



Department of
Toxic Substances
Control



RULEMAKING CONCEPTS FOR ASSESSING ADMINISTRATIVE PENALTIES FOR HAZARDOUS WASTE VIOLATORS

CONCEPTS TO UPDATE CALIFORNIA CODE OF REGULATIONS,
TITLE 22 SECTIONS 66262.60 - 66262.69





Introduction

Presenters

- Project Manager:
Renée Avila Cheperka
- Presenter:
Shyenne Lewis
- Public Participation:
Marcus Simpson

Comment Support

- Supervisor:
Abdalin Asinas
- Legal Counsel:
Julianne Culbert
- Public Participation:
James Gambrell



Land Acknowledgement

To the original people of this land, the Nisenan people, the Southern Maidu, Valley and Plains Miwok, and the Patwin Wintun peoples. May we acknowledge and honor the Native people who came before us and who were the first stewards who respect the land we walk on, the water we drink, the animals who live among us, and the trees that protect us. May we continue to do this work of honor and in partnership with the Native people who we walk beside on these ancestral lands that we have gathered here today. The Department will continue to acknowledge, appreciate and show gratitude for the indigenous people's history, contribution, culture and lives. Thank you.



Land Acknowledgement

To the original people of this land, the Lisjan people, the Karkin people, Bay and Plains Miwok, and the Muwekma Ohlone peoples. May we acknowledge and honor the Native people who came before us and who were the first stewards who respect the land we walk on, the water we drink, the animals who live among us, and the trees that protect us. May we continue to do this work of honor and in partnership with the Native people who we walk beside on these ancestral lands that we have gathered here today. The Department will continue to acknowledge, appreciate and show gratitude for the indigenous people's history, contribution, culture and lives. Thank you.



Land Acknowledgement

To the original people of this land, the Gabrielino/Tongva Nation and the Chumash peoples. May we acknowledge and honor the Native people who came before us and who were the first stewards who respect the land we walk on, the water we drink, the animals who live among us, and the trees that protect us. May we continue to do this work of honor and in partnership with the Native people who we walk beside on these ancestral lands that we have gathered here today. The Department will continue to acknowledge, appreciate and show gratitude for the indigenous people's history, contribution, culture and lives. Thank you.



Submit your Feedback

- Link to Public Comment
- <https://tinyurl.com/DTSCpenalty>
- Public Comment Ends
September 29, 2023 at 5 P.M.
- Email questions to
Penaltyregs@dtsc.ca.gov



PROJECT BACKGROUND: OUTREACH RESULTS

Clear language

Transparency in methodology

Updates to penalty matrix

Mandatory minimum penalties

Larger penalties for serious violators

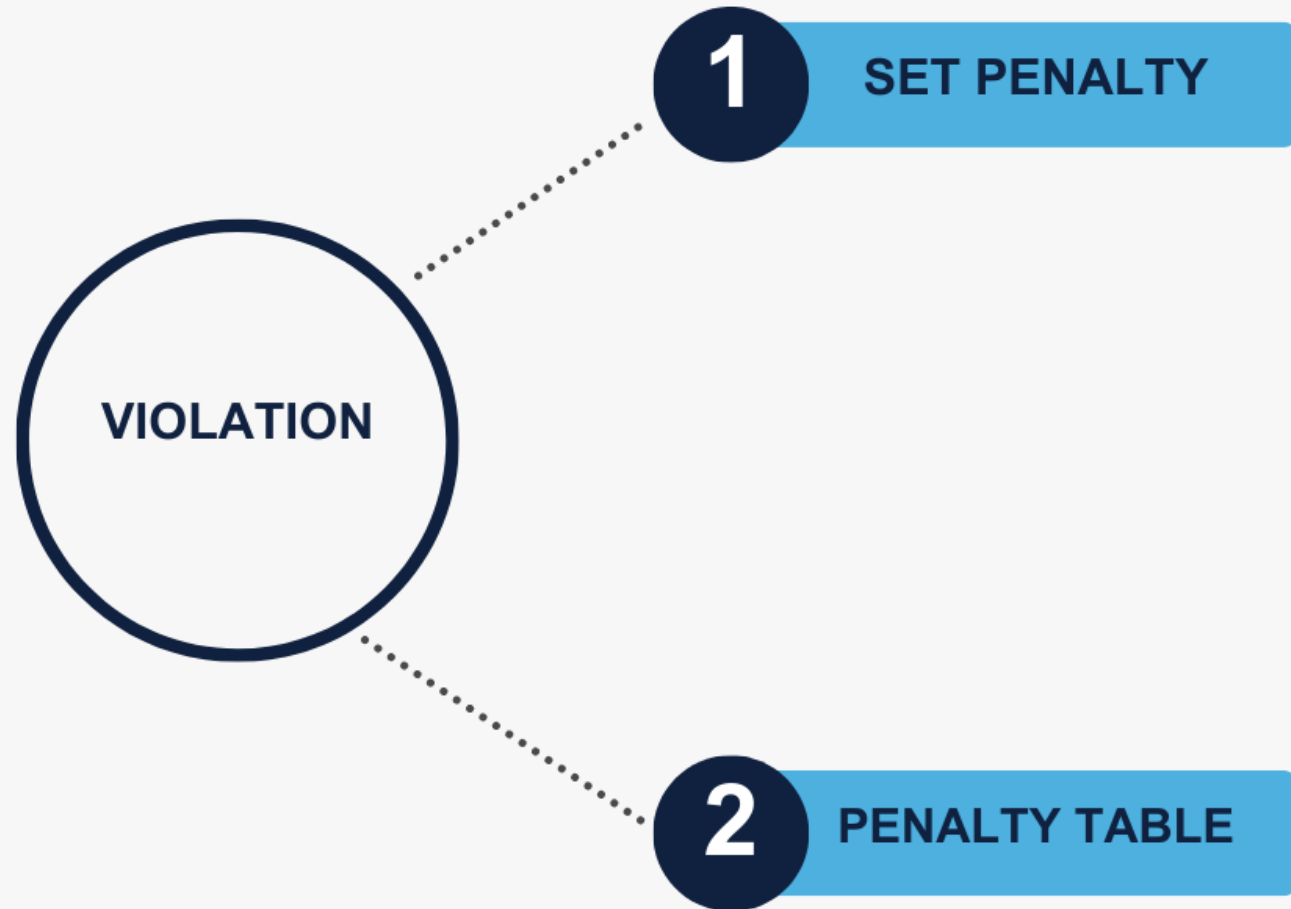
Decrease penalties for small businesses



HOW WILL THE UPDATE IMPACT THE BASE PENALTY DOLLAR AMOUNT?



Penalties for Hazardous Waste Violations





SET PENALTY

For common violations presenting low harm



BASE PENALTY SELECTION: SET PENALTY

- Set dollar amounts for each violation
- Creates transparency and consistency
- Common violations by universal waste handlers, hazardous waste transporters, and generators
- Discretion for the enforcement agency to choose
- Violations do not cause harm or release.
- Applies to facilities that fail to respond in writing when required



BASE PENALTY SELECTION: SET PENALTY

Violation Description	Citation	Justification	Set Penalty
Failure to ensure that all personnel are familiar with universal waste management and emergency response procedures.	22 CCR section 66273.36(a – d)	Group all training deficiencies for a single set penalty.	To Be Determined \$



BASE PENALTY SELECTION: SET PENALTY

Types of Letters

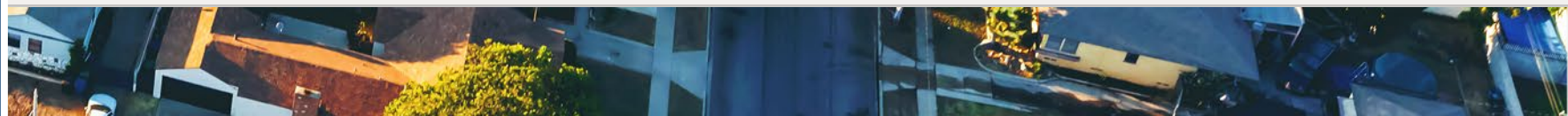
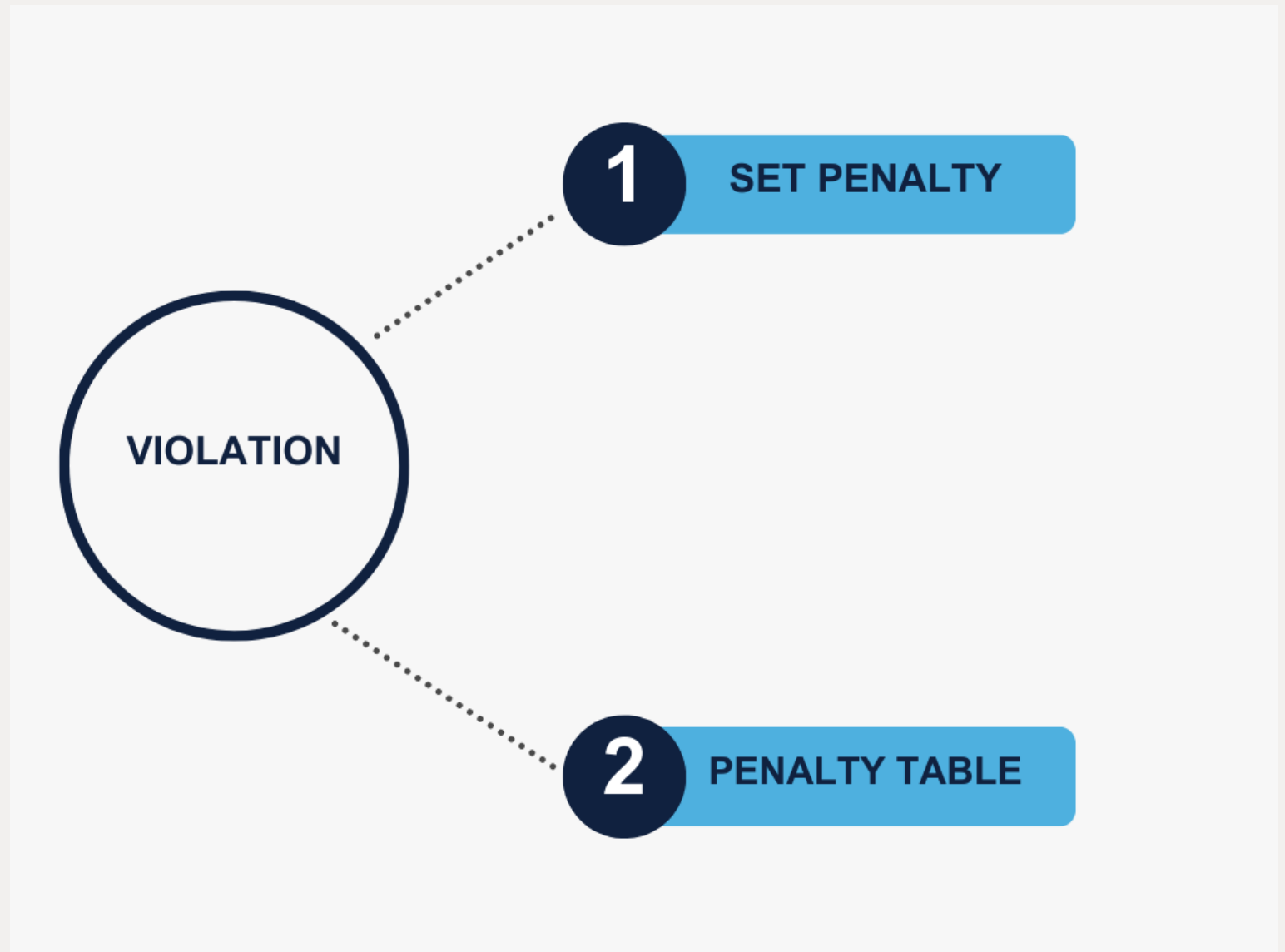
- Legal mandate requiring response
 - Notice of Deficiency
 - Request for Information
 - Corrective Action

Violation

- No response by deadline
- Submission incomplete



Penalties for Hazardous Waste Violations





PENALTY TABLE

For more complex violations.



BASE PENALTY SELECTION: PENALTY TABLE

Determination of Initial Penalty Matrix (in dollars)

<i>Extent of Deviation</i>	<i>Potential Harm</i>		
	<i>Major</i>	<i>Moderate</i>	<i>Minimal</i>
	70,000	56,000	42,000
Major	63,000	(49,000)	(29,400)
	56,000	42,000	16,800
	56,000	42,000	16,800
Moderate	(49,000)	(29,400)	(11,200)
	42,000	16,800	5,600
	42,000	16,800	5,600
Minimal	(29,400)	(11,200)	(2,800)
	16,800	5,600	0

Current Regulation



BASE PENALTY SELECTION: PENALTY TABLE

		Extent of Deviation		
		Major	Moderate	Minimal
Potential for Harm	Major	\$ 70,000	\$ 63,000	\$ 59,500
		\$ 68,250	\$ 62,125	\$ 57,750
		\$ 66,500	\$ 61,250	\$ 56,000
		\$ 64,750	\$ 60,375	\$ 54,250
		\$ 63,001	\$ 59,501	\$ 52,501
	Moderate	\$ 52,500	\$ 45,500	\$ 42,000
		\$ 50,750	\$ 44,625	\$ 40,250
		\$ 49,000	\$ 43,750	\$ 38,500
		\$ 47,250	\$ 42,875	\$ 36,750
		\$ 45,501	\$ 42,001	\$ 35,001
	Minimal	\$ 35,000	\$ 16,800	\$ 5,600
		\$ 30,450	\$ 14,000	\$ 4,375
		\$ 25,900	\$ 11,200	\$ 3,150
		\$ 21,350	\$ 8,400	\$ 1,925
		\$ 16,801	\$ 5,601	\$ 700

Proposed Update



BASE PENALTY SELECTION: POTENTIAL FOR HARM

Current

- Characteristic
- Quantity
- Harm to humans, animals, and the environment
- Proximity to drinkable water

Update

- Keep current factors and add:
 - Evidence of release
 - Waste mismanagement
 - Extent and persistence
 - Preventative provisions



BASE PENALTY SELECTION: PENALTY SELECTOR

- Penalty selection currently undefined
- Guide
 - Start at lowest value in range.
 - Move up a level for each fitting criteria:
 - ✓ RCRA waste
 - ✓ The violation occurred 3 or more times
 - ✓ Multiple violations are grouped for one penalty
 - ✓ Release occurred
 - ✓ Size and sophistication



BASE PENALTY SELECTION: PENALTY TABLE

		Extent of Deviation			
Potential for Harm		Major	Moderate	Minimal	
	Major		\$ 70,000	\$ 63,000	\$ 59,500
			\$ 68,250	\$ 62,125	\$ 57,750
			\$ 66,500	\$ 61,250	\$ 56,000
			\$ 64,750	\$ 60,375	\$ 54,250
			\$ 63,001	\$ 59,501	\$ 52,501
	Moderate		\$ 52,500	\$ 45,500	\$ 42,000
			\$ 50,750	\$ 44,625	\$ 40,250
			\$ 49,000	\$ 43,750	\$ 38,500
			\$ 47,250	\$ 42,875	\$ 36,750
			\$ 45,501	\$ 42,001	\$ 35,001
	Minimal		\$ 35,000	\$ 16,800	\$ 5,600
			\$ 30,450	\$ 14,000	\$ 4,375
			\$ 25,900	\$ 11,200	\$ 3,150
			\$ 21,350	\$ 8,400	\$ 1,925
			\$ 16,801	\$ 5,601	\$ 700

Proposed Update



WHAT FACTORS MAY IMPACT THE BASE DOLLAR AMOUNT?

PART 1: ADJUSTMENTS TO THE BASE PENALTY





ADJUSTMENTS: OVERVIEW

New Adjustments

- Self Disclosure ↓
- Environmental Equity ↑
- Unique Factors ↓



ADJUSTMENTS: SELF DISCLOSURE ↓

Current

- No formal adjustment
- Regulatory text:
“Violation occurred despite good faith efforts to comply with the regulation”
- Based on California Air Resources Board Enforcement policy

Update

- Voluntary admission
- No harm occurred
- Did not commit a similar violation within recent history



ADJUSTMENTS: ENVIRONMENTAL EQUITY↑

- Aligns with DTSC environmental justice goals
- Increases penalties for facilities in impacted communities
- May return funds to communities impacted by neighboring hazardous waste facilities by diverting funds to:
 - Supplemental Environmental Projects (SEPS) – Statutory change.
- The Toxic Substances Control Account (TSCA)
 - Funds clean up sites.



ADJUSTMENTS: ENVIRONMENTAL EQUITY↑

- CalEnviroScreen score 50-100
- Adjustment dependent on waste and handling
- Dollars return to impacted communities

Increase	Facility Type
5%	E-waste handlers
10%	E-waste dismantlers, treaters; Transporters; non-RCRA Small Quantity Generators (SQGs)
15%	Non-RCRA Permitted; RCRA SQGs
20%	RCRA Permitted; Large Quantity Generators (LQGs)



ADJUSTMENTS: UNIQUE FACTORS ↓

“Violation was completely beyond control of the violator”

22 CCR section 66272.63(a)



ADJUSTMENTS: SUMMARY

- **Self Disclosure:** decrease for self-reporting
- **Environmental Equity:** increase if CalEnviroScreen score is 50-100 to protect impacted communities
- **Unique Factors:** decrease for extenuating circumstances



PART 1: PUBLIC COMMENT



WHAT OTHER IMPROVEMENTS WILL DTSC MAKE TO THESE REGULATIONS?

PART TWO: GENERAL CHANGES

2



ADJUSTMENTS: OVERVIEW

Current Adjustments

- Multiday – Update ↑
- Economic Benefit – Update ↑
- Compliance History ↑
- Violator's Cooperation ↑
- Prophylactic Effect ↑
- Violator's Intent ↑
- Ability to Pay ↓



GENERAL CHANGES: MULTIDAY

Basic Principle

- Per day penalty for on-going violations

Concept Update

- Increase 2% to 5% per day penalty
- Add return to compliance period = no penalty
- 20% per day penalty for failure to return to compliance



GENERAL CHANGES: MULTIDAY

Example

- Day 1: Violation Begins. **\$1,000 Base Penalty.**
- Day 21: Violation is found. 20 days = **5% or \$50/day (+\$1,000).**
- Days 22-51: Fix it period = no added per day penalty.
- Day 52-61: End of Fix it period. 10 days = **20% or \$200/day (+\$2,000).**
- Penalty = [Base Penalty] + [20 days at 5%] + [10 days at 20%]
- **Penalty = \$4,000**



GENERAL CHANGES: ECONOMIC BENEFIT

Basic Principle

- Recoups economic benefit enjoyed by violator
- No minimum amount added

Concept Update

- Set \$500 threshold
- Define applicable data



GENERAL CHANGES: PLAIN LANGUAGE

Feedback

- Clear language
- Transparency
- Improve readability

Legal Requirements

- Federal Writing Act (2010)
- CA Government Code 6219



GENERAL CHANGES: PLAIN LANGUAGE

- Include table of contents
- Format as question and answer
- Be precise
- Use active tense
- Write in first or second person (“You”)



GENERAL CHANGES: PLAIN LANGUAGE

“If the violator has provided the Enforcement Agency with the financial information necessary to assess the violator’s ability to pay, the payment of the final penalty may be extended over a period of time if immediate, full payment would cause, in the judgement of the Enforcement Agency, extreme financial hardship, the penalty may be reduced.”

Ability to Pay, 22 CCR section 66272.68(d)



GENERAL CHANGES: PLAIN LANGUAGE

(1) How is the ability to pay adjustment applied?

The ability to pay adjustment can schedule a payment plan or adjust the penalty.

(2) What information do I need to determine whether an adjustment is needed?

The violator will provide to you financial information. You will determine if the penalty causes financial hardship.

Ability to Pay (Plain Language Technique Demonstration)



GENERAL CHANGES: SUMMARY

- **Multiday:** 5% per day. 0% fix it period. 20% for failure to correct violation.
- **Economic Benefit:** increase if more than \$500.
- **Plain Language:** Rewrite all sections in a easy to read style.



PART 2: PUBLIC COMMENT



BREAK

END OF PRESENTATION



HOW CAN I PROVIDE ADDITIONAL FEEDBACK?

NEXT STEPS



Submit your Feedback

- Link to Public Comment
- <https://tinyurl.com/DTSCpenalty>



- Email questions to Penaltyregs@dtsc.ca.gov





NEXT STEPS

- In-Person Meetings:
 - Downtown Los Angeles - August 16, 2023
 - Berkeley – August 31, 2023
- Public Comment Ends September 29, 2023 at 5 P.M.
- Drafting Notice Package - 2024





Department of
Toxic Substances
Control



PUBLIC COMMENT





Department of
Toxic Substances
Control



THANK YOU

FOR YOUR TIME, ATTENDANCE, PARTICIPATION AND COMMENTS.

