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January 12, 2007

JoAnn Jaschke
California Environmental Protection Agency
1001 I Street
Sacramento, CA 95814

Re; Deficiencies Status Report from 2006 CUPA Audit

Enclosed you will find our status report on the deficiencies from our 2006 CUPA audit. As you can see we have made significant progress. We have addressed every deficiency noted. Some have been completed, while others are in the process. I have enclosed our updated CUPA Inspection and Enforcement Plan Draft, and our Hazardous Materials Area Plan Draft. We participate with the County of Lake Health Officer in updating and revising the plan Please review and comment.

If you have any questions please call me 707-263-1164.

Sincerely;

Kenneth Williams, REHS
Hazardous Materials Specialist

Deficiencies and Corrective Actions

Deficiency #1: The CUPA is not annually reviewing or summarizing their review of their Unified Inspection and Enforcement Plan.

CUPA Corrective Action: The County of Lake Inspection and Enforcement Plan has been re-developed as of January 5, 2007. See enclosed. I have followed the State Guideline. Please review and comment. Included in this plan is wording that we involve time in each inspection to discuss and review Universal waste procedures, and handling of silver waste if present. See page 13 of I and E Plan #12.

The frequency for inspecting SQG and Farms is stated as once per 3 years. See page6 of I and E Plan

The AEO process is summarized on page 22, 23, 24. We are in the process of getting the procedure approved by our County Counsel.

The Lake County Hazardous Materials Area Plan has been incorporated into the Lake County Health Services Emergency Response Plan. It is one unit of nine. It has been updated and is in constant evaluation.

Deficiency #2: The CUPA is not remitting the state surcharge collected to the State.

CUPA Corrective Action: The State Surcharge money for 2006, 2007 CUPA programs will be submitted to Cal – EPA by 15 February 2007.

Deficiency #3: As noted in the 2005 CUPA evaluation, the CUPA is not regulating all agricultural handlers under the Business Plan program.

CUPA Corrective Action: A list of Farms is continuing to be developed and all are scheduled to be inspected in 2008.

Deficiency #4: As noted in the 2005 CUPA evaluation, the CUPA is not meeting the triennial inspection frequency for the Business Plan program.

CUPA Corrective Action: This and number 10 are the same problem. I have now set an inspection schedule that will bring the County into compliance with the tri-annual requirement by July 2007. I have also scheduled 2008 and 2009 to keep up with this requirement. I have set this up on an Access Data Spreadsheet.

Deficiency #5: As noted in the 2005 CUPA evaluation, the CUPA has not yet conducted preliminary risk determinations for potential Table 3 CalARP facilities.

CUPA Corrective Action: All potential Cal – ARP facilities have now been notified by letter to submit a Preliminary Risk Assessment by February 2007 or submit a full Cal – ARP plan by the end of 2007. The Preliminary Risk Assessments will be reviewed and evaluated as they come in.

Deficiency #6: As noted in the 2005 CUPA evaluation, most of the inventory forms in the files reviewed are incomplete and/or outdated.

CUPA Corrective Action: This same action is being taken for number 9. These are reviewed as part of our normal inspection process. As deficiencies are found in the inventory and the site map they are required to be updated. When compliance is accomplished a Return To Compliance note is made to the original inspection report. Until compliance is made, follow – up contact is done.

Deficiency #7: As noted in the 2005 CUPA evaluation, the CUPA is not ensuring that all businesses submit a Business Activities page.

CUPA Corrective Action: All facilities now have a Business Activities page on file. Theses will be reviewed during the tri – annual inspection.

Deficiency #8: The emergency response plan in 6 of the 9 Business Plan files reviewed did not contain instructions to notify the State Warning Center (OES) in the event of a hazardous materials release.

CUPA Corrective Action: This County has been using the Unidocs Emergency Response Contingency Plan format for the last several years. On page #2 of this plan, on point number 4, letter a, sub number v, are the instructions to notify the State OES. As we are inspecting facilities this year, to get caught up with the tri – annual schedule, these plans are updated using this format. As follow – up contact is made and compliance is obtained an RTC is noted in the file.

Deficiency #9: UST plot plans reviewed did not contain all the required elements or were missing.

CUPA Corrective Action: See response number 6.

Deficiency #10: With the increase in hazardous waste facilities, the CUPA is not meeting their inspection frequencies.

CUPA Corrective Action: see response number 4.

Deficiency #11: During the file review, Certification of Return to Compliance (RTC) for minor violations was not observed in the files, or re-inspection reports to confirm RTC was not observed in the files.

CUPA Corrective Action: All inspections done in 2006 that required follow – up in order attain compliance are being done. When compliance is attained an RTC is noted in the file. The RTC is noted and dated on the original inspection report. This procedure will continue as inspections are made in the future. A RTC form is also given to the facility to allow them to notify us that in their opinion they have returned to compliance. A reinspection is then made to verify RTC and noted in the original inspection report.

Deficiency #12: As noted in the 2005 CUPA evaluation, the CUPA has exempted heating fuel from the Business Plan program without following the exemption process.

CUPA Corrective Action: We are presently seeking Fire Department Chief's buy in on the exemption of business heating fuel from the Business Plan requirements. Once this is attained a Public Hearing will be conducted.

COUNTY OF LAKE

CUPA
INSPECTION AND ENFORCEMENT
PROGRAM PLAN

01-05=07 KLW DRAFT #1

Introduction

California Health and Safety Code Chapter 6.11 was added in 1993 which created local certified unified program agencies (CUPAs) to implement a consolidated, coordinated and consistent hazardous material/waste program. One of the requirements of the law is for each CUPA to develop and implement a single, unified inspection and enforcement program in order to ensure coordinated, efficient, and effective enforcement of the handling of hazardous materials/waste.

California Code of Regulations, Title 27 Section 15200 (a), requires that the Unified Program prepare a single Unified Inspection and Enforcement Program. The Inspection and Enforcement Plan shall be prepared in cooperation with all participating agencies of the jurisdiction and shall contain provisions for administrating all program elements. The plan must contain an inspection and enforcement component.

Table of Contents

Page

Introduction..... 2

Table of Contents..... 3-4

I. Inspection Component..... 5

General Inspection Procedures..... 10
Hazardous Waste Inspection Procedures..... 12-14

II. Enforcement Component..... 15

Enforcement Philosophy..... 15

General Enforcement Procedures..... 17

Enforcement Procedures for Hazardous Waste Generators. 18-19

Enforcement Options..... 20-29

Procedure for Administrative Orders..... 23-25

Procedure for Administrative Penalties..... 25-27

Matrix of Enforcement Options..... 27

Program Specific Enforcement Violations..... 28

HSC Chapter 6.95-Business Plans..... 28
CCR Title 19-Cal/ARP..... 28
HSC Chapter 6.7-UST..... 29
SPCC..... 30
HSC Chapter 6.5-Generators/Tiered Permits..... 31-37

III. Acronyms..... 38

IV. Inspection/Enforcement Plan Regulation Requirements..... 39

V. Appendices

A. Annual Inspection Summary Report (Title 27)
B. Annual Enforcement Summary Report (Title 27)
C. Business Plan Inspection Form
D. Underground Storage Tank Inspection Form
E. Generator Inspection Form
F. Cal/ARP Inspection Form
G. Procedures for the Issuance of Administrative Orders

VI. References

A. State Enforcement Response Policy (August 16, 1995).
B. State Water Resources Control Board "UST Facility Compliance Inspection Handbook, *A Handbook for Local Agencies*"

Inspection - Enforcement Program Plan

I. Inspection Component

A. Inventory of Regulated Businesses

Each CUPA shall complete the following inventory of regulated businesses within its jurisdiction (this information is taken from Title 27, Report #3, Annual Inspection Summary Report).

Program Elements	Number of Businesses
Hazardous Materials Release Response Plans	-303----------
Cal/ARP	-21----------
UST Facilities	--34----------
AST Facilities	----------120-------
Generators (RCRA and Non-RCRA)	-------194----------
RCRA Large Quantity Generators (>1,000 kg/month)	---------0--------
Recyclers	----------5--
Onsite Hazardous Waste Treatment (All)	----------2------
PBR	----------
CA	----------
CE	----------
Permit by Rule – HHW	---------1--------

B. Frequency of Inspections

The required frequencies for inspections are as follows:

Program	Frequency
Hazardous Materials Release Response Plans [HSC Section 25508 (b)]	Once every 3 years
Cal/ARP* (CCR Title 19 Section 2775.3)	Once every 3 years
UST Facilities [HSC Section 25288 (a)]	Once per year
AST Facilities	None
Generators (All)	None
RCRA Large Quantity Generators	None
Recyclers	None
Onsite Hazardous Waste Treatment (All) [HSC Section 25201.4 (b)(2)]	Every 3 years
PBR [HSC Section 25201.4 (b)(2)]	Every 3 years
CA [HSC Section 25201.4 (b)(2)]	Every 3 years
CE [HSC Section 25201.4 (b)(2)]	Every 3 years
Permit by Rule – HHW [HSC Section 25201.4 (b)(2)]	Every 3 years

*Note: Facilities subject to the Cal/ARP regulations must have an inspection conducted once every 3 years for compliance to Title 19, Chapter 4.5. Cal/ARP facilities must also have an audit conducted periodically to review the adequacy of RMPs submitted under Chapter 4.5, Article 3.

Program Elements	Scheduled Frequency of Inspections
Hazardous Materials Release Response Plans	----------
Cal/ARP	----------
UST Facilities	----------
AST Facilities	----------
Generators (RCRA and Non-RCRA)	----------
RCRA Large Quantity Generators(>1,000 kg/month)	----------
Recyclers	----------
Onsite Hazardous Waste Treatment (All)	----------
PBR	----------
CA	----------
CE	----------
Permit by Rule – HHW	----------

C. Provisions to promote integrated multi-media inspections

Integrated or multi-media inspections are inspections involving unified program and non-unified program agencies and/or involving more than one environmental medium (i.e. air, water, soil) of a regulated business that results in consolidating inspections. The CUPA should participate with federal/state/local agencies in inspection/enforcement initiatives.

The purpose of multi-media inspections is to coordinate, to the maximum extent feasible, the CUPA's inspection and enforcement program with the inspection and enforcement programs of other federal, state, regional and local agencies, which affect facilities regulated by the CUPA.

This CUPA promotes integrated multi-media inspections in the following manner:

1. Organizes quarterly meetings with other regulatory agencies to determine facilities that are suitable for multi-media inspection.
2. This CUPA regularly attends and participates in local Environmental Strike Force meetings when held
3. At least once per year the CUPA invites regionally assigned State and Federal regulatory personnel to attend a strategy session.
4. Regular referral of inspection notices between agencies when inspection frequency does not coincide.

Not all facilities are suited for routine multi-media inspection and enforcement procedures. The multi-media approach will only work when a facility must comply with more than one discipline of environmental protection and the procedures for each discipline can be applied without intervening with each other.

Facilities should be carefully selected. The following factors should be considered when determining which facilities can be inspected using multi-media techniques:

1. Can each regulator complete their work within a similar time frame ?
2. Can the facility operator provide adequate escort ?
3. Is facility management sufficiently diverse to accept multiple exit interviews and fully understand all of the potential compliance and enforcement issues that may need to be addressed ?
4. Is the size and physical layout of the facility such that inspectors will not spend considerable time without regulatory functions to perform ?
5. Is the size and physical layout of the facility such that the inspectors and the facility operator will cause confusion ?

D. Inspector Training Documentation

In Lake County all inspectors shall be ICC certified, or in the process, to inspect UST facilities. They also attend CUPA related workshops, seminars, other training opportunities through out the year. These trainings are required to be logged in each inspectors training log.

E. Cross-Training of Staff CROSS TRAIN WITH WHO?

Periodic training is held through out the year with Health Services, Sheriff's Department and the Fire Departments for various disaster scenarios. These enclude communication practice and patient treatment.

F. Coordination of inspection/enforcement efforts between CUPA and participating agencies. There are no Participating agencies in Lake County.

General Inspection Procedures

In general, Lake County follows the following inspection procedures for all CUPA inspections:

1. The inspector conducts a file review prior to the inspection.

2. The inspector shall identify himself/herself to the operator or manager of the facility, obtain consent to conduct the inspection, explain what the inspection will entail and that the inspection results will be reviewed with the operator/manager before leaving the site.*

3. Before leaving the facility, the inspector shall review the inspection results with the operator/manager. An inspection report is prepared and given to each business inspected.

4. Appropriate follow-up is conducted to assure compliance.

5. Appropriate enforcement action is initiated.

* If the inspector is denied entry into a facility the inspector shall report this to his/her supervisor. The supervisor shall contact the facility to secure entry consent. If entry is still denied, an inspection warrant will be obtained through the city attorney, county counsel or district attorney. Each CUPA should identify their specific procedures when entry is denied.

Inspection activities for the fiscal year are summarized in Title 27, Report 3, which must be completed and submitted to the Secretary by September 30 each year.

The return times to compliance, after violations are noted in an inspection report or audit, are as follows:

Business Plans	Thirty (30) days from the date of the deficiency notice [HSC Section 25505(a)(2)].
Cal/ARP	The owner or operator is in violation of Title 19, Article 3, thirty (30) days after the audit procedure has been completed pursuant to Title 19, Section 2775.2(h).
Underground Storage Tanks	The permit holder shall file within 60 days of receiving a compliance report, a plan to implement all recommendations contained in the compliance report or shall demonstrate, to the satisfaction of the local agency , why these recommendations should not be implemented (HSC Section 25288 (d). In addition, compliance times for specific violations are located in HSC Sections 25291, 25292 and 25295.5.
Aboveground Petroleum Storage	Not applicable. Referral to RWQCB.
HW Generator	No established times except for minor violations which require thirty (30) days from the date of receipt of the NTC to achieve compliance.
Recyclers	No established times except for minor violations which require thirty (30) days from the date of receipt of the NTC to achieve compliance.
Onsite Hazardous Waste	No established times except for minor violations which require thirty (30) days from the date of receipt of the NTC to achieve compliance.
Permit-By-Rule HHW	No established times except for minor violations which require thirty (30) days from the date of receipt of the NTC to achieve compliance.

Hazardous waste generators, recyclers, onsite hazardous waste generators and permit by rule HHW generators shall submit a written response to the CUPA within 60 days of receipt of the inspection report or within a shorter time frame as the CUPA may reasonably require, which shall include a statement documenting corrective actions taken by the operator or proposing corrective actions which will be taken by the operator for purposes of compliance with this chapter, or disputing the existence of the violation [HSC Section 25185 (c)(3)].

Hazardous Waste Inspection Procedures (Chapter 6.5 Section 25185)

The following inspection procedures shall be followed for hazardous waste generator inspections.

1. The inspector should review the file prior to the inspection.

2. At the time of the inspection, the inspector shall secure the consent of the operator for the inspection.

3. The facility inspection should be conducted.

4. Before leaving the site, the inspector shall provide a written summary to the operator of all violations (Class I, Class II and Minor) alleged by the inspector during the inspection and discuss any questions or observations that the operator might have concerning the inspection [HSC Section 25185 (c)(1)]. The inspection shall determine compliance to the applicable rules and regulations. The inspector may identify other violations in the inspection report.

5. A Notice to Comply (NTC) shall be issued for any minor violations before leaving the site. The facility shall have not more than **30 days** from the date of the NTC to achieve compliance. A NTC issued to a facility shall contain an explicit statement that the facility may be subject to reinspection at any time by the CUPA. The NTC shall separately list each of the cited minor violations and the manner in which each may be brought into compliance. A NTC shall not be issued for any minor violation corrected in the presence of the inspector.

   Within **5 working days** of achieving compliance, an appropriate person who is an owner, operator or employee at the facility shall sign the NTC and return to the CUPA. If a facility received a NTC and disagrees with one or more of the alleged violations, the owner shall give the person who issued the NTC written notice of the disagreement.

6. The CUPA shall provide an inspection report to the operator which shall fully detail all observations made at the facility or site, all alleged violations, violations determined after the site visit, the factual basis for alleging those violations, and any corrective actions that should be taken by the operator of the facility or site within 5 days of the preparation of the inspection report, and, in any event, not later than **65 days** from the date of the inspection. The inspection report shall include all pertinent information, including, but not limited to, documents, photographs taken by the CUPA in the course of the inspection and all laboratory results obtained as a result of the inspection [HSC Section 25185 (c)(2)]. The inspection report should also identify the class of violations: 1). Class I violation, 2). Class II violation or 3). Minor violation.

7. Class I violations require formal enforcement action according to the DTSC Enforcement Response Policy. Class II violations may require formal or informal enforcement action. Minor violations require a Notice to Comply to be issued pursuant to HSC Section 25187.8

8. The operator of the site or facility which receives an inspection report shall submit a written response, if appropriate, to the CUPA **within 60 days** of receipt of the inspection report or within a shorter time as the CUPA may reasonably require, which shall include

a statement documenting corrective actions taken by the operator or proposing corrective actions which will be taken by the operator, for purposes of compliance with this chapter, or disputing the existence of the violations [HSC Section 25185].

9. Upon receiving the written response from the operator, the CUPA shall upon the request of the operator, meet and confer with the operator regarding any questions, concerns or comments that the operator may have concerning the inspection report.

10. The CUPA shall **within 30 working days** from the date of receipt of the operator's response, which documents or proposes corrective action, or which disputes the existence of a violation, determine whether the corrective actions documented or proposed to be taken by the operator, if implemented as stated or proposed, will achieve compliance with this chapter, or whether a violation is still alleged, as applicable, and shall submit a written copy of that determination to the operator, in the form of a report of violation or other appropriate document.

11. If the CUPA fails to make the determination and submit a copy of the determination within **30 working days** from the date of receipt of the operator's response, the CUPA may not seek penalties for continuing violations or any alleged new violations caused by the corrective actions taken by the operator, until the CUPA submits the determination to the operator and provides the operator with a reasonable time in which to make necessary operational modifications which differ from those proposed to the CUPA.

    Information from an inspection report, or the report itself, may be withheld by the CUPA if the CUPA determines that pursuant to criminal investigation or other ongoing investigation may result in a substantial probability of destruction of evidence, intimidation of witnesses, or other obstruction of justice.

12. The CUPA shall during each inspection activity review Universal and silver waste handling procedures if present in the file and on site with the owner/operator. This should provide the 5 % time requirement

Unless otherwise indicated, all days are calendar days.

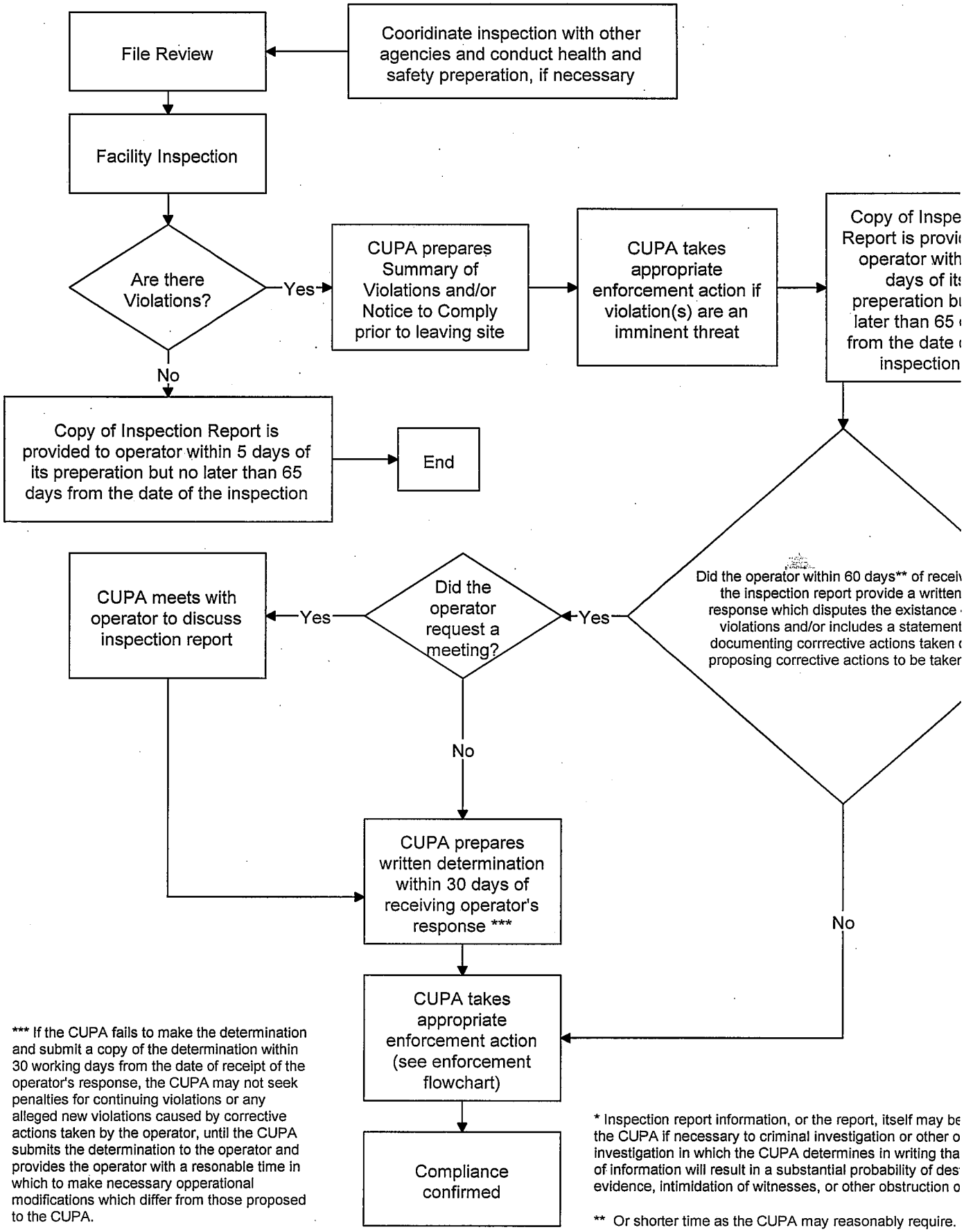
Summary of Hazardous Waste Inspection Procedure
(Chapter 6.5 Section 25185 et. seq.)

- Perform a pre-inspection file review.
- Obtain consent to conduct an inspection from the operator.
- Conduct inspection and note violations.
- Take samples/photographs as needed.
- Review records and plans
  - Manifests
  - Waste determinations/tests
  - Self-inspection logs
  - Training plan and records
  - Contingency plan
  - Treatment/recyling records
  - Biennial report, if large quantity generator
  - If applicable, SB 14 reports
  - If applicable, waste minimization program
- The CUPA shall provide a written **Summary of Violations** to the operator for Class I, Class II and Minor violations before leaving the site.
- The CUPA shall issue a **Notice to Comply** for minor violations to the operator before leaving the site.
- CUPA to provide the written inspection report to the operator within 65 days.
- Operator provides written response to the inspection report within 60 days of receipt of the inspection report.
- CUPA responds within 30 days of receipt of the response from the operator whether the corrective actions documented or proposed to be taken by the operator, if implemented as stated or proposed will achieve compliance with this chapter, or whether a violation is still alleged. The CUPA shall submit a written copy of that determination to the operator in the form of a report of violation or other appropriate document.

A flowchart is attached on page 14 describing the inspection process.

If the corrective actions are not taken by the operator within a reasonable time, appropriate enforcement action shall be taken by the CUPA.

Hazardous Waste Generator / Tiered Permitting Inspections (HSC Sec. 25185)



*** If the CUPA fails to make the determination and submit a copy of the determination within 30 working days from the date of receipt of the operator's response, the CUPA may not seek penalties for continuing violations or any alleged new violations caused by corrective actions taken by the operator, until the CUPA submits the determination to the operator and provides the operator with a resonable time in which to make necessary opperational modifications which differ from those proposed to the CUPA.

* Inspection report information, or the report, itself may be the CUPA if necessary to criminal investigation or other o investigation in which the CUPA determines in writing tha of information will result in a substantial probability of des evidence, intimidation of witnesses, or other obstruction o

** Or shorter time as the CUPA may reasonably require.

II. Enforcement Component

Enforcement Philosophy

Enforcement activities are an integral part of the CUPA program. Compliance with environmental regulations is the ultimate goal of enforcement. It is the policy of the CUPA to implement its enforcement actions to accomplish the following goals:

- To return violators to compliance in a timely manner.
- To penalize violators, as appropriate, and to deprive violators of any significant benefit gained from violations.
- To treat similar facility owners and operators equally and consistently with regard to the same types of violations.
- To initiate and conclude enforcement activities in a timely manner.
- Promote compliance with statutes and regulations.
- Prevent any businesses from having an unfair business advantage through non-compliance.
- Educate the business community.
- To deter violators of hazardous material/waste rules and regulations.

Enforcement activities for the fiscal year are summarized in Title 27, Report 4, which must be completed by the CUPA and submitted to the Secretary by September 30 each year.

Definitions

According to CCR, Title 27, Section 15110 there are three (3) types of enforcement actions:

1. **Formal enforcement** is an action which mandates compliance and initiates a civil, criminal, or administrative process which results in an enforceable agreement or order. Enforceable means the instrument creates an independent, affirmative obligation to comply and imposes sanctions for the prior failure to comply. Sanctions include fines and penalties as well as other tangible obligations, beyond returning to compliance, that are imposed upon the regulated business. Examples include administrative orders and civil and criminal referrals to the appropriate prosecutor.

2. **Informal enforcement** is an action other than a formal enforcement action that notifies the regulated business of its non-compliance and establishes a date by which that non-compliance is to be corrected. Examples include a letter or notice of violation. Informal actions do not impose sanctions.

3. **Integrated or multi-media enforcement** is a formal enforcement action involving either Unified Program and/or non-Unified Program Agencies or involving more than one environmental medium (i.e.: air, water, soil). An integrated or multimedia enforcement requires more than one agency's involvement or one medium-specific action to bring about compliance or to abate, investigate, prosecute, or remediate the violations.

General Enforcement Procedures

- Enforcement action is generally taken after a routine inspection or receiving a complaint and conducting an inspection (s) to confirm the violation(s). **Depending on the severity of the violation, formal enforcement action may be taken as the initial enforcement option.**
- After an inspection is conducted, a written report is issued to the responsible party (RP) listing the specific violations.
- The responsible party is given from 1-30 days to comply (except for underground storage tank compliance), depending on the seriousness of the violation. Either a re-inspection is conducted or a certificate of compliance is completed by the business and sent to the regulatory office.
- The company may be billed for follow-up inspections to determine compliance.
- If related to the fire code, the fire agency may issue a citation.
- If compliance is not achieved, an enforcement report is prepared and the appropriate samples, photos and documentation are obtained. If fire code related, a citation may be issued.
- Samples, if necessary, are sent to a State certified laboratory.
- The supervisor of the program reviews the enforcement report.
- A decision is made to take one of the following actions:
  - Issue a Notice of Violation
  - Re-inspection of the facility (with or without reinspection fee)
  - Office hearing with the operator.
  - Permit revocation (local operating permit)
  - Facility closure
  - Business license revocation
  - Administrative order and/or penalty for generators
  - Administrative civil penalty for business plans
  - Quarantine for generators/tiered permitting facilities
  - Referral to Federal, State Agency
  - Referral to the District Attorney, City Attorney, State Attorney General or U.S. Attorney for civil/criminal prosecution
  - **Note: The State Enforcement Response Policy requires formal enforcement action for hazardous waste generator class I violations.**

HSC Section 25187 (a)(C) states: "The department (DTSC) shall adopt regulations to implement this paragraph and paragraph (2) of subdivision (a) of Section 25187.1. The regulations shall include, but not be limited to, all of the following requirements: (i) A requirement that the unified program agency shall consult with the district attorney for the county on the development of policies to be followed by the unified program agency in exercising policies to be followed by the unified program agency in exercising the authority delegated pursuant to this section and Section 25187.1.

Therefore, the CUPA should have a written policy with the local district attorney on the issuance of administrative orders under HSC Section 25187 and 25187.1.

Enforcement Procedures for Hazardous Waste Generators/Tiered Permitting Facilities

The specific enforcement procedures for hazardous waste generators and tiered permitting facilities are identified in a flow chart on page 19. Hazardous waste generators and tiered permitting facilities require formal enforcement action be taken for Class I violations. To meet the State Enforcement Response Policy on appropriateness and applicable state law, it will be necessary in the case of Class I violations, to take both informal (Summary of Violations) and one or more formal enforcement actions. For example, when a Class I violation is detected, the HSC requires that a summary of violations (an informal action) be left at the end of the inspection. Appropriate enforcement guidance also requires a formal enforcement action for that same violation.

A Notice to Comply is required to be issued for minor violations (HSC Section 25187.8) before leaving the site. The facility which receives a notice to comply shall have not more than 30 days from the date of receipt of the Notice to Comply in which to achieve compliance. Within 5 working days of achieving compliance, an appropriate person who is an owner or operator of, or an employee at, the facility shall sign the Notice to Comply and return it to the CUPA stating that the facility has complied with the Notice to Comply.

If a facility that receives a Notice To Comply disagrees with one or more of the alleged violations, the owner shall give the CUPA written notice of the disagreement. If the CUPA takes administrative enforcement action on the basis of the disputed violation, that action may be appealed in the manner as for other alleged violations under subdivisions (d) to (j), inclusive, of HSC Section 25187.

If a facility fails to comply with a Notice to Comply, and the minor violation(s) are such that immediate enforcement is warranted to prevent harm to the public health or safety or to the environment, the CUPA may take any needed enforcement action authorized by HSC Chapter 6.5.

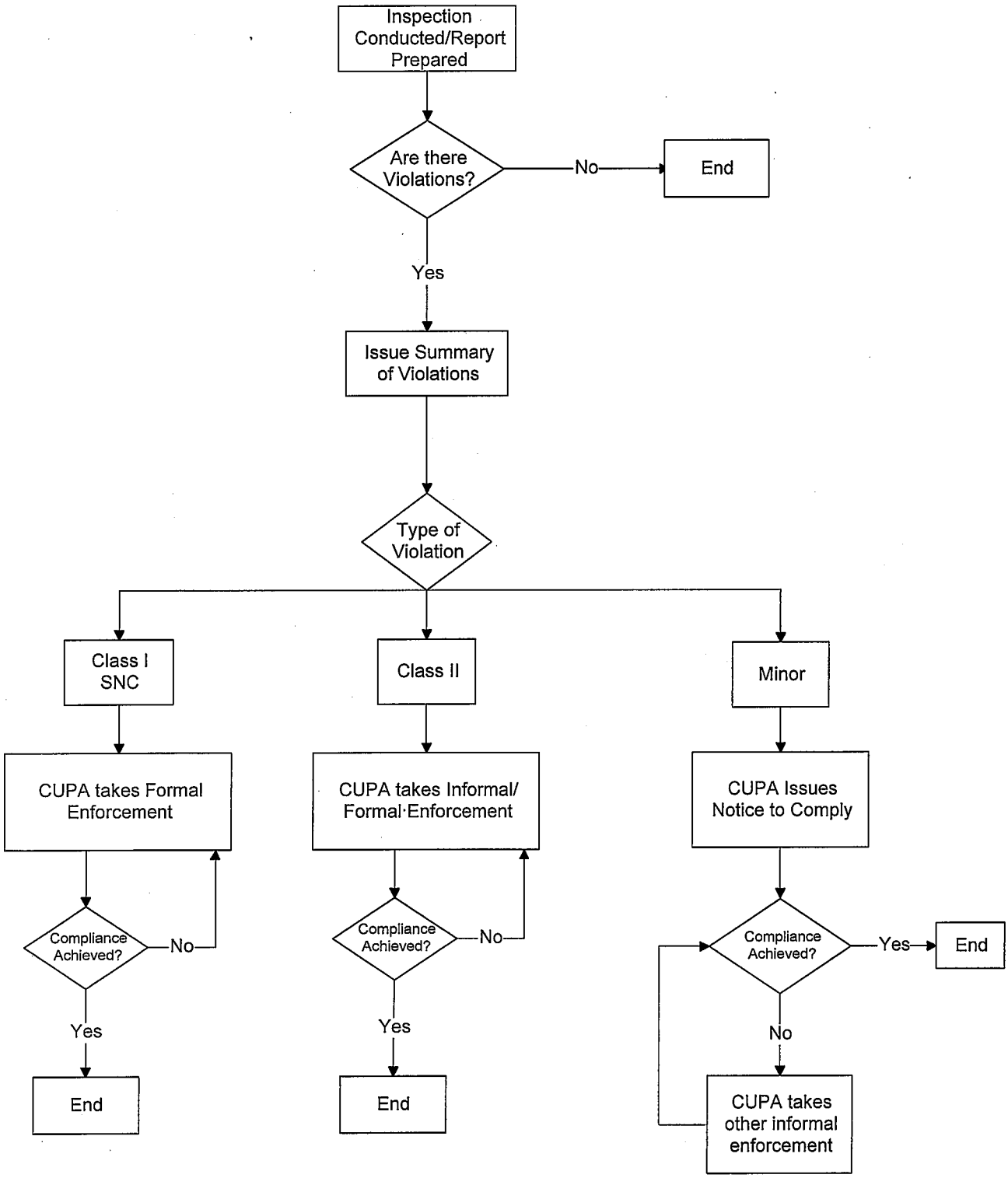
The flowchart on page 19 shows the enforcement process for Chapter 6.5 violations.

Confidentiality

All documents pertinent to CUPA/PA enforcement cases are kept, once the investigation is initiated, in a secure location in the agency. Enforcement cases are not open for public review. Staff is instructed not to discuss any existing or potential enforcement actions with anyone other than their supervisor, other local, State or Federal personnel. If the case is turned over to the District Attorney, City Attorney , County Counsel, U.S. Attorney or Attorney General, staff are instructed to forward any questions concerning the case to the appropriate attorney.

The file is not public information until the case is adjudicated.

General Enforcement Procedures for Hazardous Waste Generators/Tiered Permitted Facilities



Enforcement Options

The appropriate level of enforcement response involves a variety of factors:

- The extent of deviation from legal requirements.
- The potential for harm/threat to human health and safety and the environment.
- The violators compliance history.
- The violator's good faith efforts to comply.
- The deterrent effect on the violator and on the regulated community; and
- Any unusual circumstances and/or mitigating factors.

The facts of a specific case, the interest and capacity of the various agencies to handle the case and the seriousness of the violations must all be considered when determining the appropriate enforcement response. When selecting the appropriate enforcement response for hazardous waste generator violations, the appropriate guidance contained in the State Enforcement Response Policy should be followed.

One aspect of formal enforcement response generally includes assessment and collection of appropriate penalties. Penalties may be considered appropriate when consistent with criteria in the authorizing statutes and implementing regulations applied to the authorized penalty maximums for that program element. For example, penalties assessed for hazardous waste violations must be consistent with the regulations for penalty assessment in Title 22 CCR.

This CUPA depending on the nature of the violations may utilize the following enforcement tools. Items 1-6 are considered informal enforcement and items 7-15 are considered formal enforcement.

1. **Notice of Violation (Citation)**

   An inspection is conducted either as a scheduled inspection or the result of a complaint and violations are identified. A notice of violations or citation may be issued to the facility with a specific time period for compliance. The CUPA may require the business to respond with a signed certificate of compliance indicating the violations have been corrected. A re-inspection may be conducted by the regulatory agency. Re-inspections will be conducted when significant violations occur or the facility has a history of non-compliance.

   Note: HSC Section 25285(b) states that the local agency shall not issue or renew a permit if the local agency inspects the tank and determines that the tank does not comply with the UST laws.

2. **Summary of Violations (HSC Section 25185 (c) (1)**

   A hazardous waste generator inspection is conducted. Prior to leaving the facility, the inspector must deliver to the operator a written summary of all violations and shall discuss any questions or observations that the operator might have concerning the inspection.

3. **Notice to Comply (HSC Section 25187.8)**

An inspection is conducted either as a scheduled inspection or the result of a complaint and minor violations are identified. If minor violations are identified, the inspector shall issue a notice to comply before leaving the site.

4. **Re-Inspection**

Follow-up inspections may be conducted to determine compliance. Routine inspections of the business may be increased to monitor compliance.

5. **Re-inspection with fee**

If all of the violations have not been corrected within the specified time period or there are major violations, the regulating agency may increase the frequency of inspections and bill the facility for those costs.

6. **Office hearing**

If the business does not come into compliance with notice of violation or citation, an office hearing may be scheduled with the owner/operator. The purpose of the meeting is to reach an agreement with the operator/owner before proceeding with a higher level of enforcement. A follow-up letter is prepared after the meeting and a follow-up inspection is conducted.

7. **Permit Revocation**

The operating/consolidated permit issued by the CUPA under local ordinance or city code may be revoked. If the business is not responding to the previous enforcement requests, the jurisdiction may revoke the operating permit pursuant to local procedures. The specific local authority and procedures for permit revocation must be identified.

In addition, HSC Section 25285.1 allows the CUPA to revoke an underground storage tank permit for cause, including, but not limited to, any of the following:

- Violation of any of the terms or conditions of the permit.
- Obtaining the permit by misrepresentation or intentional failure to fully disclose all relevant facts.
- A change in any condition that requires modification or termination of the operation of the underground storage tank.

The local agency shall revoke the permit of an underground storage tank issued pursuant to HSC 25284 if the owner or operator is not in compliance with Article 3 (commencing with Section 25299.30) of Chapter 6.75 on the date 3 months after the date on which the owner or operator of the tank first becomes subject to Article3 (commencing with Section 25299.30) of Chapter 6.75.

The CUPA may also refer to DTSC conditional authorization, conditional exemption or permit by rule facilities for permit revocation or suspension pursuant to HSC Section 25186.7.

8. **Facility Closure**

Some agencies have the ability to physically secure locks at a facility to close the business. Local procedures should be followed in taking this type of enforcement option and should be identified in the specific CUPA enforcement plan. The specific local authority for this action must be identified.

9. **Business License Revocation**

Some agencies have the enforcement option of recommending revocation of a local business license to the appropriate local jurisdiction. Procedures for business license revocation should be identified in the CUPAs enforcement plan. The specific local authority for this action must also be identified.

10. **Administrative orders for hazardous waste generators/tiered permitting facilities [HSC Section 25187 (a)]**

The administrative enforcement order (AEO) is a formal means of enforcement utilized when a violator does not respond to a notice to comply or a notice of violation. The AEO basically consists of:

- Notification of corrective action to abate the effects of hazardous waste.
- An assessment of penalties.
- An assessment of agency costs of enforcement.

CUPAs are authorized under HSC Section 25404.1(a) (3)(B) to issue an order under HSC Section 25187 to specify a schedule for compliance or correction and to impose an administrative penalty for any violation of the requirements of HSC Chapter 6.5 or any other standards. HSC Section 25187(a)(2)(C) requires DTSC to adopt regulations which shall include but are not limited to the following:

- A requirement that the CUPA shall consult with the district attorney for the county on the development of policies to be followed in the issuance of orders.
- Require no duplication of enforcement action between the CUPA and DTSC for the same violation and coordination should be achieved.
- Provisions to ensure that the enforcement authority granted to the CUPA will be exercised consistently throughout the state.
- Require that the CUPA be represented by an attorney in all cases where the respondent appeals an enforcement order issued by the regulatory agency.
- Procedures to be followed by DTSC to rescind the granted enforcement authority to the CUPA, if DTSC finds that the CUPA is not exercising that authority in a manner consistent with the provisions of HSC Chapters 6.5 and 6.11 and adopted regulations.

Procedure for Issuing Administrative Orders (HSC Chapter 6.5, Section 25187 (a)

The order shall include the following requirements:

- An order issued pursuant to HSC Section 25187 shall include a requirement that the person take corrective action with respect to hazardous waste, including the cleanup of the hazardous waste, abatement of the effects, and any other necessary remedial action. The order may require that corrective action be taken beyond the facility boundary, where necessary to protect human health or the environment. The order shall incorporate, as a condition of the order, any applicable waste discharge requirements issued by the Regional Water Quality Control Board. Persons subject to an order include present and prior owners, lessees, or operators of the property where the hazardous waste is located, present or past generators, storers, treaters, transporters, disposers, and handlers of hazardous waste, and persons who arrange, or have arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste.

- In an order proposing a penalty pursuant to this section, the CUPA shall take into consideration the nature, circumstances, extent and gravity of the violation, the violator's past and present efforts to prevent, abate, or cleanup conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed civil penalty, and the prophylactic effect that imposition of the proposed penalty would have on both the violator and the regulated community as a whole.

Assessment of administrative penalties in administrative enforcement orders shall be pursuant to CCR Division 4.5, Chapter 22, Section 66272.60-66272.68

The CUPA shall determine an initial penalty for each violation, considering actual and potential harm, extent of deviation and number of days the violation continued. There are 3 categories for the degree of deviation of penalties calculated pursuant to state regulations (CCR Title 22 Section 66272.63):

- Major

  The act deviates from the requirement to such an extent that the requirement is completely ignored and none of its provisions are complied with or the function of the requirement is rendered ineffective because some of its provisions are not complied with.

- Moderate

  The act deviates from the requirement, but it functions to some extent even though not all of its important provisions are complied with.

- Minor

  The act deviates somewhat from the requirement. The requirement functions nearly as intended, but not quite as well as if all provisions had been met.

- The order must be served by a personal service or by certified mail and shall inform the person so served of the right to a hearing.

- If the person served the order cannot informally resolve the violation or deficiency with the CUPA or PA they may within 15 days after service of the order request a hearing by filing with the CUPA or PA a notice of defense. **If no notice of defense is filed within 15 days of service of the order, the order shall become final.**

- If a person served with an order chooses to resolve the content, terms or conditions of the order directly with the CUPA or PA and does not file an administrative or judicial appeal, the person may request, and the CUPA or PA shall amend into the order, a description which explains the violation and the penalties applied, including the nature extent and gravity of the violations and a brief description of any mitigating circumstances and any explanations by the respondent. Any amendment to include the written statement prepared pursuant to this subdivision does not constitute a new order and does not create a new appeal right.

- Any hearing requested shall be conducted within 90 days after receipt of the notice of defense by an administrative law judge of the Office of Administrative Hearings of the Department of General Services. With the exception of the administrative penalty, any provision of the order shall take effect upon issuance by the CUPA or PA if the CUPA or PA finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment and a request for a hearing shall not stay the effect of that provision of the order pending a decision by the CUPA or PA.

  Any order issued by the CUPA or PA shall require the person to whom the order is issued to submit to the CUPA or PA within 30 days a proposal for carrying out the required monitoring, testing, analysis and reporting.

11. **Quarantine (HSC Section 25187.6) Hazardous Waste Generators/Tiered Permitting Facilities**

    If an inspector has probable cause to believe that any hazardous waste, or any material which the inspector reasonably believes to be a hazardous waste is stored, transported, disposed of, or handled in violation of this chapter (HSC Chapter 6.5) or in a manner that will constitute a violation of this chapter, and that the violation may threaten public health and safety, or the environment the inspector may issue an order of quarantine by affixing a tag or other appropriate marking to the container containing, or to the vehicle transporting, the hazardous waste.

12. **Administrative civil penalties for business plan violations (HSC Chapter 6.95, Section 25514.6)**

    Any business that knowingly violates Chapter 6.95, after reasonable notice of the violation is civilly liable for an administrative penalty. The governing body of the administering agency shall set the amount of the administrative penalty but not greater than five thousand dollars ($5,000) for each day in which the violation occurs.

Procedure for issuing administrative civil penalties:

The administrating agency shall follow the following procedure in assessing administrative civil penalties:

A. A written complaint shall be sent to the person on whom the civil liability may be imposed for violation of HSC Chapter 6.95 stating the acts or failures to act that constitute a basis for liability and the amount of the proposed civil liability.

B. The complaint shall be served by personal service or certified mail and shall inform the party so served that a hearing shall be conducted within 60 days after the party has been served, unless the party waives (in writing) the right to a hearing.

C. If the party waives the right to a hearing, the administering agency shall issue an order setting liability in the amount proposed in the complaint unless the administering agency and the party have entered into a settlement agreement, in which case the administering agency shall issue an order setting liability in the amount specified in the settlement agreement. Where the party has waived the right to a hearing or where the administering agency and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

D. After conducting any hearing required under this section, the administering agency shall, within 30 days after the case is submitted, issue a decision, including an order setting the amount of civil penalty imposed.

E. Orders setting civil liability shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. Copies of these orders shall be served by personal service or by certified mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

F. Within 30 days after service of a copy of a decision issued by the administering agency, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within this 30 day period may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the administering agency if the decision is based upon substantial evidence in the whole record. The filing of a petition of writ of mandate shall not stay any accrual of any penalties assessed pursuant to this chapter.

G. The administering agency must have adopted a written procedure to carry out administrative civil penalties (HSC Section 25514.6)

13. **Referral to and Acceptance by State/Federal Agency**

The facility may be referred to a State or Federal Agency for appropriate enforcement action. The referral shall include a statement of facts and all information necessary for the agency to take action. Prior to referral the CUPA should consult with the State or Federal agency to determine if the agency will accept the case. If the referral is not accepted or acted on by the agency, the CUPA must take other independent formal enforcement action. CUPAs may refer hazardous waste generator/tiered permitting facilities to DTSC for permit revocation or suspension (HSC Section 25186.7).

14. **Civil Case (Various Health and Safety Code sections)**

The CUPA may forward the case to the district attorney, county counsel, city attorney or attorney general for prosecution under the appropriate statutes or regulations for civil violations. The referral shall include a statement of facts and all information necessary for the prosecuting agency to take action. If the referral is not accepted or acted on by the agency, the CUPA must take other formal enforcement action.

15. **Criminal Case (Various Health and Safety Code sections)**

The CUPA may forward the case to the U.S. Attorney, district attorney, county counsel, city attorney or attorney general for prosecution under the appropriate statutes or regulations for criminal prosecution. The referral shall include a statement of facts and all information necessary for the prosecuting agency to take action. If the referral is not accepted or acted on by the agency, the CUPA must take other formal enforcement action.

Title 27 Section 15200 (f)(2)(D) states that the enforcement component of the Inspection and Enforcement Program Plan shall include the following: A graduated series of enforcement actions, which may be taken by the responsible agencies, based on the severity of the violation.

The State Department of Toxic Substances Control has adopted as State policy, the Enforcement Response Policy dated August 16, 1995. This document summarizes the enforcement options that agency implementing Health and Safety Code Chapter 6.5 may pursue for violations of the Hazardous Waste Control Law to cause expedited correction of those violations and promote compliance. This policy allows flexibility to choose among the various appropriate enforcement options based upon the circumstances of each particular case and the ability of the option to promote compliance. Significant Non-Compliers (SNC) and Class I violations require formal enforcement action.

The following table on page 27 summarizes the enforcement options that have been presented.

Matrix of Enforcement Options for all CUPA Programs

	Generator	CalARP	Bus.Plans	UST
1. Notice of Violation	x	x	x	x
2. Summary of Violations	x	-	-	-
3. Notice to Comply	x	-	-	-
4. Re-inspection	x	x	x	x
5. Re-inspection w/fee	x	x	x	x
6. Office Hearing	x	x	x	x
7. **Permit Revocation**	x	x	x	x
8. **Facility Closure**	x	x	x	x
9. **Business License Revocation**	x	x	x	x
10. **Administrative Order**	x	-	-	-
11. **Quarantine**	x	-	-	-
12. **Administrative Civil Penalty***	-	-	x	-
13. **Referral to State/Federal Agency**	x	x	x	-
14. **Civil Case**	x	x	x	x
15. **Criminal Case**	x	x	x	x

*HSC Section 25514.5 requires the administrative civil penalty to be set by the governing body.

Shaded items indicate informal enforcement options. Items in bold print indicate formal enforcement action options. Enforcement options 2,3,10,11,12,14 and 15 are located in the Health and Safety Code.

Note:

Immediate compliance is required if the violation poses an imminent and/or significant risk.

No enforcement is taken by CUPAs against aboveground storage tanks facilities. If the facility does not have a SPCC, a referral is made to the appropriate Regional Board.

In addition to the enforcement options listed above, jurisdictions (district attorney) may also use the Fish and Game Code, Uniform Fire Code, Water Code, Air Pollution Control District regulations and other codes.

CUPAs may develop and adopt local ordinances, which may include additional enforcement tools.

Program Specific Enforcement Violations

The following listing identifies the specific enforcement actions/penalties for each program area.

A. Hazardous Materials Release Response Plans (HSC Chapter 6.95)

1. HSC Section 25514: Civil liability for violations of Section 25503.5 to 25505 inclusive or Sections 25508 to 25510 inclusive shall be civilly liable to the administering county or city in an amount of not more the $2,000 for each day in which the violation occurs.

2. HSC Section 25414.3: Any person who knowingly violates Section 25503.5, 25503.7, 25503.8, 25508, 25509, 25510 or 25533 after reasonable notice of the violation, is, upon conviction, guilty of a misdemeanor. This section does not preempt any other applicable criminal or civil penalties.

3. HSC 25514.5: Notwithstanding Section 25514 any business which violates this article is civilly liable to an administering agency for an administrative civil penalty, in an amount which shall be set by the governing body of the administering agency, but not greater than $2,000 for each day in which the violation occurs.

4. Notwithstanding Section 25514, any business that knowingly violates this article after reasonable notice of the violation is civilly liable for an administrative penalty, in an amount which shall be set by the governing body of the administering agency, but not greater than $5,000 for each day in which the violation occurs.

5. HSC 25515: Any person or business who violates Section 25507 shall, upon conviction, be punished by a fine of not more than $25,000 for each day of violation, or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment

6. HSC 25515.1 Any person who willfully prevent, interferes with, or attempts to impede the enforcement of this chapter by any authorized representative of an administering agency is, upon conviction, guilty of a misdemeanor.

B. Cal/ARP

1. CCR Title 19 Section 2775.4 states that violators of the statues or regulations established for the CalARP program may be liable for penalties or enforcement pursuant to provisions in Article 2 of Chapter 6.95 of HSC.

2. HSC Article 2, Section 25540 of the Chapter 6.95 states: (a) civil penalties not to exceed $2,000 per day for each violation. Full cost recovery if the violation results in or significantly contributes to an emergency/fire. (b) Any person or business who knowingly makes any false statement or representation in any record, report or other document filed, maintained, or used for the purpose of compliance with this article, or

destroys, alters or conceals any such record, report, or other document filed, maintained, or used for the purpose of compliance with this article, shall, upon conviction, be punished by a fine of not more than $25,000 for each day of violation

C. UST Facilities

1. HSC Chapter 6.7 Section 25299. Violations; civil and criminal penalties...

(a) Any operator of an underground tank system shall be liable for a civil penalty of not less than $500 or more than $5,000 for each underground storage tank, for each day of violation, for any of the following violations:

1. Operating an underground tank system which has not been issued a permit, in violation of this chapter.
2. Violation of any of the applicable requirements of the permit issued for the operation of the underground tank system.
3. Failure to maintain records, as required by the chapter.
4. Failure to report an unauthorized release, as required by Sections 25294 and 25295.
5. Failure to properly close an underground tank system, as required by Section 25298.
6. Violation of any applicable requirement or any regulation adopted by the board pursuant to section 25299.3
7. Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.
8. Making any false statement...

(b) Any owner of an underground tank system shall be liable for a civil penalty of not less than $500 or more than $5,000 per day for each underground storage tank, for each day of violation, for any of the following violations:

1. Failure to obtain a permit as specified by this chapter
2. Failure to repair or upgrade an underground tank system in accordance with this chapter.
3. Abandonment or improper closure of any underground tank system subject to this chapter.
4. Knowing failure to take reasonable and necessary steps to assure compliance with this chapter by the operator of an underground tank system.
5. Violation of any applicable requirement of the permit issued for operation of the underground tank system.
6. Violation of any applicable requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.
7. Failure to permit inspection or to perform any monitoring ,testing, or reporting required pursuant to Section 25288 or 25289.
8. Making any false statement, representation, or certification in any application, record, or other document submitted or required to be maintained pursuant to this chapter.

(c) Any person who intentionally fails to notify the board or the local agency when required to do so by this chapter or who submits false information in a permit application, amendment, or renewal, pursuant to Section 25286 is liable for a civil penalty of not more than $5,000 for each underground storage tank for which notification is not given or false information is submitted.

(d) Any person who falsifies any monitoring records required by this chapter or knowingly fails to report an unauthorized release, shall, upon conviction, be punished by a fine of not less $5,000 or more than $10,000, by imprisonment in the county jail not to exceed one year, or by both fine and imprisonment.

(e) In determining the civil and criminal penalties the court shall consider all relevant circumstances.....

2. HSC Chapter 6.7 Section 25299.01

When any person has engaged in, is engaged in, or is about to engage in any acts or practices which violate this chapter or Chapter 6.75 or any rule, regulation, permit, standard, requirement, or order issued, adopted, or executed pursuant to this chapter or Chapter 6.75, the city attorney, the district attorney or the Attorney General may apply to the superior court for any order enjoining these acts or practices, or for an order directing compliance. The court may grant a permanent or temporary injunction, restraining order, or other order.

3. HSC Chapter 6.7 Section 25299.02

Every civil action brought under this chapter shall be brought by the city attorney, the district attorney, or the Attorney General....

4. HSC Chapter 6.7 Section 25299.03

Any civil action brought pursuant to this chapter shall be brought in the county in which the violation occurred.....

5. HSC Chapter 6.7 25299.04

In any civil action brought pursuant to this chapter in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any state of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued or that the remedy at law is inadequate. The temporary restraining order, preliminary injunction, or permanent injunction shall be issued without these allegations and without this proof.

D. SPCC Facilities

No enforcement action is taken against a facility with violations of the Spill Prevention Control and Countermeasure Plan (SPCC). Referral is made to the appropriate Regional Board.

E. Generators (All) and Tiered Permitting Facilities

1. HSC Chapter 6.5 Section 25180 gives DTSC and the CUPA enforcement authority to implement and enforce the standards of Chapter 6.5. Enforcing HSC Chapter 6.5 includes the issuance of orders imposing administrative penalties, the referral, and the settlement of cases and adoption of enforcement policies

2. HSC Chapter 6.5 Section 25187

   The CUPA may issue an order specifying a schedule for compliance or correction and imposing an administrative penalty for any violation of this chapter [6.5] or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter.

3. HSC Chapter 6.5 Section 25188

   Any person subject to a schedule for compliance issued pursuant to Section 25187 who does not comply with that schedule shall be subject to a civil penalty of not more than $25,000 for each day of noncompliance.

4. HSC Chapter 6.5 Section 25189

   Any person who intentionally or negligently makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with is chapter [6.5], shall be liable for a civil penalty not to exceed $25,000 for each separate violation or, for continuing violation, for each day that violation continues.....

5. HSC Chapter 6.5 Section 25190

   Except as otherwise provided in Sections 25189.5, 25189.6, 25189.7, 25191, any person who violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, upon conviction, guilty of a misdemeanor and shall be punished by a fine of not more than $1,000 or by imprisonment for up to 6 months in the county jail or by both that fine and imprisonment.

6. HSC Chapter 6.5 Section 25191

   Any person who knowingly does any of the following acts shall, upon conviction, be punished by a fine of not less $2,000 or more than $25,000 for each day of violation or by imprisonment in the county jail for not more than 1 year, or by both the fine and imprisonment.

   a. Makes any false statement or representation
   b. Has in possession altered or concealed records
   c. Destroys, alters or conceals any record
   d. Withholds information
   e. Transportation violations
   f. Inadequate manifest records

g. Transportation violations
h. Violates Section 25162

7. HSC Chapter 6.5 Section 25192

All civil and criminal penalties collected pursuant to this chapter [6.5] or Chapter 6.6 shall be apportioned in the following manner:

a. 50% shall be deposited in the Hazardous Substance Account in the State General Fund.
b. 25% shall be paid to the city attorney, district attorney or Attorney General.
c. 25% to the CUPA or PA. If investigation by the local police or CHP led to the bringing of the action, the local health officer shall pay a total of 40% of his portion under this subdivision to said investigating agency.

Class I violations require that formal enforcement action be taken according to the State Response Policy. Class II violations may be enforced by formal or informal enforcement actions. Minor violations require that a Notice to Comply be prepared pursuant to HSC Section 25187.8.

Pursuant to the State Enforcement Response Policy and state statutes and regulations, generator violations fall under 4 categories:

- Class I violations
- Class II violations
  - Minor violations
- Significant Non-Compliers (SNC)

Class I violation means any of the following (HSC Section 25110.8.5):

(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 [6.5], 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:
(A) The volume of the waste.
(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 postclosure 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 of, or other corrective actions for, releases.

(b) The deviation is a Class II violation which is a chronic violation or committed by recalcitrant violator. "Class II Violation" has the same meaning as defined in Section 66260.10 of the CCR, Title 22.

Class I violations must be addressed through a formal enforcement action according to the State Enforcement Response Policy. Examples of Class I violations include but are not limited to the following:

1. A violation that results in a release or serious threat of release of hazardous waste to the environment, for example:

   - Incompatible wastes stored adjacent to each other with no physical barrier for separation.
   - Waste stored or transported in incompatible, damaged, or deteriorated container.
   - 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 a groundwater monitoring program with regularly scheduled sampling activities.
   - Failure to implement a groundwater monitoring program where all required parameters are not being analyzed.
   - Failure to perform the required statistical analysis on 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 permitted or interim status facilities, for example:

   - Failure to manifest hazardous waste.
   - Use of an unregistered hazardous waste transporter.
   - Treatment, storage, or disposal at an unauthorized point.

5. Class I or 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 mechanisms to assure closure, post closure, and liability coverage, for example:

   - Failure by an owner/operator to establish or maintain a financial assurance instrument

Class II violation means the following:

Class II violation means a deviation from the requirements specified in Chapter 6.5 of the HSC, or regulations, permit or interim status document conditions, standard, or requirements adopted pursuant to that chapter, that is not a Class I violation.

Examples of Class II violations include but are not limited to the following:

- Failure of a generator to keep a copy of each manifest for at least 3 years.
- Failure to maintain a copy of the closure plan at the facility.
- Failure to submit the annual report in a timely manner.
- Failure to maintain an adequate contingency plan.
- Failure to adequately document hazardous waste training
- Failure to note the date and nature of any repairs in the inspection log.
- Minor deficiencies in other recordkeeping requirements.
- Failure to update closure costs for inflation (although this may be Class I if such costs exceed $ 100,000.00).

Minor violations are defined as follows (HSC section 25117.6):

(a) 'Minor violation' means a deviation from the requirements of this chapter, or any regulation, stand, requirement, or permit or interim status document condition adopted pursuant to the chapter[6.5] 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 chronic or a violator is recalcitrant, for purposes of subparagraph (C) paragraph (1), the department 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.

Minor violations must be addressed by a Notice to Comply as specified in HSC section 25187.8. No formal enforcement action may be taken for minor violations that are corrected during the inspection or within 30 days.

Significant Non-Complier (SNC)

In addition DTSC has adopted a definition for "Significant Non-Complier "(SNC) from Federal EPA based upon the nature of the violations, along with a number of other factors. A SNC is a handler who:

- Has caused actual exposure or substantial likelihood of exposure to hazardous waste or hazardous constituents:or
- Is a chronic (a handler who is regularly found to have many Class I or Class II violations) or recalcitrant violator (a handler who actively refuses to comply with the regulatory requirements): or
- Substantially deviates from the terms of a permit, order, settlement document, or decree by not meeting the 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.

SNCs represent the category of violators that merit the most stringent and timely enforcement response. SNCs require formal enforcement action, and must be closely tracked to ensure timely and appropriate enforcement. Examples of potential SNCs are provided below:

- Failure to comply with an enforcement order
- Continuing Class I violation from preceding inspection within 3 years
- Second Class I violation in 3 years.
- Repeating the same Class II violation within 3 years.
- Operating a facility without a permit or other grant of authorization.
- Disposal of hazardous waste at a non-authorized site.
- Failure to manage ignitable, reactive, or incompatible wastes as required by 22 CCR 66264 and 66265.17(b)(1),(2),(3),(4) and (5).
- Failure of an owner/operator of a Treatment, Storage, or Disposal (TSD) facility to have a closure or post-closure plan or cost estimates.
- Failure to establish or maintain financial assurance for closure and/or post closure care.
- Systemic failure to comply with manifest requirements or a substantial deviation from manifesting requirements.
- Systemic failure to follow container/tank labeling requirements.
- Systemic use of containers in poor condition.
- Transporting hazardous waste without being a registered hauler.

DTSC is currently reporting SNC information to Federal EPA from information submitted by CUPAs from waste generator inspections.

F. Recyclers

Enforcement for onsite recyclers is the same as for generators.

G. Onsite Hazardous Waste Treatment (PBR, CA, CE)

Enforcement for on-site hazardous waste treatment facilities is the same as for generators.

H. Permit by Rule – HHW

Enforcement for household hazardous waste events and facilities is the same as generators.

In addition to the specific references listed above, Business and Profession Code Section 17206 may be utilized which states:

> Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed $2,500 for each violation.....
>
> Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

Describe the efforts made to eliminate duplication, inconsistencies and lack of coordination within inspection and enforcement programs

The CUPA shall attend local environmental task force meetings. The CUPA shall maintain contact with appropriate state and federal agencies to assure that the inspection and enforcement programs are consistent, coordinated and cooperative.

The CUPA should complete this section with the specific local information.?

Provisions to encourage joint, combined and integrated/multi-media enforcement whenever possible.

The CUPA, State and Federal agencies coordinate enforcement activities to eliminate duplicative enforcement efforts.

Joint enforcement is enforcement of a regulated business, conducted by two or more inspectors representing different Unified Program Agencies within a CUPA.

Combined enforcement is defined as enforcement activities concerning a regulated business by one inspector representing two or more Unified Program elements or other program elements.

Integrated/multi-media enforcement is enforcement involving Unified Program and non-Unified Program agencies and/or involving more than one environmental medium (i.e. air, water, soil) of a regulated business that results in consolidating enforcement.

The CUPA should complete this section with the specific local information.?

This Inspection/Enforcement Plan shall be reviewed annually and updated as necessary.

Acronyms

AEO- Administrative Enforcement Order
AST- Aboveground Storage Tanks
CA - Conditional Authorization
Cal/EPA- California Environmental Protection Agency
CCR- California Code of Regulations
CE- Conditional Exemption
CESQT- Conditionally Exempt Small Quantity Generators
CUPA- Certified Unified Program Agency
DTSC- Department of Toxic Substances Control
EPA- United States Environmental Protection Agency
HHW- Household Hazardous Waste
HSC- Health and Safety Code
HW- Hazardous Waste
LQG- Large Quantity Generator
NTC- Notice to Comply
OES- Office of Emergency Services
PA- Participating Agency
PBR- Permit by Rule
RCRA- Resource Conservation and Recovery Act
RMP- Risk Management Plan
RP- Responsible Party
RWQCB- Regional Water Quality Control Board
SPCC- Spill Prevention Control and Countermeasures
SWRCB- State Water Resources Control Board
UP- Unified Program
UST- Underground Storage Tank

Requirements for Inspection/Enforcement Program Plans [CCR Title 27, Section 15200 (f)]

The inspection component shall include the following:

- The number of regulated businesses within each program element and the mandated frequency of inspection for those regulated businesses.
- A schedule of the frequency of inspections to be conducted which shall meet the minimum inspection frequency(s) mandated in statutes.
- If there is no mandated inspection frequency, inspection frequency scheduling shall consider the following: local zoning requirements, population density, local ground water conditions, identified hazard of a type of business, quantity and types of hazardous materials, emergency response capability, compliance history and any other pertinent local issues.
- Provisions to promote integrated multi-media inspections.
- A mechanism to ensure that Unified Program inspector training meets or exceeds requirements currently set forth in statute or regulation.
- Methods to cross-train staff.
- To the maximum extent feasible, coordinate inspection and enforcement efforts between the CUPA and its participating agencies.

The enforcement component shall include the following:

- A description of responsible agency enforcement notification procedures which ensure the following: a). appropriate confidentiality and b). coordination and timely notification between responsible agencies and the appropriate prosecuting agency.
- Uniform and coordinated application of enforcement standards.
- Penalties and enforcement actions which are consistent and predictable for similar violations and no less stringent than state statute and regulations.
- A graduated series of enforcement actions which may be taken by the responsible agencies, based on the severity of the violation.
- Provisions for county an/or regional meetings of the CUPA with its participating agencies and between the CUPAs in a county-wide or regional area involving multiple CUPAs at least every quarter. The purpose of the meetings will be to discuss integrate/multi-media enforcement programs which include joint and combined inspection and enforcement.
- A description of the efforts made to eliminate duplication, inconsistencies and lack of coordination within inspection and enforcement programs.
- Provisions to encourage joint, combined and integrated/multi-media inspections whenever possible.

The plan shall be annually reviewed by the CUPA. The CUPA shall consult with and reach consensus with the participating agnecy(s) prior to any changes which affect program elements for which the participating agency is responsible.

The CUPA shall prepare a summary of the annual plan review identifying the effectiveness and efficiency of inspection and enforcement activities for the prior year and include this information in the annual self-audit.

The CUPA shall update the plan as necessary.

Deficiencies and Corrective Actions

County of Lake –
Update 1 Submitted January 8, 2007
with Cal/EPA's Response

Deficiency #1: The CUPA is not annually reviewing or summarizing their review of their Unified Inspection and Enforcement Plan.

CUPA Corrective Action: The County of Lake Inspection and Enforcement Plan has been re-developed as of January 5, 2007. See enclosed. I have followed the State Guideline. Please review and comment. Included in this plan is wording that we involve time in each inspection to discuss and review Universal waste procedures, and handling of silver waste if present. See page 13 of I and E Plan #12.

The frequency for inspecting SQG and Farms is stated as once per 3 years. See page 6 of I and E Plan

The AEO process is summarized on page 22, 23, 24. We are in the process of getting the procedure approved by our County Counsel.

The Lake County Hazardous Materials Area Plan has been incorporated into the Lake County Health Services Emergency Response Plan. It is one unit of nine. It has been updated and is in constant evaluation.

Cal/EPA Response: Cal/EPA and DTSC find this response sufficient to address the deficiency. This deficiency is considered corrected

Deficiency #2: The CUPA is not remitting the state surcharge collected to the State.

CUPA Corrective Action: The State Surcharge money for 2006, 2007 CUPA programs will be submitted to Cal – EPA by 15 February 2007.

Cal/EPA Response: The corrective action under the 2006 evaluation requires the CUPA to submit the FY 04/05 and FY 05/06 state surcharge in addition to future FY. Therefore, Cal/EPA will continue tracking the progress the CUPA is making towards correcting this deficiency until the CUPA has submitted the FY 04/05, FY 05/06, and FY 06/07 state surcharges. Provide Cal/EPA with an update in the next progress report due April 17, 2007.

Deficiency #3: As noted in the 2005 CUPA evaluation, the CUPA is not regulating all agricultural handlers under the Business Plan program.

CUPA Corrective Action: A list of Farms is continuing to be developed and all are scheduled to be inspected in 2008.

Cal/EPA Response: Corrective action is ongoing. We will monitor progress via the deficiency progress report updates.

Deficiency #4: As noted in the 2005 CUPA evaluation, the CUPA is not meeting the triennial inspection frequency for the Business Plan program.

CUPA Corrective Action: This and number 10 are the same problem. I have now set an inspection schedule that will bring the County into compliance with the tri-annual requirement by July 2007. I have also scheduled 2008 and 2009 to keep up with this requirement. I have set this up on an Access Data Spreadsheet.

Cal/EPA Response: A corrective action plan is in place. We will monitor progress via deficiency progress report updates and annual summary reports.

Deficiency #5: As noted in the 2005 CUPA evaluation, the CUPA has not yet conducted preliminary risk determinations for potential Table 3 CalARP facilities.

CUPA Corrective Action: All potential Cal – ARP facilities have now been notified by letter to submit a Preliminary Risk Assessment by February 2007 or submit a full Cal – ARP plan by the end of 2007. The Preliminary Risk Assessments will be reviewed and evaluated as they come in.

Cal/EPA Response: This deficiency is being corrected. The status of the stationary sources will be reflected in the annual summary report.

Deficiency #6: As noted in the 2005 CUPA evaluation, most of the inventory forms in the files reviewed are incomplete and/or outdated.

CUPA Corrective Action: This same action is being taken for number 9. These are reviewed as part of our normal inspection process. As deficiencies are found in the inventory and the site map they are required to be updated. When compliance is accomplished a Return To Compliance note is made to the original inspection report. Until compliance is made, follow – up contact is done.

Cal/EPA Response: This deficiency is being corrected. The deficiency will be reassessed at the next evaluation.

Deficiency #7: As noted in the 2005 CUPA evaluation, the CUPA is not ensuring that all businesses submit a Business Activities page.

CUPA Corrective Action: All facilities now have a Business Activities page on file. Theses will be reviewed during the tri – annual inspection.

Cal/EPA Response: The CUPA states that all businesses have now submitted a Business Activities Page. This deficiency has been corrected. No further updates are needed for deficiency #7.

Deficiency #8: The emergency response plan in 6 of the 9 Business Plan files reviewed did not contain instructions to notify the State Warning Center (OES) in the event of a hazardous materials release.

CUPA Corrective Action: This County has been using the Unidocs Emergency Response Contingency Plan format for the last several years. On page #2 of this plan, on point number 4, letter a, sub number v, are the instructions to notify the State OES. As we are inspecting facilities this year, to get caught up with the tri – annual schedule, these plans are updated using this format. As follow – up contact is made and compliance is obtained an RTC is noted in the file.

Cal/EPA Response: As per deficiency #6, this deficiency is being corrected and will be reassessed next time around.

Deficiency #9: UST plot plans reviewed did not contain all the required elements or were missing.

CUPA Corrective Action: See response number 6.

Cal/EPA Response: Cal/EPA is satisfied with the progress the CUPA is making towards correcting this deficiency. The deficiency will be reassessed at the next evaluation.

Deficiency #10: With the increase in hazardous waste facilities, the CUPA is not meeting their inspection frequencies.

CUPA Corrective Action: see response number 4.

Cal/EPA Response: A corrective action plan is in place. We will monitor progress via deficiency progress report updates and annual summary reports.

Deficiency #11: During the file review, Certification of Return to Compliance (RTC) for minor violations was not observed in the files, or re-inspection reports to confirm RTC was not observed in the files.

CUPA Corrective Action: All inspections done in 2006 that required follow – up in order attain compliance are being done. When compliance is attained an RTC is noted in the file. The RTC is noted and dated on the original inspection report. This procedure will continue as inspections are made in the future. A RTC form is also given to the facility to allow them to notify us that in their opinion they have returned to compliance. A reinspection is then made to verify RTC and noted in the original inspection report.

Cal/EPA Response: The corrective actions sufficiently addresses this deficiency.

Deficiency #12: As noted in the 2005 CUPA evaluation, the CUPA has exempted heating fuel from the Business Plan program without following the exemption process.

CUPA Corrective Action: We are presently seeking Fire Department Chief's buy in on the exemption of business heating fuel from the Business Plan requirements. Once this is attained a Public Hearing will be conducted.

Cal/EPA Response: The CUPA is pursuing exemption. We will monitor progress via the deficiency progress report updates.