

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

Report to the Legislature
“Recommendations to Improve Unified Program Enforcement Consistency”

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Executive Summary

This report evaluates existing enforcement authorities and processes available under the Unified Program and recommends consideration of statutory changes to make enforcement more consistent. The statutes of four of the six program elements provide enforcement options that may be pursued by CUPAs for violations of their respective requirements: the Underground Storage Plan (UST) program element, the Business Plan program element, the California Accidental Release Prevention (CalARP) program element, and the Hazardous Waste Generator/Onsite Treatment program element. All four include civil and criminal enforcement options; only two provide administrative enforcement processes: the Business Plan program element and the Hazardous Waste Generator/Onsite Treatment program element.

Two of the program elements, the Hazardous Materials Management Plan/Hazardous Materials Inventory Statement of the Uniform Fire Code (HMMP/HMIS) and the Spill Prevention Control and Countermeasure Plan of the Aboveground Storage Tank program (SPCC), provide CUPAs with no enforcement authorities or processes in their statutes. However, enforcement is available for violations of these program element requirements through other avenues. The HMMP/HMIS program element is largely redundant with the Hazardous Materials Release Response Plan and Inventory (Business Plan) program element; the latter provides administrative, civil, and criminal enforcement options. Under the SPCC program element, CUPAs may refer violations to the appropriate Regional Water Quality Control Board (RWQCB). RWQCBs have civil enforcement authority outside of the Unified Program for enforcement.

The absence of statutory statewide administrative enforcement processes for violations under the Underground Storage Tank Program, Accidental Release Program and Above Ground Storage Tank Program is a barrier to consistency in the Unified Program's enforcement authorities and processes. This report recommends that workshops be held to explore the possibility of legislation to create a new, unified administrative enforcement process applicable to all program elements that incorporates the fundamentals of existing administrative processes. The California Environmental Protection Agency plans to hold workshops in the spring and summer of 2001 to gather ideas and suggestions from interested parties for a new administrative process. Other barriers, such as lack of complete data, lack of direct enforcement authority and/or enforcement experience by the state agencies that have jurisdiction over the CUPA programs, and training insufficiencies are also identified. Recommendations for improvement in these areas include: ensuring the current support received from the Circuit Prosecutor Project, obtaining compliance data, and improving training given to the CUPAs by the state lead agencies.

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REPORT TO THE LEGISLATURE

“Recommendations to Improve Unified Program Enforcement Consistency”

1. Introduction

The Supplemental Report of the 2000 Budget Act requires the Secretary for Environmental Protection to “...evaluate the existing statutory and regulatory enforcement authorities and processes for each of the six program elements within the Unified Program and report to the Chairs of the Joint Legislative Budget Committee and the fiscal and pertinent policy committees of both houses by January 10, 2001 on whether the authorities and practices are consistent and on what law and process changes can be made to ensure consistent enforcement across all six program elements.”

This report has been prepared to meet this requirement. It provides a brief summary of the existing enforcement authorities and processes available under the various Unified Program elements, evaluates the consistency of these authorities and processes, and finally, recommends changes to improve consistency in the CUPAs’ enforcement authorities.

2. Background

Senate Bill 1082 of 1993 established the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program (Unified Program), with the goal of consolidating, coordinating, and making consistent local implementation of the following six regulatory programs:

- The Hazardous Waste Generator and Onsite Hazardous Waste Treatment program
- The Underground Storage Tank program (UST)
- The Hazardous Materials Release Response Plan and Inventory program (HMRRP) (Business Plan)
- The California Accidental Release Prevention program (CalARP)
- The Spill Prevention Control and Countermeasure Plan of the Aboveground Storage Tank program (SPCC)
- The Uniform Fire Code Hazardous Materials Management Plan and Inventory program (HMMP/HMIS)

CUPAs and Participating Agencies (PAs) are required by the Health and Safety Code (HSC) to “...develop and implement a single, unified inspection and enforcement program to ensure coordinated, efficient, and effective enforcement of the provisions...” of the various program elements. Title 27 of the California Code of Regulations (27 CCR) specifies the inspections that must be included in this single program, and requires CUPAs to implement an Inspection and Enforcement Program Plan, in

cooperation with PAs. The plan must include uniform and coordinated application of enforcement standards, penalties and enforcement actions that are consistent and predictable, and “a description of efforts to eliminate duplication, inconsistencies and lack of coordination....”

As part of its *Analysis of the 2000-01 Budget Bill*, the Legislative Analyst’s Office (LAO) evaluated the Unified Program, and made recommendations for its improvement. In the section titled *State Agencies Can Do More to Improve the CUPA Program*, the LAO found that the Unified Program has improved the regulation of hazardous waste and hazardous materials in California, but that problems persist with the program, including inconsistency in the implementation of the program by CUPAs. One of the LAO’s primary concerns about inconsistency is in the area of enforcement. The LAO’s analysis recommended the enactment of legislation, to ensure that state agencies improve the consistency and adequacy of enforcement taken by the CUPAs.

3. Enforcement Under the Unified Program

3.1 The Purpose of Enforcement

Hazardous waste and hazardous materials statutes and regulations have been developed in order to protect public health and the environment from these substances. The laws are only effective to the extent that the businesses that handle hazardous substances comply with their requirements. Ensuring the highest possible rate of compliance by the regulated community requires a multifaceted approach, of which enforcement is a key component. Other components are:

- clear standards for compliance are established and communicated to the regulated community;
- regulated entities are evaluated for compliance with these standards through inspections;
- appropriate criteria for enforcement are established;
- those who significantly violate the established standards for compliance are penalized consistently and predictably, in accordance with established enforcement criteria.

The last two factors in this list are where enforcement authorities and processes fit in. An effective enforcement program¹:

- obtains violator compliance;
- promotes compliance by all members of the regulated community;
- penalizes violators appropriately, at a minimum depriving them of any economic gain obtained from their violations;
- treats similarly situated violators consistently with respect to the same types of violations;
- initiates and concludes enforcement actions in a timely manner.

In order to establish an enforcement program that achieves these goals, the CUPAs have been given the statutory authority to pursue a number of enforcement actions.

The advantages, disadvantages, and applicability of these various types of enforcement are discussed below.

3.2 Enforcement Authorities and Processes

The CUPAs are given specific enforcement authority under four of the six Unified Program elements: the Hazardous Waste Generator/Onsite Treatment element, the Underground Storage Tank element, the California Accidental Release Prevention element, and the Business Plan element. The authorities and processes that are available to CUPAs are described in brief, below. The program elements are discussed in order of the number of enforcement authorities and processes in their statutes, beginning with those that have the fewest. More detailed information, including specific statutory references, can be found in the tables in Attachments 1 and 2.

4. Existing Authorities and Processes Under Each Program Element

4.1 Aboveground Storage Tanks - SPCC

4.1.1 Requirements in Brief

The Spill Prevention and Control Countermeasure Plan (SPCC) program element is part of the Aboveground Storage Tank (AST) program, which is implemented by the State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards (RWQCBs). The program's requirements are found in Chapter 6.67 of Division 20 of the HSC. "In general, the [AST Program] requires owners or operators of aboveground petroleum storage tanks to file a storage statement, pay a fee... and implement measures to prevent spills."² The owner or operator of an aboveground storage tank facility that has a petroleum storage capacity of more than 660 gallons in a single tank, or a total storage capacity of more than 1,320 gallons in more than one tank, is generally required by HSC section 15270.5 to prepare an SPCC plan. The specific requirements for an SPCC are laid out in Title 40 Code of Federal Regulations (40 CFR section 112.7).

4.1.2 Enforcement Authorities and Processes

Although the SPCC statute [HSC section 25270.4(b)(1)] says, in part, "...the unified program agencies shall enforce the requirements of subdivision (c) of Section 25770.5...", no enforcement authority or process is spelled out in subdivision (c). The statute does not authorize the CUPAs to assess or recover civil penalties from, or to refer civil actions to District Attorneys or the Attorney General. The CUPAs' activities under the SPCC program element are limited to determining whether an SPCC is required, ensuring that businesses subject to the SPCC requirement have a plan on site, and referring facilities that lack required plans to the Regional Water Quality Control Boards for follow-up.³ The SWRCB, RWQCBs or the Attorney General may bring civil actions against violators of Chapter 6.67 (including violators of SPCC requirements); they may seek to enjoin violators, and may seek civil penalties of up to \$5000 per day for a first offense, up to \$10,000 per day for repeat violations.⁴

4.2 Uniform Fire Code - Hazardous Materials Management Plan, Hazardous Materials Inventory Statement

4.2.1 Requirements in Brief

The Uniform Fire Code (UFC) is published by the Western Fire Chiefs Association. The UFC "...prescribes regulations consistent with nationally recognized good practice for the safeguarding... of life and property from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the use or occupancy of buildings or premises."⁵ The State Fire Marshal, part of the Department of Forestry and Fire Protection since 1996, has adopted the Uniform Fire Code, with amendments, as the California Fire Code. Local fire departments are required to adopt local fire codes that are no less stringent than California Fire Code.

The Unified Program includes [pursuant to HSC section 25404(c)(6)] "the requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal...." This section of the Fire Code (which has been renumbered as sections 8001.3 of Article 80 of the California Fire Code) pertains to hazardous materials permits. Pursuant to section 8001.3.1, a permit is required "...to store, dispense, use or handle hazardous material in excess of..." specified quantities. The actual issuance of these permits and compliance with their requirements are outside the scope of the Unified Program. Permit applicants may be required by a fire chief to prepare a Hazardous Materials Management Plan (HMMP) (section 8001.3.2a) and Hazardous Materials Inventory Statement (HMIS) (section 8001.3.3a); these two documents are included in the Unified Program.

An HMMP designates storage and use areas for hazardous materials, specifies the maximum amount of each hazardous material that is stored or used in each area, specifies the locations of emergency valves, conveying piping, and the 'on' and 'off' positions for valves, and includes a storage plan. An HMIS is a listing, for each hazardous material stored in excess of a threshold quantity, of the material's general chemical names, common/trade names, major constituents (for mixtures), manufacturer, United Nations or North America shipping numbers (if available) hazard class or classes, Material Safety Data Sheets (MSDSs), aggregate quantity ranges, and carcinogen identification forms.

The responsibility of each CUPA is to "...ensure full access to and availability of..." the HMMP and the HMIS to the "...Chief of any county or city fire department or district with shared responsibility for protection of the public health and safety of the environment." CUPAs are also required to "...forward the data collected, within 15 days of receipt and conformation, to the county or city fire department or district."⁶

4.2.2 Enforcement Authorities and Processes

Neither of the two subsections of the Uniform Fire Code included in the Unified Program provides the CUPAs with enforcement authority against violators of HMMP and HMIS requirements. However, Assembly Bill (AB) 1777 of 1993 amended the HSC to allow the submission of the Business Plan and Chemical Inventory required by Article

1 of Chapter 6.95 of Division 20 of the HSC, in lieu of the UFC's HMMP and HMIS. The CUPAs do have authority to pursue administrative, civil, or criminal enforcement actions against violators of Business Plan requirements (see discussion below). Since the requirements of the HMMP and HMIS are now essentially the same as those of the Business Plan, the CUPAs' lack of enforcement authority under the UFC is not a barrier to consistency. The business plan's enforcement provisions are generally adequate and appropriate for both program elements, except as noted below.

In some cases, a business can be subject to the requirement to prepare a HMMP and HMIS, but not to the requirement to prepare a Business Plan. This can occur because the minimum quantity of hazardous materials that a business may handle before it must prepare a Business Plan is the same, regardless of the material: a total weight of 500 pounds; or a total volume of 55 gallons; or 200 cubic feet at standard temperature and pressure (for compressed gas). For certain hazardous materials, the HMMP and HMIS's specified quantities are less than the Business Plan's minimum quantities. The enforcement authorities available under the Business Plan's statutes cannot be used for violations by businesses that are subject only to Hazardous Materials Management Plan and Hazardous Materials Inventory Statement. If a CUPA or Participating Agency that is a fire department discovers a violation by such a business, it can pursue enforcement under its authority as a fire agency; a non-fire agency CUPA or PA does not have enforcement authority and would have to refer violations to the local fire department for enforcement in such circumstances.

4.3 Hazards Materials Release Response Plans (Business Plans)

4.3.1 Requirements in Brief

Every person who handles more than a specified quantity of hazardous materials must prepare a Business Plan, which includes a chemical inventory (including a site map), an emergency response plan and procedures, and information on the business' hazardous materials training plan for employees. The requirements for Business Plans are found in Article 1 of Chapter 6.95 of Division 20 of the HSC. The Business Plan program element is implemented on the local level by administering agencies--CUPAs or, in non-CUPA jurisdictions, agencies designated by the Secretary for Environmental Protection pursuant to HSC section 25404.3(f)(2) (Designated Agencies or DAs). (The term "administering agency" is used throughout the Business Plan's statutes; however, with the advent of the Unified Program, the distinction between a CUPA and administering agency has disappeared. All of the current administering agencies are either CUPAs or DAs.) The Governor's Office of Emergency Service (OES) is responsible for the adoption of regulations for the components of Article 1, including the Business Plan program and release reporting. These regulations are found in Chapter 4 of Division 2 of Title 19 of the California Code of Regulations (19 CCR).

The Business Plan is submitted to the local administering agency, which reviews the plan for compliance with statutory and regulatory requirements, and ensures that it is available for use by first responders in the event of an emergency. The Business Plan's enforcement statutes (beginning with HSC section 25514) include administrative, civil, and criminal options. An administering agency may collect administrative civil

penalties, pursuant to HSC section 25414.6, or may refer cases for civil or criminal actions (e.g., to the City Attorney, District Attorney, or Attorney General).

4.3.2 Enforcement Authorities and Processes

4.3.2.1 Administrative

The Business Plan is one of two program elements that have an administrative enforcement process established in statute, in HSC section 25514.6. Below is a summary of the process. Additional detailed information can be found in the attached table, or in the relevant statutes.

In response to a violation, an administering agency may issue a complaint that alleges “the acts or failures to act that constitute the basis for liability and the amount of the proposed civil liability” [HSC section 25414.6(a)]. The complaint must inform the accused violator that a hearing will be held within 60 days of service. The violator may waive the right to a hearing, in which case the administering agency must issue an order specifying the amount of the penalty. The penalty specified in the order is either the amount originally proposed or, if the violator and the administering agency have negotiated a settlement agreement, the amount agreed upon by the violator and the administering agency.

Initial administrative civil penalties of up to \$2,000 per day of violation may be assessed; the maximum penalty rises to \$5,000 per day after reasonable notice of the violation has been given. If a violator waives the right to a hearing, or agrees to a settlement, the order issued may not be appealed to any court or agency. If the violator requests a hearing, it is conducted by the administering agency, which must issue a decision within 30 days after the case is submitted. The violator may appeal the decision of the administering agency to superior court within 30 days of service of the decision.

4.3.2.2 Civil

A number of civil enforcement options are available to administering agencies implementing the Business Plan program element. Civil actions may be brought against violators by the City Attorney, District Attorney or Attorney General. If it is determined that a violation has occurred or is about to occur, an administering agency may request that the City Attorney, District Attorney or Attorney General apply for an injunction, restraining order, or other appropriate order. Violators of Business Plan requirements are civilly liable for up to \$2,000 per day of violation or up to \$5,000 per day for knowing violation after reasonable notice has been given--the same penalties that may be imposed under the administrative civil penalties statutes.

4.3.2.3 Criminal

A hazardous materials handler that, after reasonable notice, fails to prepare a business plan, fails to review, and if necessary, revise its business plan, fails to correct deficiencies in its business plan, fails to submit its business plan to its administering

agency may be charged with a criminal misdemeanor violation. Similarly, willful interference with enforcement of Business Plan requirements is a misdemeanor. Failing to properly report releases or threatened releases are misdemeanors and violators may be fined up to \$25,000 per day for certain first-time violations, and/or may be imprisoned in the county jail for up to one year. Second or subsequent convictions may be charged as misdemeanors or felonies.

4.4 California Accidental Release Prevention (CalARP)

4.4.1 Requirements in Brief

CalARP is California's program to implement the federal Accidental Release Prevention Program (ARP), with certain additional provisions specific to California. It supersedes the state's former Risk Management and Prevention Program (RMPP). CalARP requires businesses that handle more than a threshold quantity of any of a list of extremely hazardous substances to prepare a Risk Management Plan (RMP), in order to analyze "...potential accident factors that are present and the mitigation measures that can be implemented to reduce this accident potential."⁷

The requirements for CalARP are found in Article 2 of Chapter 6.95 of Division 20 of the HSC. The OES has responsibility for developing regulations that establish statewide standards for CalARP. These regulations are found in Chapter 4.5 of Division 2 of Title 19 of CCR. CalARP is administered on the local level by an administering agency, which may or may not be the same agency that implements the business plan program in a jurisdiction. As with the business plan, the administering agencies for CalARP have been superseded by CUPAs and DAs; these local agencies are responsible for implementing the program in their jurisdictions and for enforcing its requirements, as part of the Unified Program.

CalARP has a tiered implementation system based on the specific industrial processes that a regulated business uses. Processes that meet certain criteria are considered less risky and are eligible for the least stringent requirements ("Program 1"). Processes that would otherwise be eligible for Program 1, but have led to accidental releases, are too close to a public receptor, or have not been coordinated with emergency response agencies, must comply with the more stringent requirements of Program 2. The riskiest industrial processes are subject to the most stringent tier: Program 3. All three programs require the submission of an RMP. Programs 2 and 3 also require the owner or operator to implement a management system, conduct a hazard assessment, implement specific prevention requirements, develop an emergency response program, and submit data on the process's prevention program.

4.4.2 Enforcement Authorities and Processes

4.4.2.1 Administrative

No administrative enforcement process is provided for in state statutes for the CalARP program.

4.4.2.2 Civil

Violators of CalARP's requirements are subject to a variety of civil penalties; if these penalties are recovered from the violator, statute prohibits criminal prosecution of the violator for the same offense, and any civil action pending against a violator must be dismissed upon filing of a criminal complaint. A first-time violator may be held liable for up to \$2,000 per day of violation and any costs incurred for emergency response or cleanup resulting from the violation. A person who commits a violation after reasonable notice is liable for up to \$25,000 per day.

4.4.2.3 Criminal

Criminal misdemeanor penalties apply to anyone convicted of knowingly falsifying, destroying, altering, or concealing documents used for compliance with CalARP, including fines of up to \$25,000 per day of violation and/or imprisonment up to 1 year in county jail, in addition to any costs incurred for emergency response or clean-up resulting from the violation. Second or subsequent convictions may be charged as misdemeanors or felonies.

4.5 Underground Storage Tanks

4.5.1 Requirements in Brief

California's underground storage tank regulatory program was established in order to prevent "...contamination from, and improper storage of, hazardous substances underground... (and to) ensure that newly constructed underground storage tanks meet appropriate standards and that existing tanks be properly maintained, inspected, tested, and upgraded so that the health, property, and resources of the people of the state will be protected."⁸

The requirements for the UST program are found in Article 2, Chapter 6.7, Division 20 of the HSC. The SWRCB has responsibility for developing regulations that establish statewide standards for the UST program, which are found in Chapter 16 of Division 3 of Title 23, CCR. The program is implemented on the local level by CUPAs, Participating Agencies of CUPAs, and agencies designated by the Secretary for Environmental Protection, pursuant to subdivision (f) of HSC section 25404.3. The owner or operator of an UST must generally obtain a permit from the CUPA or other appropriate local agency, or a Unified Program Facility Permit from the local CUPA, PA, or Designated Agency (DA) prior to commencing operation of a tank. "The permit includes conditions regarding design, construction, and installation of new USTs, monitoring, repairs, upgrades, release response, closure, and notification or reporting."⁹

4.5.2 Enforcement Authorities and Processes

4.5.2.1 Administrative

None, except as established in some jurisdictions by local ordinance.

4.5.2.2 Civil

Civil actions against UST violators may be brought by the city attorney, district attorney, or Attorney General, who may apply to the superior court for an injunction or restraining order to prevent a person from continuing to violate UST requirements. Subdivision (a) of HSC section 25299 enumerates 8 violations for which an operator of a UST, if found civilly liable, is subject to a civil penalty of between \$500 and \$5,000 per tank, per day of violation. The violations include operating a tank without a permit, violating the conditions of a permit, failure to maintain required records, and failure to report an unauthorized release, among others. Subdivision (b) of the same section contains a similar list of violations for which the owner of a UST, if found civilly liable, is subject to the same penalties. Pursuant to subdivision (c) of section 25299, a person who “intentionally fails to notify the local agency when required to do so..., or who submits false information... is liable for a civil penalty...” of up to \$5,000.

4.5.2.3 Criminal

The UST program includes criminal enforcement options for certain violations. Pursuant to subdivision (d) of HSC section 25299, any person who falsifies required UST monitoring records, fails to report an unauthorized release from an UST, or who intentionally tampers with or disables a tank’s automatic leak detection system is guilty of a misdemeanor punishable by a fine between \$5,000 and \$10,000, one year in the county jail, or both.

4.6 Hazardous Waste Generator/Onsite Treatment of Hazardous Waste

4.6.1 Requirements in Brief

California’s Hazardous Waste Control Law (HWCL) and implementing regulations regulate the generation, classification, storage, treatment, recycling, and disposal of hazardous waste in this State. California is one of 49 states that are authorized to implement the federal RCRA hazardous waste program. As a condition of this authorization, the state’s HWCL’s requirements must be at least as stringent as those of the federal act.

Businesses whose processes generate waste are required to determine whether it meets any hazardous waste criteria. If a waste is hazardous, it is subject to various requirements for its generation, storage, labeling, onsite treatment, offsite treatment, storage and disposal. Hazardous waste generators are required to obtain authorization before treating their waste onsite, under one of three authorization tiers. Hazardous waste must be transported using the Uniform Hazardous Waste Manifest. Offsite treatment, storage, and disposal of hazardous waste also requires authorization. The CUPAs are responsible for implementing the hazardous waste generator and onsite tiered permitting aspects of the HWCL within their jurisdictions, including conducting inspections of hazardous waste generators. HSC sections 25180 and 25404 give the CUPAs the authority to enforce the requirements of California’s HWCL. The CUPAs

may do this using administrative, civil and criminal enforcement authorities and processes, as spelled out in Article 8, Chapter 6.5, Division 20 of the HSC.

4.6.2 Enforcement Authorities and Processes

4.6.2.1 Administrative

The administrative enforcement process laid out in HSC section 25187, is a formal process that CUPAs can use, when the circumstances of the case and the history of the violator are appropriate. After a violation has been noted in a CUPA's inspection report, the CUPA drafts an enforcement order that specifies a schedule for compliance or correction and imposes an administrative penalty. The accused violator (respondent) may choose not to contest the order and instead pay the administrative penalty, or the respondent may request an informal meeting with the CUPA to discuss facts regarding the alleged violation and/or the amount of the penalty. A respondent may within 15 days of the issuance of an order, request a formal hearing. The hearing, if requested, is conducted by an Administrative Law Judge from the state Office of Administrative Hearings.

The penalties assessed in the HSC section 25187 administrative process are determined in accordance with Article 3, Chapter 22, Division 4.5 of Title 22 CCR. For each violation there must be a consideration of "actual and potential harm, extent of deviation and number of days the violation continued...." Depending on the extent of deviation from requirements and the potential and actual harm that results from a violation, administrative penalties can range from zero to \$25,000 per violation, per day of violation.

4.6.2.2 Civil

A CUPA may refer a civil enforcement action for violations of the HWCL to a city attorney, county attorney, District Attorney, or Attorney General for temporary restraining orders, preliminary injunctions, permanent injunctions, or civil penalties. The HWCL authorizes civil penalties for any non-minor violation, including: failure to meet a compliance schedule issued in conjunction with an administrative enforcement order, misstatements (intentional or otherwise) on a document used for compliance with the HWCL, violation (intentional, negligent or otherwise) of any requirement of the HWCL, and unauthorized disposal (intentional, negligent or otherwise) of hazardous waste. Civil penalties of up to \$25,000 per day of violation may be assessed for any of these violations.

4.6.2.3 Criminal

A CUPA may refer violations of the HWCL to a District Attorney or City Attorney for criminal prosecution. Generally, a violation of the HWCL or the implementing regulations without negligence or intent (i.e., strict liability) is a misdemeanor subject to fines of up to \$1,000 and/or imprisonment up to 6 months. Repeat violators may be charged with a misdemeanor or a felony, imprisoned up to 24 months, and fined up to \$25,000. Willful interference or attempted interference with certain activities (including enforcement of the HWCL, examination of records, and preservation of evidence of a

violation) of a person authorized to enforce the requirements of HWCL is specifically identified in statute as a misdemeanor.

Persons convicted of certain specific violations are subject to fines of between \$2,000 and \$25,000 per day of violation, and/or imprisonment for one year for the first offense; fines up to \$50,000 per day of violation, and prison terms up to 24 months apply for subsequent convictions. These violations include falsification, alteration, concealment or destruction of required records; withholding requested information regarding a real and substantial danger to public health and safety; and illegal or improper handling, storage, transportation or disposal of hazardous waste.

A person convicted of storing hazardous waste at an unauthorized facility, transporting hazardous waste to an unauthorized facility, disposing hazardous waste at an unauthorized facility, or burning or incinerating hazardous waste at an unauthorized location, who knew or should have known that the facility was unauthorized, is subject to a fine between \$5,000 and \$100,000 per day of violation. The violator may, at the discretion of the District Attorney, be charged with a misdemeanor or a felony; if convicted of a felony, the violator may be imprisoned for 18 months, two years, or three years. If great bodily injury or a substantial probability of death results from any of these violations, the violator is subject to imprisonment up to six years and fines of up to \$250,000 per day.

The harshest punishment is reserved for persons convicted of knowingly or recklessly managing hazardous waste in a manner that causes unreasonable risk of fire, explosion, serious injury, or death. Any of these violations is a public offense, subject to fines of between \$5,000 and \$250,000 per day of violation, and or imprisonment in the county jail or state prison up to one year. If a person convicted of such an offense has placed another person in imminent danger of death or serious injury, he or she may be found guilty of either a misdemeanor or a felony, and is subject to a fine of between \$5,000 and \$250,000 per day of violation. If convicted of a misdemeanor, the person may be jailed for up to one year; if convicted of a felony, he or she may be sentenced to state prison for up to nine years.

The HWCL has the most extensive criminal enforcement provisions of any of the 6 CUPA programs.

5. *How an Enforcement Process is Chosen*

Depending on the program element, there are up to three basic enforcement processes from which a CUPA may choose. Each enforcement process has its own advantages and disadvantages. In some cases, more than one enforcement option may be utilized, for example a civil action and a criminal action. In some cases, more than one enforcement action may be appropriate although only one is utilized. For example, some cases that are appropriate for civil action may also be satisfactorily resolved in the administrative arena. Depending on the priorities and caseloads of the outside prosecutor (District Attorney, Attorney General etc.), criminal or civil enforcement may not be available for some cases; even if the circumstances of the violation would

otherwise indicate that a civil or criminal action is appropriate. Administrative enforcement is the only formal enforcement option with which the CUPA can retain control and ensure that formal action is taken. The advantages of each type of formal enforcement is discussed below.

5.1 Administrative Enforcement

Administrative enforcement allows a CUPA to pursue an action independent of an outside prosecutorial agency. The CUPA also determines an appropriate penalty based on the circumstances of the violation and the violator, and statutory or regulatory penalty criteria. The CUPA may set the penalty and the time frame for the violator's return to compliance. If the alleged violator chooses to contest the case, the CUPA schedules a hearing at which there is the opportunity to refute the allegations and to present any mitigating factors that may affect the penalty. Administrative enforcement has several advantages:

- provides adequate enforcement response for cases requiring formal action/penalty but not appropriate for referral to an outside prosecutor;
- is less resource intensive than other types of formal enforcement;
- generally produces a quicker response than criminal or civil enforcement;
- preserves control of the regulatory agency over the process;
- has less formal rules of evidence as compared to criminal or civil enforcement; and
- when other prosecutorial resources are limited, this may be the only formal enforcement process available for a particular violation.

As mentioned above, only 2 of the 6 program elements provide for administrative penalties processes. The two program elements that have such provisions vary in how the process is conducted. Under current statutes, administrative hearings for violations of the Business Plan program element are conducted by the CUPA; under the Hazardous Waste Generator element, an Administrative Law Judge from the state Office of Administrative Hearings presides at the hearing. The lack of a consistent administrative hearing process for the 6 CUPA programs is a barrier to consistent enforcement. This is addressed in the Recommendation section, below.

5.2 Civil Actions

With civil enforcement, CUPAs can request, through an outside prosecutor, penalties, temporary restraining orders, and/or injunctions to stop illegal activities. Injunctions can also require activity such as clean up. Civil actions require the involvement of a City Attorney, District Attorney, or the Attorney General. The CUPA's role in a civil case can vary, depending on the office that brings the case, but the local agencies are often deeply involved. Civil cases are frequently settled before they go to trial. If they cannot be settled, they are decided by a judge or sometimes by a jury, not by the CUPA. Civil actions may be appropriate when:

- injunctive relief is needed
- more extensive or serious violations have occurred

- a case has significance beyond the CUPA's jurisdiction
- existing orders or settlements have been violated
- the judicial discovery process is needed
- the case involves a major cleanup activity
- local issues make administrative action difficult
- there is a need to establish a judicial precedent

5.3 Criminal Actions

Criminal actions are generally referred to the District Attorney or US Attorney for prosecution. Certain City Attorneys may also have criminal authority in some cases. If a prosecutor is unwilling or unable to accept a criminal case, the CUPA may pursue some other form of formal enforcement, such as administrative or civil action. A number of factors indicate that criminal referral is appropriate, including:

- the violator has a prior history of violations;
- significant injury or risk are associated with the violations;
- violations are major;
- acts are intentional (although criminal cases may also be appropriate when there is negligence or no fault);
- civil or administrative remedies are inadequate; or
- evidence is sufficient to support the criminal burden of proof.

There has been a historical lack of prosecutorial resources in smaller CUPA jurisdictions such as the rural counties. This problem has been greatly improved by the creation of the Circuit Prosecutor Project. This project, partially funded by grants from Cal/EPA, provides experienced environmental prosecutors to District Attorneys Offices in small rural counties. These Circuit Prosecutors have "leveled the playing field" by providing a vital tool for improved civil and criminal enforcement in environmental regulatory programs such as the CUPAs.

6. Analysis

6.1 Why Consistency is Important

CUPAs frequently regulate businesses that are subject to several program elements. Businesses that generate hazardous waste are likely to have hazardous materials on hand, for example, while businesses that use hazardous materials in their processes are likely to generate hazardous waste. The Unified Program is required to coordinate, consolidate and make consistent its six program elements, including the enforcement of their respective requirements. Each element of the Unified Program was developed independently, prior to the advent of the program, and each element has unique requirements. Because of these differences in the histories and the requirements of the program elements, some variability should be expected in their enforcement authorities and processes.

Federal statutes require that in order to receive delegation, the State and CUPAs' hazardous waste enforcement programs must be consistent with the federal hazardous

waste program¹⁰. In addition, California statutes required that the HWCL be enforced consistently throughout the state¹¹.

In order to comply with the Unified Program statutes, and to maximize the efficiency and efficacy of their enforcement programs, the CUPAs need consistent enforcement tools that are applicable to all program elements. To achieve consistency, all of the program elements must have the same enforcement tools available. Currently, inconsistencies in enforcement tools exist: inconsistent availability of serious criminal provisions (felonies, perjury); the amount and quality of enforcement training provided to the CUPAs, the different experience and history the various state lead agencies have in enforcement, the availability of needed data such as compliance statistics to measure the effectiveness of CUPAs enforcement programs and the absence of consistent administrative enforcement processes.

Many of these issues, such as improving training, are being addressed (see section 8, below). Some of these issues, such as the lack of consistent administrative penalty process require further work and statutory changes.

6.2 The Advantages of Administrative Enforcement

Administrative enforcement has a number of advantages, as well as some limitations. Administrative enforcement cases generally require fewer resources and are resolved more quickly, and control of the process is retained by the enforcement agency (under the HSC section 25187 administrative process, the agency head may choose to accept, reject, or modify the decision of an Administrative Law Judge). Civil and criminal sanctions are generally more stringent than administrative penalties. Criminal cases require a higher standard of proof than do civil and administrative cases, and require that a prosecutor (such as the local District Attorney) agrees to take the case. The limitations of administrative enforcement make it unsuitable for the most egregious violations, but for many cases, it is the most cost effective and expeditious type of formal enforcement. Without this tool in place, the local enforcement agencies' limited financial and staff resources prevent them from pursuing formal enforcement in many cases.

While the CUPAs have had the authority to use the HSC section 25187 administrative enforcement process for hazardous waste violations, they are only now beginning to incorporate it into their Inspection and Enforcement Program Plans. CUPAs have difficulty using this process because of the cost of paying for an Administrative Law Judge from the Office of Administrative Hearings and obtaining legal assistance needed to use the formal hearing process provided for in the HWCL.

6.3 Approaches to Administrative Enforcement

As mentioned earlier, one important difference between the Unified Program's two existing administrative processes is that under HSC section 25187 (which governs hearings in the Hazardous Waste Generator Program program), hearings are conducted by Administrative Law Judges (ALJs) from the Office of Administrative Hearings (OAH), while under HSC section 25514.6 (which governs hearings under the Business Plan program), hearings are conducted by the enforcement agency. While an ALJ may appear to be a more impartial arbiter than a person working for the agency that developed an enforcement case, the nature of the OAH hearing process makes differences in the impartiality of the two processes less significant than they appear. Under the HSC section 25187 process, an enforcement agency is not required to accept an ALJ's proposed decision as issued; the agency may reduce a proposed penalty, make technical or other minor changes in the proposed decision, reject the decision and refer it back to the ALJ for revision, or reject the decision outright and decide the case based on the record, with or without taking additional evidence. Both of the Unified Program's current administrative enforcement processes allow an accused violator, after a hearing, to appeal the decision to Superior Court.

The requirement that CUPAs use Administrative Law Judges under the HSC section 25187 process results in higher costs for hearings than under the HSC section 25514.6 process. DTSC has committed to pay for the CUPAs' use of the OAH for one year for enforcement under the Hazardous Waste Generator Program element, however future funding is uncertain. Further, OAH costs would likely increase if a new unified administrative enforcement process that included ALJ hearings were developed. The logistics of ALJ hearings are also more complex than those of hearings conducted by local agencies. While ALJ hearings can be arranged for other locations, they are mainly held in four cities: Sacramento, Oakland, Los Angeles, and San Diego, none of which is convenient to jurisdictions in the eastern or far northern parts of the State.

The two processes also differ in the steps that a violator must take for a case to go to a hearing. Under the Business Plan's process, a hearing is held unless the accused violator waives the right to one. Under the HWCL process, an enforcement order becomes final, without a hearing, unless the accused violator submits a notice of defense, in which case a hearing is held. In devising a single unified administrative enforcement process, the advantages and drawbacks of each of these approaches to hearings must be considered.

As detailed below, this report recommends that workshops be held to determine what would be the most appropriate administrative hearing process to use, whether to choose one of the existing processes, to blend the two existing processes or use something entirely new.

7. Recommendations

7.1 A new statutory unified administrative penalty process.

Many violations that CUPAs encounter during inspections require a formal enforcement response; yet do not rise to a level that requires civil or criminal action. For violations of the Hazardous Waste Generator/Onsite Treatment and Business Plan programs, administrative enforcement is an option. The creation of new unified administrative enforcement processes would give CUPAs a third formal enforcement option for all 6 programs--administrative enforcement--that may be appropriate for such cases. Consistency across the Unified Program would be enhanced by the addition of an administrative process that is appropriate for and applicable to violations across all program elements. With a single, unified process, CUPAs can avoid having to develop staff training and expertise in several different administrative processes, each of which serves essentially the same purpose. Creating a new unified administrative process would require legislation, but once in place, would pay large dividends in improvements in the consistency and appropriateness of enforcement under the Unified Program.

Adding additional administrative processes to the existing processes available under the Unified Program would further complicate an already complex set of statutes and regulations. In the interest of efficiency and consistency, it would be preferable to develop a single, cost-effective, unified administrative enforcement process, applicable to all program elements. Such a process would enable CUPAs to take formal enforcement in every instance when it is warranted. This new unified process should incorporate the best elements of the processes in the statutes of the Business Plan and Hazardous Waste Generator/Onsite Treatment program elements, and any other successful administrative enforcement programs.

In order to devise a unified administrative enforcement process that incorporates the best elements of these and other existing processes, Cal/EPA plans to conduct workshops with CUPAs, participating agencies, business interests, environmental groups, and other interested parties during the spring and summer of 2001.

7.2 Continue the support received from the Circuit Prosecutor program.

The Circuit Prosecutor Project, at its current level of service, provides vital support to the CUPA programs. It is recommended that the current level of service be continued.

7.3 Obtain compliance data.

The effectiveness of an enforcement program cannot be accurately measured by simply comparing the numbers of enforcement actions taken or the amount of penalty received. Critical data is missing, that of the rates of compliance of the regulated entities in the CUPA's jurisdiction. Without this data, ensuring truly consistent and effective enforcement is not possible. The state agencies with responsibility for the CUPA programs should explore how this data might be obtained and used to evaluate CUPA enforcement programs.

8. Current Efforts by Cal/EPA and the Cal-CUPA Forum

The CUPA Forum Board (Cal-CUPA Forum) in coordination with State agencies, has

developed a guidance document, "Guidance for the Preparation of Inspection and Enforcement Program Plans", to assist CUPAs in making their inspection and enforcement programs consistent, and compliant with all applicable requirements. The document summarizes the existing statutory and regulatory enforcement options of the four Unified Program elements that have them, and recommends an approach to enforcement that is consistent with the Department of Toxic Substances Control's (DTSC's) enforcement response policy.

A CUPA Enforcement Workgroup has been established, with representatives of the Cal-CUPA Forum, DTSC, and Cal/EPA. The group's goal is to improve enforcement by CUPAs statewide. The first objective is to provide the CUPAs with the assistance, training and support they need in order to implement HSC section 25187 Administrative Enforcement Orders for hazardous waste violations by the end of April, 2001. An agreement between the Cal-CUPA Forum and Cal/EPA has been signed that contains milestones for both parties to achieve, and dates for achieving them. The workgroup has also drafted a guidance document for the CUPAs use as they add HSC section 25187 orders to their Inspection and Enforcement Program Plans, and is coordinating workshops and training sessions to assist CUPA staff in implementing the process. The group will also provide input to Cal/EPA and DTSC in the development of CUPA enforcement regulations.

Regulations are currently under development by DTSC to incorporate DTSC's enforcement response policy into Title 27 Unified Program regulations. The new regulations will establish standards for the CUPAs' hazardous waste inspection and enforcement programs, including criteria for classifying violations and violators, appropriate enforcement response options that take the classifications into account, and a requirement for timely initiation of enforcement responses. The regulations will establish minimum inspection frequencies for hazardous waste generators, conditionally exempt small quantity generators of silver-only waste, and generators of universal waste.

In accordance with recent legislation (SB 989 (1999)), the SWRCB has convened a panel of local agency and SWRCB representatives to review existing enforcement authorities to make recommendations to the Secretary of Cal/EPA by January 1, 2001 of any changes necessary to enable local agencies to take adequate enforcement action against owners and operators of underground storage tanks that failed to meet the 1998 upgrade requirements. Cal/EPA and the Cal-CUPA Forum will review and work together to implement these recommendations.

Cal/EPA, the Office of Emergency Services, the State Fire Marshal and the Cal-CUPA Forum have formed a training advisory group to review training programs and design

new programs for identified unmet needs. New training programs under development include a new 2 week basic "Cal/EPA Academy". This training will emphasize field inspections and enforcement techniques. One of the goals of this Academy is to improve statewide enforcement consistency.

Appendix I
Table 1: Existing Administrative Enforcement Processes

Program	Notice	Complaint/Order	Hearing	Appeal
<p>Hazardous Materials Release Response Plans (HSC Chap. 6.95, Article 1)</p> <p>[Note: HSC § 25514.6 only applies to agency that has adopted written policy to carry out § 25514.6]</p>		<p>Complaint is issued to any person on whom civil liability can be imposed. (HSC § 25514.6(a))</p> <p>-----</p> <p>Order issued if party waives hearing or issued to set penalty amount pursuant to settlement agreement. (HSC § 25514.6(a))</p> <p>-----</p> <p>Order issued after hearing and decision. (HSC § 25514.6(b))</p>	<p>Agency conducts hearing unless party waives it. (HSC § 25514.6(a))</p>	<p>Party has 30 days to appeal to superior court after decision issued. (HSC § 25514.6(d))</p> <p>No appeal if party waives hearing or enters into settlement agreement. (HSC § 25514.6(a))</p>
<p>Generator/Tiered Permitting. (HSC Chap. 6.5)</p>	<p>Summary of violations issued at conclusion of inspection. (HSC § 25185(c)(1))</p>	<p>For minor violations: a Notice to Comply is issued. (HSC § 25187.8). Except when penalties are appropriate or required under federal law, no penalties imposed if violation is corrected within 30 days. (HSC §25187.8(g)(2))</p> <p>-----</p> <p>For non-minor violations: an Order specifying schedule for compliance and imposing administrative penalty is issued. (HSC §25187(a)(1))</p>	<p>Any person served with an order or Notice to Comply may request hearing. (HSC § 25187(d)(1))</p>	<p>Party may appeal OAH decision to Superior Court. (HSC § 25187(g))</p>
	<p>Inspection Report issued within 65 days of inspection (HSC § 25185(c)(2))</p>		<p>Office of Administrative Hearings (OAH) conducts hearing. (HSC § 25187(e))</p>	

Appendix II
Table 2: Existing Administrative, Civil, and Criminal Authorities and Processes

Program	Criminal	Civil	Administrative	
Hazardous Materials Release Response Plans. (HSC Chap. 6.95 -- Article 1)	Knowing violation after reasonable notice - - guilty of misdemeanor [for violations of HSC §§ 25503.5, 25503.7, 25503.8, 25505, 25508, 25509, 25509.3, 15510 or 25533] (HSC § 25514.3)	Up to \$2,000 per day of violation (+full cost of emergency response & clean-up) (HSC § 25514.3(a))	Up to \$2000 for each day of violation (+full cost of emergency response & clean-up) (HSC § 25514.5(a)) Up to \$5,0 00 for each day of violation after reasonable notice. (HSC § 25514.5(b)) Collected pursuant to HSC § 25514.6. (HSC § 25514.5(c)) Penalty not recoverable under § 25514.5 and § 25514 for same violation. (HSC § 25514.5(d))	
	For violation of § 25507: Up to \$25,000 per day and/or imprisonment 1 year in county jail. (HSC § 25515) [Greater fines and prison sentences for repeat violations]	Up to \$5,000 per day of knowing violation after reasonable notice. [for violations of 25503.5 to 25505 or 25508 to 25510] (HSC § 25514(b))		
	Willful interference or impeding of enforcement of Chap. 6.95 - - guilty of misdemeanor. (HSC § 25515.1)	Injunctions, restraining orders, etc. are brought by city attorney or DA AG. (HSC §§ 25516, 25516.1)		
		Every civil action shall be brought by city attorney, DA or AG. (HSC § 25516.1)		
		For TROs, injunctions etc., not necessary to show irreparable damages or inadequate remedy at law. (HSC § 25516.2)		

Program	Criminal	Civil	Administrative
<p>Cal/ARP (HSC Chap. 6.95 - - Article 2)</p>	<p>Up to \$25,000 per day of violation for knowing false statements, misrepresentations, etc. and/or 1 yr. imprisonment in county jail (+full cost of emergency response and clean-ups).</p> <p>Repeat violation: Fines increase to \$2,000 to \$50,000</p> <p>-----</p> <p>Up to \$25,000 per day of knowing violation after reasonable notice and upon conviction, may be punished by imprisonment in county jail 1 yr. (HSC § 25540(b))</p> <p>-----</p> <p>Up to \$10,000 per day of violation for knowing violation of Article 2 or for knowingly rendering monitoring device/method inaccurate. (§ 25541.3)</p>	<p>Up to \$2,000 per day of violation (+full cost of emergency response and clean-ups.) (HSC § 25540(a))</p>	

Program	Criminal	Civil	Administrative
		<p>Up to \$10,000 per day strict liability for violation of any rule, regulation, requirement etc. associated with Article 2. (§ HSC 25540.5)</p> <p>-----</p> <p>If civil penalties are recovered pursuant to § 25540 or 25540.5, same offense shall not be subject of criminal prosecution pursuant to § 25541 or 25541.3. Civil action is dismissed upon filing of criminal complaint.</p>	
<p>Underground Storage Tanks (HSC Chap. 6.7)</p> <p>[Local agency may also request DTSC and regional water quality control board to take action.] (HSC § 25297)</p>	<p>\$5,000 to \$10,000 and/or 1 yr. imprisonment in county jail for falsifying monitoring records, knowingly failing to report, or intentionally disabling/ tampering with leak detection system. (§ 25299(d)(1) and (2))</p>	<p>\$500 to \$5,000 per day of enumerated violations, per tank. (§ 25299(a) and (b))</p> <p>Up to \$5,000 per day, per tank, for intentional failure to notify or submittal of false information. (§ 25299(c))</p> <p>Civil actions may be brought by city attorney, DA or AG. (HSC § 25299.02)</p> <p>Injunctions/Restraining Orders: City Attorney, DA, or AG may apply to Superior Court for injunction/restraining order for acts or practices which violate Chapters 6.7. or 6.75.</p> <p>It is not necessary to allege or prove that irreparable damage will occur. (HSC § 25299.01 and 25299.04)</p>	

Program	Criminal	Civil	Administrative
<p>Generator/Tiered Permitting. (HSC Chapter 6.5)</p>	<p>Imprisonment 1 yr. in county jail or state prison and fine \$5,000 to \$100,000 per day for:</p> <p>disposal at, transportation to, treatment or storage at unauthorized facility, when the person knew or reasonably should have known the facility was unauthorized. (HSC § 25189.5 (a), (b), (c), (d) and (e))</p> <p>(The imprisonment and fine can be increased for great bodily harm pursuant to § 25189.5 (e).)</p> <p>-----</p> <p>Imprisonment 1 yr. and/or fine \$5,000 to \$250,000 for:</p> <ul style="list-style-type: none"> • management activities with reckless disregard for risk in manner which causes unreasonable risk or fire, explosion, etc. (HSC § 25189.6(a)) • placing another person at risk when engaged in activities specified in subdivision (a). above (HSC § 25189.6 (b)) 	<p>Civil actions are brought by City Attorney, county attorney, DA or AG (HSC § 25182)</p> <p>TROs/Injunctions - Not necessary to allege or prove that irreparable harm will occur or remedy law is inadequate. (HSC § 25184)</p> <p>Failure to comply with compliance schedule issued pursuant to HSC § 25187: \$25,000 per day of noncompliance. (HSC § 25188)</p>	<p>Liability under HSC 25189.2 can also be imposed administratively. (HSC 25189.2 (e))</p>

Program	Criminal	Civil	Administrative
		Intentional or negligent false statement/representation: \$25,000 per day. (HSC § 25189 (a))	
Generator/Tiered Permitting (HSC Chapter 6.5) Cont'd.	Imprisonment 1 yr. and fine \$5,000 to \$100,00 for unauthorized burning or incineration. (HSC § 25189.7(a)) (The imprisonment and fine can be increased for great bodily harm pursuant to § 25189.7(b).)	Intentional or negligent false statement, representation etc: Up to \$25,000 per day (HSC § 25189(a)) Intentional or negligent violation of any provision of Chapter 6.5, permit, etc: Up to \$25,000 per day (HSC § 25189(b))	
	Violation of statute, regulation, permit etc. is <i>misdemeanor</i> except as provided in §§ 25189.5, 25189.6, 25189.7 and 25191. Punishment is fine up to \$1,000 and/or imprisonment 6 months. (HSC § 25190(a)) (The imprisonment and fine can be increased for second or subsequent violations) (HSC § 25190(b).)	Intentional unauthorized disposal: \$1,000 to \$25,000 per day. (§ 25189(c))	
		Negligent unauthorized disposal: Up to \$25,000 per day (HSC § 25189 (d))	
		No civil penalties under both §§25188 and 25189.2 for same act. (HSC § 25189(f)) Civil liability for state and local actions; natural resources damages. (HSC § 25189.1)	

Program	Criminal	Civil	Administrative
Generator/Tiered Permitting (HSC Chapter 6.5) Cont'd.	<p>Fine of \$2,000 to \$25,000 and/or imprisonment 1 yr. in county jail for:</p> <ul style="list-style-type: none"> (1) false statements or misrepresentation; (2) altered or concealed records; (3) destruction, alteration, concealment of record; (4) withholding information regarding real and substantial danger; (5) transportation in violation of statute; (6) improper handling in violation of statute; (7) illegal transportation; and (8) violation of § 25162. <p>(HSC § 25191(a) and (b))</p>	<p>Penalty up to \$25,000 per violation/ per day for:</p> <ul style="list-style-type: none"> (a) false statement or (b) violation of statute, regulation, permit, etc. (c) unauthorized disposal. <p>(HSC § 25189.2 (a)(b) and (c))</p> <p>-----</p> <p>No liability under §25189.2 and 25189 for same act. (HSC §25189.2 (d))</p>	<p>Liability under § 25189.2 can be imposed in civil action or administratively pursuant to § 25187. (HSC § 25189.2 (e))</p> <p>Liability under HSC § 25189.2 is as follows:</p> <p>Penalty up to \$25,000 per violation/ per day for:</p> <ul style="list-style-type: none"> (a) false statement or (b) violation of statute, regulation, permit, etc. (c) unauthorized disposal. <p>(HSC § 25189.2 (a)(b) and (c))</p>
Generator/Tiered Permitting (HSC Chapter 6.5) Cont'd.	<p>Fine of up to \$500 per day and/or imprisonment 6 months for transportation without manifest or valid registration. (HSC § 25191(d))</p> <p>-----</p> <p>Acts constituting misdemeanors:</p> <ul style="list-style-type: none"> (a) interference with authorized person enforcing Chapter 6.5; (b) attempt to prevent or prevention of examination of records; and (c) prevention of or interference with preservation of evidence. (HSC § 25195) 		

Appendix III: Endnotes

¹ Department of Toxic Substances Control: "ENFORCEMENT RESPONSE POLICY," EO-95-004-PP, effective August 16, 1995.

² California State Water Resources Control Board Internet web site:
<http://www.swrcb.ca.gov/cwphome/agt/index.htm>

³ Title 27, California Code of Regulations, Section 15100, subdivision (d).

⁴ HSC Section 25270.12.

⁵ 1991 Uniform Fire Code, Section 1.102(a).

⁶ Title 27, California Code of Regulations, Section 15100(g)(3).

⁷ Fact Sheet on the CalARP program, website of the Governor's Office of Emergency Services:
<http://www.oes.ca.gov/Develop/CalARP.nsf/....>

⁸ California Health and Safety Code, Division 20, Section 25280(b).

⁹ State Water Resources Control Board, "Enforcement Guidelines for 1998 Underground Storage Tank Upgrade Requirements," November, 1998.

¹⁰ 42 U.S.C. section 6926 (b)

¹¹ H&SC sections 15150(b), 25150(b) and 25159.5.