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**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 of Toxic Substances Control (DTSC) 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. DTSC may take action at variance with this policy or any internal implementing procedures.***

***This policy expires five years from the effective date, but may be updated prior to expiration.***

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## ACRONYMS

<b>AEO</b>	Administrative Enforcement Order
<b>AG</b>	Attorney General
<b>BDO</b>	Board, Department and Office
<b>CalEPA</b>	California Environmental Protection Agency
<b>CA</b>	City Attorney
<b>CCR</b>	California Code of Regulations
<b>CUPA</b>	Certified Unified Program Agency
<b>DA</b>	District Attorney
<b>DTSC</b>	Department of Toxic Substances Control
<b>EERD</b>	Enforcement and Emergency Response Division
<b>HSC</b>	Health and Safety Code
<b>HWCL</b>	Hazardous Waste Control Law
<b>HWMP</b>	Hazardous Waste Management Program
<b>OCI</b>	Office of Criminal Investigation
<b>OLC</b>	Office of Legal Counsel
<b>PDT</b>	Penalty Determination Team
<b>PRA</b>	Public Records Act
<b>RCRA</b>	Resource Conservation and Recovery Act
<b>SNC</b>	Significant Non-Complier
<b>SCUPA</b>	State Certified Unified Program Agency
<b>SEP</b>	Supplemental Environmental Project
<b>SOO</b>	Summary of Observations
<b>SOV</b>	Summary of Violations
<b>U.S. EPA</b>	United States Environmental Protection Agency

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## **I. PURPOSE**

The Department of Toxic Substances Control (DTSC) regulates the generation, transportation, treatment, storage, and disposal of hazardous waste. DTSC monitors compliance with the Hazardous Waste Control Law (HWCL) Health and Safety Code (HSC) section 25100 et seq., and its implementing regulations (California Code of Regulations, Title 22 (22 CCR), section 66260.1 et seq.) by conducting inspections and taking enforcement action, as appropriate.

This document sets forth DTSC's policy for taking enforcement action and summarizes the enforcement options for violations of the HWCL and its implementing regulations, based upon the circumstances of each case. This policy does not supersede the State Certified Unified Program Agency (SCUPA) enforcement process. When enforcement processes in this policy conflict with SCUPA processes, SCUPA staff will follow SCUPA Standard Operating Procedures.

## **II. BACKGROUND**

This policy supersedes DTSC-OP-0006 (dated 06/29/2017).

## **III. STATUTORY AUTHORITY**

DTSC's primary enforcement authority is granted by HSC section 25180. Other sections of the HWCL provide additional enforcement authority, mandate DTSC to take certain actions, and detail the rights, responsibilities, and liabilities of persons subject to HWCL.

## **IV. POLICY STATEMENT**

It is DTSC's policy that its inspectors will pursue enforcement response in accordance with this document. All associated procedures are referenced in the Attachments section of this document.

DTSC is committed to maintaining a robust enforcement that is effective, equitable, consistent, and timely. DTSC strives to promote compliance and regulate entities equally and consistently. It is DTSC's policy to return violators to compliance in a timely manner, penalize violators as appropriate, deprive violators of economic benefit gained from non-compliance, and initiate and complete enforcement actions in a consistent and timely manner. DTSC promotes equitable and fair treatment, accessibility, and protection for all communities and residents, regardless of race, age, culture, income, or geographic location.

## **V. ORGANIZATIONAL STRUCTURE**

The Enforcement and Emergency Response Division (EERD) and the Office of Criminal Investigations (OCI) are two divisions within DTSC's Hazardous Waste Management Program (HWMP). EERD and OCI are both overseen by the deputy

director for HWMP, led by their respective division chiefs, and are responsible for conducting inspections and investigations in various offices throughout California.

EERD and OCI work closely with several other DTSC programs as it pertains to intra-departmental coordination of inspection and enforcement activities. These programs include the: Permitting Division, Office of Legal Counsel, Environmental Chemistry Lab, Office of Communications, Safer Consumer Products, Office of Environmental Equity, and Geological Services. EERD and OCI support and coordinate multi-media inspections and investigations with other California Environmental Protection Agency (CalEPA) Boards, Departments, and Offices (BDO), and federal and local agencies.

EERD and OCI continually strive to promote and support program evaluation and enhancements to ensure equitable, consistent, effective, and timely inspections and investigations. This includes enhancing public transparency and accessibility.

EERD and OCI are committed to upholding their respective mission statements as follows:

- EERD's mission is to achieve a unified, comprehensive, effective, and equitable enforcement program that partners with communities and the regulated industries to achieve and sustain full compliance with California Hazardous Waste and Hazardous Substances Laws.
- OCI's mission is to prevent and investigate violations of California's Hazardous Waste Control Laws for the safety of the public and protection of the environment.

## **VI. RESPONSIBILITIES**

### **Enforcement and Emergency Response Division**

EERD has a broad range of inspection and enforcement responsibilities including, but not limited to:

- Performing inspections of hazardous waste generators, handlers, transporters, operators of treatment, storage, and disposal facilities, and electronic waste recyclers and handlers.
- Regulating universal wastes, treated wood waste, lead in jewelry, and toxics in packaging.
- Performing complaint investigations.
- Conducting enforcement actions for serious violations found through inspections and complaint investigations.

- Implementing targeted inspection and enforcement initiatives including participation in the Identifying Violations Affecting Neighborhoods Network and attending various task force meetings.
- Conducting emergency response; which includes off-highway incident response, clandestine laboratory clean-up, railroad accident response, disaster planning, and resumption of government planning responsibilities.
- Providing oversight and conducting evaluations of the Certified Unified Program Agencies (CUPAs), providing CUPA support, and providing technical training and technical assistance.
- Implementing the CUPA program for both Imperial and Trinity Counties.

### **Office of Criminal Investigations**

OCI is tasked with specific inspection, investigation, and enforcement responsibilities. OCI is responsible for investigating alleged criminal violations and pursues a wide range of both felony and misdemeanor cases. OCI also assists other BDOs within CalEPA to investigate complex civil and administrative violations. OCI works with other state, federal and local law enforcement agencies, including the California Highway Patrol, Department of Fish and Wildlife, Federal Bureau of Investigation, United States Environmental Protection Agency's Office of Criminal Investigations, and local enforcement agencies in the development of criminal cases.

## **VII. ENVIRONMENTAL JUSTICE**

DTSC recognizes the need for further integration of environmental justice in its program activities and decisions to protect California's most vulnerable and environmentally burdened communities. EERD and OCI prioritize DTSC's commitment to advance environmental justice by conducting objective and equitable inspections, investigations, and enforcement. Additionally, EERD and OCI will implement environmental justice-informed approaches for disproportionately impacted and disadvantaged communities by:

- Integrating environmental justice into regulations, program activities, and policies.
- Engaging community members in a meaningful manner and providing opportunities for public participation.
- Working closely with the public, including vulnerable and environmentally burdened communities, to identify, verify, and resolve hazardous waste complaints.

- Ensuring that communications with the public are conducted in a culturally and linguistically sensitive and effective manner.
- Conducting at least 50 percent of all inspections and investigations in disadvantaged communities.
- Reducing environmental harm and health risks through targeted enforcement actions.
- Developing and incorporating an environmental justice program element in employee-training curriculum.
- Actively supporting and participating in CalEPA environmental justice enforcement initiatives and directives.

## **VIII. RELATIONSHIP TO OTHER DOCUMENTS**

This document should be used in conjunction with other United States Environmental Protection Agency (U.S. EPA), CalEPA and DTSC documents, including but not limited to the following:

- U.S. EPA's Hazardous Waste Civil Enforcement Response Policy.
- 2015 Update to the 1998 U.S. EPA Supplemental Environmental Projects Policy.
- DTSC's Supplemental Environmental Projects Policy (DTSC-OP-035).
- Referrals to the California Compliance School (DTSC-OP-0002).
- Complaint Response Policy (DTSC-OP-0003).
- Calculating the Economic Benefit of Noncompliance (DTSC-OP-0004).
- Conducting Inspections Policy (DTSC-OP-0005).
- Sharing Administrative Penalty Calculation Information (DTSC-OP-0007).
- Quarantine Authority (DTSC-OP-0008).
- Collecting Overdue Administrative Penalties (DTSC-OP-0032).
- EERD Guidance for Filing Documents.

## **IX. CONFIDENTIALITY**

Under the Public Records Act (PRA), pursuant to Government Code section 6250 et seq., records retained by state agencies are public unless exempt from disclosure. Preserving the confidentiality of documents is therefore important, however, not all documents obtained or generated are confidential.

### **Documents**

Documents obtained during an inspection that are not part of the inspection report may be confidential. Documents are not subject to disclosure under the PRA if they pertain to pending litigation and/or compromise the record of an investigation compiled for law enforcement purposes (Government Code section 6254(b) and (f)). However, once litigation is complete or the case is otherwise resolved, these documents may become public records pursuant to Government Code section 6254.

### **Draft Documents**

Preliminary draft documents are typically confidential under the PRA, pursuant to Government Code section 6254(a). Documents are subject to public disclosure once they are finalized or released to the facility.

### **Attorney-Client Privilege**

Attorney-client communications are not discoverable and are exempt from disclosure under the PRA. Evidence Code section 954 sets forth the attorney-client privilege.

### **Attorney Work Product Doctrine**

The work product of an attorney is not discoverable and is exempt from disclosure under the PRA. Attorney work product documents remain confidential, even after an enforcement action is completed.

### **Trade Secrets**

"Trade secrets" are confidential pursuant to HSC section 25173. Within ten business days of receipt of the inspection report, the operator may submit a letter to DTSC identifying trade secret information contained in the inspection report and request that such information be withheld from public disclosure. Failure to make a timely claim of confidentiality may result in waiver of these rights. See HSC section 25173, and 22 CCR section 66260.2, and the references contained therein.



## **X. ENFORCEMENT POLICY**

### **A. CLASSIFYING VIOLATIONS**

DTSC evaluates several factors to select and execute the proper enforcement action, including reviewing the class of the violation and the type of violator. For the purpose of selecting an appropriate enforcement response, the violation class is defined by three broad categories: Class I, Class II, and Minor violations. Class I and Minor violations are defined in statute (HSC sections 25110.8.5 and 25117.6, respectively). A Class II violation is defined in 22 CCR section 66260.10. See Attachments C and D for Examples of Potential Class I and Class II violations, respectively.

DTSC will also evaluate whether the violator is a Significant Non-Complier (SNC). A SNC is defined in U.S. EPA's Hazardous Waste Civil Enforcement Response Policy as a violator that has caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; is a chronic or recalcitrant violator; or deviates substantially from the terms of a permit, order, agreement or from statutory or regulatory requirements. See Attachment E for Examples of Potential Significant Non-Compliers.

### **B. ENFORCEMENT RESPONSE ACTIONS**

Enforcement response actions include informal enforcement actions, formal enforcement actions, and other administrative enforcement options, as described in this section.

Class I violations are addressed through formal enforcement action. Class II violations are addressed through formal enforcement action, as appropriate. Minor violations are typically corrected at the conclusion of the inspection or addressed through informal enforcement action, as appropriate.

If a Minor violation is not corrected at the time of the inspection, it must be included in the Summary of Violations (SOV) (HSC section 25187.8). Enforcement action may be pursued for Minor violations if the facility fails to comply with the SOV or circumstances are such that public health or safety, or the environment is threatened (HSC section 25187.8 (g)).

DTSC will consider many factors when selecting an appropriate enforcement response action including, but not limited to:

- The facts of the case.
- Interest and capacity of the various agencies to handle the case.
- Class of violation(s), and type of violator.
- Actual and potential harm to human health or safety, or the environment.

- Extent of deviation from requirements.
- Violator's compliance history.
- Number of violations.
- Violator's good faith effort(s) to comply or lack thereof.
- Prophylactic effect.
- Unusual circumstances and/or mitigating or aggravating factors.
- Litigation factors such as the available evidence and need for judicial discovery.

## **1. INFORMAL ENFORCEMENT ACTION**

DTSC will utilize informal action to achieve compliance when formal enforcement is not warranted (e.g., informal enforcement may be appropriate for a violation that does not rise to the level of a Class I or Class II violation). An informal enforcement action is an option that notifies the regulated facility of its non-compliance and establishes a date by which that non-compliance is to be corrected. If an informal action fails to achieve compliance, escalation to a formal action is appropriate. An informal action is not appropriate for a Class I violation.

## **2. FORMAL ENFORCEMENT ACTION**

DTSC will utilize formal actions to achieve compliance when informal enforcement is not warranted. A formal enforcement action is a legal action that creates an independent, affirmative obligation that mandates compliance and results in an enforceable agreement or order, final judgement, or conviction. It is DTSC's policy to take formal enforcement action for Class I violations and Class II violations, as appropriate.

DTSC will pursue the following enforcement actions based on the severity and type of violation: administrative action, civil action, and criminal action.

**Administrative Action:** DTSC will utilize its administrative enforcement order (AEO) authority if formal enforcement action is appropriate. The penalties assessed in administrative enforcement orders shall be calculated utilizing 22 CCR sections 66272.60 through 66272.69. This article, however, does not apply to penalties assessed pursuant to HSC sections 25244.18(b)(2), 25244.21(a), 25244.21(b), 25215, 25214.3.3, 25214.3.4, 25214.3, and 25250.62 (source reduction and management). DTSC will take administrative enforcement action to order required corrections for violations.

**Civil Action:** DTSC pursues civil actions through referrals to the California Office of the Attorney General (AG) as required by Government Code section 11040. DTSC will refer civil enforcement actions to the Office of the AG to file on behalf of DTSC. DTSC uses 22 CCR sections 66272.60 through 66272.69 for calculating civil penalties for settlement purposes. Civil action will also be pursued when DTSC seeks to obtain injunctive relief. Factors indicating that a civil action may be appropriate include, but are not limited to:

- Need for injunctive relief to attain compliance.
- Multi-jurisdictional violations.
- Violations of statewide significance.
- Violation of existing DTSC or CUPA AEOs or settlements.
- Need to utilize judicial discovery.
- Major cleanup activity.
- Cases where the city or county is a Respondent or where local factors make prosecution at the state level preferable (e.g., major employer in small county).
- The need to establish a judicial precedent.

**Criminal Action:** DTSC will take criminal enforcement action by referring the case to a District Attorney (DA), City Attorney (CA), AG, Circuit Prosecutor, or the United States (U.S.) Attorney (for violations of federal law), as appropriate. DTSC provides technical support to the office prosecuting these cases. Criminal cases are filed in the name of the People of California or the United States (for a federal case). Factors indicating that a criminal action may be appropriate include, but are not limited to:

- Violations are severe.
- Acts are intentional.
- Whether intentional or not, the actions create significant harm or a high risk of harm to public health, public safety or to the environment.
- Fraud, false statements, misrepresentation, intentional destruction or concealment of evidence or use of a scheme that undermines the integrity of an agency's regulatory program.
- Illegal disposal, treatment, storage, or transportation.

- Violations of more than one media (e.g. air, water, or soil).
- Serious violations at multiple facilities or locations.
- Civil or administrative remedies are inadequate.
- Evidence is sufficient to support the criminal burden of proof.
- The prosecutor is willing and able to file and prosecute the case within statutory time limits in a California Superior Court.

See Attachment F for Enforcement Procedures.

### **3. Other Administrative Enforcement Options: Suspension, Revocation, or Denial of a Grant of Authorization**

DTSC may deny, suspend, or revoke a permit, registration, license, etc., issued by DTSC pursuant to HSC section 25186, if the applicant or holder (or in the case of a business concern, any trustee, officer, director, partner, or any person holding more than five percent of the equity in or debt liability of that business concern) has engaged in certain acts, including but not limited to:

- Violating the HWCL, Resource Conservation and Recovery Act (RCRA), or other specified environmental statutes, if the violation shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.
- Aiding, abetting, or permitting such violations.
- Violating a relevant administrative or judicial order.
- Misrepresenting or omitting significant information in an application or subsequent submissions for authorization.
- Activities resulting in criminal convictions significantly related to the fitness of the permit applicant or holder to perform under the permit.
- Activities resulting in the revocation or suspension of any other relevant permit, registration, license, etc., held by the applicant or holder.

In addition, DTSC may suspend a permit to prevent an imminent and substantial danger to public health or safety or to the environment (HSC section 25186.2).

DTSC will consider three or more violations of a requirement in HSC section 25186(a) or (b) for which a person or entity has been found liable or

convicted, with respect to a single facility within a five-year period, as compelling cause to deny, suspend, or revoke the permit, registration, or certificate (HSC section 25186.05(d)).

Permit and hazardous waste transporter registration denials, suspensions, and revocations may result in the applicant or holder losing the legal right to operate a hazardous waste business. Permit and hazardous waste transporter denials, suspensions, and revocations are considered when the acts of the applicant or holder are criminal, pose a substantial threat to public health or public safety or to the environment, fail to pay fees, or show a clear unwillingness or inability to comply with environmental laws. Pursuant to HSC section 25189.3(c) and (d), DTSC may suspend the permit of any facility for nonpayment of a penalty assessed or delinquent payment of a penalty. These actions can proceed concurrently with civil or criminal actions.

#### **4. Enforcement Referrals**

##### **a. Referral to Another Agency**

DTSC utilizes the following considerations and factors in determining when referral to another agency is appropriate.

- **U.S. EPA or Other Federal Agencies:** Referral of a case to U.S. EPA or other federal agency is appropriate when the State of California does not have authority to enforce a federal requirement. DTSC and the U.S. EPA can, by mutual agreement, determine that the case is best addressed by U.S. EPA. In addition, for violations along the California/Mexico Border, DTSC will pursue enforcement for import violations of RCRA hazardous waste requirements and refer export violations of RCRA hazardous waste requirements to U.S. EPA for enforcement.
- **CalEPA Assistant General Counsel for Enforcement:** Referral of a case by DTSC to the Assistant General Counsel for Enforcement of CalEPA may be appropriate for cases that have multimedia implications or cases that have cross CalEPA board, department, or office implications.
- **Other CalEPA Board, Department, or Office (BDO):** Referral of a case to another CalEPA department or board is appropriate when there is overlapping jurisdiction, CalEPA is taking action, and has strong interest in the case, or when DTSC does not have the authority to enforce the case.
- **Certified Unified Program Agencies (CUPAs):** Referral of a case to a CUPA may be appropriate when the CUPA has jurisdiction or authorization, such as enforcement involving certain generators.

- **Other Agencies:** Referral of a case to agencies not mentioned above may be made, as appropriate.

**b. Referral to DTSC from Another Agency**

DTSC will accept enforcement referrals from other agencies at its discretion, on a case-by-case basis, if the matter is within DTSC's jurisdiction.

**C. ENFORCEMENT ACTION TIMELINES**

It is DTSC's policy to follow the Administrative and Civil Enforcement Timelines (Attachment G) to ensure timely enforcement response action. The EERD Inspection and EERD Inspection and Enforcement Process Map (Attachment H) flowcharts show the inputs, actions and outputs of the inspection, enforcement, and administrative enforcement settlement processes. DTSC has established and identified the following target dates for completing certain steps in the enforcement process.

**Note:** Day(s) means calendar day(s) from the first day of inspection.

**1. Inspection Report**

Pursuant to HSC section 25185, DTSC is required to provide a copy of the inspection report to the facility operator, hereafter referred to as Operator, no later than 65 days from the date of inspection, unless specific statutory exemptions apply. DTSC is required to provide the Operator with the final inspection report within 5 days of its completion. If the inspection report cannot be issued within 65 days, DTSC shall inform the Operator via letter within 70 days and give an estimated date by which the report will be issued. An inspection report is complete when the inspector signs it. If sampling or laboratory results are not available at the time the inspection report is prepared, this will be stated in the report, and the results shall be provided to the Operator within 10 working days of receipt by DTSC.

It is DTSC's policy to complete and deliver a copy of the inspection report to the facility within 30 days from the first day of the inspection. The Operator may request a meeting with DTSC to discuss the inspection report.

See the DTSC Conducting Inspections Policy (DTSC-OP-0005).

**2. Enforcement Actions**

It is DTSC's policy to initiate formal enforcement action as early as possible. Initiation of an enforcement action means issuing an order, final settlement document, or referring the case to the DA, CA, AG, U.S. Attorney, Circuit Prosecutor, or another agency.

When DTSC initiates an enforcement action, the Respondent will be notified of DTSC's intent to take enforcement action. DTSC will notify the Respondent of enforcement initiation by issuing a draft order and/or a settlement letter and inviting the Respondent to meet and discuss the violations and proposed enforcement. DTSC will offer the Respondent an opportunity to settle the case and will either finalize a settlement or issue the Respondent an AEO. DTSC may forego this approach and issue an order for chronic violations, complex cases, or special circumstances. Special circumstances may include, but are not limited to, a violator who is uncooperative, has questionable compliance history, or is unwilling to negotiate or meet with DTSC.

When DTSC issues an order, the matter may go to the Office of Administrative Hearings to determine the outcome. If an order is issued and there is no response from the respondent within 15 days of service of the order, the order will become final.

### **3. Settlement Negotiations**

The Operator may request a meeting with DTSC to resolve the case. If the Operator is represented by counsel, DTSC's Office of Legal Counsel (OLC) must be present. If an agreement-in-principal is reached, a Consent Order (CO) is signed by the Respondent and DTSC. Final settlement documents will be uploaded to EnviroStor and posted on DTSC's public web page.

Additional time for settlement negotiations may be required when the Operator does not respond promptly to CO revisions, compliance issues arise which require follow-up with other DTSC programs, technical and/or legal issues are raised, or unforeseen occurrences arise.

If an agreement cannot be reached with the terms of the CO, an AEO will be issued to the Respondent.

#### **a. Supplemental Environmental Projects**

As stated in the 2018 CalEPA Supplemental Environmental Project guidance, community involvement in the development of Supplemental Environmental Project (SEP) promotes restorative justice for communities harmed by violations, enhances relations between enforcement agencies

and the communities affected by violations, and can help improve relations between a violating facility and the community in which it is located.

As part of a settlement agreement, the Respondent may request a SEP to offset penalties that result from civil or administrative enforcement actions initiated by DTSC. Each SEP is considered on a case-by-case basis and

is approved at DTSC's discretion. A SEP must completely describe the specific actions the Respondent will perform and how DTSC will verify that the Respondent completed the project as required. See DTSC's SEP policy (DTSC-OP-035) for additional information.

**b. Admission of Violations**

It is DTSC's policy to include admissions language in settlement documents, when appropriate. Permitted facility settlement documents require admissions or alternative language equivalent to admission language. All other settlement documents may require admissions or alternative language equivalent to admission language. DTSC may forego admission of violations in certain and very limited circumstances.

**4. Settlement Delays**

In all administrative enforcement, DTSC shall request a hearing date after receipt of a Notice of Defense, unless DTSC agrees to delay or postpone the hearing. If DTSC and the Respondent cannot settle administrative and civil actions, a complaint must be filed unless an extension is approved by DTSC.

Once an AEO or other enforcement document is signed by DTSC, it will be uploaded to EnviroStor and posted on DTSC's public website. The duration of the enforcement document posting on DTSC's public website may be extended (e.g., Violations Scoring Procedure documentation, a Stipulation and Order or Judgment) or shortened to one year (per Government Code 6253.8) at the discretion of DTSC.

See Attachments A-J for specific enforcement procedures.



## ATTACHMENT A

### Definitions

The definitions below are for reference only. Staff need to consult the statutory and regulatory definitions, as appropriate.

**Administrative Enforcement Action:** The Department of Toxic Substances Control (DTSC) has authority to enforce its laws through orders, enforceable agreements, and 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 document. If unable to settle a matter, DTSC will request an administrative hearing before an administrative law judge from the Office of Administrative Hearing (OAH) to obtain a preliminary decision on the case presented. An administrative action may result in a penalty and other corrective actions and DTSC may pursue recovery of administrative costs in its negotiations. Once the administrative law judge issues a preliminary decision, DTSC has 100 days to either accept the decision, modify the penalty and accept the decision, make technical changes and accept the decision, reject the decision and refer back to OAH, or reject the proposed decision and decide the case on the record from the hearing. If the payment of a penalty, as a result of an administrative action, is not paid in full, DTSC may request the court to convert the final administrative order or settlement document into a judgment and abstract to pursue a court ordered payment.

**Chronic Violation:** A violation that continues or occurs repeatedly for a long time. A violation of the same requirement that has been cited on more than one occasion at the same facility. To determine whether a violation is chronic, DTSC will consider whether there is evidence indicating a pattern of neglect or disregard with respect to an applicable regulatory requirement.

**Civil Enforcement Action:** DTSC may file a civil complaint in state or federal court. While settlement negotiations typically occur without judicial oversight, the final settlement documents are filed and approved by the court. Like an administrative enforcement action, DTSC will seek penalties and may seek costs and require injunctive relief through a civil order or settlement. The difference between Civil Enforcement and Administrative Enforcement Actions is that civil cases typically involve more complex issues, are of statewide significance or involve larger penalties. Civil cases may be filed by the California Office of the Attorney General (AG), District Attorney's Office (DA), County Counsel, California, or the United States AG. Criminal cases are filed by a local, state, or federal prosecutor on behalf of the People of the California State or United States.

**Class I Violation:** Health and Safety Code (HSC) section 25110.8.5 defines a Class I violation as a violation that represents a significant threat to human health or safety or the environment because of the volume of the waste, the relative hazardousness of the waste, and/or the proximity of the population at risk. A Class I Violation is also a

violation where the deviation is significant enough that could result in a failure to ensure that hazardous waste is destined for, and delivered to, an authorized hazardous waste facility, prevent releases of hazardous waste or constituents to the environment during the active or post closure period of facility operation, ensure early detection of releases of hazardous waste or constituents, ensure adequate financial resources in the case of releases of hazardous waste or constituents, ensure adequate financial resources to pay for facility closure, and/or perform emergency cleanup operations of, or other corrective actions for, releases. A Class I violation also means the deviation is a Class II violation which is a chronic violation or committed by a recalcitrant violator. "Class II Violation" has the same meaning as defined in California Code of Regulations, Title 22 (22 CCR), section 66260.10.

**Class II Violation:** 22 CCR, section 66260.10 defines a Class II violation as a deviation from the requirements specified in Chapter 6.5 of Division 20 of the HSC, or regulations, permit or interim status document conditions standards, or requirements adopted pursuant to that chapter, that is not a Class I violation. A Class II violation can be classified as a Class I when the violator is a recalcitrant violator and has a history of chronic Class II violations.

**Criminal Enforcement Action:** Criminal Enforcement Actions are reserved for the most egregious violations and represent the most severe punishment and greatest deterrent against unlawful conduct that harms or poses a threat of serious harm to public health or safety or the environment. DTSC will refer an enforcement case for filing once it has determined the actions of a facility are criminal in nature and criminal charges are warranted and supported by the evidence. Criminal cases are filed by a DA, AG, or U.S. Attorney (for a federal case) in the name of the People of California or the United States (for a federal case). DTSC provides technical support to the offices prosecuting these cases.

**Day(s):** Means calendar day(s) from the first day of inspection, unless otherwise noted.

**Minor Violation:** HSC, section 25117.6 defines a Minor violation as a deviation that is not a Class I violation. A minor violation does not include any of the following: any knowing, willful, or intentional violation; any violation that enables the violator to benefit economically from noncompliance, either by reduced costs or competitive advantage; any Class II violation that is a chronic violation or that is committed by a recalcitrant violator. If there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to the requirements, a violation may be considered chronic or a violator recalcitrant.

**Operator:** The person responsible for the overall operation of a facility (22 CCR, section 66260.10).

**Recalcitrant Violator:** A violator that is cited for chronic violations, actively refuses to comply with the regulatory requirements or has otherwise engaged in a pattern of neglect or disregard for statutory or regulatory requirements (or with respect to requirements of the Hazardous Waste Control Law (HSC, section 25117.6).

**Respondent:** A person, including any individual, company or entity listed in HSC, section 25118, who has been cited for a violation.

**Significant Non-Complier:** Consistent with U.S. EPA guidance, a significant non-complier is a chronic or recalcitrant violator or a handler who substantially deviates from the terms of a permit, order, settlement agreement or decree by not meeting 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.

**Supplemental Environmental Project (SEP):** 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. A SEP shall consist only of measures that go beyond the obligations that a Defendant is already legally required to perform. DTSC manages SEPs in accordance with DTSC's SEP Policy (DTSC-OP-035).

## **ATTACHMENT B**

### **Enforcement Roles and Responsibilities**

#### **Deputy Director, Hazardous Waste Management Program (HWMP)**

- Negotiate, sign, and settle enforcement and consent orders or agreements of any amount, as appropriate.
- Counsel staff and consult with the Director as needed, on response actions and settlements in complex, sensitive, or controversial cases.
- Sign administrative enforcement orders for any case with or without an assessed penalty, as appropriate.

#### **Division Chief or Chief Investigator**

- Employ knowledge and experience to help ensure regulations are applied consistently, and appropriately.
- Negotiate, sign, and settle enforcement and consent orders or agreements up to \$3,000,000, as appropriate.
- Counsel staff and consult with the deputy director as needed, on appropriate response actions and settlements in complex, sensitive, or controversial cases.
- Provide guidance to the Penalty Determination Team (PDT) to determine and approve penalty and settlement amounts.
- Address disputes elevated by branch chief(s).
- Approve or deny extensions for settlement negotiations.

#### **Environmental Program Manager and Supervising Criminal Investigator II**

- The Environmental Program Manager (branch chief) reviews and signs off on litigation referral packages.
- Negotiate, sign, and settle enforcement and consent orders or agreements up to \$750,000, as appropriate.
- The branch chief may exercise discretion for a case to go civil or be referred to the California Office of the Attorney General (AG).
- Counsel staff and consult with the deputy director, division chief, supervisor and staff as needed, on appropriate response actions and settlements in complex, sensitive, or controversial cases.

- Participate as a member of the PDT, as appropriate, and review penalties to ensure regulations are applied consistently and appropriately.
- Approve referrals of enforcement actions to other agencies, as appropriate, and notify local agencies when an Enforcement Order will be issued in their jurisdiction.
- Ensure the completeness, accuracy, and timeliness of the inspection, complaint, and enforcement information in EnviroStor, or other databases, is maintained.
- The branch chief may exercise discretion to forego admissions language in settlement documents in certain, very limited circumstances.
- If DTSC and the Respondent cannot settle potential administrative and civil actions within 90 days of initiating negotiations, a complaint must be filed by the branch chief.
- Serve as the Hearing Officer to conduct a hearing on the validity of a Quarantine Order.
- Address disputes elevated by unit chief(s).

### **Supervisor**

- Review violation classifications, inspection reports, enforcement documents, and penalties for consistency, accuracy, and completeness.
- Review and approve violation classifications, enforcement responses, penalties, and statements of fact.
- Participate as a member of the PDT and review penalties for completeness and consistency, as appropriate.
- Employ knowledge and experience to help ensure regulations are applied correctly and consistently.
- Negotiate, sign, and settle enforcement and consent orders or agreements up to \$140,000, as appropriate.
- Coordinate with Office of Legal Counsel (OLC) to monitor enforcement referrals and negotiate actions with the AG until adjudicated.
- At least five days prior to issuing an Enforcement Order, notify the DTSC branch chief in the county where the order is being issued.

- Provide DTSC's Office of Criminal Investigations (OCI) copies of all cases referred to the District Attorneys (DA), City Attorneys (CA), or the United States (U.S.) Attorney, as required.
- Provide OCI status updates on cases referred to DAs, CAs, and the U.S. Attorney.
- Oversee return to compliance on enforcement actions and/or settlements.
- Address disputes and elevate unresolved disputes to branch chief.
- Coordinate with the DTSC Office of Communications, as appropriate.

### **Senior Environmental Scientist (Specialist)**

- Review violation classifications, enforcement documents, and penalties for consistency, accuracy, and completeness.
- Prepare and review Statements of Fact.
- Participate as a member of the PDT, as appropriate, and review penalties for accuracy and consistency.
- If delegated by the supervisor, provide OCI with copies of all referrals to DAs, CAs, the AG, and the U.S. Attorney, as required.
- Monitor enforcement cases referred to the DAs, CAs, AG, and U.S. Attorney until adjudicated.
- If delegated by the supervisor, notify OCI quarterly of the status of referrals of DAs, CA, and U.S. Attorney until adjudicated.

### **Inspector**

- Submit Work Request for OLC support and contact Penalty Specialist/other Specialists, as needed.
- Populate the Penalty Matrix and schedule the PDT meeting.
- Prepare enforcement referral packages, response to compliance submittals, and related documents, as required.
- Oversee return to compliance and conduct compliance follow-up to ensure violators return to compliance and comply with all terms of the enforcement action.
- Participate in negotiations and provide draft settlement language, as appropriate.

- Ensure data is entered into EnviroStor correctly, completely, and timely.
- Ensure all enforcement documents are uploaded to EnviroStor, as required.

### **Investigator**

- Prepare and review Statements of Fact.
- Make recommendations to senior staff on the type of violators for appropriate enforcement response.
- Present violations and penalty calculations to the PDT, as appropriate, and review penalties for completeness and consistency.
- Participate in negotiations and provide draft settlement language, as appropriate.
- Refer cases initiated by OCI to DAs, CAs, AG and U.S. Attorney.
- Maintain a database to track all referrals made to DAs, CAs, AG, and the U.S. Attorney, and maintain a central file for all referrals.
- Conduct compliance follow-up to ensure violators return to compliance and comply with all terms of the enforcement action.
- Ensure data is entered into EnviroStor correctly, completely, and timely and obtain a docket number.
- Ensure all enforcement documents are uploaded to EnviroStor, as required.
- Monitor referrals to the DAs, CAs, AG, and U.S. Attorney until adjudicated by completing supplemental reports on a quarterly basis (including copies of all pertinent documents).

### **Penalty Specialist (Primary and Secondary)**

- Apply knowledge and experience to help ensure laws, regulations and other applicable requirements and violation classification(s) are applied accurately and consistently.

### **Office of Legal Counsel**

- Provide EERD and OCI legal support to help ensure laws, regulations and other applicable requirements are applied consistently, accurately, and supported by facts.
- Prepare and review (or draft) enforcement orders and enforcement documents, as requested.

- Provide legal support in the development and settlement of enforcement actions; provide other legal assistance, as requested.
- Prepare and approve all referrals to the AG, DA, CA, and the U.S. Attorney.
- Represent and communicate on behalf of EERD and OCI with the DAs, CAs, the AG, or U.S. Attorney during enforcement actions, as appropriate.

### **Administrative Support Staff**

- Administrative Support Staff (Data Managers) Ensure documents are Americans with Disabilities Act compliant and uploads to EnviroStor.
- Ensure quality assurance and quality control of data in EnviroStor as directed by management.
- Upload enforcement documents to DTSC's public webpage. Once an enforcement document is signed by DTSC, it will be posted on DTSC's public website for 3 years from the effective date of the document. This period may be extended (e.g., Violations Scoring Procedure documentation, a Stipulation and Order or Judgment) or shortened to one year (per Government Code 6253.8) at the discretion of DTSC.
- Ensure the completeness, accuracy, and timeliness of all EnviroStor entries.
- Provide data entry support and create specialized reports, as requested.



## ATTACHMENT C

### Examples of Potential Class I Violations

Examples of potential Class I violations include, but are not limited to, the following:

1. A release or serious threat of a release of hazardous waste to the environment, or violation that causes a release or serious threat, for example:
  - Incompatible wastes stored or accumulated adjacent to each other with no physical barrier for separation.
  - Waste stored, accumulated, or transported in an incompatible, damaged, or deteriorated container.
  - Evidence that a release to the environment occurred.
  - Failure to transfer waste from deteriorated containers into sound containers.
2. A violation that involves the failure to assure that groundwater will be protected, for example:
  - Failure to implement regularly scheduled sampling activities pursuant to the groundwater monitoring program.
  - Failure to analyze all required parameters in a groundwater monitoring program.
  - Failure to perform the required statistical analyses of monitoring data.
3. A violation that involves the failure to assure required closure and post-closure activities are undertaken, for example:
  - Failure of an owner/operator to develop a closure or post-closure plan.
4. A violation that involves failure to establish or maintain financial mechanism to assure closure, post-closure, and liability coverage, for example:
  - Failure by an owner/operator to establish or maintain a financial assurance instrument.

5. A violation that involves the failure to assure that hazardous wastes are destined for and delivered to an authorized facility, for example:
  - Failure to use a manifest for hazardous waste.
  - Use of an unregistered hazardous waste transporter
  - Treatment, storage, or disposal of hazardous waste at an unauthorized point.
6. Illegal storage
  - Storage over 90 days for a generator.
  - Storage over 10 days for a transporter.
  - Storage in exceedance of a permit condition.
  - Failure to meet the condition for an exempt transfer facility (located within 500 feet of a residence).
  - Storage of waste in areas not authorized.
7. Class II violations by a recalcitrant or chronic violator, including one who is violating outstanding enforcement orders, for example:
  - Failure to correct violations in accordance with a schedule of compliance.

**Note:** This is not intended to be a complete list of potential Class I violations.

## ATTACHMENT D

### Examples of Potential Class II Violations

Examples of potential Class II violations include the following:

- Failure of a generator to keep a copy of each manifest for at least three years.
- Failure to maintain a copy of the closure plan at the facility.
- Failure to submit the annual report in a timely manner.
- Failure to maintain an adequate contingency plan.
- Failure to adequately document hazardous waste training.
- Failure to note the date and nature of any repairs in the inspection log.
- Deficiencies in other record-keeping requirements.
- Failure to update closure costs for inflation (although this may be a Class I violation if costs are substantial).

**Note:** This is not intended to be a complete list of potential Class II violations. Minor violations are usually corrected at the time of the inspection and are considered a subset of Class II violations. These examples may also be Minor violations, unless a particular occurrence meets one or more of the exceptions in the definition of Minor violation (Health and Safety Code, section 25117.6).

## ATTACHMENT E

### Examples of Potential Significant Non-Compliers

Examples of a Significant Non-Complier, include the following:

- Repeat Class I and II violations from a preceding inspection within three years.
- Failure to comply with an enforcement order.
- Operation of a facility without a permit or other grant of authorization.
- Transportation of hazardous waste without a registration.
- Disposal of hazardous waste at an unauthorized point.
- Failure to manage ignitable, reactive, or incompatible wastes as required by California Code of Regulations, Title 22, section 66264.17.
- Failure to have a closure or post-closure plan or cost estimates for a treatment, storage, or disposal facility undergoing closure.
- Failure to establish or maintain financial assurance for closure and/or post-closure care.
- Failure to systematically comply with manifest requirements or substantially deviate from manifesting requirements.
- Failure to systematically follow container/tank labeling requirements.
- Systematic use of containers in poor condition.

**Note:** This is not intended to be a complete list of potential Significant Non-Complier.

## **ATTACHMENT F**

### **Enforcement Procedures**

#### **Formal Enforcement Action Procedures**

The Department of Toxic Substances Control (DTSC) will pursue formal enforcement actions for:

- Class I violation(s).
- Class II violation(s), as appropriate.
- Escalated informal enforcement actions that failed to achieve compliance.

When a formal enforcement action is warranted, DTSC will pursue the following procedures as outlined in the phases below.

#### **Penalty Assessment Phase**

##### **Penalty Determination Team**

All enforcement cases are submitted to the Penalty Determination Team (PDT) to assess an initial penalty. The PDT primarily consists of the lead inspector, a supervisor, and penalty specialist. The PDT may also include other specialist(s), staff counsel, and branch chief, as needed. A Work Request to Office of Legal Counsel (OLC) for a staff counsel must be submitted as soon as it is determined enforcement will be pursued.

The lead inspector will work with their supervisor to draft a penalty determination using the penalty determination template and consult with the penalty specialist, as needed. The lead inspector's supervisor will review and approve the draft penalty determination prior to distribution to the PDT. The PDT will assess the initial penalty in a work meeting(s).

If the draft penalty is less than \$50,000, staff counsel and the branch chief are optional for the PDT.

If the draft penalty is \$50,000-\$75,000, staff counsel is required but the branch chief is optional for the PDT.

If the draft penalty is greater than \$75,000, both staff counsel and the branch chief is required to the PDT.

The initial penalty assessed by the PDT must always be approved by the branch chief.

If the enforcement case is determined to be administrative, the enforcement case will continue through administrative settlement negotiation. If the initial penalty is \$3,000,000 or greater, the enforcement case may be referred to the California Office of the Attorney General as a civil enforcement case, at DTSC branch chief discretion.

### **Administrative Settlement Negotiations Phase**

Once an initial penalty has been determined by the PDT, DTSC will notify the Respondent of enforcement initiation by issuing a draft order and/or sending a settlement letter to the Respondent inviting them to discuss the violations and proposed enforcement.

A facility has 15 days following the receipt of the draft order or settlement letter to set up a negotiation/settlement meeting. If the facility has legal counsel, then DTSC must also have legal counsel present in the negotiation/settlement meeting. The inspector must consult with OLC on any changes to the legal text in the draft order. Any revised draft order will be sent to the facility for review and a signature within 20 days following the request of a revised draft order. After signature by the facility, the DTSC supervisor or inspector will sign and issue Consent Order (CO) agreements. The inspector must update EnviroStor work with the data manager to upload a copy of the CO to EnviroStor and place the original in the case file.

Consent Orders for administrative enforcement cases are expected to be signed within 180 days from the first day of inspection.

### **Administrative Enforcement Case Phase**

If an agreement-in-principal cannot be reached within 180 days, an Administrative Enforcement Order (AEO) will be served upon facility management, administration or legal staff representing the facility within 20 days of the settlement negotiation meeting or DTSC's attempt to reach an agreement. The AEO will be served in person, by certified mail (see Attachment J – Proof of Service). Documentation of this process includes naming the Operator who was served, the date, time, and address where the order was served and the name of the person serving the enforcement order. The administrative enforcement case will continue through the Office of Administrative Hearings, as necessary.

### **Civil Enforcement Case Referrals**

If the enforcement case has an initial penalty of \$3 million or greater, or at the discretion of the branch chief and division chief, the case may be referred to the California Office of Attorney General (AG). DTSC must coordinate with the AG to settle civil enforcement cases.

## **Technical Enforcement Forum**

Enforcement staff from all regional offices throughout the state participate in a monthly Technical Enforcement Forum to discuss hazardous waste inspection and enforcement activities. Through communication and collaboration, the meeting provides staff the opportunity to share technical information, ask questions, and provide feedback and solutions, discuss inspection specifics, identifying and citing violations, determining and calculating penalties, and implementing enforcement actions. Staff present case studies, enforcement successes and areas of concern, as well as industry and technology changes.

## ATTACHMENT G

### Administrative and Civil Enforcement Timelines

**Activity:** Inspection Phase – Consists of the inspection, inspection report and Summary of Observations (SOO)/Summary of Violations (SOV)

**Goal:** Complete this activity within 30 days from the first day of inspection

#### 5 days to complete the following:

- Debrief with management
- Determine if Enforcement will be pursued
- Update EnviroStor (inspection date, violation section, SOO/SOV date)
- Submit Work Request for Financial Records Review and/or Office of Legal Counsel (OLC) support, as appropriate

#### 15 days to complete the following:

- Draft inspection report

#### 10 days to complete the following:

- Finalize inspection report, obtain supervisor review, and send to the facility
- For permitted facilities, send final, signed, and dated inspection report to the Violations Scoring Procedure team for scoring at [VSP@dtsc.ca.gov](mailto:VSP@dtsc.ca.gov)
- Complete inspection report cover letter and send to the facility
- Update EnviroStor and upload documents
- Code for file room and file original hardcopies
- If the inspection report is not issued within 30 days, the inspector will meet with his/her supervisor to review the inspection report and develop a plan to ensure the inspection report is issued to the facility within 65 days



**Activity:** Enforcement Phase – Consists of Penalty Assessment

**Goal:** Complete this activity within 60 days from the first day of inspection

**15 days to complete the following:**

- Draft Penalty Matrix
- Distribute Penalty Matrix to Penalty Determination Team (PDT) upon supervisor approval

**15 days to complete the following:**

- Finalize initial penalty with PDT
- Administrative penalties continue to administrative settlement negotiations phase
- Civil penalties must coordinate with the California Office of the Attorney General
- Submit additional Work Request to OLC, if needed

**Activity:** Enforcement Phase – Consists of Administrative Settlement Negotiations

**Goal:** Complete this activity within 180 days from the first day of inspection

**30 days to complete the following:**

- Review and finalize Enforcement Order or Consent Order and Settlement Letter

**30 days to complete the following:**

- Start negotiations

**45 days to complete the following:**

- Negotiations and settlement meetings

**15 days to complete the following:**

- Settle with Consent Order or issue Administrative Enforcement Order

**Activity:** Settlement with Consent Order or Enforcement Phase - Administrative Enforcement Case

**Goal:** Complete this activity within 240 days from the first day of inspection

**60 days to complete the following:**

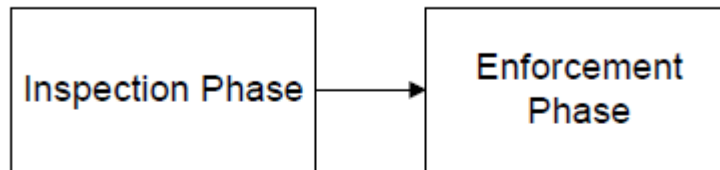
- Comply with Office of Administrative Hearings Procedure
- Hearings
- Settle with Stipulation and Order or Consent Order
- Notice of Final Order
- Finalize Settlement and Update EnviroStor

**Note:** Day(s) mean calendar day(s)

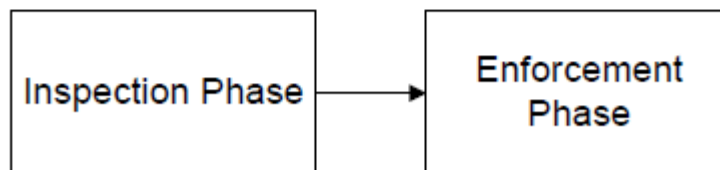
## ATTACHMENT H

### EERD Inspection and Enforcement Process Map

#### Non-Permitted Facilities

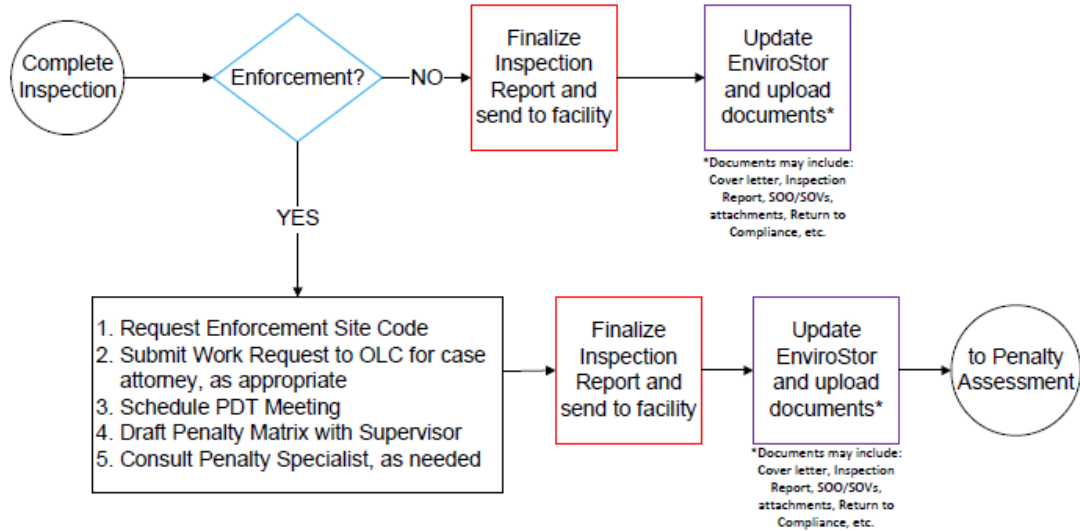


#### Permitted Facilities



# Non-Permitted Facility Inspection

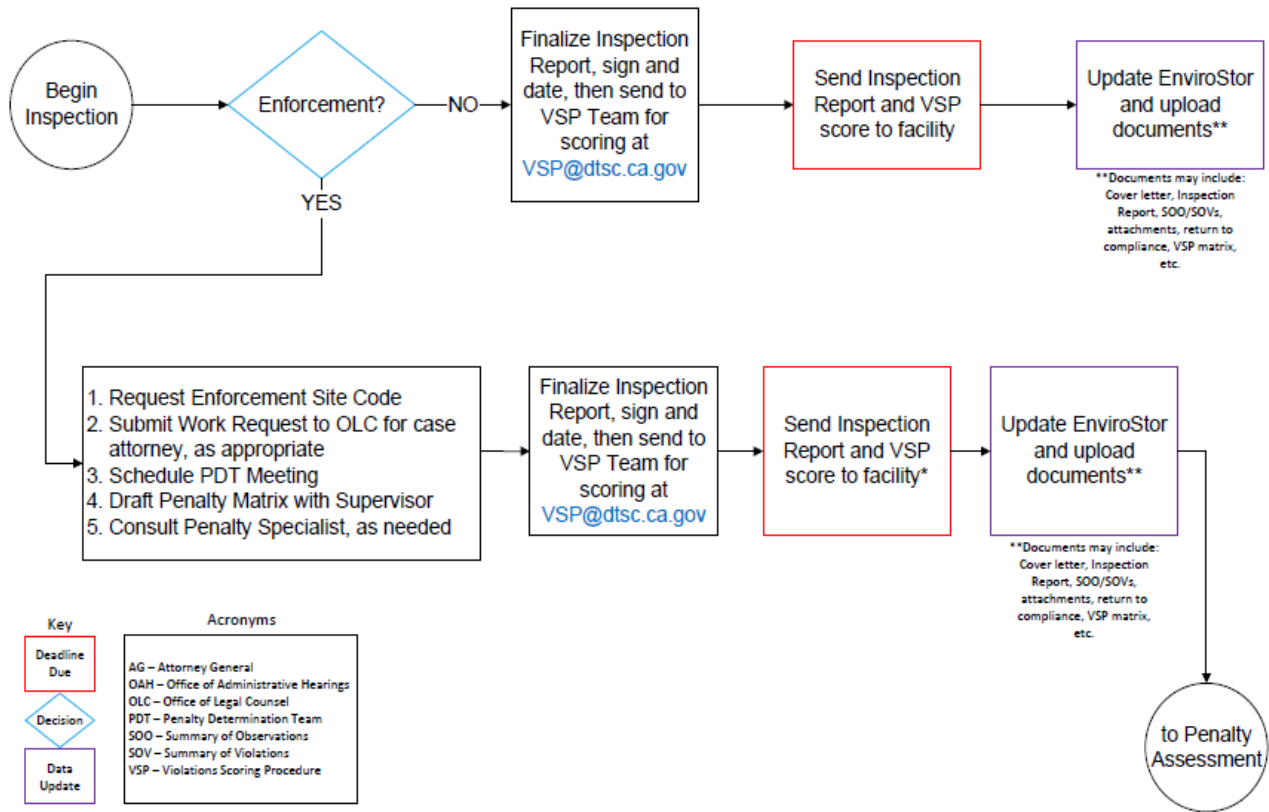
Day 0 - 30



Key	Acronyms
Deadline Due	AG – Attorney General
Decision	OAH – Office of Administrative Hearings
Data Update	OLC – Office of Legal Counsel
	PDT – Penalty Determination Team
	SOO – Summary of Observations
	SOV – Summary of Violations
	VSP – Violations Scoring Procedure

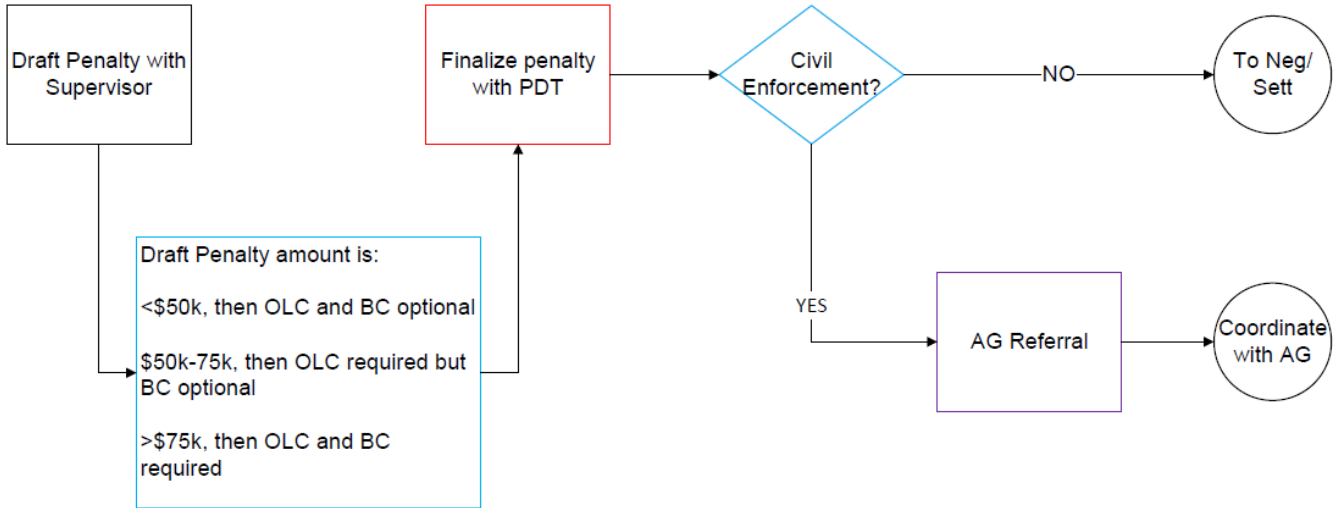
## Permitted Facility Inspection

Day 0 - 30



## Enforcement Phase: Penalty Assessment

Day 30 - 60



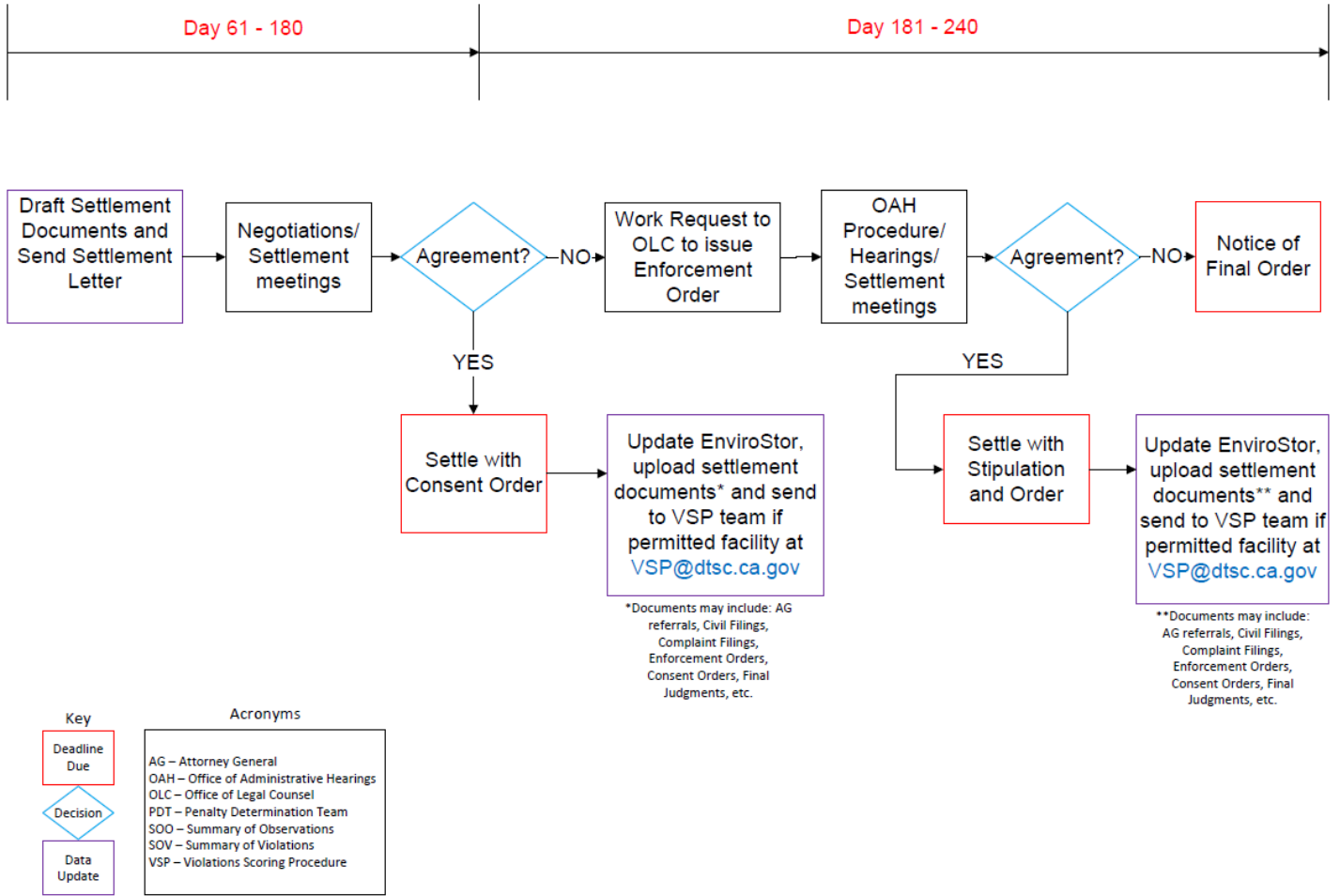
**Key**



**Acronyms**

AG – Attorney General
OAH – Office of Administrative Hearings
OLC – Office of Legal Counsel
PDT – Penalty Determination Team
SOO – Summary of Observations
SOV – Summary of Violations
VSP – Violations Scoring Procedure

## Administrative Enforcement Settlement



## ATTACHMENT I

### Penalty Determination Team Roles and Responsibilities

#### **Penalty Determination Team (PDT)**

**Lead Inspector:** *The primary inspector, and responsible for enforcement*

- Consults with supervisor on any violations cited during inspection and determine if there will be enforcement.
- Works with Data Manager to obtain Enforcement Site Code/Activity Code and Docket number to initiate enforcement and prepare Enforcement Action Update (EAU).
- Submits Work Request, upon supervisor approval, for case team legal support from Office of Legal Council (OLC).
- Schedules the Penalty Determination Team (PDT) meeting as soon as it is determined that enforcement will be pursued. Follow-up meetings will be scheduled as needed. The penalty should be determined before the 60<sup>th</sup> calendar day from the first day of inspection. Include the Enforcement Performance Management Branch in PDT(s) for training coordination.
- Consults with supervisor on violations section of the inspection report.
- Consults with Penalty Specialist(s) on violations section of the inspection report, as needed.
- Works with supervisor to draft the Penalty Matrix. Consults with Penalty Specialist and OLC, as needed.
- Completes the Penalty Matrix and submits it to supervisor for review and approval.
- Leads the PDT discussion and collaborates with PDT to determine the penalty at the PDT meeting(s).
- Keeps focus of PDT discussion to issues related only to penalty assessment.
- Incorporates input from PDT into Final Penalty Matrix, as appropriate, and finalizes with supervisor.
- Links Final Penalty Matrix to regional branch chief for final approval.



**Supervisor:** *Performs final review of inspection report and draft Penalty Matrix*

- Provides consultation to the lead inspector for the inspection report.
- Reviews (all violations, their accuracy, and applicability) and approves the inspection report.
- Provides technical guidance to lead inspector on drafting the Penalty Matrix.
- Reviews draft Penalty Matrix using the footnotes on what is applicable for each section, grammatical errors, repetitiveness, unnecessary information, or more information if needed
- Reviews (all violations, their accuracy, and applicability) and approves the Penalty Matrix prior to distribution to the PDT.
- Uploads supervisor approved Penalty Matrix to Enforcement and Emergency Response Division Teams Confidential Documents folder and send link of the documents' location to PDT members at least one week before the scheduled PDT meeting.
- Collaborates with PDT to determine the penalty at the PDT meeting and ensure all factors have been considered in calculating the penalty amount.
- Manages disagreements during PDT meeting(s) or elevates to branch chief, as appropriate.

**Penalty Specialist (Primary):** *Supports the Penalty Determination Team by ensuring consistency of penalties across Workplan/Inspection types*

- Provides consultation to the lead inspector on the violations section of the inspection report, if requested.
- Provides technical consultation to the lead inspector as Penalty Matrix is drafted, as needed.
- Participates with PDT to determine the penalty at the PDT meeting(s) and ensure all factors have been considered in calculating the penalty amount.
- Include Backup Penalty Specialist in PDT meeting(s).

**Penalty Specialist (Backup):** *Supports the Penalty Determination Team by ensuring consistency of penalties across Workplan/Inspection types*

- Attends all PDT meeting(s) for consistency purposes.
- Participates with PDT to determine the penalty at the PDT meeting(s) and ensure all factors have been considered in calculating the penalty amount.
- Fills in for Primary Penalty Specialist to provide technical consultation to Lead inspector on violations section of the Inspection report and in calculating penalties, as needed.

**Legal Counsel: Assigned enforcement case attorney**

- Provides technical consultation to the lead inspector as Penalty Matrix is drafted, as needed.
- Reads the Final Inspection Report and Penalty Matrix in preparation for the PDT meeting(s).
- Prepares comments on Penalty Matrix for the PDT meeting(s).
- Communicates any inconsistency in how the penalty applied, as applicable.
- PDT participation is optional for penalties <\$50k. OLC is required to participate in the PDT meeting if total penalty is  $\geq$ \$50k.

**Branch Chief (BC), as needed: Manages disagreements or elevates to division chief, as appropriate**

- Participates with PDT to determine the penalty at the PDT meeting(s) and ensure all factors have been considered in calculating the penalty amount, as needed.
- PDT participation is optional for penalties <\$75,000. Branch chief is required to participate in PDT meeting if total penalty is  $\geq$ \$75,000.
- Approves the Final Penalty Matrix for all penalties.
- Communicates penalty consistency with other branch chiefs and division chief (DC), as needed.
- Decides if the enforcement case should be referred to the California Office of Attorney General.

**Other Specialist, as needed: Financial Assurance, Geologist, etc.**

- Reads the final inspection report and Penalty Matrix in preparation for the PDT meeting(s).
- Prepares comments on Penalty Matrix for the PDT meeting(s).
- Collaborates with PDT to determine the penalty at the PDT meeting(s) and ensure all factors have been considered in calculating the penalty amount.

**Economic Benefit of Non-compliance (BEN) Specialist, as needed: *Economic benefit expert***

- Provides technical assistance in determining economic benefit by utilizing the BEN model as applicable.
- Participates in PDT at the request of the lead inspector.

**Non-Participating Attendee**

- Staff may attend meetings for training purposes only.
- Staff may ONLY listen in.
- No participation in meeting deliberation.

## **ATTACHMENT J**

### **Proof of Service**

Visit California Courts public webpage (<https://www.courts.ca.gov/>) to access the following Proof of Service forms:

- Proof of Personal Service - Civil
- Attachment to Proof of Personal Service - Civil (Documents Served)
- Attachment to Proof of Personal Service - Civil (Persons Served)
- Proof of Service by First-Class Mail - Civil
- Attachment to Proof of Service by First-Class Mail - Civil (Documents Served)