

Department of Toxic Substances Control Official Policy

ENFORCEMENT RESPONSE

DTSC-OP-0006

Subject/Title of Policy

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EO-02-003-PP and DTSC-OP-0006 (1/30/2009)

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Supersedes Number(s)

Date Issued/Effective Date

All Staff

Hazardous Waste Management Program

Target Audience

Issuing Unit

Barbara A. Lee

Director

Name

Title of Approving Authority

Signature

Date Signed

Statutory Reference(s):

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

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

This policy expires five years from the date of signature.

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I. PURPOSE

This document sets The Department of Toxic Substances Control's (DTSC) policy for conducting enforcement actions and summarizes the enforcement options for violations of the Hazardous Waste Control Law (HWCL) and its implementing regulations. This policy identifies enforcement options based upon the circumstances of each case.

II. BACKGROUND

This policy supersedes EO-02-003-PP and DTSC-OP-0006 (1/30/2009).

III. STATUTORY AUTHORITY

DTSC's primary enforcement authority is granted by [Health and Safety Code \(HSC\) section 25180](#). Other sections of the HWCL provide additional enforcement authority, mandate certain actions by DTSC in specific situations, and detail the rights, responsibilities and liabilities of persons subject to the HWCL.

IV. POLICY STATEMENT

It is DTSC's policy to accomplish the following:

- Promote compliance throughout the regulated community;
- Promote equitable and fair treatment, accessibility, and protection for all communities and residents, regardless of race, age, culture, income, or geographic location;
- Treat hazardous waste generators, handlers, transporters, and operators of treatment, storage, and disposal facilities (TSDF) equally and consistently;
- Penalize violators, as appropriate, and deprive violators of economic benefit gained from non-compliance;
- Return violators to compliance in a timely manner; and
- Initiate and complete enforcement actions in a consistent and timely manner.

V. RELATIONSHIP TO OTHER DOCUMENTS

This document should be used in conjunction with other United States Environmental Protection Agency (U.S. EPA), California Environmental Protection Agency (CalEPA) and DTSC documents, including the following:

- [CalEPA Recommended Guidance on Supplemental Environmental Projects](#), October 2003;
- Collecting Overdue Administrative Penalties ([DTSC-OP-0032](#));

- Conducting Inspections ([DTSC-OP-0005](#));
- Guidelines for Calculating the Economic Benefit of Noncompliance ([DTSC-OP-0004](#));
- Hazardous Waste Administrative Complaints Policy ([DTSC-OP-0003](#));
- [Hazardous Waste Civil Enforcement Response Policy](#) | US EPA, December 2003;
- Implementing Quarantine Authority ([DTSC-OP-0008](#));
- Referrals to California Compliance School ([DTSC-OP-0002](#));
- Sharing Administrative Penalty Calculation Information ([DTSC-OP-0007](#));
- Supplemental Environmental Projects ([DTSC-OP-035](#)); and
- [2015 Update to the 1998 U.S. EPA Supplemental Environmental Projects Policy](#) | Enforcement | US EPA, March 2015

Note: Some of the links listed in this document are only available internally.

VI. POLICY

A. CLASSIFYING VIOLATIONS

The primary factors that affect the selection and execution of enforcement actions by DTSC are the class of the violation and the type of violator. It is DTSC's policy to take a formal enforcement action for Class I violations and recalcitrant violators.

For the purpose of selecting an appropriate enforcement response, violations are 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 [California Code of Regulations \(CCR\) section 66260.10](#). In the Summary of Violations (SOV), both Class I and Class II Violations are referred to as "Non-Minor" Violations.

1. Class I

[HSC section 25110.8.5](#) defines "Class I Violation" as:

- (a) A deviation from the requirements of this chapter, or any regulation, standard, requirement, permit or interim status document condition adopted pursuant to this chapter, that is any of the following:
 - (1) The deviation represents a significant threat to human health or safety or the environment because of one or more of the following:
 - (B) The relative hazardousness of the waste.
 - (C) The proximity of the population at risk.
 - (2) The deviation is significant enough that it could result in a failure to accomplish any of the following:
 - (A) Ensure that hazardous waste is destined for, and delivered to, an authorized hazardous waste facility.
 - (B) Prevent releases of hazardous waste or constituents to the environment during the active or post-closure period of facility operation.

- (C) Ensure early detection of releases of hazardous waste or constituents.
- (D) Ensure adequate financial resources in the case of releases of hazardous waste or constituents.
- (E) Ensure adequate financial resources to pay for facility closure.
- (F) Perform emergency cleanup operations or other corrective actions for releases.
- (b) The deviation is a Class II Violation, which is a chronic violation or committed by a recalcitrant violator.

Class I Violations are addressed through a formal enforcement action. Examples of potential Class I Violations are provided in [Attachment A](#).

2. Class II

[CCR section 66260.10](#) specifies that a “Class II Violation” means 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.

Enforcement actions for Class II Violations may be addressed through formal enforcement action, as appropriate. Examples of potential Class II Violations can be found in [Attachment B](#).

3. Minor

[HSC section 25117.6](#) defines “Minor violation”, which is a subset of Class II Violations as:

- (a) a deviation from the requirements of this chapter, or any regulation, standard, requirement, or permit or interim status document condition adopted pursuant to this chapter that is not a Class I Violation.
- (b)(1) A Minor Violation does not include any of the following:
 - (A) Any knowing, willful, or intentional violation of this chapter.
 - (B) Any violation of this chapter that enables the violator to benefit economically from noncompliance, either by reduced costs or competitive advantage.
 - (C) Any Class II Violation that is a chronic violation or that is committed by a recalcitrant violator.
- (2) In determining whether a violation is chronic or a violator is recalcitrant, for purposes of subparagraph (C) of paragraph (1), the department or the local officer or agency authorized to enforce this chapter, shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to the requirements of this chapter.

If a Minor Violation is not corrected at the time of the inspection ([HSC section 25187.8 \(d\)](#)), a Notice to Comply (NTC) must address it, as specified in [HSC section 25187.8](#). Procedures for DTSC staff to implement this section of the law are detailed in the DTSC Policy for Conducting Inspections ([DTSC-OP-0005](#)). Minor Violations are generally not included in an enforcement action. The exception is when a facility fails to comply with the NTC within the prescribed

time period, or if circumstances are such that public health or safety or the environment is threatened ([HSC section 25187.8 \(g\)](#)).

DTSC will classify all hazardous waste handlers with Class I Violations and Class II Violations repeated within three years as Significant Non-Compliers (SNC) in DTSC's EnviroStor database.

It is DTSC's policy to follow the Administrative Goal Timeline outlined in [Attachment C](#) to ensure timely enforcement response action.

B. ENFORCEMENT RESPONSE ACTIONS

1. Informal

An informal 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. Examples of these include letters, SOVs, and NTCs ([HSC sections 25185](#) and [25187.8](#)). SOVs shall identify violations known at the conclusion of an inspection. An amended SOV may be issued, as appropriate. If criminal acts are identified during an inspection, an informal action such as an SOV shall not be left with the operator. Informal actions do not impose sanctions. When other enforcement actions are pursued, informal actions may be utilized to notify the violator of the violations and required corrections.

2. Formal

A formal enforcement action is an option that mandates compliance and initiates an administrative, civil, or criminal action that may result in an enforceable agreement or order, final judgment or conviction. Enforceable means the instrument creates an independent, affirmative obligation to comply and imposes sanctions for failure to comply. Sanctions can include fines and penalties and other tangible obligations that are imposed upon the respondent or defendant. Examples of formal enforcement actions include administrative orders, civil orders and judgments.

DTSC has different enforcement options that are selected based on the severity of a violation. These options include, in ascending order of stringency:

- **Administrative:** DTSC has statutory authority to take administrative action to order correction of violations and to impose penalties.
- **Civil:** Generally referred to the Attorney General (AG) to file on behalf of DTSC.
- **Criminal:** Generally referred to District Attorney (DA) or City Attorney (CA); however, they can also be referred to the AG, a Circuit Prosecutor, or the United States (US) Attorney (for a federal case). Criminal cases are filed in the name of the People of California or the United States (for a federal case) and DTSC provides technical support to the offices prosecuting these cases.

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., pursuant to [HSC section 25186](#) for permitted facilities, 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 final criminal convictions significantly related to the fitness of the permit applicant or holder to perform under the permit; and/or
- 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 temporarily 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](#)).

Permit denials, suspensions, and revocations may result in the permit applicant or holder losing the legal right to operate a hazardous waste business. Permit denials, suspensions, and revocations are considered when the acts of the permit applicant or holder are criminal, pose a substantial threat to public health or safety or the environment, if they 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 because they are licensing issues.

4. Referral to Another Agency

Listed below are some considerations and factors indicating that referral to another agency may be appropriate.

- **US EPA or other federal agencies have jurisdiction:** Referral of a case to the US EPA or other federal agencies is appropriate when the State of California does not have authority to enforce certain federal requirements (e.g., loss of interim status under the [Hazardous and Solid Waste Amendments of 1984 pertaining to the RCRA of 1976](#)). DTSC and the US EPA can, by mutual agreement, determine that the case is best addressed by US EPA. In addition, violations of import/export requirements of RCRA hazardous waste along the California/Mexico border will be referred to US EPA for enforcement.
- **Deputy Secretary for Law Enforcement and Counsel of CalEPA:** Referral of a case by DTSC to the Deputy Secretary of CalEPA may be appropriate for cases that have multimedia implications or cases that have cross-board/department/office implications necessitating CalEPA involvement for investigation and coordination purposes.
- **Other CalEPA Departments or Boards:** Referral of a case to another CalEPA department or board is appropriate when the CalEPA department or board has overlapping jurisdiction, is taking action, and has strong interest in the case, or when DTSC does not have the authority to enforce.
- **Certified Unified Program Agencies (CUPAs):** Referral of a case to a CUPA may be appropriate when the CUPA has jurisdiction or has authorization, such as for enforcement cases involving certain generator activities or on-site permitted activities.
- **Other Agencies:** Referral of a case to agencies not mentioned above may be made, as appropriate. The Branch Chief must approve all case referrals.

5. Referral from Another Agency

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

C. SELECTION OF ENFORCEMENT RESPONSE ACTION

Choosing an appropriate enforcement response action requires consideration of numerous factors including the facts of the particular case, the interest and capacity of the various agencies to handle the case, the class of violations, and the type of violator.

The factors considered include:

- The actual harm to human health and safety or to the environment;
- The potential harm to human health and safety or to the environment;

- The extent of deviation from legal requirements;
- The violator's compliance history;
- The violator's good faith efforts to comply or lack thereof;
- The deterrent on the violator and regulated community;
- Any unusual circumstances and/or mitigating or aggravating factors; and
- Litigation factors such as the quality of the evidence and need for judicial discovery and other enforcement tools.

The weight given to various factors in particular cases will vary depending on case specific circumstances. Violations of varying severity or class by the same facility should be included in one enforcement action.

Once the inspection report is completed, the Office of Legal Counsel (OLC) must be consulted regarding Class I Violations to determine the appropriate enforcement response. An enforcement action may include all violations identified in the inspection report(s), except minor violations.

1. Informal

DTSC utilizes informal actions in an effort to achieve compliance where formal enforcement action is not warranted (e.g., formal enforcement is seldom pursued for Class II Violations only). If an informal action fails to achieve compliance, then escalation to a formal action is appropriate. An informal action is not pursued for Class I Violations only.

[HSC section 25185](#) mandates that DTSC provide an SOV at the conclusion of an inspection, prepare an inspection report, provide a copy of the inspection report to the operator of the facility, and respond to requests and responses made by the operator. Further, [HSC section 25187.8](#) requires an Inspector to issue an NTC before leaving the facility for Minor Violations discovered during an inspection. DTSC may conduct re-inspections to confirm compliance for informal actions.

2. Administrative

If a formal enforcement action is appropriate, but the situation does not meet the criteria for criminal or civil action, or referral to another agency, then use of DTSC's administrative enforcement order authority is warranted. The penalties assessed in administrative enforcement orders shall be calculated utilizing [CCR, Division 4.5, Chapter 22, Article 3](#) (Assessment of Administrative Penalties). This article, however, does not apply to penalties assessed pursuant to [HSC sections 25244.18\(b\)\(2\)](#), [25244.21\(a\)](#) and [25244.21\(b\)](#) regarding requirements for source reduction and management.

3. Civil

Factors indicating that a civil action should be pursued include:

- Need for injunctive relief to obtain compliance;
- One or more Class I Violations;
- Multi-jurisdictional issues;
- Issues of statewide significance;
- Existing DTSC or CUPA Administrative Enforcement Orders (AEOs) or settlements violated;
- Need to utilize judicial discovery;
- Major cleanup activity;
- Cases where the city or county is a possible Respondent or where local factors make prosecution at the state level preferable (e.g., major employer in small county); and
- The desire to establish a judicial precedent.

DTSC will pursue civil actions through referrals to the AG or other prosecutors or agencies, as appropriate. DTSC uses [CCR sections 66272.60 through 66272.69](#) for calculating civil penalties.

4. Criminal

Factors indicating that a criminal action should be pursued include:

- Violations are severe;
- Acts are intentional;
- Whether intentional or not, actions that create a significant harm or a high risk of harm to public health, public safety or 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; and
- The prosecutor is willing and able to file and prosecute the case within statutory time limits in a California Superior Court.

DTSC will refer criminal actions to a DA, CA, the AG, a Circuit Prosecutor or other prosecutors, as appropriate.

D. TIMELINESS OF ENFORCEMENT ACTION

To meet DTSC's goals of initiating and completing enforcement actions in a timely manner, target dates for completion of certain steps in the enforcement process are established ([Attachment C](#)).

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

1. Inspection Report

Under [HSC section 25185](#), DTSC is required to provide a copy of the inspection report to the facility operator within five days of completing the inspection report, and no later than 65 days, unless specific statutory exemptions apply. If the inspection report cannot be issued within 65 days, DTSC shall inform the Respondent via letter within 70 days and give an estimated date by which the report will be issued. DTSC will invite the facility operator to a meeting to discuss the report. An inspection report is complete when the Inspector signs it. If sampling or laboratory results are not available at the time that the inspection report is prepared, it should be included in the report, and those results shall be provided to the facility operator within 10 working days of receipt.

It is DTSC's policy to complete and deliver a copy of the inspection report to the facility within 50 days ([Attachment C](#)). If the inspection report is not issued within 50 days, the Inspector will meet with their supervisor to review the inspection report, discuss its complications, and develop a plan to ensure the inspection report is issued to the facility within 65 days.

The procedures for completing inspections are contained in DTSC's Policy for Conducting Inspections ([DTSC-OP-0005](#)).

2. Initiating Enforcement

DTSC staff should, in all cases, initiate formal enforcement action as early as possible, and no later than 180 days. Initiation of an enforcement action means issuing an AEO, final settlement document, or referring the case for appropriate action to the DA, CA, AG, US Attorney, Circuit Prosecutor, or to another agency. When DTSC initiates an enforcement action, the Respondent will be notified in writing within 120 days of DTSC's intent to take enforcement action. DTSC will notify the Respondent of enforcement initiation by presenting a finalized AEO draft to the Respondent and inviting them to meet and discuss the violations and proposed enforcement. DTSC will offer the Respondent an opportunity to settle the case within 45 days of presenting the AEO draft and will either finalize a settlement or issue an AEO to the Respondent within 180 days.

DTSC may forego this approach and issue an AEO for violations of [Phase I environmental assessment](#) requirements, chronic violations, complex cases, or special circumstances as approved by the Branch Chief. Special circumstances may include a violator who is uncooperative, has questionable compliance history, or is unwilling to negotiate or meet with DTSC.

DTSC issues an AEO when the matter goes to a hearing to determine the outcome. If an AEO is issued and there is no response within 15 days after service of the order from the respondent then the AEO becomes final.

3. Small Penalty Enforcement

If penalties in a case are less than \$30,000, the case will follow the normal procedures outlined in this Enforcement Response Policy with the exception that the proposed penalties are not required to be presented at the Penalty Work Group (PWG). A Branch Chief from a different Enforcement and Emergency Response Division (EERD) office, however, must review the proposed penalty.

If legal counsel is representing the facility, a DTSC Supervisor or Inspector will request representation from the “small case attorney” designated by OLC within seven days of being informed that the Respondent has retained legal counsel.

4. Penalty Work Group

The PWG reviews penalties of cases at or above \$30,000 to ensure that penalty regulations are consistently applied. The PWG typically consists of a Branch Chief, Inspector, Supervisor, and Staff Counsel.

A qualifying case will include a presentation of the penalty calculation and background that supports the proposed penalty amounts. The Inspector typically makes the presentation to the group, which includes the Supervisor, Branch Chiefs, OLC Counsel assigned to the case, and the Division Chief. There may be other attendees, including a Deputy AG assigned to the case or other DTSC staff. The PWG generally meets monthly, however, a special meeting may be held, as needed.

5. Settlement Meeting

If either DTSC or the facility operator requests a meeting to resolve the case, one will be held within 30 days of the meeting request. The meeting will be conducted by EERD staff unless the facility operator is represented by counsel. If an agreement-in-principal is reached, a Consent Order (CO) will be drafted, signed by the EERD Branch Chief and Supervisor and served upon the facility within 10 days of reaching an agreement. Serving the CO to the facility operator will be completed in person or by registered mail with the proper proof of service ([Attachment E](#)), and must be documented and placed in the case file. If an agreement-in-principal cannot be reached within 180 days, an AEO will be served upon facility management, administration or legal staff representing the facility within 20 days of the agreement-in-principal meeting or DTSC’s attempt

to reach an agreement. The AEO will be served in person, by certified mail, or by email with a confirmation of the email sent. Documentation of this process includes naming the facility operator who was served, the date, time and address where the order was served and the name of the person serving the enforcement order.

A facility has 15 days following the receipt of the CO to negotiate its terms. If a settlement meeting is requested, the procedures outlined in the "Settlement Meeting" paragraph above will apply. If technical legal changes are requested by the facility operator to the CO, the "small case attorney" designated by OLC will be consulted. Any revised CO will be sent to the facility for review and a signature within 20 days following the request of a revised CO. After signature by the facility, the CO will be signed by the Supervisor, Senior Scientist, or Branch Chief on behalf of DTSC and posted on DTSC's web page.

COs for small enforcement penalty cases are expected to be signed within 180 days. Additional time may be required when 1) The facility operator does not respond promptly to CO revisions 2) Compliance issues arise which require follow-up with other DTSC Programs 3) Technical and/or legal issues are raised or 4) Unforeseen occurrences arise. If an agreement cannot be reached on the terms of the CO, an AEO will be issued to the facility.

6. Settling Enforcement

In all administrative enforcement actions, DTSC's OLC shall request a hearing date in order to avoid delay if the case is not settled, unless a delay in setting the hearing is approved by the Division Chief.

If DTSC and the Respondent cannot settle potential civil actions within 90 days of initiating negotiations, a complaint should be filed unless an extension is approved by the Division Chief.

Once an AEO or other enforcement document is signed by DTSC, it shall be posted on DTSC's public website for 3 years from the effective date of the document. This period may be lengthened (e.g., in the case of a Stipulation and Order or Judgment) at the discretion of DTSC.

E. SETTLEMENT PHASE

Although DTSC must always be prepared to litigate any enforcement action, it is DTSC's practice to encourage Respondents to enter into settlement discussions with DTSC in order to settle the case expeditiously.

1. Admission of Violation

Each enforcement action can include a number of violations that vary in degree of seriousness. Generally, DTSC will require admission language for the most egregious violations, those violations that endanger public health or safety or

the environment, and for serious repeating violations. The Branch Chief will determine if admission language is required.

2. Use of Supplemental Environmental Projects

As part of a settlement agreement, DTSC may agree to Respondents undertaking a Supplemental Environmental Project (SEP). SEPs offset penalties that result from civil or administrative enforcement actions initiated by DTSC. SEPs are considered by DTSC on a case-by-case basis and are approved entirely at the discretion of DTSC. The settlement agreement should accurately and completely describe the SEP, including the specific actions that the Respondent will perform and how DTSC will verify that the Respondent completed the project as required. See DTSC's SEPs policy ([DTSC-OP-035](#)) for additional information.

Attachment A

Examples of Potential Class I Violations

Examples of potential Class I Violations include the following:

1. A release or serious threat of a 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 soil or water has occurred
 - Failure to transfer wastes 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 in a 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 that proper closure and post closure activities will be undertaken, for example:
 - Failure of an owner/operator to develop closure or post closure plans.
4. A violation that involves the failure to assure that hazardous wastes will be destined for and delivered to an authorized facility, for example:
 - Failure to manifest hazardous waste
 - Use of an unregistered hazardous waste transporter
 - Treatment, storage, or disposal at an unauthorized point

Attachment A
Examples of Potential Class I Violations
(continued)

5. 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
6. A violation that involves failure to establish or maintain appropriate 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

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

Attachment B

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 in the inspection log the date and nature of any repairs
- Small deficiencies in other record keeping requirements
- Failure to update closure costs for inflation (although this may be a Class I Violation if such costs are substantial)

Note: This is not intended to be a complete list of potential Class II Violations. Minor Violations are a subset of Class II Violations. These examples may also include Minor Violations, unless a particular occurrence meets one or more of the exceptions to the definition of Minor Violation ([Health and Safety Code \(HSC\), section 25117.6](#)).

Attachment C Administrative Goal Timeline

Policy Goal Milestones	Activity	Days to Complete
-	Inspection Phase: Inspection, Inspection Report and SOO/SOV	-
-	-Debrief with Management -Decide if Enforcement will be Pursued -Update EnviroStor (Inspection date, Violations section, SOO/SOV date)	5
-	-Draft Inspection Report (Initial draft)	15
-	Enforcement Phase: Begin Penalty Matrix	-
-	-Initiate Enforcement (Draft Penalty Matrix / Request Enforcement Site Code) -Continue Drafting Inspection Report	10
-	-Supervisor review of Inspection Report -Work Meeting for Inspection Report -Request Attorney if Penalty is >\$30K -Continue Drafting Penalty Matrix	10
Day 50	-Finalize Inspection Report and Send it to the Facility -Continue Drafting Penalty Matrix -Update EnviroStor and Upload Documents -Code for File Room and File Original Hardcopies	10
Day 65	-Required to Provide Inspection Report to Facility (HSC section 25185)	-
Day 70	-Notification of Exception to Day 65 requirement (HSC section 25185)	-
-	Enforcement Phase: Penalty Matrix	-
-	-Penalty Matrix Review -Work Meetings to Finalize Penalty Matrix	25
Day 90	-Present to Penalty Work Group OR Review by Small Penalty Case Reviewer if Penalty is ≤\$30K -Draft Enforcement Order	15
-	Enforcement Phase: Settlement	-
-	-Continue Drafting Enforcement Order to Include Penalty Amount -Review and finalize Enforcement Order or Consent Order	15
-	-Start Negotiations -Present Finalized Enforcement Order Draft	15
-	-Negotiations and Settlement Meetings	45
Day 180	-Issue Enforcement Order or Settle With Consent Order	15
-	Settlement with Consent Order and update EnviroStor OR Enforcement Phase: Administrative Case	-
Day 240	-Comply with Office of Administrative Hearings Procedure -Hearings -Settle with Stipulation and Order -Notice of Final Order	60
-	Settlement and Update EnviroStor	0

Note: Days(s) mean calendar days

Attachment D

Examples of Significant Non-Compliers

Examples of Significant Non-Compliers include the following:

- Repeat Class I Violation from a preceding inspection within three years
- Fail to comply with an enforcement order
- Repeat the same Class II Violation within three years
- Operate a facility without a permit or other grant of authorization
- Dispose of hazardous waste at an unauthorized point
- Fail to manage ignitable, reactive, or incompatible wastes as required by [CCR section 66264.17](#)
- Fail to have a closure or post closure plan or cost estimates for a treatment, storage, or disposal facility (TSDF)
- Fail to establish or maintain financial assurance for closure and/or post closure care
- Fail systematically to comply with manifest requirements or deviate substantially from manifesting requirements
- Fail systematically to follow container/tank labeling requirements
- Systematically use containers in poor condition
- Transport hazardous waste without being a registered transporter

Attachment E
Proof of Service Documents

- Proof of Personal Service--Civil
(<http://www.courts.ca.gov/documents/pos020.pdf>)
- Attachment to Proof of Personal Service—Civil (Documents Served)
(<http://www.courts.ca.gov/documents/pos020d.pdf>)
- Attachment to Proof of Personal Service—Civil (Persons Served)
(<http://www.courts.ca.gov/documents/pos020p.pdf>)
- Proof of Service by First-Class Mail—Civil
(<http://www.courts.ca.gov/documents/pos030.pdf>)
- Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)
(<http://www.courts.ca.gov/documents/pos030d.pdf>)

Attachment F
Roles and Responsibilities

1. Deputy Director, Hazardous Waste Management Program (HWMP)
 - Sign enforcement settlements of any amount, as appropriate
 - Negotiate settlements of enforcement actions, as appropriate given the circumstances of the case
 - Counsel staff, and consult with the Director as needed, on appropriate response actions and settlements in complex, sensitive, or controversial cases
 - Sign administrative enforcement orders for any cases with or without an assessed penalty, as appropriate

2. Division Chief or Chief Investigator
 - Sign enforcement settlements for up to \$2,500,000
 - Negotiate settlements of enforcement actions, as appropriate given the circumstances of the case
 - Counsel staff, and consult with the Deputy Director as needed, on appropriate response actions and settlements in complex, sensitive, or controversial cases
 - Sign administrative enforcement orders for any cases with or without an assessed penalty, as appropriate

3. Branch Chief and Supervising Criminal Investigator II
 - Concur and sign off on litigation referral packages
 - Sign administrative enforcement orders for any case, as appropriate
 - Sign enforcement settlements for up to \$500,000, as appropriate
 - Negotiate settlements of enforcement actions of up to \$500,000, as appropriate given the circumstances of the case
 - Counsel staff, and consult with the Deputy Director and Division Chief, as needed, on appropriate response actions and settlements in complex, sensitive, or controversial cases

Attachment F
Roles and Responsibilities
(continued)

- Approve referrals of enforcement actions to other agencies, as appropriate
- Ensure the integrity of the inspection, complaint and enforcement information in EnviroStor, or successor database, is maintained

4. Unit Chief (Supervisor)

- Review and approve violation classifications, enforcement responses, and penalties
- Review and approve inspection reports and statements of fact
- May present penalty calculations
- Sign administrative enforcement orders (AEO)
- Sign enforcement settlements up to \$75,000
- Negotiate settlements of enforcement actions up to \$75,000
- Monitor enforcement referrals and negotiate actions with the Attorney General (AG) until adjudicated
- Notify the Environmental Program Manager in the office where the order is being issued at least five days prior to issuance of the order so the local jurisdiction can be notified
- Provide Office of Criminal Investigations (OCI) with copies of all referrals to District Attorneys (DA), City Attorneys (CA), and the United States (US) Attorney
- Notify OCI quarterly of the status of referrals to DAs, CAs, and the US Attorney until adjudicated
- Oversee return of violators to compliance on enforcement actions and/or settlements
- Submit data for entry into EnviroStor

Attachment F
Roles and Responsibilities
(continued)

5. Senior Environmental Scientist (Specialist)

- Determine violation classifications, enforcement responses, and penalties
- Prepare, review, approve, and sign statements of fact
- May present penalty calculations to Penalty Work Group (PWG)
- Sign AEO orders
- Sign enforcement settlements up to \$75,000
- Negotiate settlements of enforcement actions up to \$75,000
- If delegated by the supervisor, provide OCI with copies of all referrals to DAs, CAs, the AG, and the US Attorney
- Monitor DAs, CAs, the AG and the US Attorney enforcement referrals until adjudicated
- If delegated by the supervisor, notify OCI quarterly of the status of referrals of DAs, CA, and US Attorney until adjudicated
- Submit data for entry into EnviroStor

6. Inspector

- Determine and classify violations at the time of inspection
- Ensure Enforcement and Emergency Response Division (EERD) and OCI supervisors are aware of planned inspection work and/or complaint work
- Issue Notice to Comply
- Complete a Summary of Violations (SOVs) prior to preparing the inspection report

Attachment F **Roles and Responsibilities**

(continued)

- At the time of the inspection, provide Respondent with clear information on observed violations and how to return to compliance
- Prepare inspection report
- Make recommendations to a Senior Scientist on the class and type of violations, the appropriate enforcement response and return to compliance dates, and the appropriate penalties
- Prepare enforcement orders, statements of facts, enforcement referral packages, responses to compliance submittals, and related documents
- Present penalty calculations to PWG
- Submit rough draft of enforcement orders for review and comment prior to issuance
- Oversee return of violators to compliance on enforcement actions and/or settlements
- Conduct compliance follow-up to ensure violators return to compliance with the law and comply with all terms of enforcement settlement
- Participate in negotiations and provide draft settlement language, as appropriate
- Ensure data is entered into EnviroStor and obtain an assigned docket number

7. Criminal Investigator

- Conduct investigations of potential criminal activity related to hazardous waste management
- May issue SOV
- Write reports of investigation and statements of fact
- Make recommendations to senior staff on the class of violations and type of violators for appropriate enforcement responses

Attachment F
Roles and Responsibilities
(continued)

- Present Penalty calculations to PWG
 - Prepare enforcement orders, statements of facts, enforcement referral packages, responses to compliance submittals, and related documents
 - Submit rough draft enforcement orders for review and comment prior to issuance
 - Work with violators to assist them to return to compliance
 - May conduct compliance follow-up to ensure violators return to compliance with the law and comply with all terms of enforcement settlement
 - Participate in negotiations and provide draft settlement language, as appropriate
 - Submit, for supervisor approval, data for entry into EnviroStor or successor database (OCI currently maintains a separate database)
 - Monitor referrals to the DAs, CAs, and the AG and the US Attorney until adjudicated by completing supplemental reports on a quarterly basis (including copies of all pertinent documents)
8. Office of Legal Counsel (OLC)
- Review (or draft) and approve enforcement orders and prepare enforcement documents as required
 - Provide legal advice as needed in the development and settlement of enforcement actions
 - Represent DTSC and/or act as a liaison to the DAs, CAs, the AG, or the US Attorney during enforcement actions, when appropriate (note: in cases with penalties under \$75,000, program staff will generally conduct informal conferences, unless legal assistance is requested or unless an attorney is representing the Respondent)
 - Review and approve all referrals to the AG. Receive notifications of all DTSC referrals to DAs, CAs, and the US Attorney
 - Provide other legal assistance, as required
 - Annually update and revise enforcement forms

Attachment F
Roles and Responsibilities
(continued)

9. Office of Criminal Investigations

- Investigate environmental crimes
- Provide investigative advice and support as needed in the development of enforcement actions
- Refer cases initiated by OCI to DAs, CAs, the AG and the US Attorney
- Maintain a database to track all referrals made to DAs, CAs, the AG, and the US Attorney, and maintain a central file for all such referrals
- Support California Environmental Protection Agency (CalEPA) in its cross-media investigation efforts
- Support task forces around the State
- Participate in multimedia investigations, as appropriate

10. Regional Emergency Response Division Data Manager

- Maintain EnviroStor. Provide data entry support; create specialized reports and tickler files

Attachment G Definitions

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

- A. **Administrative Enforcement Action:** 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, DSTC 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.
- B. **Chronic Violation:** 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.
- C. **Civil Enforcement Action:** DTSC may refer a case to the AG's Office to file a civil complaint in a 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, may seek costs, and require certain actions or other compliance activities (injunctive provisions) 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 potential penalties. Civil cases may be filed by the AG, DA's Office, County Counsel, CA, or the US AG. Criminal cases are filed by a local, state or federal prosecutor on behalf of the People of the California State or United States (See [Definition F](#) below).
- D. **Class I Violation:** The [HSC section 25110.8.5](#) defines a Class I Violation as a violation that is a significant threat to human health or safety or the environment because of volume, hazardousness, and/or proximity of the population at risk. A Class I Violation is also a violation that could result in a failure to possess adequate financial assurance or perform corrective action including emergency cleanup. 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.

- E. **Class II Violation:** The [CCR section 66260.10](#) defines a Class II Violation as a violation that is not a Class I Violation and does not meet the conditions of a Minor Violation.
- F. **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 to local, state or federal prosecutors for filing as a criminal case when 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 US Attorney (for a federal case) in the name of the People of California or the United States (for a federal case) and DTSC provides technical support to the offices prosecuting these cases.
- G. **Day(s):** Means calendar day(s) from the first day of inspection, unless otherwise noted.
- H. **Minor Violation:** The [HSC section 25117.6](#) defines a Minor Violation as a subset of a Class II Violation that is not knowing, willful or intentional, does not enable the Respondent to gain an economic benefit for noncompliance, is not chronic or is not committed by a recalcitrant violator.
- I. **Operator:** Is the person responsible for the overall operation of a facility ([CCR section 66260.10](#)).
- J. **Recalcitrant Violator:** Is 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 (HWCL)) ([HSC section 25117.6](#)).
- K. **Respondent:** Is a person, including any individual, company or entity listed in [HSC section 25118](#), cited for a violation.
- L. **Significant Non-Complier:** Consistent with United States Environmental Protection Agency (US 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.
- M. **Supplemental Environmental Project (SEP):** Is an environmentally beneficial project that a Respondent voluntarily agrees to undertake in settlement of enforcement action to offset a portion of an administrative or civil penalty. In turn, DTSC agrees to reduce the monetary penalty that would otherwise apply as a result of the violation(s). SEPs are carried in accordance with DTSC's SEP Policy ([DTSC-OP-035](#)).