

# Fact Sheet

The mission of DTSC is to protect California's people and environment from harmful effects of toxic substances by restoring contaminated resources, enforcing hazardous waste laws, reducing hazardous waste generation, and encouraging the manufacture of chemically safer products.

## Hazardous Waste Facility Permitting Criteria Regulations: New Violations Scoring Procedure Effective January 1, 2019

This fact sheet provides an overview of the Violations Scoring Procedure (VSP) regulations, which became effective January 1, 2019. The VSP regulations, found at California Code of Regulations (Cal. Code Regs.), title 22, section 66271.50 through 66271.57, require DTSC to comprehensively evaluate each hazardous waste facility's compliance history as part of the permit decision-making process. The VSP regulations establish a systematic process for evaluating and characterizing a hazardous waste facility's compliance with substantive hazardous waste management requirements. This fact sheet includes basic information regarding this process.

### Benefits of the VSP Regulations

The new Facility VSP Score and the corresponding assigned compliance tier provide DTSC important permitting decision metrics. The VSP regulations are meant to incentivize facilities to improve compliance performance and reduce the number of violations, which over time will result in better protection of public health and the environment. The regulations will also foster a better understanding of permitting decisions.

### What Facilities are Subject to the VSP Regulations

The VSP regulations apply to all permitted operating hazardous waste facilities, except for those facilities solely authorized by one of two types of authorizations: (1) post-closure permits or orders; and (2) permits and permit modifications for closure only.<sup>1</sup>

### How Does DTSC Score a Facility?

Generally, each Class I violation is evaluated and scored for each compliance inspection. A Facility VSP Score is calculated by summing the scores for all Class I violations for compliance inspections over a rolling ten-year period, and then dividing by the number of compliance inspections.

**Class I Violation Scoring** – For the preceding ten calendar years, DTSC will score all Class I violations and any Class II violations that meet the definition of a Class I violation.<sup>2, 3</sup> The score for any Class I violation that has been cancelled, retracted, withdrawn or successfully challenged in an administrative or judicial proceeding will not be scored.<sup>4</sup> When calculating a score for each Class I violation, DTSC shall determine the potential harm to public health and safety or the environment posed by the violation and the extent of deviation from hazardous waste management requirements posed by the violation.<sup>5</sup> DTSC must categorize the potential harm and extent of deviation as “major,” “moderate,” or “minimal.”



DTSC shall use the matrix shown in Figure 1 to determine the score for each Class I violation, selecting the score from the matrix cell that corresponds to the appropriate potential harm and extent of deviation categories.

Figure 1. Matrix for Scoring Class 1 Violations

Extent of Deviation	Potential Harm		
	Major	Moderate	Minimal
Major	25	20	15
Moderate	20	15	6
Minimal	15	6	2

DTSC shall also make an adjustment for repeat violations only if the owner or operator has been given at least one Summary of Violations at the same facility within the prior three years or last three compliance inspections, whichever time period is longer. See Figure 2 for a matrix depicting the adjustment for repeat Class I violations.

Figure 2. Adjustment for Repeat Class 1 Violations

Adjustment Factors for Repeat Violations	Circumstance
Upward Adjustment of 25 percent	Second instance
Upward Adjustment of 50 percent	Third instance
Upward Adjustment of 100 percent	Fourth or more instances

**Provisional and Final Inspection Violation Scores** – Each compliance inspection for the past ten years is given a provisional inspection violation score. Additionally, all inspections that occurred after the effective date of the VSP regulations (January 1, 2019), will also be given a provisional inspection violation score. A provisional inspection violation score is the sum of the scores for all Class I violations found during the compliance inspection and adjusted for repeat violations.<sup>6</sup> If a compliance inspection has no Class I violations the inspection violation score is zero.

A facility can dispute a provisional inspection violation score by filing a Provisional Inspection Violation Score Dispute Document (“Dispute Document”) within 60 days of DTSC sending the provisional inspection violation score. The contents of the Dispute Document are outlined in the regulations.<sup>7</sup> DTSC’s dispute resolution official will then issue a written decision granting or denying, in whole or in part, the relief sought by the facility. The dispute resolution official’s decision will become the final inspection violation score. If a facility does not file a Dispute Document within the applicable time frame, the provisional inspection violation score becomes final. Final inspection violation scores are not subject to additional administrative dispute resolution.<sup>8</sup>

**Annual Facility VSP Scores** – The Facility VSP Score calculation includes all Class I violations that are found during DTSC compliance inspections over a rolling ten-year period. The sum of all final inspection violation scores is then divided by the number of compliance inspections that occurred during the preceding ten-year period. The resulting number is the Facility VSP Score. Each year, DTSC will re-calculate the Facility VSP Scores for the prior ten years. This time span only includes calendar years.<sup>9</sup> For example, the 2019 Facility VSP Score will include all inspection violation scores for compliance inspections that occurred between January 1, 2009, and December 31, 2018. The 2020 Facility VSP Score will include all inspection violation scores for compliance inspections that occurred between January 1, 2010, and December 31, 2019.

**Notification and Posting of Facility VSP Scores** – On or before September 30 of each calendar year, DTSC shall provide written notice to each facility of their Facility VSP Score through December 31 of the prior calendar year. DTSC will post on its website the Facility VSP Score and compliance tier assignment for each permitted operating hazardous waste facility by December 31 each year.<sup>10</sup>

## Compliance Tiers

DTSC shall assign a facility to a compliance tier based on the Facility VSP Score.<sup>11</sup> A Facility will be assigned to one of the following three compliance tiers: “acceptable,” “conditionally acceptable,” and “unacceptable.”

**“Acceptable”** – A facility that receives a Facility VSP Scores of less than 20 shall be designated as having a Facility VSP Score that is “acceptable.” A compliance tier assignment of “acceptable” is not subject to additional administrative dispute resolution.



**“Conditionally Acceptable”** – A facility that receives a Facility VSP Score equal to or greater than 20 and less than 40 shall be designated as having a Facility VSP Score that is “conditionally acceptable.” A compliance tier assignment of “conditionally acceptable” is not subject to additional administrative dispute resolution.

Facilities that receive a final compliance tier assignment of “conditionally acceptable” are required to comply with additional requirements outlined in the regulations.<sup>12</sup> A facility that receives a “conditionally acceptable” compliance tier assignment will be required to prepare and provide at least two third-party compliance audits to DTSC.<sup>13</sup> A compliance audit is a detailed review of the facility’s hazardous waste operations to assess compliance with applicable environmental laws and regulations, identify violations, and recommend actions needed to return to compliance. Federal facilities may prepare and submit to DTSC a facility self-disclosure audit using an internal auditor. Upon review, DTSC may then impose other permit restrictions or enhancements, mitigation measures, or even prohibitions on some hazardous waste management activities — deemed necessary to protect human health, safety, or the environment.<sup>14</sup>



**“Unacceptable”** – A facility that receives a Facility VSP Score equal to or greater than 40 shall be designated as having a Facility VSP Score that is “unacceptable.” DTSC is required to initiate permit denial, suspension, or revocation proceedings for facilities that receive a final compliance tier assignment of “unacceptable.”<sup>15</sup>



A facility may challenge an “unacceptable” compliance tier rating. If a facility does not challenge the compliance tier assignment, the facility’s “unacceptable” compliance tier assignment will become final sixty (60) days after DTSC’s written notice of the facility’s compliance tier assignment.<sup>16</sup> If a facility submits a written notice challenging its “unacceptable” compliance tier assignment within sixty (60) days, a public meeting will take place where DTSC will present the grounds for assigning the facility an “unacceptable” compliance tier and the facility will demonstrate its opposition.<sup>17</sup> The public is also provided an additional public comment period to weigh in on the pending permit decision. DTSC will issue a written decision regarding the facility’s challenge of its “unacceptable” compliance tier assignment, which will then constitute the facility’s final compliance tier assignment.

DTSC may still grant a permit or a permit modification to a facility given an “unacceptable” compliance tier assignment if DTSC determines the operation of the facility will not pose a threat to public health, safety, or the environment.<sup>18</sup> However, DTSC is required by the VSP regulations to impose mandatory permit restrictions, which include limiting the length of the permit, requiring additional audits, and requiring the correction for all potential harm associated with the facility operations.<sup>19</sup>

## Contact Information and Link to Regulation

If you have questions about the regulations or the applicability of the various requirements, please contact the Regulatory Assistance Office at (800) 72TOXIC or send an email to [permits\\_hwm@dtsc.ca.gov](mailto:permits_hwm@dtsc.ca.gov).

DTSC's hazardous waste regulations are located in the official version of the California Code of Regulations at [Title 22 Social Security, Division 4.5, Environmental Health Standards for the Management of Hazardous Waste](#). (This link goes to the Westlaw website and will open in a new tab/window.)

### Quick Reference Guide: Amended Regulations in Division 4.5 of Title 22 of California Code of Regulations

#### Chapter 21, Procedures for Hazardous Waste Permit Decisions

- **Article 3. Violations Scoring Procedure for Hazardous Waste Facility Operations**
  - § 66271.50 Definitions and Applicability
  - § 66271.51 Determining the Initial Score for Each Class I Violation<sup>64</sup>
  - § 66271.52 Adjustment to the Initial Score for Repeat Class I Violations
  - § 66271.53 Inspection Violation Score
  - § 66271.54 Facility Violations Scoring Procedure (VSP) Score and Compliance Tier
  - § 66271.55 Hazardous Waste Facility Permit Decisions
  - § 66271.56 Requirements for Facility VSP Score of “Conditionally Acceptable”
  - § 66271.57 Requirements for Facility VSP Score of “Unacceptable”

**Disclaimer:** This fact sheet addresses select provisions of the amended regulations using plain language. Nothing in this fact sheet is meant to replace or revise any regulatory provisions or any other part of the California Code of Regulations or the California Health and Safety Code.

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The following cited sections are all found in Title 22 of the California Code of Regulations:

<sup>1</sup> § 66271.50, subd. (b).

<sup>2</sup> The definition of Class 1 violations as specified in section 66260.10.

<sup>3</sup> § 66271.50, subd. (d)(1).

<sup>4</sup> § 66271.54, subd. (a)(2).

<sup>5</sup> § 66271.51, subd. (a).

<sup>6</sup> § 66271.53, subd. (b).

<sup>7</sup> § 66271.53, subd. (c)(2).

<sup>8</sup> § 66271.53, subds. (c) and (d).

<sup>9</sup> § 66271.54, subd. (c).

<sup>10</sup> § 66271.54, subd. (c).

<sup>11</sup> § 66271.54, subd. (b).

<sup>12</sup> § 66271.56.

<sup>13</sup> § 66271.56, subd. (a)(1).

<sup>14</sup> § 66271.56, subd. (b) and (c).

<sup>15</sup> §§ 66271.54, subd. (b)(3) and 66271.57.

<sup>16</sup> § 66271.54, subd. (b).

<sup>17</sup> § 66271.54, subd. (e).

<sup>18</sup> § 66271.54, subd. (g).

<sup>19</sup> § 66271.54, subd. (h).