

MEMORANDUM

TO: Violations Scoring Procedure Team

FROM: Keith Kihara, Chief 
Enforcement and Emergency Response Division

DATE: February 1, 2019

SUBJECT: Violations Scoring Procedure for Operating Permitted Hazardous Waste Facilities

INTRODUCTION AND BACKGROUND

The purpose of this document is to provide the Department of Toxic Substances Control's (DTSC) Violations Scoring Procedure (VSP) Team with general guidance regarding how to calculate provisional inspection violation scores and Facility VSP Scores and make compliance tier assignments pursuant to the VSP regulations found at [California Code of Regulations \(CCR\), title 22, sections 66271.50 through 66271.54](#). This guidance is not a rule and is intended only as general guidance for DTSC staff to begin implementing the VSP regulations.¹ The extent to which this guidance applies may depend on facility-specific facts, and these facility-specific circumstances may require that DTSC staff deviate from this guidance.

The VSP regulations took effect on January 1, 2019, and apply to all operating permitted hazardous waste facilities, except for those facilities **solely** authorized under a post-closure permit or order, or a permit or permit modification for closure only. The VSP regulations also apply to hazardous waste facility permit applicants. The VSP regulations establish a process for evaluating and scoring an operating permitted hazardous waste facility and permit applicant's Class I violations over a rolling ten (10) year period, so DTSC can assign the facility to one of three compliance tiers. DTSC's Permitting Division will then consider, among other information, the Facility VSP Score and compliance tier assignment as part of its review of a hazardous waste facility's compliance history when deciding to issue, deny, revoke, suspend, or modify a permit. ([22 CCR § 66271.55](#).) Additionally, DTSC is required to initiate a process to deny, suspend, or revoke a permit for hazardous waste facilities assigned to an "unacceptable" compliance tier or may grant a permit or permit modification when appropriate (discussed below). ([22 CCR § 66271.57, subd. \(a\)](#).)

As detailed below, DTSC is required to calculate an annual Facility VSP Score for each operating permitted hazardous waste facility subject to the VSP regulations. ([22 CCR §](#)

¹ This document and implementing procedures are intended solely as guidance. It does not constitute a rulemaking by 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 document or any implementing procedures.

66271.54, subd. (c).) A Facility VSP Score consists of the sum of the inspection violation scores for each “compliance inspection” conducted during the preceding ten (10) year period, ending on December 31 of the prior calendar year, divided by the number of such inspections. (*Id.* at 22 CCR § 66271.54, subds.(a), (c).)² An inspection violation score is the sum of the scores for all Class I violations found during a compliance inspection, including any adjustments for repeat violations. (22 CCR §§ 66271.51, 66271.52.)

By September 30 of each year, DTSC shall issue a Facility VSP Score, including all provisional and final inspection violation scores used to calculate the Facility VSP Score, and compliance tier assignment to all operating permitted hazardous waste facilities and permit applicants. DTSC will post all Facility VSP Scores and compliance tier assignments to DTSC’s website by December 31 of each year.

“COMPLIANCE INSPECTION” DEFINED

A “compliance inspection,” as defined in CCR, title 22, section 66271.50, subdivision (a)(1), means:

[A]n evaluation of a hazardous waste facility’s compliance with any operating hazardous waste management requirements set out in statute, regulation, permit, order, stipulation, agreement, settlement document, judgment, decree, grant of authorization issued by the Department, or other document establishing requirements upon operations at the facility. “Compliance inspection” includes, but is not limited to, scheduled and unscheduled inspections by the Department. A “compliance inspection” may last more than one day.

DTSC conducts numerous types of inspections and evaluations, including, but not limited to:

- Case Development Inspections
- Complaint Investigations
- Compliance Evaluation Inspections
- Facility Self Disclosures
- Financial Record Reviews
- Financial Self Disclosures
- Focused Compliance Inspections
- Follow-Up Inspections
- Groundwater Audit Inspections
- Groundwater Monitoring Evaluations
- Non-Financial Record Reviews
- Operation and Maintenance Inspections
- Post-Closure Inspections³

² In 2019, for example, DTSC will issue Facility VSP Scores and make compliance tier assignments based on compliance inspections that occurred in the ten (10) year period commencing on January 1, 2009 and ending on December 31, 2018. In 2020, DTSC will issue Facility VSP Scores and make compliance tier assignments based on compliance inspections that occurred in the ten (10) year period commencing on January 1, 2010 and ending on December 31, 2019.

³ The VSP regulations exempt hazardous waste facilities “solely” authorized pursuant to post-closure permits or orders and permits or permit modifications for closure only. (22 CCR § 66271.50 subd. (b).) However, if a facility is operating under both an active permit and post-closure permit or order, DTSC may, for the purpose of the VSP, consider any Class I violations found during a Post-Closure Inspection, regardless of whether the violation is related to a closed unit or tank.

DTSC may consider inspections individually or group related inspections together and consider them as a single "compliance inspection" for purposes of calculating an inspection violation score pursuant to the VSP regulations. For example, DTSC staff may consider a Compliance Evaluation Inspection (CEI) and a Financial Record Review (FRR) as one "compliance inspection" for purposes of calculating an inspection violation score where the Enforcement and Emergency Response Division (EERD) requests the Financial Responsibility Unit to conduct an FRR as part of the CEI. When grouping multiple inspections together into one "compliance inspection," DTSC may consider, among other relevant factors, whether the inspections were triggered by the same or a common precipitating event and whether the inspections were conducted simultaneously or in close proximity in time to one another.

The following examples illustrate this point:

1. DTSC conducts a CEI on January 1-3, 2019. As part of the CEI, the inspector creates a work request for a FRR, which takes place on February 10, 2019. On February 15, 2019, DTSC issues the CEI Inspection Report, FRR Findings, and notice of provisional inspection violation score for the CEI and FRR to the facility. In this scenario, the CEI and the FRR are related because the FRR occurred as part of the CEI. The two inspections share a common precipitating event (the CEI) and can therefore be considered and scored together as a single compliance inspection despite having occurred on separate dates.
2. DTSC conducts a CEI on January 1-3, 2019. As part of the CEI, the inspector creates a work request for an FRR, which takes place on February 10, 2019. During the CEI, a violation was cited and documented in an Inspection Report issued to the facility on February 15, 2019. DTSC's inspectors return to the facility for a Follow-Up Inspection (FUI) on September 30, 2019, to determine whether the facility has returned to compliance for the violation that was found during the CEI. During the FUI, DTSC finds the facility has not returned to compliance and cites the facility for additional violations. These violations are documented in the FUI Inspection Report. In this example, the CEI and FRR can be scored together, as they are triggered by the January CEI. However, the FUI can be considered an independent inspection and may be scored as a separate compliance inspection.
3. DTSC conducts a CEI on January 1-3, 2019. DTSC then conducts a Groundwater Audit Inspection on January 4, 2019, as required by the facility's permit. These two inspections are independent and can be considered and scored as two separate compliance inspections.

PROVISIONAL INSPECTION VIOLATION SCORING PROCEDURES

For compliance inspections that occur after January 1, 2019, the VSP regulations require DTSC to provide operating permitted hazardous waste facilities and permit applicants with a provisional inspection violation score concurrent with the inspection report for the compliance inspection. For compliance inspections that occur before January 1, 2019, the VSP regulations require DTSC to provide operating permitted hazardous waste facilities and permit applicants with all provisional inspection violation scores at the time DTSC issues the

facility's Facility VSP Score and compliance tier assignment. Some of the steps below more specifically apply to DTSC's calculation of Facility VSP Scores for compliance inspections conducted prior to January 1, 2019. However, the steps provide general guidance on how to calculate provisional inspection violation scores, which will assist DTSC in calculating provisional inspection violation scores for compliance inspections that occur after January 1, 2019. (See [22 CCR § 66271.53](#).)

1. Prior to scoring a facility, DTSC will determine the number of compliance inspections that occurred in the most recent ten (10) year period, utilizing the compliance inspection guidance provided in this document.
2. After the number of compliance inspections is determined, DTSC will review each Class I and Class II violation cited during the applicable ten (10) year period and determine whether the violation meets the regulatory definition of a Class I violation. (See [22 CCR § 66260.10](#).) DTSC will not score any violations that have been cancelled, retracted, withdrawn or successfully challenged in an administrative or judicial proceeding or through settlement negotiations. Accordingly, all settlement, judgment, or other documents reflecting the final resolution of an enforcement matter will take precedence over any other enforcement document for the purpose of determining whether a violation should be scored.⁴
3. If a violation meets the regulatory definition of a Class I violation, DTSC will proceed to calculate a provisional inspection violation score for that violation. If a violation does not meet the definition of a Class I violation, DTSC will not calculate a provisional inspection violation score for the violation.
4. DTSC shall use the scoring matrix set forth in [CCR, title 22, section 66271.51, subdivision \(d\)](#), to calculate an initial score for each Class I violation, considering the violation's potential harm to public health and safety or the environment and extent of deviation from hazardous waste management requirements. The potential harm and extent of deviation will be categorized as "Major", "Moderate", or "Minimal" pursuant to the factors outlined in CCR, title 22, section 66271.51, subdivisions (b) and (c), and DTSC will use the matrix for scoring set forth in section 66271.51, subdivision (d) to calculate the initial score for each Class I violation.
5. DTSC will adjust the initial score for each Class I violation to reflect repeat violations pursuant to [CCR, title 22, section 66271.52](#). A repeat violation, is defined in [CCR, title 22, section 66271.50, subdivision \(a\)\(3\)](#), as "two or more violations of the same or closely-related statutory or regulatory requirements in separate compliance inspections; or of the same term, condition, or provision of a permit, order, stipulation, agreement, settlement document, judgment, decree, grant of authorization issued by the Department, or other document establishing requirements upon operations at the facility." The regulations provide that DTSC "shall make an adjustment for a repeat violation 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 inspections, whichever time period is longer, and such Summary of Violations has not been cancelled, retracted,

⁴ A violation with multiple instances will be scored as a single violation. If, however, the same violation is cited multiple times in the enforcement documents, each occurrence of the violation will be scored.

withdrawn, or successfully challenges in an administrative or judicial proceeding. The adjustment for a repeat violation based on issuance of a Summary of Violations shall occur regardless whether the owner or operator corrected a violation after receipt of the Summary of Violations.” ([22 CCR § 66271.52, subd. \(b\).](#))

DTSC will not adjust a Class I violation’s initial score for a repeat violation if the same violation occurred more than one time within the same compliance inspection.

6. Once all Class I violations are scored, DTSC will calculate a provisional inspection violation score for each compliance inspection falling within the applicable ten (10) year period. 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. (See [22 CCR § 66271.53, subd. \(a\).](#))
7. All provisional inspection violation scores will be documented on a Violation Scoring Matrix, which, when final, will be included in an Administrative Record supporting the provisional inspection violation scores, Facility VSP Score, and compliance tier assignment (see below). The Violation Scoring Matrix will also be provided to a facility concurrent with the issuance of an inspection violation score or Facility VSP Score. (See [22 CCR § 66271.53, subd. \(b\)\(2\).](#))
8. Once provisional inspection violation scores are calculated for each compliance inspection falling within the applicable ten (10) year period, DTSC will calculate the Facility VSP Score pursuant to [CCR, title 22, section 66271.54, subdivision \(a\)](#). The Facility VSP Score consists of the sum of all provisional or final inspection violation scores for each compliance inspection conducted during the preceding ten (10) years, divided by the number of compliance inspections. (See [22 CCR § 66271.54, subd. \(a\).](#))
9. Based upon the Facility VSP Score, DTSC will assign the facility to one of three compliance tiers (See [22 CCR § 66271.54, subd. \(b\).](#)):

“**Acceptable**” is a Facility VSP Score of less than 20.

“**Conditionally Acceptable**” is a Facility VSP Score equal to or greater than 20 and less than 40.

“**Unacceptable**” is a Facility VSP Score equal to or greater than 40.

10. Once the Facility VSP Score has been determined, DTSC will issue a letter to the facility with the provisional inspection violation score for each compliance inspection conducted during the preceding ten-year period, the Facility VSP Score, and the facility’s compliance tier assignment. A copy of the Violation Scoring Matrix will also be provided.

FINAL INSPECTION VIOLATION SCORES

The VSP regulations outline a dispute process pursuant to which an owner or operator of an operating permitted hazardous waste facility or permit applicant may dispute a provisional inspection violation score. ([22 CCR § 66271.53.](#)) Provisional inspection violation scores become final inspection violation scores:

1. If an owner or operator of an operating permitted hazardous waste facility or permit applicant does not file a Provisional Inspection Violation Score Dispute Document (Dispute Document) with DTSC within sixty (60) days of DTSC sending the provisional inspection violation score. ([22 CCR § 66271.53, subd. \(d\)\(1\).](#))
2. If an owner or operator of an operating permitted hazardous waste facility or permit applicant files a timely Dispute Document, the provisional inspection violation score will become the final inspection violation score consistent with the dispute resolution official's written decision. ([22 CCR § 66271.53, subd. \(c\)\(4\).](#))

FINAL FACILITY VSP SCORE

The compliance tier assignment for a facility that is assigned to an "acceptable" or "conditionally acceptable" compliance tier based on its Facility VSP Score is final when all inspection violation scores on which the Facility VSP Score is based are also final pursuant to [CCR, title 22, section 66271.53, subdivision \(d\)](#). A final compliance tier assignment of "acceptable" or "conditionally acceptable" is not subject to additional administrative dispute resolution. (See [22 CCR § 66271.54, subd. \(e\).](#))

The owner or operator of a facility assigned to a compliance tier of "unacceptable" may dispute its compliance tier assignment pursuant to [CCR, title 22, section 66271.57](#). The compliance tier assignment for a facility that is assigned to an "unacceptable" compliance tier based on its Facility VSP Score becomes final in accordance with CCR, title 22, section 66271.57, subdivisions (b) and (f).

VSP ADMINISTRATIVE RECORD

DTSC will compile a VSP Administrative Record for each operating permitted hazardous waste facility and permit applicant for which DTSC issues a Facility VSP Score. The VSP Administrative Record supports the provisional inspection violation scores, Facility VSP Score, and compliance tier assignment. The VSP Administrative Record will consist of copies of all documents and information considered by DTSC when calculating an inspection violation score, the Facility VSP Score, and assigning a facility to a compliance tier.⁵ The VSP Administrative Record may include, but is not limited to:

1. Summary of Observations
2. Summary of Violations (SOV)
3. Inspection Reports with cover letters and attachments
 - a. Amended Inspection Reports
 - b. Addendum Inspection Reports
4. Non-Confidential Memos to File
5. Enforcement Documents
 - a. Facility responses to the SOV(s) and Inspection Report(s)
 - b. Return to compliance correspondence and documentation
 - c. Consent Orders
 - d. Enforcement Orders

⁵ The Administrative Record Index will specify whether a document related to a compliance inspection is missing or otherwise cannot be located by DTSC.

- e. Civil or Criminal Court filings
6. Settlement Documents
 - a. Non-confidential settlement correspondence
 - b. Consent Orders
 - c. Judgments
 - d. Stipulations
7. Violation Scoring Matrix
8. Hazardous Waste Facility Permit, including authorized modifications

The VSP Administrative Record will be compiled by EERD and provided to DTSC's Permitting Division. The VSP Administrative Record will be maintained by DTSC staff in the regional office overseeing the permit for the facility.

The VSP Administrative Record will contain an index that lists each document contained in the record and the date, author, and office in which the original document is located. DTSC will update the index, as needed, to reflect any changes to the VSP Administrative Record.

A request to review or receive a copy of a VSP Administrative Record must be made in writing. Requests to review or receive a copy of a VSP Administrative Record will be treated by DTSC pursuant to a California Public Records Act (PRA) request. DTSC staff receiving a request to review or provide a copy of a VSP Administrative Record shall forward a copy of the request to the Headquarters PRA Coordinator for tracking. DTSC may also make the VSP Administrative Record available for review at the appropriate regional office. Alternatively, a person may pay DTSC at a standard rate to make a copy of the VSP Administrative Record and have it sent to them within ten (10) business days of receipt of the request. A person seeking a copy of the VSP Administrative Record may also arrange for a copy service to make a copy of the record at the requestor's expense.