

# Department of Toxic Substances Control Official Policy

## COLLECTING OVERDUE ADMINISTRATIVE PENALTIES

**DTSC-OP-0032**

Subject/Title of Policy

Official Policy Number

EO-02-005-PP and DTSC-OP-0032 (01/30/2009)

06/29/2017

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

6/29/17

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.***

### CONTACT:

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## I. PURPOSE

This document sets forth the Department of Toxic Substances Control's (DTSC) policy for collecting past due administrative penalties assessed under Health and Safety Code, Division 20, Chapter 6.5 and its implementing regulations.

## II. BACKGROUND

This policy supersedes EO-02-005-PP and DTSC-OP-0032 (01/30/2009).

## III. STATUTORY AUTHORITY

The California Health and Safety Code (HSC) sections 25184.1, 25186(c) and 25189.3 authorizes DTSC to pursue legal action against a Respondent that fails to keep current on the payment of administrative penalties.

**Respondent:** A Respondent is a person, as defined in HSC section 25118, who has been cited for a violation.

## IV. POLICY STATEMENT

It is the policy of DTSC to expeditiously collect all overdue administrative penalties.

## V. COLLECTION PROCESS

DTSC's Accounting Office (Accounting) will send the first certified collection letter (Attachment A) to all Respondents identified with delinquent accounts. The letter shall request payment within 30 days and inform the Respondent that DTSC may petition the court to convert the administrative order to a civil judgment (HSC section 25184.1). For Respondents with hazardous waste facilities permits, the letter shall advise the Respondent that if payment of the assessed penalties is not made as required, DTSC may deny or suspend the facility's permit to operate for nonpayment (HSC section 25189.3) or revoke their permit in accordance with HSC section 25186. If the Respondent is a transporter, the letter shall advise the Respondent that DTSC may suspend, deny or revoke any permit, registration or certificate pursuant to HSC section 25186. If the Respondent holds a variance and/or on-site treatment authorization, DTSC will pursue enforcement action, as appropriate.

Correspondence from DTSC to the Respondent will include the Office of Legal Counsel (OLC), Enforcement and Emergency Response Division (EERD), Permitting Division, and Policy and Program Support Division (PPSD). Each correspondence should address the appropriate person(s), including their unit and title (see Attachments).

If payment is not received within 30 days, DTSC may petition the court to convert the administrative order to a civil judgment. Accounting will submit a General Work Request Form to OLC and a notice to Permitting Division, EERD, and PPSD, as appropriate. The notice is sent to Permitting Division if the Respondent holds a hazardous waste facilities permit; if the Respondent holds a hazardous waste transporter registration the notice is sent to EERD and PPSD, as appropriate.

#### **A. Case Referral**

Accounting's General Work Request to OLC will indicate payment was not received, request the order be filed with the appropriate court, and include all supporting documentation.

The Permitting Division, EERD, and PPSD will receive a copy of the referral so that suspension or denial of a facility permit to operate and/or transporter registration may be initiated and inspection of a facility/transporter with a suspended/denied permit/transporter registration is conducted to ensure compliance.

A Notice of Intent to Deny Permit will be sent by the Permitting Division; a Notice of Intent to Deny Transporter Registration will be sent by PPSD; a Notice of Suspension or Revocation of the Permit and/or Transporter Registration will be sent by EERD, as appropriate.

OLC will consult with EERD to determine if conversion to a civil judgment is appropriate and refer the administrative order to the Office of the Attorney General (AG) for conversion to a civil judgment pursuant to HSC section 25184.1.

The referral to the AG will occur within 30 days of OLC's determination that all the necessary materials have been submitted for filing of the order. Once the court clerk has entered the judgment, the judgment may be enforced as any other judgment of the court. OLC will provide a copy of the judgment to Accounting.

Within 10 days of receiving the court's judgement converting the administrative order to a civil judgement, Accounting will send a second certified collection letter (Attachment B) notifying the Respondent that the administrative order has been converted to a civil judgment and failure to pay the assessed penalties could result in the Respondent being held in contempt of court. Once a civil judgment has been issued it may be recorded and will constitute a lien against the Respondent's real property in each county where it is recorded. The lien exists for 10 years and may be re-issued for an additional 10 years.

## **B. No Further Collection Action**

DTSC may discontinue collections when the process is no longer successful or cost-effective or it is determined the Respondent is unable to pay. If DTSC determines collection efforts are no longer feasible or the Respondent is unable to pay, a No Further Collection Action (NFCA) form (Attachment C) will be prepared.

- A Respondent may prompt a financial review by claiming inability to pay.
- The AG, OLC, Accounting, Permitting Division, and/or PPSD may recommend to discontinue collections.
- The NFCA form is approved by EERD's Division Chief, HWMP Deputy Director, and OLC; Accounting, Permitting Division and PPSD will review, as appropriate.

NFCA forms should be brief and identify the basis for the "no further collection action" recommendation. At a minimum, the form shall identify:

- The number of attempts made to collect assessed penalties.
- The cost incurred in pursuing payment of assessed penalties (number of hours multiplied by hourly rate).
- The date and circumstances under which the case was referred to OLC for filing with the appropriate court.
- Any financial statements and/or records that demonstrate the facility's inability to pay the assessed penalties.

## **VI. ROLES AND RESPONSIBILITIES**

### **A. Accounting Office**

- Compile, maintain, and distribute the monthly "Fines and Penalties Collection Report" to identify Respondents with accounts overdue in payment of assessed penalties.
- Send the first certified collection letter (Attachment A) to Respondents with delinquent accounts within 30 days after knowledge of an overdue assessed penalty, with copies to OLC, EERD, and as appropriate, Permitting Division and/or PPSD.

The collection letter shall inform the Respondent of: 1) delinquency, 2) potential of permit denial, suspension, or revocation pursuant to HSC section 25189.3, as appropriate and 3) DTSC's authority to pursue legal action against a Respondent who fails to pay penalties.

- Refer case to OLC (General Work Request) if payment is not received within 30 days of the first collection letter and provide a copy of the referral to EERD and as appropriate, Permitting Division and PPSD.

- Send the second certified collection letter (Attachment B) to Respondent within 10 days of receiving the court judgment converting the administrative order to a civil judgment.
- Provide financial review of Respondent's claim of inability to pay penalties and review NFCA forms in coordination with OLC, EERD and as appropriate, Permitting Division and/or PPSD.
- Remove Respondent's name from the monthly "Fines and Penalties Collection Report" once an NFCA is approved or penalties are paid.

**B. Enforcement and Emergency Response Division (Data Manager)**

- Provide payment status of Respondents with delinquent accounts to the appropriate Branch Chief.

**C. Hazardous Waste Management Program (Deputy Director)**

- Approve NFCA form.
- Approve the denial, suspension or revocation of a facility permit and/or transporter registration.

**D. Enforcement and Emergency Response Division (Division Chief)**

- Approve NFCA forms.
- Authorize the suspension or revocation of a facility permit or hazardous waste transporter registration.

**E. Enforcement and Emergency Response Division (Branch Chief)**

- Coordinate with OLC to issue a Notice of Suspension and/or Revocation of Permit, as appropriate.
- Prepare, review and approve NFCA forms in coordination with OLC and as appropriate, Accounting, Permitting Division and PPSD.
- Designate the appropriate EERD staff to visit the permitted facility in-person to inform them of permit suspension.

## **F. Permitting Division**

- Coordinate with Accounting to issue Notice of Intent to Deny Permit, as appropriate.
- Review NFCA forms in coordination with Accounting, OLC, EERD, and PPSD, as appropriate.

## **G. Policy and Program Support Division**

- Coordinate with Accounting and issue Notice of Intent to Deny a Transporter Registration, as appropriate.
- Review NFCA forms in coordination with Accounting, OLC, EERD and Permitting Division, as appropriate.

## **H. Office of Legal Counsel**

- Approve NFCA form.
- Provide periodic status reports to Accounting on cases referred to the AG and any subsequent determinations.
- Review and approve NFCA forms in coordination with EERD and as appropriate, Accounting, Permitting Division and PPSD.
- Determine whether conversion to a civil judgment is appropriate and refer the administrative order to the AG for conversion to a civil judgment.

**Attachment A**  
**First Collection Letter**

Facility Name  
Case/Docket Number  
Month Day, Year

Dear Facility Operator/Owner:

Administrative Order or Docket # [Insert order or docket number] became final on [Insert date order was signed]. The order requires payment of the penalty by [Insert date penalty became overdue or date and amount of the facilities payment arrangement]. Payment of the penalty in the sum of [Insert dollar amount] shall be received within 30 days of the date of this letter to avoid additional penalties assessed as authorized by Health and Safety Code, section 25188 and/or referral to the appropriate court as authorized under Health and Safety Code, section 25184.1.

Health and Safety Code, section 25188, provides for a civil penalty of up to \$25,000 per day for each day of noncompliance by a person who fails to comply with a schedule of compliance issued pursuant to Health and Safety Code, section 25187. Health and Safety Code, section 25184.1, authorizes the Department of Toxic Substances Control (DTSC) to apply to the clerk of the appropriate court for a judgment to collect administrative penalties. The Data Manager will provide permit status; accounting will obtain transporter registration status from HWTS.

*[For use where the Respondent is a permitted facility]*

Please note that Health and Safety Code section 25189.3, mandates that DTSC suspend or deny a hazardous waste facilities permit or standardized permit to operate for nonpayment of assessed penalties.

*[For use where the Respondent has a variance, is authorized under any on-site treatment tier, or is a transporter]*

Please note that Health and Safety Code, section 25186 (c), provides for the suspension, revocation, or denial of any permit, registration, or certificate for violation of, or noncompliance with, any order issued by DTSC.

If payment is not received as required above, this matter shall be forwarded to DTSC's Office of Legal Counsel for further action. If you have any questions, please feel free to contact [Insert first/last name] at [Insert area code and telephone number].

Sincerely,  
[Insert first/last name] Accounting Office

cc. Office of Legal Counsel, Assigned Counsel EERD, Branch Chief  
Hazardous Waste Management Program, Deputy Director  
Permitting Division, Supervising Hazardous Substances Engineer I *(If a permitted facility)*  
Permitting Division, Division Chief *(If a permitted facility)*  
Policy and Program Support Division, Division Chief *(If a transporter)*

**Attachment B**  
**Second Collection Letter**

Facility Name  
Case/Docket Number  
Month Day, Year

NOTICE OF CIVIL JUDGMENT

Dear Facility Operator/Owner:

This to inform you that administrative order or decision docket # [Insert order or docket number] was filed with the appropriate court and converted to a civil judgment on [Insert date converted]. A copy is attached.

The judgment entered may be enforced in the same manner as any other judgment of the court in which it is entered. DTSC may record this judgment in any county in which you hold real property; such recordation shall constitute a lien against that real property.

If payment has been made, please provide a copy of the canceled check, both front and back. If you have any questions, please feel free to contact [Insert first/last name] at [Insert area code and telephone number].

Sincerely,  
[Insert first/last name] Accounting Office

cc. Office of Legal Counsel, Assigned Counsel EERD, Branch Chief  
Hazardous Waste Management Program, Deputy Director  
Permitting Division, Supervising Hazardous Substances Engineer I *(If a permitted facility)*  
Permitting Division, Division Chief *(If a permitted facility)*  
Policy and Program Support Division, Division Chief *(If a transporter)*

**Attachment C  
No Further Collection Action Form**

Site Name: \_\_\_\_\_ Site Code: \_\_\_\_\_

Case Background: *[Describe the facility and violations identified. Discuss the number of attempts made to collect assessed penalties, costs incurred in pursuing payment of assessed penalties, when and under what circumstances the case was referred to OLC for filing with the appropriate court, and final ruling by the court.]*

Amount of Penalties that will not be pursued: *[Insert dollar amount]*

Recommended Decision: *[Brief review of the facility's financial status, the amount incurred by DTSC in pursuing collection of overdue penalties, outstanding balances, pertinent dates and statute(s) of limitation. Documentation supporting the decision should be attached.]*

\_\_\_\_\_  
*Prepared by [Insert first/last name]*

\_\_\_\_\_  
*Date*

*[Include signature blocks below with name and title, as appropriate]*

\_\_\_\_\_  
*Office of Legal Counsel, Assigned Counsel*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Accounting, Associate Accounting Analyst*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*EERD, Branch Chief*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*EERD, Division Chief*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Hazardous Waste Management Program, Deputy Director*

\_\_\_\_\_  
*Date*

cc. Policy and Program Support Division, Division Chief *(If a transporter)*