environment. However priority is placed to meet the required inspection frequency.*** For UST inspection CCEHD personnel may schedule an inspection in response to a contractor request.
2. Prior to performing an on-site inspection, CUPA personnel will conduct an office audit of the facility that includes the following reviews:
 - a. The facility file, to become familiar with facility operations and inspection history. Be sure to note any open violations or a pattern of repeat discrepancies. If the latest inspection was conducted by another CUPA staff, contact that staff member as necessary to gain familiarization with the

facility and to note unique issues.

- b. Any submitted Business or Emergency Response and Contingency Plans for completion and adequacy based on facility operations.
 - c. Any submitted Monitoring Response Plans and Certificates of Financial Responsibility forms.
 - d. Any appropriate industry and/or regulatory background information needed to perform the inspection (i.e., process or equipment familiarization).
3. Generate any facility guidance, legislation awareness, or other required documents to provide the facility during the inspection.

2.7.3 On-site Procedures: Depending on the facility, CUPA 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. Observe any relevant activity or physical evidence for appropriate immediate action before entering the facility (i.e., improper discharge to storm drain, unsafe storage of hazardous materials, or other improper practice, etc.).
2. Display proper photo identification and provide a business card to the business representative.
3. State the nature of the visit (routine inspection, complaint response, or incident response, etc.), and obtain consent to do inspection. If denied entry into a facility, CUPA personnel will report this to his/her Supervisor or Manager. The Supervisor or Manager will contact the facility to secure consent of 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, compliance officer, etc.).
5. Perform facility walk-through following the program-specific inspection checklists.
6. Record inspection observations on inspection form, as per checklist. Confirm and document chemical inventory as follows: types and quantities of chemicals over the reporting threshold and/or all hazardous wastes generated and the quantity generated per month and per year.
7. Request review of any otherwise required site-specific environmental permits or documents (Permit to Operate, Consolidated Permit, Spill Prevention Control and Countermeasure (SPCC) Plan, Risk Management Plan (RMP), inspection logs,

manifests, training records etc.).

8. Document any noted violations (i.e. logs, photos, sampling, etc.). Violations should all be classified. Upon return to the office, the inspector may consult with management to verify any violations that may be Class-I or Class-II.

Note: H&SC §25185(a) authorizes CUPA personnel to enter and inspect facilities; conduct necessary sampling activities; inspect and copy any records, reports or other related 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 encountered violations with the business representative and note any explanations or extenuating circumstances on the inspection comments form.
10. Indicate a standard time of thirty days for corrective action on Hazardous Materials Facility Self-Certification of Return to Compliance form, which also serves as the Notice to Comply (NTC) form.
11. The standard times to return to compliance, after violations are noted in an inspection report or audit, are as follows:
 - a. Hazardous Materials Business Plans: Thirty (30) calendar days from the date of NTC form. [H&SC §25505(a)(2)]. Other hazardous material related violations: As appropriate depending on the violation, but in no case greater than 30 calendar days from the date of the NTC form.
 - b. Underground Storage Tanks: Unless otherwise required, within 30 calendar days from the date of receiving the NTC form. [California Code of Regulations, Title 23, §2712(f)]. In addition, compliance times for specific violations are located in the H&SC §25288(d), §25291, §25292 and §25295.5.
 - c. Hazardous Waste Generator: No established times except for minor violations which require 30 calendar days from the date of receipt of the NTC form to achieve compliance. This includes recyclers and Household Hazardous Waste (HHW) facilities.
 - d. Cal-ARP: Thirty (30) calendar days after the date the audit procedure has been completed [California Code of Regulations, Title 19, §2775.2(H)].
 - e. Aboveground Petroleum Storage Act (APSA) facilities: Thirty (30) calendar days from the date of NTC form. [H&SC §25404.1.2(c)(1)]. Other APSA related violations: As appropriate depending on the violation, but in no case greater than 30 calendar days from the date of the NTC form.

12. Explain the NTC form to the business representative, specifically stating that a signed corrective actions statement must be returned with evidence of compliance (e.g. photos, disposal records, required documents etc.) within the time specified. The NTC form should contain an explicit statement that the facility may be subject to a re-inspection at any time by the CUPA.
13. Obtain the business representative's signature on inspection forms/checklists. This inspector shall also sign these forms/checklists.
14. Sign and date the NTC form.
15. Issue the yellow copies of the NTC form to the business representative along with relevant inspection forms/checklists.

2.7.4 Inspection Follow-up: After completing the on-site inspection, the CUPA shall perform the following tasks:

1. Enter any changes, to the hazardous materials inventory or hazardous waste generation, determined during the facility inspection. If the corrections in these require a change in the facility's classification, make the appropriate changes in the database (Envision Connect), and billing program.
2. Enter Envision Connect daily for inspection done.
3. Enter Compliance Monitoring Enforcement (CME) data in California Environmental Reporting System (CERS).
4. File all appropriate photographs taken during the inspection.
5. If Class I or other significant violations were observed during the inspection and noted on the inspection checklist/form, the CUPA inspector shall consult with his/her supervisor about potential enforcement action. *Note: See Enforcement Section for specific procedures.*
6. If the facility fails to close out all violations within the required timeframe initiate escalated enforcement per our described enforcement procedures, outlined in the Enforcement Section of this document.

2.7.5 Complaint Process/ Inspection:

EH staff receives a complaint from the public or any state agency; the complaint and any information provided by the reporting party is entered into Envision and the Community Development Department's comprehensive code violation tracking system.

The complaint is initially screened to determine if there is an immediate health issue; if it is an immediate health issue the division manager or the department director is notified immediately for immediate assignment and investigation. Otherwise the complaint is placed in the

investigation assignment folder for the review by the department director. The department director will then determine whether the complaint is solely the responsibility of the environmental health division or also involves either the planning or building units. The complaint is then assigned for investigation to the inspector(s) who then follow the steps below:

1. Background information is gathered to verify the property location, directions, and the property owner. Google earth is reviewed to gain an understanding of the property and surrounding area.
2. Personal safety is the first priority. Do not enter what you perceive to be an unsafe situation until you have provided yourself with appropriate protection (personal protective equipment, co-worker/office support, or law enforcement assistance. If a dangerous person, animal or any unsafe situation is encountered, do not proceed until it is safe. Notify your Manager as soon as it is safe to do so. Make an appropriate note to the file and database so that future investigators are made aware.
3. Conduct an inspection/site review at the location reported for the alleged complaint. The inspector(s) documents the site location, takes observation notes, and takes photographs of the existing conditions.
4. Once back in the office, each inspector that was present writes an investigation report summarizing their observations and the potential code compliance issues that pertain to their jurisdictional area. For example, the environmental health inspector would focus on health and safety issues while a building inspector would focus on building code related issues. The investigation reports are then reviewed by the division manager or the department director to determine if the complaints are valid, what code violations are present, and the enforcement action to be taken.
5. The inspector will then contact the business owner/property owner via mail and/or phone to inform them of the present violations. A follow up inspection date will be scheduled with the responsible party.
6. After the initial inspection is complete and the owner has been contacted, Envision and all other in-office records are updated to include information that the complaint has been investigated, the findings, any violations noted, and any enforcement action taken. The date for return inspection is then put on the inspector's Outlook calendar.
7. After the return inspection has been performed, Envision and the tracking spreadsheet will be updated with new findings/information regarding the complaint, or the complaint will be closed. All complaints received from the Cal EPA system will be updated/closed via the Cal EPA system.
 - A. If resolved satisfactorily, notify the responsible party and other responsible agencies involved. The case is closed and Envision and the tracking spreadsheet are updated reflecting the case closure.

- B. If the situation is not resolved by deadline given, a Notice of Violation should be sent with a new, final compliance date. An attempt to contact the responsible party in person should also be made regarding the Notice of Violation and the new compliance date. If the responsible party refuses to accept the Notice of Violation, the violation should be posted on the property in a conspicuous location.
- C. After the second Notice of Violation's compliance deadline, if the violation(s) is resolved satisfactorily, notify the responsible party and other responsible agencies involved. The case is then closed and Envision and the tracking spreadsheet are updated reflecting the case closure. If the violation(s) is not resolved, a referral memo to the County Counsel will be prepared detailing the violation and background information. (Prior to sending the referral memo to County Counsel, provide a copy including supporting file documentation to the department director for review and approval). The County Counsel's office will take the lead in initiating formal enforcement actions while working with Colusa CUPA staff.
- D. Once the complaint is resolved through the County Counsel's office, Envision and the tracking spreadsheet are to be updated reflecting the case has been closed.

**Figure 1
Facility Inspection Procedure**

	Steps/Tasks	Documentation
General Protocol	<ol style="list-style-type: none"> 1. CUPA 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 boots, hardhats, etc.), c. displaying proper County-issued identification, d. triennially, on an announced or unannounced basis for HMBP, HW, APSA and Cal-ARP: annually for UST facilities. 	
Pre-Inspection Procedure	<ol style="list-style-type: none"> 1. Review of CUPA database (Envision Connect) to determine sites needing inspection by highest priority (oldest last inspection or facilities with greater risk potential). 	
	<ol style="list-style-type: none"> 2. Before performing the on-site inspection, CUPA personnel shall review: <ol style="list-style-type: none"> a. the facility file to become familiar with facility operations and inspection history, including open violations, b. any CERS submitted Hazardous Materials Business Plan, Emergency Response and Contingency Plan or Monitoring Response Plan for completeness and accuracy based on facility operations, c. any appropriate industry and/or regulatory background information needed to perform the inspection (i.e. process familiarization, etc.). 	
	<ol style="list-style-type: none"> 3. Generate current Hazardous Materials Inventory forms to verify database information while performing inspection. 	Hazardous Materials Inventory Forms
On-site Procedure	Upon arriving at the facility, CUPA personnel shall complete the inspection performing the following :	
On-site Procedure	<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, unsafe storage, etc.). 	
	<ol style="list-style-type: none"> 2. Display proper photo identification and provide a business card to the facility representative. 	
	<ol style="list-style-type: none"> 3. State the nature of the visit (complaint response, routine inspection, etc.), and obtain consent to do the inspection. 	
	<ol style="list-style-type: none"> 4. Request accompaniment during the inspection by the facility manager or other qualified business representative (owner, emergency coordinator, etc.) 	
	<ol style="list-style-type: none"> 5. Perform facility walk-through following the appropriate program element inspection forms/checklists. 	Inspection forms/checklists
	<ol style="list-style-type: none"> 6. Record or document inspection observations on inspection forms/checklists; confirm chemical inventory. Fill out Generator Inspection Observation Page (GIOP), if necessary. 	Inspection forms/checklists, GIOP.
	<ol style="list-style-type: none"> 7. Request review of any otherwise required site-specific environmental permits or documents (i.e., Spill Prevention Control and Countermeasure (SPCC) Plan, Emergency Response and Contingency Plan, Monitoring Response Plan, etc.). 	
	<ol style="list-style-type: none"> 8. Discuss alleged violations with the business representative and note any explanations or extenuating circumstances on the Inspection Comments form. 	Applicable program element forms/checklists.

On-site Procedure	9. Take photos of site as needed if future enforcement actions are suspected.	Digital Camera or Camera Cell phone
	10. Complete NTC form recording the date by which corrective action is required. Sign and date the NTC form.	NTC form.
	11. Explain the NTC form to the business representative, specifically stating that a signed corrective actions statement must be returned with evidence of compliance (e.g. required documents, photos, disposal records, etc.) within 30 calendar days.	NTC form.
	12. Obtain the facility representative's signature on the inspection form/checklist. Sign and date this form/checklist as well. Issue the yellow copies of the NTC form to the business representative with the relevant inspection form/checklist	Inspection form/checklist. NTC form.
Inspection Follow-up	After completing the on-site inspection, CUPA personnel shall:	
	1. If the new information requires a change in the facilities classification make the appropriate corrections in the database.	
	2. Enter Envision Connect daily for inspection done. Upload Compliance Monitoring Enforcement (CME) data through CERS Integration Wizard on a weekly basis.	
	3. Track the facility's compliance time by Envision Connect for violations follow-up.	
	4. File all appropriate photographs taken during the inspection.	
	5. If Class I or other significant violations were observed during the inspection CUPA inspector shall consult with his/her supervisor about potential enforcement action.	
	6. Perform re-inspection when no corrective action response or inadequate submission (CUPA may opt to use formal correspondence to request additional compliance action in lieu of re-inspection).	
	7. Review all corrective action documentation submitted by the facility owner/operator or designated representative, for completeness and adequacy. Close out all appropriate violations within five (5) working days of receiving approved correction documentation. Place any appropriate correction documentation into the facility file.	
8. If the facility fails to close out all violations within the required timeframe initiate escalated enforcement per our described enforcement procedures, outlined in the Enforcement Section of this document.	See Enforcement Section	

2.8 Hazardous Materials Business Plan (HMBP) Submittals; HMBP Annual Renewal Completeness Check Procedure; and Underground Storage Tank (UST) document submittals:

2.8.1 General Procedure: Unless exempted pursuant to subdivision (c) (3) of §25503.5 of the California Health and Safety Code, businesses or facilities that store or manage hazardous materials in quantities equaling or exceeding regulatory established threshold amounts [fifty-five (55) gallons of liquid, five hundred (500) pounds of solid, or two hundred (200)

cubic feet of compressed gas] are required to submit a Hazardous Materials Business Plan (HMBP) to CERS. Once submitted, such businesses or facilities are then required to annually review and update the information contained in those plans and submit a HMBP to CERS.

All UST documents must also be submitted to CERS instead of on paper forms.

2.8.2 Review Process:

2.8.2.1 HMBP Submittals:

- A. For facilities required to submit a HMBP to CERS.
- B. The HMBP is reviewed for completeness and for any unusual or abnormal entries. If an incomplete or incorrect documentation is found then HMBP will not be accepted. And the comments will be made to the owners/operators for reason of not accepting it. Owners/Operators will have thirty (30) days to correct any noted deficiencies.
- C. If a business or facility fails to respond within the required time period to correct deficiencies a Notice of Violation (NOV) will be issued, and the case will be forwarded to the supervisor for possible formal enforcement action.
- D. The HMBP that are reviewed and considered complete will be uploaded using CIW into the Envision Connect data base. Then the invoice will be generated and mailed to the businesses/facilities.

2.9 Enforcement Section

3.0 Statutory Authority: Pursuant to the California Health and Safety Code (H&SC), Division 20, Chapter 6.11, §25404.1.1, if the CCEHD determines that a person(s) or business has committed, or is committing, a violation of any, law, regulation, permit, information request, order, variance, or other requirement that the CCEHD is authorized to enforce or implement, the CCEHD may issue an Administrative Enforcement Order requiring that the violation be corrected and imposing an administrative penalty. This authority can be used to address violations of the following requirements:

- Hazardous Materials Business Plans: H&SC, Division 20, Chapter 6.95, Article 1 (commencing with §25500).
- Underground Storage Tank Program: H&SC, Division 20, Chapter 6.7 (commencing with §25280). Not including violations of corrective action requirements established by or issued pursuant to §25296.10.
- Hazardous Waste and Tiered Permitting Program: H&SC, Division 20, Chapter

6.5 (commencing with §25100).

- Above Ground Storage Tank Program: H&SC, Division 20, Chapter 6.67, (commencing with §25270).
- California Accidental Release Prevention Program: H&SC, Division 20, Chapter 6.95, Article 2 (commencing with §25531).

3.1 General Information: It is the policy of the CCEHD to achieve compliance with applicable laws and regulations through an extensive inspection program, provision of reference or training materials, educational outreach efforts and, if necessary, the initiation of appropriate enforcement action(s). The goal of any enforcement action is to: (1) return the facility to compliance in a timely manner; (2) eliminate economic benefit realized by the noncompliant facility; and (3) punish violators and deter future noncompliance. Within CCEHD, CUPA is responsible for initiating and implementing appropriate enforcement actions for violations of the CUPA program requirements.

3.1.1 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 CUPA is to issue a Final Order within 180 days of the inspection or incident. If the case is to be referred to an outside enforcement agency such as the Colusa County District Attorney's Office, then the goal is to make that referral within 60 days of the date of inspection or incident.

3.1.2 Documentation: Proper documentation forms the basis for any contemplated enforcement action. This must include:

1. Issuing adequate and proper notices to the responsible party describing the violations.
2. Use of photographs depicting the violations.
3. Clearly and completely documenting interviews with witnesses.
4. Sampling or otherwise preserving physical evidence.
5. Maintaining an accurate chronology of events.

3.1.3 Roles and Responsibilities:

1. The Colusa County Environmental Health Manager of the CUPA shall review AEOs, other Orders and Stipulations, Consent Agreements and other documents generated for respondents with penalty assessments.

2. The Colusa County Environmental Health Manager shall:
 - a. Review and sign AEOs, other Orders and Stipulations, Consent Agreements and other documents generated for Respondents.
 - b. Pursuant to guidance outlined in this manual, confer with the Environmental Health Specialist to determine which cases should be referred to outside enforcement agencies for action.
 - c. Conduct informal conferences with the Respondents for the purpose of explaining or negotiating the penalty and/or required compliance actions.
 - d. Routinely meet with the Environmental Health Specialist to discuss potential enforcement actions.
3. Environmental Health Manager shall:
 - a. Determine whether alleged violations require consideration for the initiation of formal enforcement action.
 - b. Ensure that staff understands enforcement procedures and prepares potential formal enforcement actions in accordance with the provisions of this manual and appropriate statutes.
 - c. Review, approve, and forward all draft enforcement documents prepared by staff.
4. Line Staff 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 Notices to Comply to operators who are in violation of environmental laws.
 - c. Write draft enforcement documents when appropriate.

3.1.4 Guidelines for Case Referral to Outside Agencies: To the greatest extent possible, the CCEHD 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 Colusa County District Attorney's Office, the California District Attorney's Association Circuit Prosecutor, or the State Attorney General is required and/or appropriate.

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

1. Criminal prosecution is warranted.
 2. Multiple locations (facilities) are involved that may suggest an industry or company wide pattern of non-compliance.
 3. The case requires additional investigation that is beyond the capability of the CCEHD.
- B. Evaluation: The Environmental Health Manager 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 Department Head and/or the appropriate agency may be needed under some circumstances.

3.1.5 Definitions:

A. General:

1. **Administrative Enforcement:** Administrative enforcement allows the CCEHD to pursue action independent of an outside prosecutorial agency. CCEHD also determines the appropriate penalty based on the circumstances of the violation and the violator, and statutory or regulatory penalty criteria. The CCEHD may set the penalty and the time frame for the violator's return to compliance. If the alleged violator chooses to contest the case, CCEHD schedules a hearing at which there is the opportunity to refute the allegations and present any mitigating factors that may affect the penalty.
2. **Administrative Enforcement Order:** This includes any of the order of variations including the Consent Order, Expedited Consent Order, Stipulation and Order, and Unilateral Order.
3. **Enforceable:** Any instrument that creates an independent, affirmative obligation to comply and imposes sanctions for the prior failure to comply.
4. **Final Order:** An AEO that has been formally issued, with (Consent) or without consent (Unilateral) of the respondent and has become final.
5. **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. Sanctions include fines and penalties, as well as, other tangible obligations, beyond returning to compliance, that are imposed on the regulated business. (CCR, Title 27, §15110)
6. **Informal enforcement:** Informal Enforcement is an action other than a formal enforcement action that notifies the regulated business of its non-compliance and establishes a date by which that non-compliance is to be corrected. Examples include letter, notices of violation and verbal warnings or notices. Informal actions do not impose

sanctions. Informal enforcement can be a useful tool and should always be documented. However, it should not be the only enforcement tool used by CUPA.

7. **Minor Violation:** Means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the Unified Program that SCEHD is authorized to implement or enforce pursuant to **H&SC, Division 20, Chapter 6.11 §25404(a) (3)**, and does not otherwise include any of the following:
 - a. A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.
 - b. A knowing willful or intentional violation.
 - c. A violation that is a chronic violation, or is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, CCEHD 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 safety 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 as provided in **H&SC, Division 20, Chapter 6.5 §25117.6**.
 - g. A Class II violation committed by a chronic or a recalcitrant violator, as provided in **H&SC, Division 20, Chapter 6.5, §25117.6**.
 - h. A violation that hinders the ability of the CCEHD to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.
 8. **Respondent:** The person, business or facility that is the alleged violator.
 9. **Supplemental Environmental Project (SEP):** An environmentally beneficial project or projects that business agrees to undertake in settlement of an enforcement action, but which the business is not otherwise legally required to perform.
- B. Hazardous Waste Generator Program:
1. **Class I Violation:** A Class I violation means any of the following:
 - A. A deviation from the requirements of the Health and Safety Code (H&SC) or any regulation, standard, requirement, permit, or interim status document condition adopted

pursuant to the H&SC that is any of the following:

- I. 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.

- II. The deviation is significant enough that it could result in failure to accomplish any of the following:
 - a. Ensure that a 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/or treatment, storage or disposal at an unauthorized location.
 - b. Prevent releases of hazardous waste 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 and compatible containers; or incompatible waste stored adjacent to each other with no physical barrier for separation.
 - c. Ensure early detection of releases of hazardous waste.
 - d. Ensure adequate financial resources in the case of releases of hazardous waste, or to pay for facility closure.
 - e. Perform emergency cleanup operations, 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), regulations, permits, grants 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, CUPA 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 meets any of the following:

- I. Has caused actual exposure or substantial likelihood of exposure to hazardous waste or hazardous constituents.

- II. Is a chronic (a handler who is regularly found to have many Class I or Class II violations) or recalcitrant (a handler who intentionally refuses to comply with the regulatory requirements) violator.
- III. 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 the terms of permits, orders, settlement agreements, or decrees.
- IV. Substantially deviates from statutory or regulatory requirements.
- V. Examples of potential SNCs include, but are not limited to:
 - a. Failure to comply with an enforcement order.
 - b. Having previous Class I violation(s) within the past three years.
 - c. Repeating the same Class II violation(s) within the past three years.
 - d. Operating a facility without a permit or other grant of authorization.
 - e. Disposal of hazardous waste at a non-authorized site.
 - f. Systemic failure to follow container/tank labeling requirements.
 - g. Failure to manage ignitable, reactive, or incompatible wastes as required by CCR, Title 22, §66264.1 and §66265.17(b)(1)-(5).
 - h. Systemic use of containers that are in poor condition.

C. Underground Storage Tank Program:

1. Significant Violation: Means the failure of a person to comply with any requirement of H&SC, Division 20, Chapter 6.7 or any regulation adopted pursuant to Chapter 6.7, not including the corrective action requirements in H&SC, §25296.10 and CCR, Title 23, Article 11, Chapter 16 that is any of the following;

- i. A violation causing, or threatens to cause a liquid release of petroleum from an underground storage tank system, including but not limited to:
 - a. Failure of any required overfill prevention system, where the failure is causing or threatens to cause a release.
 - b. 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.
- ii. A violation that impairs the ability of the underground storage tank system to detect a liquid leak or contain a liquid release of petroleum in the manner required by law, including but not limited to tampering with leak detection equipment so that the equipment is no longer capable of detecting a leak at the earliest possible opportunity.

- iii. 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, CUPA 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 Division 20, of the H&SC and CCR, Title 23, Article 11, Chapter 16.

2. Imminent threat to human health or safety of the environment: Means 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 and/or safety, and/or the environment.

3.2. Administrative Enforcement Order (AEO)

3.2.1. Introduction:

- 1 CUPA is authorized by Chapter 6.11 of the H&SC §25404.1.1 to issue an administrative enforcement order if it has determined that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that CUPA is authorized to enforce or implement pursuant to Chapter 6.11, Division 20 of the H&SC and to impose administrative penalties.
- 2 The goal of the AEO is, among other things, to return a facility to compliance in a timely manner; eliminate economic benefit realized by the noncompliant facility, and create deterrence against future noncompliance.
- 3 To expedite achieving the enforcement goal throughout the administrative order process, CUPA will encourage the respondent to enter into settlement discussions. Settlement discussions can occur at any time – prior to the issuance of a Final Order; after the issuance of a Final Order; during the period before and after the appeal is heard by a Hearing Officer.

3.2.2. Case Disposition Guidance.

1. Based on information provided by line staff, the Environmental Health Manager will review each case and provide recommendations to Department Head regarding whether:
 - a. The case should be referred to an outside agency for enforcement action (see paragraph 3.2.4) or;
 - b. The case should be handled through the AEO process. If the AEO process is recommended, the Supervising Environmental Health Specialist will also recommend an AEO option to be pursued.
2. Environmental Health Manager in consultation with the Environmental Health Specialist will

review the case 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 \$20,000, the Environmental Health Manager will confer with the Department Head prior to making a final decision regarding case disposition.

3.2.3. Administrative Enforcement Order (AEO) Action Options. Depending on the circumstances of each case, H&SC §25187 provides multiple options for initiating, settling, and issuing administrative orders. Figure 2 should be consulted when considering the appropriate option to use.

**Figure 2
Selecting an AEO Process**

AEO Process Alternative	When to Use	Disadvantages
Show Cause Letter	1. When a business is not a repeat violator, does not have a history of noncompliance, and has not been recalcitrant or uncooperative. 2. The violations do not pose an imminent and substantial threat to public health or the environment and the violations have not resulted in a significant release to the environment.	Statutory timeframes for filing a notice are not started and therefore a deadline has not been established.
Consent Order	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.	1. Provides no opportunity for discussion of complex compliance issues. 2. Difficult to use if case involves multi-agency enforcement.
Stipulation and Order	1. A Unilateral Order has been issued and the business has then requested settlement discussions. 2. Settlement discussions have led to an agreement with the business on compliance timelines and penalties and the CUPA does not wish to restate the violations cited in the Unilateral Order.	

“Final” Unilateral Order	1. The business is a repeat violator or has a history of noncompliance. 2. The violations pose an imminent and substantial threat to public health or the environment; or 3. The violations have resulted in a significant release to the environment.	Doesn't allow for consideration of the business's response prior to formal public action.
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3.2.4. AEO Processes:

1. “Show Cause” Letter Alternative. Under this alternative, a Show Cause letter may be issued to the business, notifying it that CUPA is planning to take an AEO action and encouraging the business to discuss a settlement. The Show Cause letter is a public document and is not enforcement confidential. It does not constitute a formal enforcement action but establishes the CUPA’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 CUPA 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 business is not a repeat violator, and does not have a history of noncompliance.
 - (2) The business has not been recalcitrant or uncooperative and the violations do not pose an imminent and substantial threat to public health or the environment; and the violations have not resulted in a significant release to the environment.

2. Consent Order. Under this alternative, the CUPA 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. 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 business is not a recalcitrant/repeat violator and the penalties are relatively small.
 - (4) When prompt settlement is anticipated.

3. Stipulation and Order. A Stipulation and Order is a mechanism that the CUPA should use

if it comes to an agreement (a stipulation) with a respondent after a Unilateral Order has been issued. A Consent Order can also be used.

a. Although preferable, a Stipulation and Order does not require a restatement of the violations identified in the Unilateral Order. For this reason, the use of a Stipulation and Order may be more expeditious than the use of a Consent Order, in certain situations.

b. When to use. The Stipulation and Order alternative may be appropriate under the following circumstances:

(1) A Unilateral AEO has already been issued for the violation or violations in question and the business has requested settlement discussions after service of the draft Unilateral AEO.

(2) Settlement discussions have led to an agreement with the business on compliance timelines and penalties and the CUPA wishes to avoid restating the violations cited in the Unilateral Order.

4. Unilateral Order. Utilizing this alternative, CUPA will issue a Unilateral Order to the business or 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. When to use. The Unilateral Order alternative is appropriate under the following circumstances:

- (1) The business or facility is a repeat violator or has a history of noncompliance with either the Hazardous Waste Control Law or other environmental or public safety laws;
- (2) The business or 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 a settlement is not achieved with the Show Cause alternative.

c. Preparing a Unilateral Order. When preparing a Unilateral Order, all of the following documents must be included in the package served on the respondent:

- (1) A copy of the signed Order.
- (2) All exhibits or attachments referred to in the Order.
- (3) Statement to the respondent.

- (4) A copy of proof of service.
- (5) Cover letter to respondent.
- (6) Two copies of Notice of Defense (NOD).

d. Serving the Order. An Order shall be served in person or by “proof of service” certified mail. If a NOD is not received within 20 calendar days of service of the Order, the Order becomes final. The additional 5 calendar days (from the 15 day statutory requirement) is to allow for mail delivery time. A proof of service form must be completed and included in the package.

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

- (1) When the respondent files a request for amendment that is agreed to by the CUPA, CUPA 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 CUPA determines that a correction is necessary. The issuance of an amended Unilateral Order in this situation requires the re-issuance of the complete service package and may create new appeal rights.

f. Withdrawing an Order. If the CUPA decides to withdraw a Unilateral Order, a Notice of Dismissal must be completed with a letter, with return receipt requested, officially notifying the respondent that the Order is being withdrawn.

3.2.5. Settlement Discussions/Settlement Agreement

1. Settlement discussions between CUPA and the business or 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 or facility owner or operator and the CUPA during the course of settlement discussions.
2. CUPA will set a time and place for any settlement discussion meeting. If the CUPA and the business or facility owner or operator is able to reach a settlement, the CUPA 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 the CUPA; and
 - c. Payment to the CUPA of any penalty(s) assessed.
3. Failure to comply with any term of the Settlement Agreement shall void the Agreement and the CUPA may proceed with any and all actions lawfully available. However, so long

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

3.3. Failure to Return to Compliance Notifications

On a monthly basis, the CUPA will identify businesses or facilities with documented violations that have not been corrected within stipulated deadlines. These businesses or facilities will be issued a Second Notice of Violation/Notice to Comply (NOV/NTC). The notice shall state the record of their failure to either correct the noted discrepancies or to submit documentation proving corrective actions have been completed. This notice also serves as a Notice of Violation for failure to comply within the required timeframe.

1. Content of Notification: Businesses or facilities receiving a Second NOV/NTC will be provided with the following information:

1. The date of their most recent inspection with the required timeframe for compliance.
2. Notification that they are subject to re-inspection and that they will be liable for the cost of such a re-inspection.
3. Notification that the business or facility may be subject to administrative enforcement action if any subsequent re-inspection reveals uncorrected violations.
4. In order to avoid a re-inspection and any follow-up enforcement actions, the business or facility must provide proof of correction of all open violations must be provided to the CUPA not later than the required timeframe stated on the second NOV/NTC.

2. Follow-up Actions: A monthly review will be conducted to determine that all facilities that have failed to verify compliance of all open violations within the required timeframe, as stipulated on Second NOV/NTC. These facilities will be targeted for re-inspection based on a risk priority. The Environmental Health Division Chief will direct the initiation of administrative enforcement actions for those businesses or facilities where re-inspections reveal uncorrected violations.

3.3.1. Reinspections:

A. Definition: A reinspection is defined as any field inspection conducted outside of the required regulatory frequency.

B. General. Reinspections will be conducted at the expense of the affected facility when one or more of the following conditions are present:

1. To confirm that necessary action(s) have been completed so as to achieve compliance after one

or more Class I or II violations or any other violation deemed significant or major have been documented.

2. The affected facility has been placed in a “monitor” status. A facility that has repeated significant violations may be placed in a “monitor” status if there is reasonable doubt that the facility will remain in compliance with applicable sections of environmental statutes, regulations or local ordinances.
3. To confirm that necessary action(s) have been completed so as to achieve compliance after numerous minor violations or violations that have been determined not to 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 the CUPA.

3.3.2. Revocation, Modification or Suspension of Permit:

1. Grounds for Revocation, Modification or Suspension of Permit to Operate: Any permit issued pursuant to Colusa County Ordinance, Chapter 770, Section 770-061 (Underground Storage Tanks) may be revoked, modified or suspended during its term, upon one or more of the following grounds:
 - a. Obtaining the permit by misrepresentation or intentional failure to fully disclose all relevant facts.
 - b. A change in condition that requires modification or termination of the operation of the Underground Storage Tank.
 - c. Violation of any provision of Colusa County Ordinance, Chapter 770, Section 770-061 or Health and Safety Code, Section 25280 et seq., or the California Code of Regulations, Title 23, Division 3, Chapter 16, Section 2610 et seq.
2. **Method:** CUPA may revoke, modify, or suspend a permit by issuing a written notice (Notice) stating the reasons.
 - a. The revocation, modification or suspension shall become effective 15 calendar days after service of the Notice, unless the holder of the permit enters into a settlement agreement with the CUPA or appeals the Notice in accordance with Section IX of this policy.
 - b. 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.
 - c. Delivery shall be deemed complete upon either personal delivery to the permit holder or through proof of service by certified mail.

3.3.3. Red Tag Procedures (USTs only):

1. Affixing Red Tag

- a. Upon discovery of a significant violation that poses an imminent threat to human health or safety or the environment, CUPA staff may immediately affix a red tag to the top of the fill pipe of the non-compliant underground storage tank system.
- b. 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 H&SC §2715.3, CUPA may issue a notice of violation to the owner or operator. If the owner or operator fails to correct the violation within 7 calendar days from the receipt of the notice, CUPA may affix a red tag to the top of the fill pipe of the non-compliant underground storage tank system.
- c. Before affixing any red tag, the CUPA staff shall document the product level in the tank. No owner or operator of an underground storage tank system may deposit or allow for the deposit of any petroleum product into a tank that has a red tag affixed.

2. Removal of Red Tag:

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

3.4. Administrative Hearing Process

3.4.1. Hearing Procedures.

1. Pursuant to Division 20, Chapter 6.11, subsection (d), §25404.1.1 of the Health & Safety Code allows the business/facility owner or operator (Respondent) to request a hearing on the Order within 15 calendar days after service of the Order or Notice. This timeframe cannot be extended.
2. A request for a hearing is referred to in Division 20, Chapter 6.11, subsection (d), §25187(d) of Health & Safety Code as a “Notice of Defense (NOD).” The NOD must be filed with the CUPA within 15 calendar days of service of the Order or Notice. It is acceptable if the NOD is postmarked within that 15 day period. If the Respondent does not submit a NOD within the 15 days after service, the Order or Notice becomes final.

3. The Respondent may specify in the NOD one of two hearing processes.
 - a. An administrative law judge available through a Cal-EPA contract, or
 - b. A hearing officer designated by the CUPA 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 the CUPA receives a NOD within the 15 calendar day time period, it must immediately transmit the NOD to the Colusa County Counsel, who arrange for the hearing. A cover letter must be sent to accompany the NOD.
 5. The Respondent must be notified of the hearing date.
 6. The hearing must commence within 90 calendar days of receipt of the NOD. This 90 day deadline may be extended upon mutual agreement.
 7. CUPA will be represented by County Counsel during the hearing process.
 8. CUPA will remain in contact with the Respondent and offer the opportunity to settle the case prior to the hearing date.
 9. After the hearing, a proposed decision should be issued to the CUPA within 30 calendar days. To adopt the proposed decision, the CUPA will serve the Respondent with a letter, stating that it is adopting the proposed decision, and serves this package on the business. Such Orders are effective and final upon issuance, and the business has 30 calendar days to make any stipulated payment. A copy of the Order must be served by personal service or by “proof of service” certified mail.
- 3.4.2. Procedures to Access Administrative Law Judge:** Cal-EPA has entered into a contract with the Department of General Services, Office of Administrative Hearings (OAH) to fund requested hearings on AEOs issued by the CUPA’s. The following is the procedure to access this contract.
1. OAH agrees to provide administrative law judges, clerical support, and hearing reporters as may be needed to conduct hearings.
 2. The hearings will be conducted as requested to resolve AEOs pursuant to Chapter 6.5, §25187 and Chapter 6.11, subsection (a) of §25404.1.1 of the H&SC for violations of Chapter 6.5 (commencing with §25100), Chapter 6.7 (commencing with §25280), Article 1 (commencing with §25500) of Chapter 6.95, Article 2 (commencing with §25531) of Chapter 6.95 and §25270.5.
 3. Hearings on AEOs will be conducted pursuant to H&SC §25404.1 and Government Code §11400 et seq.

- a. OAH should be called to schedule a hearing at (916) 445-4926.
- b. Inform the OAH Calendar Office that services are to be provided under Interagency Agreement Contract. The OAH Calendar Office will schedule the hearing at a place and time that is mutually agreeable to the OAH and the CUPA.
- c. Provide the OAH with a copy of the AEO and the NOD. Their mailing address is: 560 J Street Suite 300 Sacramento, CA 95814
- d. CUPA will provide notices of scheduled hearings to all applicable Parties according to pertinent law. A copy of the notice of scheduled hearing shall also be mailed to: Cal-EPA/Unified Program 1001 I Street Sacramento, CA 95812
- e. The OAH will provide the CUPA with a proposed decision containing the findings of fact, conclusions of law and a final deposition regarding each issue contested. CUPA can choose to adopt the OAH's proposed decision; or adopt portions of the proposed decision while revising other portions; or reject the proposed decision.
- f. CUPA will issue the final order to the respondent and provides copies by mail to OAH and Cal-EPA/Unified Program. Case files shall be retained by OAH for a period of 6 months, at which time OAH will notify the CUPA to pick up the case files.

3.4.3. Civil Appeal of the "Final" Order.

1. Within 30 calendar days after service of a copy of a Decision and Order issued by the CUPA, the business/facility owner or operator (Respondent) may file with the Superior Court, a Petition for Writ of Mandate for Review of the Decision and Order. The filing of such Petition for Writ of Mandate does not stay any penalties assessed.
2. Any Respondent that fails to file the Petition within this 30 calendar day period may not challenge the "Final" Unilateral Order [*Government Code §11523*].

3.5. Administrative Penalties

3.5.1. General Policy

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

- c. The violator's ability to pay.
- d. The deterrent affect of the penalty.

3.5.2. Steps in Determining Penalties

1. Initial Penalty. CUPA 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:

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 the CUPA, the violator realized significant economic benefit as a result of the failure to comply.

- (1) The adjustment to the initial penalty cannot exceed the statutory maximum.
- (2) Economic benefits to consider include: avoided or delayed costs, or increased profits.

3. Combining Multiple Violations. A single penalty may be assessed for multiple violations for the following situations:

- a. The facility has violated the same requirement in different locations or units within the facility.
- b. The facility has violated the same requirement on different days. This would not be appropriate if the facility has been notified of the violation and has had sufficient time to correct the violation.

4. Multi-day Violations. On a case-by-case basis, for days following the first day of violation, the multi-day component of the penalty may be calculated by determining 2% of the adjusted initial penalty times the number of days after the initial day.

5. Base Penalty. The base penalty for a one-day violation occurrence is the adjusted initial penalty. The base penalty for multi-day violations is the adjusted initial penalty for the first day of the violation plus the penalty for the additional days of the violation.

6. Total Base Penalty. The total base penalty is the sum of all base penalties for all violations incurred at a given facility.

7. To determine the Final Penalty, adjustments to the total base penalty may be made based on the following factors.

a. Adjustment factors for cooperation.

Degree of Cooperation/Effort	Adjustment Factor	Circumstance
Extraordinary	Downward adjustment of up to 25 %	Violator exceeded minimum requirements in returning to compliance or returned to compliance faster than requested.
Good Faith	No adjustment	Violator demonstrated a cooperative effort.
Recalcitrance	Upward adjustment of up to 25 %	Violator failed to cooperate, delayed compliance, created unnecessary obstacles to achieving compliance, or the compliance submittal failed to meet requirements.
Refusal	Upward adjustment of 50 to 100 %	Violator intentionally failed to return to compliance with regulations or to allow cleanup operations to take place. This does not include refusal to allow inspection.

b. Adjustment to create a preventive or deterrent effect. The total base penalty may be adjusted upward or downward to ensure that the penalty is sufficient to provide a deterrent effect on both the violator and/or the regulated community as a whole.

c. Adjustment for compliance history. The total base penalty may be adjusted upward or downward based on the facility's compliance history.

(1) General considerations.

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

(2) Specific guidance.

- (a) Downward adjustments of up to 5% for each previous consecutive inspection with no violations can be made up to a maximum of 10%.
 - (b) Downward adjustments of up to 15% can be made if the facility has an ISO 14001 certificate.
 - (c) Upward adjustments of up to 100% can be made if a facility has a consistent history of noncompliance over the past 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.

3.5.3. Initial Penalties

1. Hazardous Waste: For violations of H&SC Chapter 6.5, the violator shall be liable for penalties as provided in §25189.2 (a-c).

a. The total penalty calculated for any single violation shall not exceed the amount specified in statute; \$25,000 per day, per violation (H&SC, §25189.2).

b. The following matrix will be used to determine initial penalty for a hazardous waste violation:

Initial Penalty Matrix – Hazardous Waste

	ACTUAL OR POTENTIAL HARM	Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major		Maximum \$25,000 Average \$22,500 Minimum \$20,000	\$20,000 \$17,500 \$15,000	\$15,000 \$10,500 \$6,000
Moderate		Maximum \$20,000 Average \$17,500 Minimum \$15,000	\$15,000 \$10,500 \$6,000	\$6,000 \$4,000 \$2,000
Minimal		Maximum \$15,000 Average \$10,500 Minimum \$6,000	\$6,000 \$4,000 \$2,000	\$2,000 \$1,000 \$0

2. Underground Storage Tanks. For violations of H&SC Chapter 6.7, the violator shall be liable for penalties as provided in §25299 (a-c).

a. H&SC §25299 (a) and (b) call for penalties no less than \$500 or no more than \$5,000 per day, per violation, per Underground Storage Tank.

b. For violations of H&SC §25299 (c), the respondent is liable for no more than \$5,000 per day, per violation, per Underground Storage Tank.

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

Initial Penalty Matrix – Underground Storage Tanks

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

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

Initial Penalty Matrix – Hazardous Materials Business Plan Program

	ACTUAL OR POTENTIAL HARM	Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major		Maximum \$2,000 (\$5,000) Average \$1,600 (\$4,000) Minimum \$1,200 (\$3,000)	\$1,200 (\$3,000) \$1,000 (\$2,500) \$800 (\$2,000)	\$800 (\$2,000) \$600 (\$1,500) \$400 (\$1,000)
Moderate		Maximum \$1,200 (\$3,000) Average \$1,000 (\$2,500) Minimum \$800 (\$2,000)	\$800 (\$2,000) \$600 (\$1,500) \$400 (\$1,000)	\$400 (\$1,000) \$300 (\$750) \$200 (\$500)
Minimal		Maximum \$800 (\$2,000) Average \$600 (\$1,500) Minimum \$400 (\$1,000)	\$400 (\$1,000) \$300 (\$750) \$200 (\$500)	\$200 (\$500) \$100 (\$250) \$0 (\$0)

4. Failure to Report Unauthorized Spill or Release of Hazardous Material or Waste.

- a. Businesses or facilities shall, upon discovery, immediately report any release or threatened release of a hazardous material to the CUPA and the Governor’s Office of Emergency Services Warning Center. In addition, each business or facility and any employee, authorized representative, agent, or designee of the business or facility shall provide all state, city, county fire or public health or safety personnel and emergency rescue personnel with access to the facility.
- b. Pursuant to §25514.5(a) of the H&SC, any business or facility that violates these requirements are civilly liable in an amount not to exceed \$2,000 per day for each violation.

Initial Penalty Matrix – Unreported Spills or Releases

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

5. California Accidental Release Prevention (Cal-ARP) Program.

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

Initial Penalty Matrix – Cal-ARP Program

	ACTUAL OR POTENTIAL HARM	Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major		Maximum \$2,000 (\$25,000) Average \$1,600 (\$20,000) Minimum \$1,200 (\$15,000)	\$1,200 (\$15,000) \$1,000 (\$12,500) \$800 (\$10,000)	\$800 (\$10,000) \$600 (\$7,500) \$400 (\$5,000)
Moderate		Maximum \$1,200 (\$15,000) Average \$1,000 (\$12,500) Minimum \$800 (\$10,000)	\$800 (\$10,000) \$600 (\$7,500) \$400 (\$5,000)	\$400 (\$5,000) \$300 (\$3,750) \$200 (\$2,500)
Minimal		Maximum \$800 (\$10,000) Average \$600 (\$7,500)	\$400 (\$5,000) \$300 (\$3,750)	\$200 (\$2,500) \$100 (\$1,250)

		Minimum		
		\$400	\$200	\$0
		(\$5,000)	(\$2,500)	(\$0)

6. Above Ground Petroleum Storage Act (APSA).

- a. For violations of H&SC, Chapter 6.67, commencing with Section 25270, 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.

Initial Penalty Matrix – Above Ground Petroleum Storage Act

	ACTUAL OR POTENTIAL HARM	Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major		Maximum \$5,000 (\$10,000) Average \$4,000 (\$8,000) Minimum \$3,000 (\$6,000)	\$3,000 (\$6,000) \$2,500 (\$5,000) \$2,000 (\$4,000)	\$2,000 (\$4,000) \$1,500 (\$3,000) \$1,000 (\$2,000)
Moderate		Maximum \$3,000 (\$6,000) Average \$2,500 (\$5,000) Minimum \$2,000 (\$4,000)	\$2,000 (\$4,000) \$1,500 (\$3,000) \$1,000 (\$2,000)	\$1,000 (\$2,000) \$750 (\$1,500) \$500 (\$1,000)
Minimal		Maximum \$2,000 (\$4,000) Average \$1,500	\$1,000 (\$2,000) \$750	\$500 (\$1,000) \$250

		(\$3,000)	(\$1,500)	(\$500)
		Minimum		
		\$1,000	\$500	\$0
		(\$2,000)	(\$1,000)	(\$0)

3.6. Confidentiality

Although the need for confidentiality varies case by case, in general, current or potential enforcement actions should not be discussed with anyone other than supervisors, legal counsel or other appropriate government personnel. This does not prohibit us, for example, from discussing matters at an enforcement task force meeting.

Inquiries from the press require review with management and our agency’s information officer. In general, details regarding current enforcement investigation should not be released to the press. There may be a need to discuss certain matters such as any public health dangers or matters of public record. Remember also the reporting requirements of Government Code section 25180.7 (Prop. 65). If the case was referred to a prosecutor, questions concerning the case should be referred to that office.

Pending enforcement cases may be exempt from release under the Public Records Act (Gov’t Code section 6254 et seq). CUPA should consult it’s legal counsel for guidelines. “Pending enforcement” refers to any matter where the CUPA is considering formal enforcement from the time of inspection or incident until all enforcement action is final, including appeal. This exemption only applies while the case is pending and absent other exemptions all records of the investigation will become releasable once the matter is final. This exemption can be waived at the discretion of the agency that has the records. Any waiver of the exemption should be reviewed with legal counsel and other agencies involved in the investigation.