

Department of Toxic Substances Control

Official Policy

REFERRALS TO CALIFORNIA COMPLIANCE SCHOOL

DTSC-OP-0002

Subject/Title of Policy

Official Policy Number

EO-OP-0002 and DTSC-02-004 PP (1/30/2009)

07/15/2016

Supersedes Number(s)

Date Issued/Effective Date

All Staff

Hazardous Waste Management Program

Target Audience

Issuing Unit

Barbara A. Lee

Director

Name

Title of Approving Authority

Original signed by Barbara A. Lee

7/15/16

Signature

Date Signed

Statutory Reference(s):

Health and Safety Code, Division 20, Chapter 6.5, and its implementing regulations.

This Policy and any internal procedures adopted for its implementation are intended solely as guidance. This policy does not constitute a rulemaking by the Department and may not be relied upon to create a specific right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Department may take action at variance with this policy or any internal implementing procedures.

This policy expires five years from the date of signature.

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I. PURPOSE

This document sets forth the Department of Toxic Substances Control's (DTSC) policy and procedures for referrals and penalty offsets relating to California Compliance School (CCS) in administrative and civil settlements under the Hazardous Waste Control Law (Health and Safety Code section 25100 et seq.).

II. BACKGROUND

This policy is intended to be consistent with the Supplemental Environmental Projects (SEPs) policy, DTSC-OP-035.

CCS is an educational compliance program designed primarily for hazardous waste generators and is a tool for use in enforcement actions to improve compliance in the future.

CCS is a partnership between DTSC and Kern Community College District to educate the regulated community about basic hazardous waste management requirements and promote voluntary compliance. It is operated by the Economic and Workforce Development Department at Kern Community College District.

III. STATUTORY AUTHORITY

Health and Safety Code, Division 20, Chapter 6.5, and its implementing regulations authorize DTSC to take enforcement actions and negotiate settlements.

IV. POLICY

It is the policy of DTSC to inform the regulated community and other agencies about the availability of CCS and recommend referrals, as appropriate.

V. DEFINITIONS

The definitions below are for quick reference only. Staff need to consult the actual statutory and regulatory provisions that apply to their case.

A. Administrative Enforcement Action: DTSC has authority to enforce its laws through orders, enforceable agreements and enter settlements that do not require judicial approval or court filings. Using this administrative authority, DTSC may seek penalties and compel certain actions or other compliance activities through an administrative order or settlement. If unable to settle a matter, DTSC may need to present evidence to an administrative law judge from the Office of Administrative Hearing to obtain a ruling on the evidence and case presented. DTSC does not have administrative authority to require jail or prison time, but may also pursue costs in its negotiations. DTSC may file its final administrative order or settlement with a court to obtain a judgment and abstract to further pursue payment, as needed.

- B. Civil Enforcement Action:** DTSC may also file a case through the California Attorney General's Office with a state or federal court when it identifies and resolves violations. While settlement negotiations typically occur without court oversight, the final resolution and settlement document require court approval with or without a trial. Like an administrative action, DTSC may seek penalties and costs, and compel certain actions or other compliance activities through an administrative order or settlement. Only criminal cases filed by a local, state or federal prosecutor can result in a jail or prison sentence.
- C. Class I Violation:** The Health and Safety Code (HSC) section 25110.8.5 defines a Class I Violation as a violation that is a significant threat to human health or safety or the environment because of volume, hazardousness, and/or proximity to population at risk. A Class I Violation is also a violation that could result in a failure to ensure adequate financial assurance, perform corrective action or emergency cleanup; or a repeating Class II Violation committed by a recalcitrant violator.
- D. Class II Violation:** The California Code of Regulation (CCR), title 22, section 66260.10 and Health and Safety Code (HSC) section 25110.8.5, subdivision (b) define a Class II Violation as a violation that is not a Class I Violation and does not meet the conditions of a Minor Violation.
- E. Minor Violation:** The Health and Safety Code (HSC) section 25117.6 defines a Minor Violation as a subset of a Class II Violation that is not knowing, willful or intentional, does not enable the Respondent to gain an economic benefit for noncompliance, is not chronic or is not committed by a recalcitrant violator.
- F. Respondent:** A Respondent is a person, including any individual, company or entity listed in Health and Safety Code (HSC) section 25118, who has been cited for a violation.
- G. Significant Non-Complier:** Consistent with United States Environmental Protection Agency guidance, a Significant Non-Complier is a business that has caused actual exposure or substantial likelihood of exposure to hazardous waste or hazardous constituents; is a chronic (a handler who is regularly found to have many Class I or Class II Violations) or recalcitrant violator (a handler who actively refuses to comply with the regulatory requirements); or substantially deviates from the terms of a permit, order, settlement agreement 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 substantially deviates from statutory or regulatory requirements.
- H. Supplemental Environmental Projects (SEPs):** A SEP is an environmentally beneficial project that a Respondent voluntarily agrees to undertake in settlement of enforcement action to offset a portion of an administrative or civil penalty. The project must require work beyond a Respondent's compliance

obligations. More information on SEPs is available on DTSC's website at https://www.dtsc.ca.gov/GetInvolved/SEPS_Policy.cfm.

VI. PROCEDURES

DTSC staff should promote CCS attendance and encourage the regulated community and agency staff to attend, whenever appropriate. Five modules are currently offered at CCS (Attachment A). Required testing is conducted after completion of the last module.

A. Attendance

Participants may attend CCS voluntarily either:

- After an inspection identifying Minor Violations (no enforcement order is issued); or
- As a condition of the settlement of an administrative or civil enforcement action.

All CCS participants are encouraged to attend Modules I through V (see Attachment A for the contents of each module).

B. Attendance Resulting from an Administrative or Civil Enforcement Action

The settlement of administrative or civil enforcement actions may include language for CSS attendance (see Attachment B for Template Settlement Language). A CCS referral may result from Class I or II Violations. A penalty offset is not available for CCS attendance when resolving violations committed by Significant Non-Compliers. A copy of enforcement orders that contain a CCS referral shall be sent to CCS prior to attendance.

DTSC has discretion to decide when a CCS referral and/or a credit or offset against any penalty amount is appropriate for any administrative or civil settlement depending on the specific facts of the case. For criminal cases, DTSC does not decide the terms of any plea bargain or settlement but should provide the prosecutor with information on CCS if that information could be helpful in resolving the matter.

CCS is designed to promote compliance with hazardous waste management requirements for generators. Certain modules may not be relevant to permitted facilities or transporters.

1. Eligible Attendees

DTSC will collaborate with the Respondent in identifying the individuals that must attend and successfully complete CCS as part of the settlement. CCS attendees may include persons who handle and/or manage hazardous waste or supervise those who do.

2. Penalty Offset

The penalty offset is \$750 per person, up to a maximum of \$5,000, and may not exceed 50 percent of the penalty amount in a settlement agreement. Although a generator or facility may be referred to CCS multiple times, a penalty offset will be allowed only once for each generator or facility location. The Respondent's staff listed in the settlement document must pass the exam and submit a Certificate of Completion to DTSC within 185 calendar days of the date of order (CCS Deadline). Please see the CCS website for current tuition rates.¹ CCS will confirm attendance and mail a Certificate of Completion to attendees that have passed the exam. A DTSC Branch Chief may allow an extension of the CCS Deadline upon receipt of written request and demonstration of good cause. The written request for an extension must be received by DTSC at least two business days prior to the CCS Deadline.

3. Facilities with Previous Violations

Generally, no penalty offset for CCS will be offered to generator or facility location with previous violations or a history of recalcitrant noncompliance. All non-complying generators and facilities should be encouraged to send employees to CCS even when a penalty offset is not allowed.

C. Recognition for Attendance

An inspector may take into account a Respondent's attendance in CCS when evaluating the Respondent's good faith efforts to comply with applicable requirements.

The following two types of certificates are available to participants that complete CCS:

1. Certificate of Participation (no test required): CCS issues this to voluntary participants. This certificate is not sufficient to qualify for a penalty offset.
2. Certificate of Completion (test required): CCS issues this to voluntary and referred participants who pass the test with a score of 80 percent or above. Respondents must submit a Certificate of Completion to DTSC to obtain a penalty offset (see Attachment B for Template Settlement Language).

¹ As of July 2016, the cost for modules I through IV is \$570 and \$620 for all five modules, and \$100 for the examination.

Participant(s) must submit either a Certificate of Participation or a Certificate of Completion to DTSC, as appropriate.

DTSC may periodically evaluate the CCS program to ensure that it is conducted effectively and accomplishes intended goals.

D. Class Availability

CCS modules are offered and scheduled throughout the state at various locations. A current schedule for CCS classes is available at the CCS website (Class Schedule).

If requested, CCS may conduct on-site training at a reduced rate that is more focused on specific waste streams.

VII. ROLES AND RESPONSIBILITIES

- A. Inspector:** Shall research Respondent's compliance history (reviewing both DTSC and CUPA records) and collaborate with supervisor, branch chief, and assigned Office of Legal Counsel (OLC) Attorney to determine the eligibility of the Respondent for CCS and a penalty offset. When drafting the settlement document use the template in Attachment B.
- B. Supervisor:** Shall determine whether the Respondent will benefit from attending CCS (i.e., whether attendance is likely to improve compliance); coordinate with inspector, branch chief, and assigned OLC Attorney, as appropriate, including preparation of settlement language; and ensure that a copy of a settlement document is sent to CCS.
- C. Branch Chief:** Shall collaborate with inspector, supervisor, and assigned OLC Attorney, as appropriate, including the determination to approve or deny an extension of the CCS Deadline.
- D. OLC Attorney:** Shall collaborate with inspector, supervisor, and branch chief, as appropriate; review proposed language in the draft settlement document; and communicate with opposing counsel.

Attachment A
CCS Modules

I. Hazardous Waste Identification and Overview (4 hours)

Introduction to state and federal laws, waste classification, record-keeping, waste minimization, and information sources.

II. On-site Management Requirements (4 hours)

How to manage tanks and containers, inspection and secondary containment, and allowable accumulation times and documentation.

III. Transportation and Land Disposal Restrictions (4 hours)

How to complete a manifest, labeling, and land disposal restriction notification form. Use of registered transporters and where to obtain more information.

IV. Preparedness, Prevention and Training (4 hours)

Planning for emergencies, safety equipment, training staff, and training records. Completion of source reduction checklist.

V. Tiered Permitting (6 hours)

Generator self-audits, treatment, on-site recycling, and tiered permitting requirements. Topics covered include: how to conduct self-audits, when authorization for treatment is needed, which recycling is exempt, and what are the requirements for on-site treatment by tier.

Attachment B
Template Settlement Language
For CCS Referrals

Instructions: Replace **[Boldface type in square brackets]** with case specific language.

Template Settlement Language:

Respondent agrees to send the following employee(s) who handle(s) and/or manage(s) hazardous waste or supervise those who do to CCS training, including Modules **[specify the modules, e.g., I through and including V]:**

[specify the employee(s) name(s)]

Each employee must attend the CCS training and pass the exam for DTSC to approve a penalty offset. Respondent must submit a copy of CCS Certificate(s) of Completion for each attendee to DTSC within 185 calendar days of the date of this Order (CCS Deadline). In recognition of this educational investment, \$ **[enter amount of credit up to \$750.00 per person to a maximum of \$5,000, and not to exceed 50 percent of the penalty as part of a settlement agreement]** of the total penalty imposed by this Order has been suspended, pending DTSC's receipt and verification of the submitted Certificates. Timely submittal of valid Certificate(s) of Completion for the required individuals shall satisfy Respondent's obligation to pay this \$ **[enter amount of credit up to \$750.00 per person to a maximum of \$5,000, and not to exceed 50 percent of the penalty as part of a settlement agreement]** in penalties.

If Respondent fails to submit the copies of the Certificate(s) as required, this portion of the penalty is no longer suspended, and is due and payable within 21 calendar days from the CCS Deadline.

The CCS Deadline may be extended by a DTSC Branch Chief upon a written request demonstrating good cause. The written request for extension must be received by DTSC at least two business days prior to the CCS Deadline.