



**Department Management Manual**

OFFICIAL POLICY/PROCEDURE

**DOCUMENT #:** EO-93-014-PP

**TITLE:** Policy and Procedures for Site Mitigation  
Complaints for Penalties

**Effective Date:**

**Expiration Date:** N/A

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**DISTRIBUTION:**

- |        |          |                            |
|--------|----------|----------------------------|
| [    ] | Volume 1 | Introduction               |
| [    ] | Volume 2 | Permits                    |
| [ X ]  | Volume 3 | Site Mitigation            |
| [    ] | Volume 4 | Surveillance & Enforcement |
| [    ] | Volume 5 | Health & Safety            |

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**DESCRIPTION:**

Establishes policy and procedures and provides guidance for imposing penalties for violations of Remedial Action Orders, Imminent and/or Substantial Endangerment orders, and for releasing hazardous substances to the environment without notifying the Department.

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**APPROVED BY:** \_\_\_\_\_ **Date** \_\_\_\_\_

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POLICY AND PROCEDURES FOR SITE MITIGATION COMPLAINTS FOR  
PENALTIES

**DOCUMENT #EO-93-014-PP**

**PURPOSE**

This document describes the Department's policy and procedures for imposing penalties for violations of Remedial Action Orders and Imminent and/or Substantial Endangerment Orders and for releasing hazardous substances to the environment without notifying the Department.

**AUTHORITY**

In 1992, the Legislature passed SB 2057 (Stats. 1992, Chap. 1344), establishing a penalty of up to \$25,000 a day for violating Remedial Action Orders and Imminent and/or Substantial Endangerment Orders (Health and Safety Code (HSC) section 25359.2). The bill also created a penalty of up to \$25,000 a day for releasing, or allowing or causing a release of, a hazardous substance into the environment unless the person who allows or causes the release notifies the Department and complies with any cleanup order (HSC section 25359.4). Both of these penalties may be imposed administratively, pursuant to HSC sections 25359.2, 25359.3, and 25359.4, or in a civil action. Assembly Bill (AB) 2061 (Stats. 1993, Chap. 1184), amended HSC section 25359.4 to require the property owner and any person who releases or causes a release of a "reportable quantity" to make a written report to the Department within 30 days of discovery.

**POLICY**

The Department will exercise its authority to impose penalties in a fair and consistent manner in accordance with this document.

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There is a duplicate HSC section 25359.3. Proposed cleanup legislation will renumber this section.

## PROCEDURES

The format for issuing administrative complaints for penalties is found in Attachment 1. The procedures for determining penalties are on pages 3 through 12.

## ROLES AND RESPONSIBILITIES

- I. Regional Site Mitigation Branch
  - A. Drafts the complaint
  - B. Prepares supporting documentation
  - C. After approval of complaint, issues complaint on signature of Branch Chief (refer to Management Memo #EO-93-022-MM, "Authority to Issue Site Mitigation Documents")
  - D. If the complaint is appealed, provides technical support needed to litigate the case
  - E. Negotiates and recommends settlements to Deputy Director or designee
  - F. Oversees return to compliance
  - G. Notifies the Accounting Office and provides a copy of the complaint setting penalties (with approved settlement memo/order signed by Site Mitigation Deputy Director or designee)
- II. Headquarters Surveillance and Enforcement Branch
  - A. Issues docket numbers, tracks cases, and maintains docket log
- III. Headquarters Site Mitigation Program
  - A. The appropriate Site Mitigation Branch provides technical support on complex issues of statewide significance

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Management Memo #EO-93-022-MM (formerly #92-SM2) became effective September 1, 1993. Per the request of the Department's Executive Office, all guidance and policies and procedures issued since July 1, 1992 have received a new document reference number.

- B. Deputy Director signs, or delegates authority to sign, all settlement agreements

IV. Office of Legal Counsel

- A. Provides support in drafting complaints and reviews and approves proposed complaints
- B. When a case is appealed, provides legal counsel either directly or through the Office of the Attorney General
- C. Provides support in settlement negotiations
- D. Drafts settlement memos/orders

V. Accounting Office

- A. Receives payments
- B. Notifies the office issuing the complaint when a payment is not received, as required by a complaint or settlement order
- C. Notifies Regional Site Mitigation Branch when payment is received.

**PENALTIES**

A penalty of up to \$25,000 is authorized for each day violation of an order continues and for each day a release continues without notification to the Department. Penalties should be determined by the Case Management Team (refer to Official Policy and Procedure #90-7), with consideration given to the specifics of each situation. HSC section 25359.3(b) requires that the following factors be taken into consideration in determining the amount of the penalty:

The nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety or the environment, the violator's ability to pay the proposed penalty, and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole.

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Ibid.

These factors can be divided into two groups:

Those associated with the violation, and those associated with the violator. Both sets of factors play an important role and must be considered to ensure that the penalties assessed are large enough to deter future violations and at the same time are consistent and equitable.

The first set of factors, those associated with the specific act or omission, ensure that the penalty is appropriate to the violation. These factors are (1) the actual and potential harm to public health or safety or the environment and (2) the extent of deviation from requirements. The Department deals with a wide range of situations, both in the nature and importance of the requirement involved and in the degree of the violation itself. Therefore, the Department classifies the violation as minor, moderate, or major, depending on the actual or potential harm and the extent of the deviation of the violation. These classifications are incorporated into a chart so that the multiple factors can be considered simultaneously.

Once the base penalty for a violation is determined, the Department considers the second set of factors, those associated with the violator. The base penalty may be adjusted up or down, depending on cooperation, intent, enforcement history, inability to pay, and prophylactic effect.

Finally, the penalty is adjusted upward to the maximum, if necessary, to deprive the violator of any economic benefit gained from the violation.

## I. Factors Associated with the Violation

### A. Step A. Determine actual and potential harm.

In this step, the Department will consider the actual and potential harm associated with a release or violation. The Department concentrates on the potential for harm associated with a release or violation, as well as the actual harm. Potential for harm is a better indicator of the seriousness of a release or violation, since the existence or lack of actual harm may be the result of good fortune on the part of the violator. It is the policy of the Department not to reward these violators by assessing lower penalties if there is no actual harm.

In selecting the appropriate harm category, the following should be considered:

1. Characteristics of the substance(s) involved as they effect the threat to public health and the environment (e.g., degree of hazard/toxicity; threat of explosion or fire; and/or mobility).
2. Amount of substance(s) involved.
3. Specific situation. Examples of specific situations are:
  - a. Is human life or health threatened? To what extent?
  - b. Is animal life threatened? To what extent?
  - c. Is the environment threatened? To what extent?
  - d. Are potable water supplies threatened? To what extent?
  - e. Is groundwater or surface water threatened? To what extent?
  - f. Are beneficial uses threatened? To what extent?
  - g. Can potential damage be prevented?
4. Release:
  - a. Failure to report a release;
  - b. Late reporting of a release; and
  - c. Intentional failure to report a release.
5. Violation or noncompliance with an order:
  - a. Failure to comply with an order;
  - b. Failure to comply with a requirement of an order;
  - c. Inadequate deliverables;
  - d. Inadequate work activities (e.g., workplan or field activity);

- e. Late deliverables;
  - f. Late field activities;
  - g. Failure to follow approved workplan or techniques (e.g., not conducting required field work); and
  - h. Conducting unauthorized/unapproved work.
6. The degree of potential harm for the previous five categories are defined as follows:

**MINOR:** The violation or release represents a low potential for harm.

**MODERATE:** The violation or release represents a moderate potential for harm, or the likelihood of harm from noncompliance is not high.

**MAJOR:** The violation or release represents a major potential for harm to human health or the environment, and/or the circumstances of the case indicate a high potential for harm.

B. Step B. Determine the extent of deviation from requirements.

For any release or violation, a range of potential noncompliance with the subject requirement exists. In other words, a violator may be substantially in compliance with the requirement, may be totally out of compliance with the requirement, or may strike a point in between. Only the action or inaction constituting the violation are considered at this point; not the violator's intent, enforcement history, etc. The extent of deviation from requirements is classified according to the following definitions:

**MINOR:** The violator's action or inaction deviates in a minor respect from the requirement or order, but the most important provisions are met. The intention or purpose of the requirement or order is achieved nearly as intended, but not quite as well as if there had been no deviation.

**For example:**

- (1) A Responsible Party (RP) is ordered to erect fence and post warnings at a hazardous substance site. The RP installs a fence but delays posting warning signs, claiming that the signs would adversely affect business operations. The RP eventually posts warning signs 90 days after the order is issued.
- (2) RP fails to submit required groundwater monitoring reports or other deliverables as specified in an order issued by the Department and does not request an extension. The groundwater report or other submittal is more than 30 days late. The RP routinely submits late reports.
- (3) RP submits an incomplete removal action workplan or other deliverable without explanation or prior approval. The RP routinely submits incomplete reports and/or other deliverables.
- (4) RP undertakes a minor removal action (e.g., a removal of less than 100 cubic yards of soil with contaminants of minor toxicity or small amounts) or field investigation without prior notification and approval by the Department.

**MODERATE:** The violator's action or inaction clearly deviates from the requirement or order, but not to the extent that the intent or purpose of the requirement or order is impaired significantly, even though there has been a clear deviation.

**For example:**

- (1) RP is ordered to erect fence and post warning signs at the site. The RP delays installing the fence and eventually installs a fence (per the fence and post requirements). The RP posts handwritten cardboard warning signs.
- (2) RP is ordered to submit a removal action workplan prior to removing visibly contaminated soil from an area adjacent to a stream. The RP completes the removal action without submitting a workplan or notifying the Department. No Department oversight occurs, but an engineering

firm provides an adequate report of completion.

- (3) RP completes a removal action of significant quantities of contaminants (greater than 500 cubic yards) without submitting a removal action workplan or seeking the Department's approval. However, the contaminated materials were properly transported and disposed. Depending on the toxicity of chemicals (regardless of the proper transportation or disposal), this may constitute a major violation.
- (4) RP begins a removal action using an alternative technology without notifying the Department, and without the Department's review and approval. There exists a potential for generation of more toxic substances. Depending on the toxicity and actual generation of toxic substances, this may be a major violation.
- (5) RP fails to implement the Department's required/approved removal action. The RP has been granted extensions and continues to delay. Depending on the urgency of the removal action, this could be a major violation.

**MAJOR:** The violator's action or inaction deviates from the requirement or order to such an extent that the requirement or order is completely ignored or none of its significant provisions are complied with, and/or the intent or purpose of the requirement or order is not effectuated because of the deviation.

**For example:**

- (1) RP fails to adequately prevent public access or otherwise minimize potential exposure (e.g., erect a fence meeting the Department's specifications and post visible warning signs) to a hazardous substance site located in a densely populated residential area.
- (2) RP implements an alternative final remedial action prior to the submittal of the Remedial Action Plan to the Department.
- (3) RP removes a significant quantity of contaminated soil (greater than 500 cubic

yards) without the Department's approval and oversight to conceal a previously unreported hazardous substance release. The contaminated materials are inappropriately containerized and transported and/or disposed at a municipal landfill.

- (4) RP fails to implement the Department's approved Remedial Action Plan's final remedial action. RP has been granted several extension and continues to delay implementation.
- (5) RP attempts to conceal areas of contamination by capping with asphalt or removing surface evidence. Depending on the extent of concealment and the RP's intent, this may also be a criminal action.
- (6) RP is ordered to provide an alternative domestic water supply to 50 residences whose private wells have been contaminated by the site. The RP fails to provide an alternative water supply as ordered, and the Department is required to provide and pay for water service.

Select the appropriate category for extent of deviation, e.g., minor, moderate, or major.

C. Step C. Determine initial penalty amount from penalty chart.

Find the section in the Penalty Chart (next page) that corresponds to the categories of potential for harm and extent of deviation in which the violation has been classified. Select an initial penalty amount from the penalty range found in the selected penalty cell. Unless evidence indicates that there is a need to raise or lower the penalty, the midpoint of the range should be used.

D. Step D. Determine multi-day penalties.

Multi-day penalties should be assessed:

1. As a financial incentive for coming into compliance, or
2. When a violation poses a major threat of harm and continues for more than one day, or
3. When a violation constitutes a major deviation from

requirements and continues for more than one day, or

4. To ensure that the violator will not benefit economically.

Full multi-day penalties should not be assessed in cases where multi-day penalties would be too large to be reasonable or fair.

Some violations extend over a period of time, but do not meet the criteria for per day assessment, such as a failure to report minor releases or a failure to comply with a minor provision of an order. In such cases, the length of time that the violation continues should be considered when evaluating the extent of deviation factor (the longer the period of noncompliance, the greater the deviation). In addition, the length of time of violation can be accounted for in adjusting penalties based on recalcitrance.

In certain cases, it may be appropriate to reduce the amount added for each day of violation, e.g., when compliance efforts made by the violator result in a decrease in the potential for harm associated with the violation.

Multi-day violations must be documented with evidence establishing the dates that noncompliance continued.

#### E. Step E. Determine base penalty.

The base penalty is the amount determined in Step C unless there is a multi-day penalty, as provided in Step D. The penalty derived from Step C should be multiplied by the number of days of violation to arrive at the base penalty amount if a multi-day penalty is appropriate.

**PENALTY CHART**

**Potential for Harm**

Extent of Deviation	MAJOR	MODERATE	MINOR
MAJOR	\$25,000	\$17,500 to \$15,000	\$12,500 to \$8,000
MODERATE	\$24,000 to \$20,000	\$15,000 to \$13,000	\$8,000 to \$6,000
MINOR	\$18,000 to \$8,000	\$13,000 to \$11,000	\$6,000 to - 0 -

II. Factors Associated with the Violator

Factors associated with the violator are included in the assessment of a penalty in order to reflect the intent and behavior of the violator. These factors are designed to ensure that the final penalty is appropriate to both the violation and the violator. Such factors may either increase or reduce the penalty.

A. Step A. Adjust penalty for cooperation.

The Department presumes that a party will make all necessary good faith efforts to comply with regulatory requirements and, therefore, a cooperative spirit to achieve compliance is the standard. Adjustments in the penalty are based on deviations from this standard. Downward adjustments are made only for extraordinary efforts on the part of the violator. Upward adjustments are made for recalcitrance and refusals on behalf of the violator.

1. Extraordinary Efforts:

The Department may recognize efforts on behalf of

a party if such efforts meet the goals of the Department and exceed minimum regulatory requirements. Consequently, a downward adjustment in the base penalty may be granted to reward such efforts.

The Department may also recognize extraordinary efforts to rectify any damage or environmental harm resulting from the noncompliance. Such efforts must be extraordinary in nature, exceeding the minimum required to justify a reduction in the base penalty. This reduction also is designed to encourage remedial actions that exceed regulatory requirements in responding to a problem.

2. Recalcitrance:

Lack of cooperation, delay in compliance, hiding a release, and creating unnecessary obstacles to achieving compliance can increase environmental harm, enforcement time, and costs. Increased penalties shift the monetary burden of such behavior from the Department to the party creating the problem and serve as a deterrent to future recalcitrant behavior.

3. Refusals:

Refusal by a party to comply with requirements, to permit entry, or to allow cleanup operations to take place is a serious offense, and an upward adjustment in the penalty is required.

B. Step B. Adjust penalty for intent.

1. Lack of Control:

A release or failure to report a release or violation of an order resulting from circumstances outside the control of the violator justify a reduction of the penalty amount. Where the violation is caused solely by an "act of God," the base penalty for that violation may be waived. However, if the violation in question is only partially out of the control of the violator, a partial reduction may be made.

2. Intentional or Willful Violations:

Where the violation was willfully committed, the penalty will be increased since willful or intentional violations are more serious than unintentional ones. The base penalty will be adjusted upward if the violator intentionally committed a violation. Where the violation is willful or intentional and actual or potential harm has occurred or could occur as a result of the violation, the Department will seek the maximum penalties.

C. Step C. Adjust penalty based on the violator's enforcement history.

A party's enforcement history is an indicator of good or bad faith and can increase a penalty since continued and repeated violations indicate a lack of concern for human health and the environment as well as disregard for the law. Continued violation of environmental requirements, especially of similar requirements, may also indicate that previous penalties were not high enough to ensure compliance.

When considering the enforcement history, recent violations are more relevant than violations occurring in the distant past. Prior violations of the same or similar requirements are the most serious type of repeat violation, but prior violations of unrelated environmental requirements will also be considered.

D. Step D. Adjust penalty based on inability to pay.

In general, the Department will not adjust penalties based on the violator's inability to pay.

Under certain circumstances, however, a penalty may be reduced or payment of the penalty may be extended over a period of time if immediate, full payment would cause extreme undue financial hardship such as forcing the company to go out of business or file for bankruptcy.

The financial information necessary to make an adjustment based on the violator's inability to pay is not usually available until the stage of settlement negotiations. Tax returns and other detailed financial information, including access to the violator's financial records by Department auditors, are generally required to support this type

of adjustment. Financial information should be evaluated in consultation with the Office of Audits.

- E. Step E. Adjust penalty based on the prophylactic effect on the violator and the regulated community.

A penalty large enough to have a deterrent effect on the violator in the future is not the same for an individual or small business as for a large corporation. Therefore, the law requires the Department to consider this factor in assessing penalties. Information to consider includes the size of the company, the nature of its ownership (individual or corporate), its income, and its net worth. If appropriate, adjust the penalty upward to ensure that the penalty is large enough to deter future violations.

- F. Step F. Adjust penalty based on the economic benefit of noncompliance.

A violator should not benefit economically from noncompliance, either by reduced costs or competitive advantage. Therefore, the penalty must deprive the violator of any economic benefit gained by the failure to comply or delayed compliance. A violator may benefit economically by avoiding costs, delaying costs, increasing profits, having use of capital, avoiding interest payments, etc.

It is not always possible to obtain or to estimate cost data, so it is sometimes impossible to calculate economic benefit. Whenever the economic benefit of noncompliance can be calculated, however, the amount of the penalty should be increased by the minimum calculation of economic benefit of noncompliance up to the statutory maximum.

- G. Step G. Adjust penalty based on the violator's pollution prevention actions.

If the violator takes action to prevent releases and manages hazardous substances and wastes in ways which reduce or eliminate the potential for future pollution, these efforts will be considered by the Department. A downward adjustment in the base penalty may be granted.

Attachment 1

Procedures and Forms for Issuing Complaints for Penalties

HSC section 25359.3

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of: ) Docket No.  
\_\_\_\_(3)\_\_\_\_\_ )  
 )  
 [1] ) COMPLAINT  
 [2] ) Health and Safety Code  
 ) Section 25359.3  
Respondent(s). )  
\_\_\_\_\_ )

INTRODUCTION

1.1 Parties. The State Department of Toxic Substances Control (Department) issues this Complaint to \_\_\_\_\_[4]\_\_\_\_\_ (Respondent).

1.2. Site. The site that is the subject of this Order is located at: \_\_\_\_\_[5]\_\_\_\_\_ (Site). (Map attached as Exhibit 1.)

1.3. Jurisdiction. Section 25359.3 of the Health and Safety Code (HSC) authorizes the Department to issue a Complaint when the Department determines that a person is subject to a penalty pursuant to HSC section 25359.2 or 25359.4.

1.4. Exhibits. All exhibits attached to this Order are incorporated herein by reference.

DETERMINATIONS

2. The Department has determined that:

[Alternative 1: Failure to Comply with Order]

2.1. On \_\_\_\_\_[6]\_\_\_\_\_, the Department issued  
\_\_\_\_\_[7]\_\_\_\_\_ with which Respondent has not complied, to wit:  
\_\_\_\_\_[8]\_\_\_\_\_

[Alternative 2: Release of Hazardous Substance]

2.1 On \_\_\_\_\_[9]\_\_\_\_\_ the Respondent [10] of [11] into the  
environment at the Site, failed to clean up the hazardous  
substance [12], and failed to file a report of the release  
with the Department: \_\_\_\_\_[13]\_\_\_\_\_.

#### PENALTY

3. Based on the foregoing DETERMINATIONS, the Department  
sets the amount of Respondent's penalty at \$(\_\_\_\_\_) [For  
multi-day penalties, use the following language: per day for  
each and every day from [date] and continuing until  
Respondents bring themselves into compliance by [completing or  
submitting] the [\_\_\_\_\_]].

#### RIGHT TO A HEARING

4. A hearing may be requested to appeal the penalty  
within 45 calendar days of the date of service of the  
Complaint. Appeal procedures are described in the enclosed  
Statement to Respondent.

Date:\_\_\_\_\_.

\_\_\_\_\_ [14][15]

Department of Toxic Substances Control

Enclosure

cc: Ms. Vicki Vandergriff  
Planning and Management Branch  
Site Mitigation Program  
400 "P" Street, 4th Floor  
P.O. Box 806  
Sacramento, CA 95812-0806

Mr. Larry Matz  
HQ, Surveillance and Enforcement Branch  
400 "P" Street, 4th Floor  
P.O. Box 806  
Sacramento, CA 95812-0806

**[Name of Attorney]**  
Office of Legal Counsel  
400 "P" Street, 4th Floor  
P.O. Box 806  
Sacramento, CA 95812-0806

## GUIDANCE

- (1) Site name and address.
- (2) Name of Respondent(s).
- (3) Docket number.
- (4) Name and individual or business status of each respondent, e.g.:  

Joe Smith, an individual

Smith Corp., a California corporation

Jones Corporation, a Delaware corporation doing business in California

Bob Smith, an individual doing business as Smith Plating Company
- (5) Location of the Site.
- (6) Date of order
- (7) Type of order: "a Remedial Action Order" or "an Imminent and/or Substantial Endangerment Order."
- (8) Details of noncompliance: Specify whether Respondent failed to comply at all or in what specific way Respondent failed to comply. This paragraph must allege specific provisions of an order and specific acts or omissions that make Respondent liable for the penalty.
- (9) Date of release.
- (10) Choose one: "released" or "caused a release" or "allowed a release."
- (11) Name of the hazardous substance released.
- (12) If the Respondent has cleaned up, but failed to report, delete this part of the sentence.
- (13) If the Respondents never filed a notice of the release, do not add anything to this sentence. If the Respondent filed a notice of the release, add the following: "until [date notice filed]."

(14) Name of person signing the Complaint. Authority to sign is delegated to Site Mitigation Branch Chiefs (refer to Management Memo #EO-93-022-MM).

(15) Title of person signing the Complaint.

---

Ibidem.

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:	)	Docket No.
____(3)_____	)	
	)	
(Name)	)	STATEMENT TO RESPONDENT
(Address)	)	
	)	Complaint for Penalty
	)	
Respondent.	)	
_____	)	

TO THE ABOVE RESPONDENT:

A Complaint for Penalty (Complaint) is attached to this statement and is hereby served upon you. The Complaint has been filed by the Department of Toxic Substances Control (Department).

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Department within forty-five (45) days after you received a copy of the Complaint, you will be deemed to have waived your right to a hearing in this matter. If you do not file a timely hearing request, the Complaint becomes final automatically and the Department will issue an Order Setting Penalty, which will set the penalty in the amount proposed in the Complaint for Penalty.

The request for a hearing may be made by delivering or mailing one copy of the enclosed form entitled "Notice of Defense" or by delivering or mailing a Notice of Defense as

provided in section 11506 of the Government Code to:

Chief Counsel  
Office of Legal Counsel  
Department of Toxic Substances Control  
400 P Street, 4th Floor  
P.O. Box 806  
Sacramento, CA 95812-0806

The enclosed Notice of Defense, if signed and filed with the Department, is deemed a specific denial of all parts of the Complaint, but you will not be permitted to raise any objection to the form of the Complaint unless you file a further Notice of Defense as provided in section 11506 of the Government Code within forty-five (45) days after service of the Complaint upon you.

If you file a Notice of Defense within the time permitted, a hearing on the allegations made in the Complaint will be conducted by the Office of Administrative Hearings of the Department of General Services in accordance with the procedures specified in Health and Safety Code section 25359.3 and Government Code sections 11500 et seq.

The hearing may be postponed for good cause. If you have good cause, you must notify the Department within ten (10) working days after you discover the good cause. Failure to notify the Department within ten days will deprive you of a postponement.

Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are attached. If you desire the names and

addresses of witnesses or an opportunity to inspect and copy items in possession, custody, or control of the Department, you may contact:

Chief Counsel  
Office of Legal Counsel  
Department of Toxic Substances Control  
400 P Street, 4th Floor  
P.O. Box 806  
Sacramento, CA 95812-0806

Whether or not you have a hearing, you may confer informally with the Department to discuss the alleged facts, determinations, and penalty. An informal conference does not, however, postpone the forty-five (45) day period you have to request a hearing on the Complaint. An informal conference may be pursued simultaneously with the hearing process.

You may but are not required to be represented by counsel at any or all stages of these proceedings.

Enclosures

Notice of Defense  
Excerpts from the Government Code

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of: ) Docket No.  
\_\_\_\_\_)  
(Name) ) NOTICE OF DEFENSE  
(Address) )  
)  
)  
Respondent. )  
\_\_\_\_\_)

I, the undersigned Respondent, acknowledge receipt of a copy of an Enforcement Order or Complaint for Penalty, Statement to Respondent, Government Code sections 11507.5, 11507.6, and 11507.7, and two copies of a Notice of Defense.

I request a hearing to permit me to present my defense to the allegations contained in the Enforcement Order or Complaint for Penalty.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Respondent)

Mailing Address of Respondent

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City) (State)(Zip)

\_\_\_\_\_  
(Telephone Number)

PROOF OF SERVICE

1. I served the following documents:

a. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. (Name): \_\_\_\_\_  
\_\_\_\_\_

c. By serving [ ] Responsible Party/Respondent  
[ ] Other (Name and Title):  
\_\_\_\_\_  
\_\_\_\_\_

2. a. [ ] By personally delivering copies to (address)  
\_\_\_\_\_  
\_\_\_\_\_ at (time)  
\_\_\_\_\_ on  
(date)\_\_\_\_\_.

b. [ ] By mailing copies by first-class certified  
mail, Certified Mail Receipt No. \_\_\_\_\_,  
return receipt requested, in a sealed envelope  
addressed to:

3. At the time of service I was at least 18 years of age and  
not a party to this action.

4. My name, business address, and telephone number are:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I declare under penalty of perjury that the foregoing is  
true and correct and that this declaration is executed on  
\_\_\_\_\_ at \_\_\_\_\_, California.  
(date) (place)

\_\_\_\_\_  
(Signature)

COMPLAINT FOR PENALTIES  
SIGN-OFF SHEET

[SITE NAME]

---

Project Manager

Date

---

Senior Specialist/Engineer

Date

---

Office of Legal Counsel

Date

---

Site Mitigation Branch Chief

Date

---

Deputy Director/Director

Date

**[Signature authority has been delegated to  
Branch Chiefs; however on a site-specific  
Basis, either the Deputy Director or the  
Director may elect to sign.]**

Remarks: \_\_\_\_\_

\_\_\_\_\_

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