

California Environmental
Protection Agency



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Forum



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GUIDANCE FOR

ADMINISTRATIVE ENFORCEMENT

ORDER

AND

HEARING PROCEDURES

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I. INTRODUCTION

This *Guidance for the Administrative Enforcement Order and Hearing Procedures* is a tool to assist Certified Unified Program Agencies (CUPAs) and their Participating Agencies (PAs) [collectively called Unified Program Agencies (UPAs)] in developing and implementing their Administrative Enforcement Order (AEO) Program. In contrast to other enforcement options that are specific to a single program element, the AEO authority is a consistent, formal enforcement option that can be used by UPAs to address violations in five of the six program elements (Hazardous Waste Generator and Tiered Permit, Underground Tank, Above Ground Tank, Business Plan, and Cal/ARP). Violations of Article 80 of the Fire Code are not covered under the AEO authority described in this document. However to the extent that these Article 80 violations are the same as Business Plan violations under HSC, Chapter 6.95, the AEO option can be used to cite the appropriate HSC, Chapter 6.95 violation.

Sections of this guidance are specific to an individual program element and detail statutory, regulatory, policy relationships, definitions, and penalties that may differ between elements. The remaining sections of this guidance identify a model (or blueprint) for order preparation, issuance, settlement, and follow-up and are the same for any order issued for violations of any of the five program elements. Under the process described in this guidance, a single order can be used to address all violations of the five program elements detected in an inspection. This document also provides a variety of options or approaches for using the AEO process (see chart 1b). Each UPA can use any or all options based on their program needs and the specifics of each case.

All UPAs are required to have an Inspection and Enforcement Plan that outlines the various protocols that might be undertaken to enforce the applicable laws and regulations found within each Unified Program (UP) element. UPAs have a wide variety of enforcement response options (see Chart 1a) that should be used appropriately to address the wide range of violations and violators that may be encountered. A UPA's Inspection and Enforcement Plan should be amended to include the expanded AEO authority that became available on January 1, 2003 for specific violations of HSC, Chapters 6.5 (Hazardous Waste Generator and Tiered Permit), 6.7 (Underground Tanks), 6.95 (Business Plan and Cal/ARP), 6.67 (Above Ground Tanks) and implementing regulations.

Similar to any enforcement activity, the use of Administrative Enforcement Orders should be coordinated with other State and Federal enforcement agencies that may also have an enforcement interest in that regulated entity.

This *guidance* provides sample language and recommendations consistent with the *Guidance for the Preparation of Inspection and Enforcement Program Plans* issued in February 2000.

Forms that may be useful to UPAs in the AEO process are found in a separate document titled “AEO Forms”. It contains an index of the forms and a brief summary of each form’s applicability. The forms are referenced by number (e.g., AEO 01) in the text of this guidance.

Nothing in this document is intended to preclude Unified Program Agencies from pursuing other formal enforcement options available under existing law.

Many thanks to the Unified Program Administrative Advisory Group (UPAAG) Enforcement Steering Committee and AEO Workgroup members for their hours of work on this project: Bill Jones (LA County Fire) and Larry Matz (Cal/EPA) – co-chairs; Lisa Brown (Cal/EPA); Loretta Sylve (Cal/EPA); Dennis Karidis (Sacramento County); David Boyers (SWRCB); Liz Haven (SWRCB); Leslie Graves (SWRCB); Julie Berrey (SWRCB); Chuck McLaughlin (DTSC); Mickey Pierce (DTSC); Doug Snyder (San Bernardino County Fire); Holly Clark (San Bernardino County Fire); Mary Avatsu (San Diego County) and Jim Sullivan (US-EPA).

Chart Ia: Selecting an Appropriate Enforcement Response

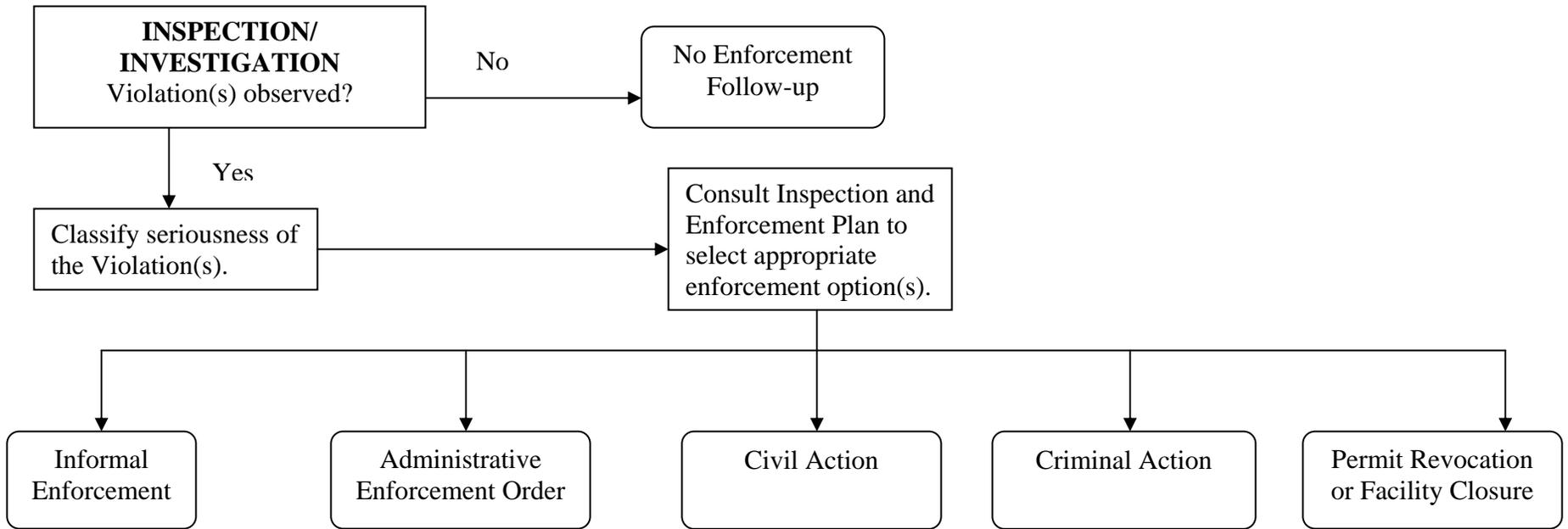
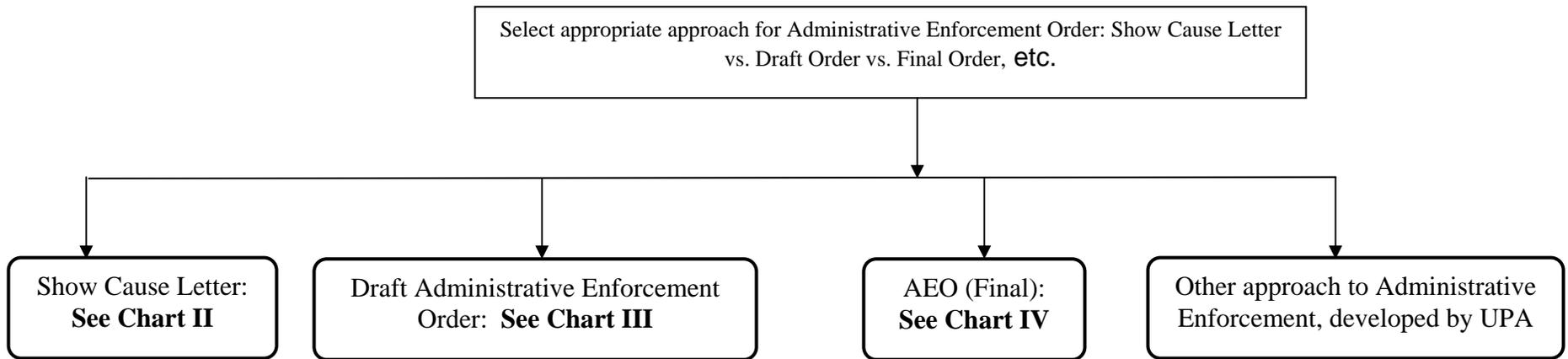


Chart Ib: Selecting an Approach to Administrative Enforcement



II. STATUTORY AUTHORITY

A. California Health and Safety Code, Chapter 6.11, Section 25404.1.1 [Assembly Bill 2481]

If the UPA determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that the UPA is authorized to enforce or implement pursuant to this chapter, the UPA may issue an Administrative Enforcement Order requiring that the violation be corrected and imposing an administrative penalty. This authority can be used to address violations of the following requirements:

- Hazardous Waste and Tiered Permitting Program: Health and Safety Code (HSC), Chapter 6.5 (commencing with Section 25100).
- Underground Storage Tank Program: HSC Chapter 6.7 (commencing with Section 25280). Not including violations of corrective action requirements established by or issued pursuant to Section 25296.10. [HSC Section 25299 (d)]
- Above Ground Storage Tank Program: HSC Chapter 6.67, Section 25270.5.
- Hazardous Materials Release Response Plans: HSC Chapter 6.95, Article 1 (commencing with Section 25500).
- California Accidental Release Prevention Program: HSC Chapter 6.95, Article 2 (commencing with Section 25531).

III. DEFINITIONS

A. Unified Program

1. Formal Enforcement *[Title 27 CCR §15110]*

Formal enforcement is an action that mandates compliance and initiates a civil, criminal, or administrative process that 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.

2. Administrative Enforcement

Administrative enforcement allows a UPA to pursue an action independent of an outside prosecutorial agency. The UPA also determines an appropriate penalty based on the circumstances of the violation and the violator, and statutory or regulatory penalty criteria. The UPA 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 UPA 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 possible advantages:

- Provides adequate enforcement response for cases requiring formal action/penalty but are not appropriate for referral to an outside prosecutor;
- May be less resource intensive than other types of formal enforcement;
- Generally produces a quicker response than criminal and civil enforcement;
- Preserves regulatory agency control 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;

3. Administrative Enforcement Order

For the purpose of this guidance, the term: "Administrative Enforcement Order" (AEO), includes any of the order variations including the Consent Order and the Unilateral Order.

4. Minor Violation [*HSC Chapter 6.11, §25404(a)(3)*]

"Minor violation" means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the Unified Program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

- (a) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.
- (b) A knowing willful or intentional violation.
- (c) A violation that is a chronic violation, or is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.
- (d) A violation that results in an emergency response from a public safety agency.
- (e) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.
- (f) A class I violation as provided in HSC Section 25117.6.
- (g) A class II violation committed by a chronic or a recalcitrant violator, as provided in HSC Section 25117.6.
- (h) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

Note: HSC Section 25404.1.2.(a)(2) states, "In any proceeding concerning an enforcement action taken pursuant to this section, there shall be a rebuttable presumption upholding the determination made by the UPA regarding whether the violation is a minor violation."

5. Respondent [*Government Code (GC) §11500(c)*]

For purposes of this guidance, a respondent is the person or business that is the alleged violator in an AEO.

6. Supplemental Environmental Projects

Supplemental Environmental Projects (SEP) means an environmentally beneficial project or projects that a business agrees to undertake in settlement of an enforcement action, but which the business is not otherwise legally required to perform. For further information please refer to *DTSC*, *SWRCB*, *Cal/EPA* and *USEPA* SEP policies.

7. Final Order

A Final Order means an AEO that has been formally issued with consent (Final Order on Consent i.e.. signed by both parties) or without the consent of the respondent and the time period for the respondent to request an administrative hearing has elapsed.

8. Unified Program Agency [HSC §25404(a)(1)(C)]

Unified Program Agency (UPA) means a Certified Unified Program Agency (CUPA) or Participating Agency (PA) that has enforcement authority and responsibility for any element(s) of the Unified Program.

9. Multi-Agency

Multi agency means more than one agency is responsible for Unified Program elements at a single facility and may be involved in a single administrative enforcement order.

B. Hazardous Waste Program

1. Class I Violation [HSC Chapter 6.5, §25110.8.5]

Class I violation means any of the following:

- (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 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:
 - The volume of the waste.
 - The relative hazard of the waste.
 - 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:

- Ensure that hazardous waste is destined for, and delivered to, an authorized hazardous waste facility.
- Prevent releases of hazardous waste or constituents to the environment during the active or post closure period of facility operation.
- Ensure early detection of releases of hazardous waste or constituents.
- Ensure adequate financial resources in the case of releases of hazardous waste or constituents.
- Ensure adequate financial resources to pay for facility closure.
- 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 a recalcitrant violator.

In determining whether a violation is chronic or a violator is recalcitrant, the local agency authorized to enforce this chapter 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.

[HSC Chapter 6.5, §25117.6]

2. Class II Violation *[Title 22 CCR, §66260.10 “Class II Violation”]*

Class II violation means a deviation from the requirements specified in HWCL, or regulations, permit or grant of authorization, or conditions, standards, or requirements adopted pursuant to Chapter 6.5 of Division 20 of HSC (HWCL), that is not a Class I violation.

3. Significant Non-Complier *[DTSC’s Enforcement Response Policy]*

Significant Non-Complier (SNC) is a business that 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.

C. Underground Storage Tank Program

1. Significant Violation: Upon discovery of a significant violation, the local agency may affix a red tag to the fill pipe of a non-compliant underground storage tank. AEOs can be used in addition to the red tag authority for significant violations.

2. Significant Violation with Imminent Threat: [Title 23 CCR, §2717 “Significant Violation”] Significant violation means the failure of a person to comply with any requirement of Chapter 6.7 of the HSC or any regulation adopted pursuant to Chapter 6.7, not including the corrective action requirements in Section 25296.10 of the HSC and Article 11 of Chapter 16 of Title 23 of the regulations, that is any of the following:

- (1) A violation that is causing, or threatens to cause a liquid release of petroleum from an underground storage tank system, including, but not limited to: the failure of any required overfill prevention system, where the failure is causing or threatens to cause a release; or the failure of a required spill containment structure, where the failure is causing or threatens to cause a release to the environment due to a spill or an overfill.
- (2) A violation that impairs the ability of an underground storage tank system to detect a liquid leak or contain a liquid release of petroleum in the manner required by law, including, but not limited to: tampering with leak detection equipment so that the equipment is no longer capable of detecting a leak at the earliest possible opportunity.
- (3) A chronic violation or a violation that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the local agency shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to any requirement of Chapter 6.7 or of any regulation adopted pursuant to Chapter 6.7, not including the corrective action

requirements in Section 25296.10 of the HSC and Article 11 of Chapter 16 of Title 23 of the regulations.

2. Imminent threat to human health or safety or the environment” means a condition that creates a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the actual or potential damages to human health or safety or the environment.

IV. ROLES AND RESPONSIBILITIES

A. Single Agency

1. Counsel

It is recommended that each UPA consult with counsel regarding implementation of AEO authority within its jurisdiction. Counsel should be available to represent the UPA in formal hearings. Options for counsel include county counsel, city attorneys, or district attorneys. It is also recommended that counsel review documents and be involved to the extent possible with individual AEOs.

2. Signature Authority for Issuance/Settlement

Each UPA should designate the appropriate level of responsibility for signing all documents related to the issuance of AEOs. Form AEO 02 may be useful for signoffs.

3. Assignment of Tracking Number

It is recommended that each UPA develop a case tracking system to be used to track each AEO. An example for the tracking number might be EM00-001 where “EM” is the UPA district designation, “00” is the year and “001” is the case number. All data elements should conform to the T27 data dictionary. A tracking system should incorporate the following data elements:

- Case #
- Respondent information (name, address, phone number)
- Type of business
- Program element(s)
- Violations noted (Form AEO 11)
- Total penalties assessed
- Cost recovery

- Other credits (e.g. Supplemental Environmental Projects)
- Total penalties collected
- Date total penalty collected (in total)

4. Internal Review/Approval

Statute and regulations do not mandate specific internal review/approval procedures. Internal review and approval of AEOs are dependent on the size and complexity of the UPA organization. Generally, staff supervisors have a responsibility to review all work, including draft AEOs. However, draft AEOs may warrant a higher level of approval and possible interaction between different sections or units before final approval is granted. Each UPA should determine its own level of internal review and approval for all aspects of the AEO process.

The following is an example of an internal review/approval and responsibilities policy that might be used by a more complex UPA. A smaller UPA would be likely to utilize a less complicated internal review and approval process:

The Director/Chief

Review and sign AEOs,, settlement documents (e.g. Stipulations and Orders, Consent Orders), and other documents generated for respondents with penalty assessments of \$500,000 or more.

Program Managers

1. Review and sign AEOs, settlement documents (e.g. Stipulations and Orders, Consent Orders), and other documents generated for respondents with penalty assessments of less than \$500,000.
2. Routinely (at least monthly) meet with all supervisors to discuss potential AEOs for accuracy and consistency.
3. Conduct informal conferences with the respondents for the purposes of explaining or negotiating the penalty.

Supervisors

1. Determine whether an AEO is the appropriate enforcement response option for the violations identified.
2. Ensure appropriate evidence supports all violations alleged in the AEO.
3. Review and approve all draft AEOs prepared by staff within their respective units.
4. Review all potential AEO cases for possible criminal referral.
5. Ensure that the AEOs and other supporting documents are produced and issued in a timely manner.

Line Staff

1. Conduct inspections of regulated entities and/or respond to complaints.
2. Gather and preserve evidence indicating a violation has occurred.
3. Prepare AEOs when appropriate (see AEO protocols for detailed instructions).
4. Attend and participate in informal conferences and formal hearings.

B. Multi-Agency

It is recommended that each UPA with enforcement responsibilities at a common regulated entity, meet and discuss coordination issues prior to issuing an AEO to that entity. While each jurisdiction will have unique issues and concerns relative to the joint issuance of AEOs, it is desirable to have a single AEO issued for multiple violations at a single entity. Options include one AEO with multiple signatures (representing each UPA) or issuance of separate independent AEOs from each UPA. Separate AEOs may be issued depending on the complexity of coordination issues. Coordination should include timing of AEO issuance, discussion of total penalties, penalty assessment per program element, potential maximum penalty reductions and implementation of compliance mandates.

1. Counsel

The agencies involved should decide how counsel will work together to determine how to facilitate the AEO (for example who will issue the AEO, joint or separate signatories, conduct settlement negotiations etc).

2. Signature Authority for Issuance/Settlement

The UPAs involved in the joint issuance of an AEO should determine the appropriate signatory or signatories for signing all documents related to the issuance of AEOs.

Form AEO 02 may be useful for signoffs.

3. Assignment of Tracking Number

It is recommended that agencies develop a joint case tracking system to be used for all documentation for a particular multi-agency case. An example for the tracking number might be MA00-001 where “MA” is the multi-agency designation, “00” is the year and “001” is the case number. All data elements should conform to the T27 data dictionary. A tracking system should incorporate the same data elements as the single agency tracking system.

4. Internal Review/Approval

While each UPA will need to determine its own level of internal review and approval for all aspects of the AEO process, multiagency actions require a coordinated review/approval process. While each agency shares responsibility for the AEO, detailed review of the violations and penalties assessed are generally conducted by the agency with responsibility for that program element within the joint AEO.

V. ADMINISTRATIVE ORDER ISSUANCE AND SETTLEMENT PROCESS

A. Introduction

UPAs are authorized by HSC Section 25404.1.1 to issue AEOs that impose penalties. The goals of the AEO are to return a facility to compliance in a timely manner, eliminate illegally obtained economic benefit, punish the violator, and deter future non-compliance. To expedite achieving the enforcement goal as efficiently as possible, the UPA should encourage the respondent to enter into settlement discussions. *Settlement discussions can occur at any time during the enforcement process.*

This guidance assumes the UPA has completed the necessary documentation, such as inspection or investigation reports, and followed the appropriate regulations and policies necessary to make the determination that an AEO is appropriate given the circumstances.

There are different procedures that may be used to initiate the issuance of an AEO. For example, a draft AEO may be sent to the respondent as a first step or a letter may be sent informing the respondent that the UPA intends to issue an AEO. This guidance provides several options for the issuance and finalization of the AEO. It is up to the UPA to decide which option is appropriate. Other options not described may be used as long as they comply with the procedural requirements of the Health and Safety Code.

B. Timeliness of Enforcement Actions

One of the goals of the UPA Inspection and Enforcement program is to take timely enforcement actions. To achieve that goal, each UPA should establish appropriate timelines for major milestones throughout its inspection and enforcement process. These timelines are goals that the UPA establishes to ensure internal accountability and reduce unnecessary delays in making appropriate progress.

Timely enforcement is measured from the date of the inspection when the violations were first detected. For the Hazardous Waste Program, HSC Section 25185(c)(2) requires that inspection reports be mailed to businesses within 65 days of the inspection. If an AEO is the selected enforcement option, DTSC's Enforcement Response Policy establishes a goal of issuing a Final Order within 180 days of the inspection. If this goal cannot be achieved, management should be consulted. UPAs should have a similar policy established in their Enforcement Plan to ensure AEOs are issued in a timely manner.

C. Options for Administrative Enforcement Order Issuance

The UPA may use the procedures identified in this guidance (see Chart 1b) in initiating, settling, and issuing administrative orders under HSC Section 25404.1.1. A UPA may decide to use these or other alternatives that result in a Final Order with compliance mandates and an appropriate penalty. Any option chosen must meet the requirements of HSC Section 25404.1.1.

1. "Show Cause" Letter

The Show Cause letter is the most commonly used and recommended option. The UPA issues a Show Cause letter (Form AEO 05) to the respondent notifying that the

UPA is planning to take an AEO action and encouraging the business to contact the UPA to discuss settlement.

The goal of this process is to enter into settlement discussions between the respondent and the UPA; reach agreement on compliance, timelines and penalties; and formalize the agreement in an Enforcement Order.

The UPA must be prepared to issue an AEO (Form AEO 04) in cases where the respondent fails to reply to the notice or settlement discussions fail to result in an agreement. When entering into settlement discussions, the UPA should establish deadlines for reaching agreement. When deadlines pass, the UPA should take the next step by issuing an AEO.

The Show Cause letter does not constitute a formal enforcement action. The letter establishes the UPA's intent to pursue formal enforcement and encourages a consensual resolution.

Advantages and Disadvantages

The advantages of the "Show Cause" letter are that it:

- Reduces the number of steps in the AEO process;
- Provides the respondent with an expedited process for resolving the violations;
- Provides for respondent input prior to the issuance of an AEO;
- Does not start the statutory time frame for hearings; and
- Allows for early discussion of the violations and avoids the possibility of the UPA having to formally amend or retract a Final Order.

The disadvantage is that the statutory timeframes for filing a notice of defense are not triggered; and therefore, a deadline is not established. If immediate action is required, this option may not be appropriate.

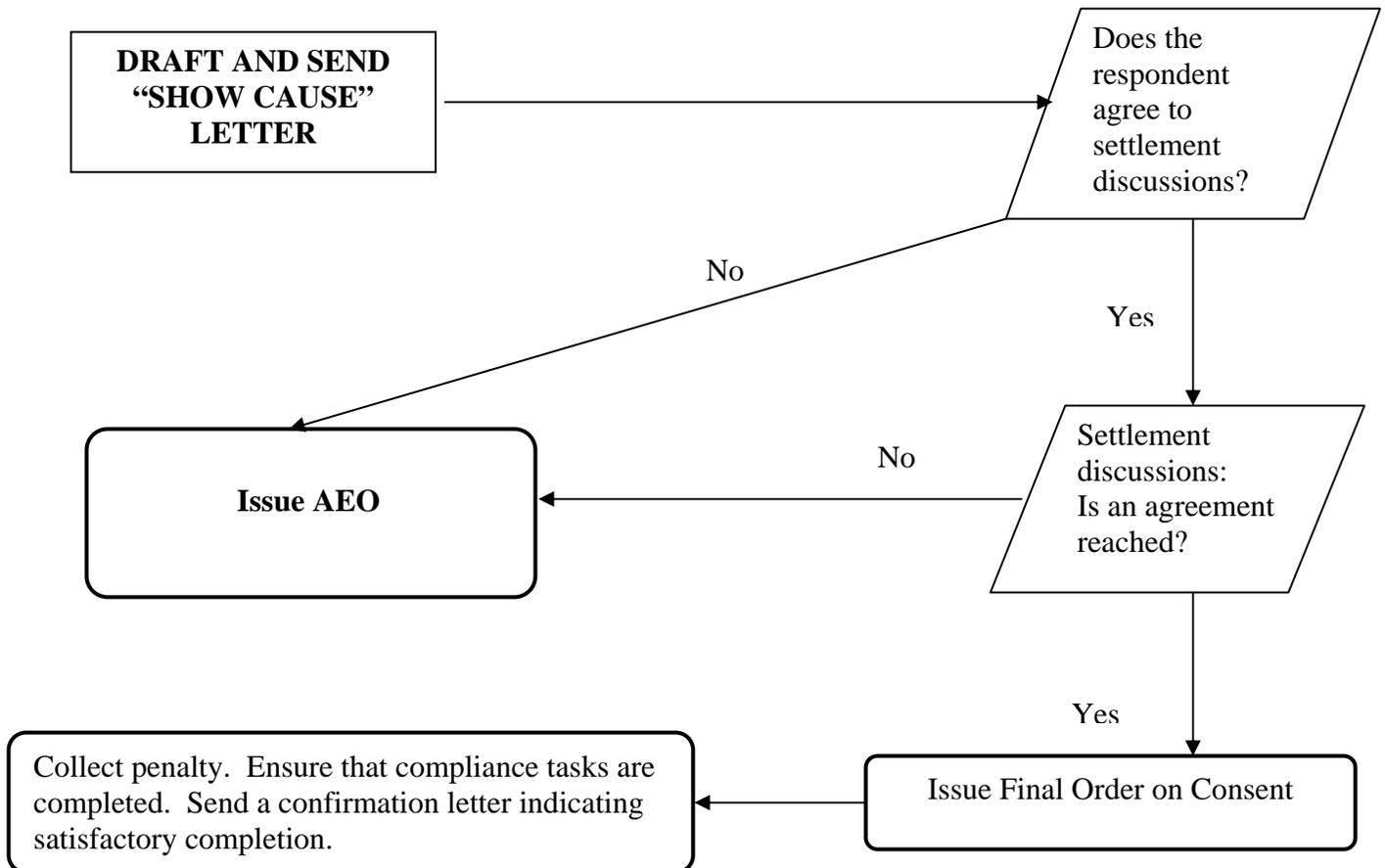
Elements of the “Show Cause” letter (See Form AEO 05)

Show Cause

Steps in the process

1. Draft and send a “Show Cause” letter.
2. If the respondent agrees, set up settlement discussions.
3. Conduct settlement discussions.
4. If an agreement is reached, complete and mail a Final Order.
5. If no response is received to the “Show Cause” letter or if settlement is not achieved, issue an AEO.
6. If settlement is achieved, collect penalties and assure that compliance tasks are completed.

Chart II: The “Show Cause” Letter Approach to Administrative Enforcement



2. Draft Administrative Order

Under this alternative the UPA would send a “draft” AEO with a cover letter to the respondent. The cover letter would state why the draft AEO is being sent and provide the respondent with a specified number of days to enter into settlement discussions before the Final AEO is issued. The failure of the respondent to answer the letter requires the issuance of the Final AEO.

The draft AEO essentially has not been signed by the issuing UPA. It is similar to the Show Cause alternative because it initiates settlement discussions with the respondent.

Advantages and Disadvantages

The advantages of the draft AEO alternative are that it:

- Is more formal than the Show Cause alternative because it contains all the details of the alleged violations and the proposed penalties;
- Documents the violations and penalty and communicates them early;
- Is easy to quickly finalize;
- Does not start the statutory time frame for hearings, and
- Allows for early discussion of the violations and avoids the possibility of the UPA having to formally amend or retract an AEO.

The disadvantage is that the statutory timeframe for filing a notice of defense has not been triggered; and therefore, a deadline is not established.

Draft AEO may be appropriate

- For more serious violations;
- For complex violations;
- When complex compliance issues are present;
- When a compliance schedule is required; and
- When prompt settlement is not anticipated.

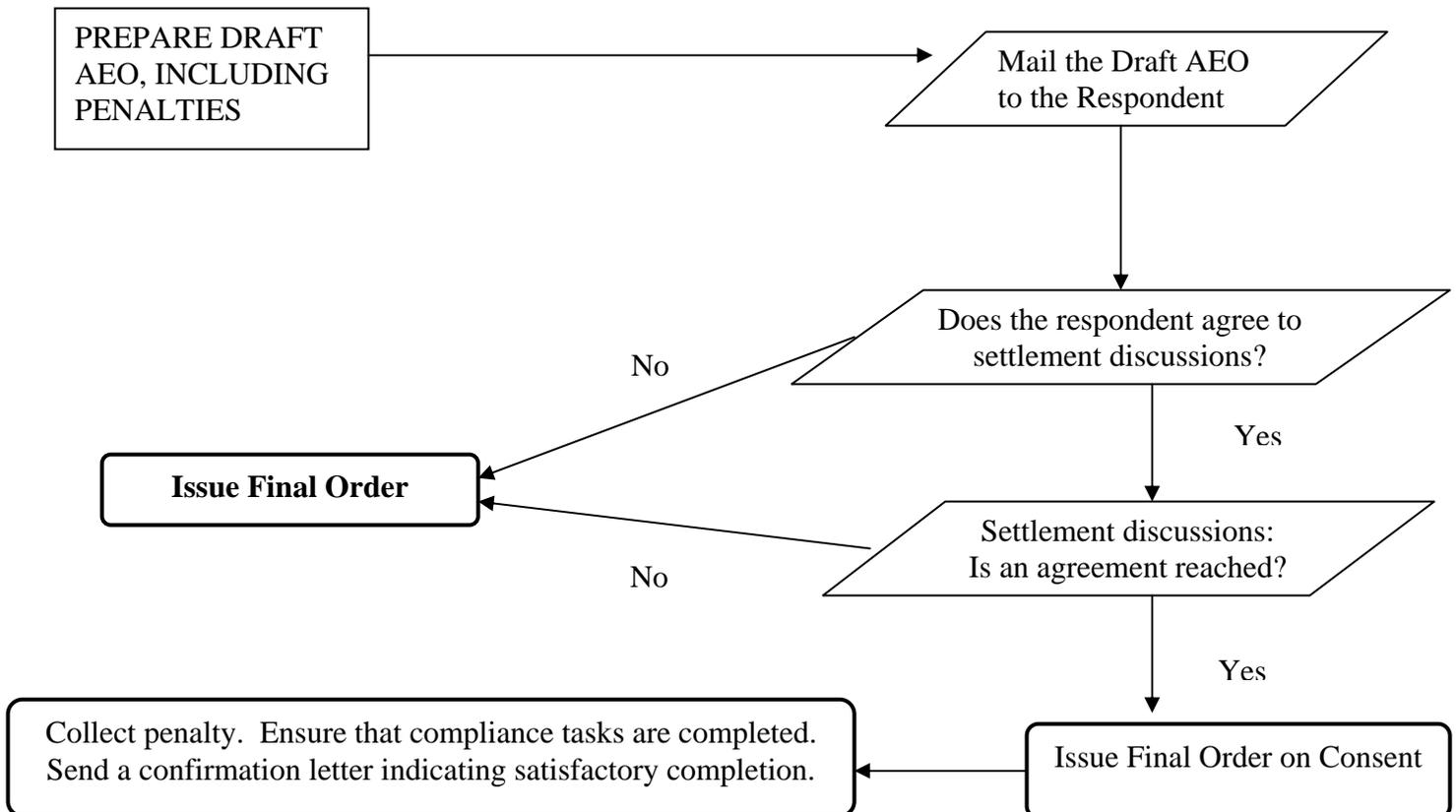
Elements of the Draft Administrative Order (See Form AEO 04)

Draft Administrative Order

Steps in the Process

1. Prepare and mail draft AEO with penalty assessment to respondent.
2. If the respondent agrees, set settlement discussions.
3. Conduct settlement discussions.
4. If settlement is reached, complete a Final Consent Order.
5. Collect and distribute penalty and assure that compliance tasks are completed.
6. Send confirmation letter to business indicating satisfactory completion with the Final Order on Consent.
7. If respondent does not agree to settle issue the Final AEO.

Chart III: The Draft Administrative Order Approach to Enforcement



3. Final Order

Under this alternative, the UPA sends a complete, signed Final Order to the respondent without prior discussion or negotiation. The Show Cause Letter and draft AEO alternatives anticipate the possibility of the issuance of a Final Order as a possible outcome. This alternative utilizes the issuance of a Final Order as the initial step.

Advantages and Disadvantages

The advantages of the Final Order alternative are that:

- Respondent may request a hearing within 15 days;
- Imminent and substantial endangerment finding requires immediate compliance, even if an appeal is filed; and
- Order is a public document.

The disadvantage of the Final Order is that it doesn't allow consideration for the respondent's position prior to formal public action.

The Final Order alternative may be appropriate

- When the respondent is a repeat violator of, or has a history of non-compliance with environmental or public safety laws;
- When the respondent has been recalcitrant or uncooperative;
- When the violations pose an imminent and substantial threat to public health or the environment; or
- When the violations have resulted in a significant release to the environment.

As previously noted, the Final Order can be a necessary escalation when settlement is not achieved with the Show Cause Letter or draft AEO alternatives. For elements of a Draft AEO see Form AEO 04.

Preparing an AEO

When preparing an AEO, the following documents must be included in the package served on the respondent:

- A copy of the signed order (Form AEO 04)

- All exhibits referred to in the order
- Statement to the Respondent (Form AEO 07)
- A copy of proof of service (Form AEO 09)
- Cover letter to respondent (Form AEO 06)
- Two copies of Notice of Defense (NOD) (Form AEO 08)

Serving the Order

HSC Section 25404.1.1(c) requires that an order shall be served in person or by certified mail. The more common method for serving an enforcement order is to mail the order by first-class certified mail, return receipt requested. HSC section 25404.1.1(d) states that if no NOD is received within 15 days of service of the order, the order becomes final. It is good practice to allow an additional 5 days for mail delivery time (20 days total). If an NOD is received, a hearing must be scheduled within 90 days before the hearing officer selected by the respondent. For those selecting the State ALJ, refer to the procedures for accessing an ALJ through the State OAH found in a separate document titled “Procedure for Accessing an ALJ”. For those selecting a local hearing officer established by the UPA, set the hearing. A proof of service form (Form AEO 9) must be completed and included in the package.

Amending an Administrative Order

There are two situations in which an AEO may be amended:

- When the respondent files a request for a revision and the UPA agrees the change is needed, the UPA makes the appropriate amendments and sends a copy to the respondent.
- When the UPA independently determines that a correction is necessary. To move above issuance of an amended AEO in this situation requires the re-issuance of the complete service package and may create new hearing rights.

Withdrawing an Order

If the UPA decides to withdraw the AEO, the UPA completes a Notice of Dismissal (Form AEO 15) and sends with a letter, return receipt requested, officially notifying the respondent that the order is being withdrawn.

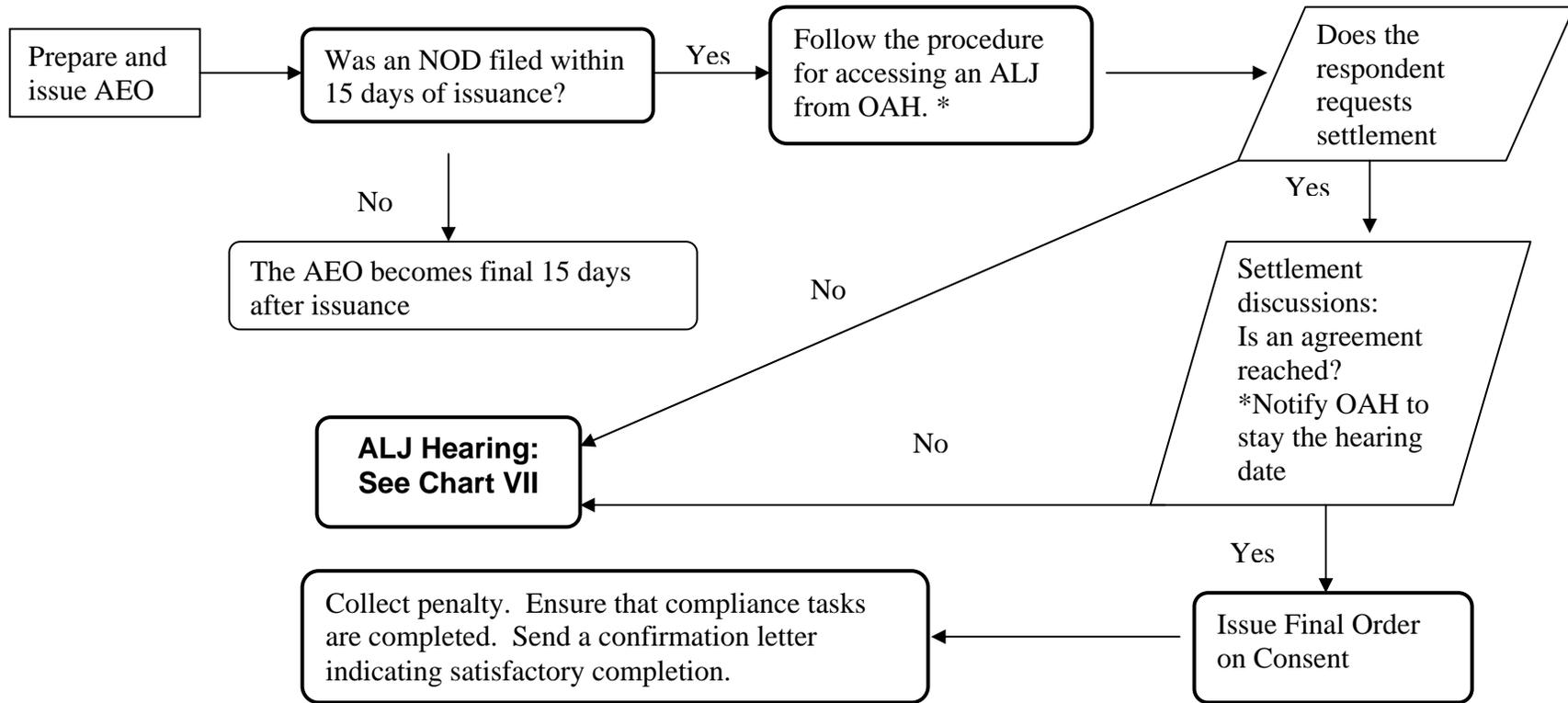
Elements of the AEO (*See Form AEO 04*)

Administrative Order

Steps in the Process

1. Prepare and issue the AEO including penalties and completion of the certificate of service.
2. Respondent submits the NOD and requests a stay while settlement discussions occur.
Conduct settlement discussions. Reach agreement and issue Final Order on consent. If agreement cannot be reached, discontinue stay and go to item 4.
3. Respondent submits NOD without requesting settlement discussions. UPA sends the NOD to the OAH. The OAH assigns an ALJ and a hearing is conducted within 90 days. (UPA and respondent may resolve the violations at any time with a Consent Order). An ALJ hears the case and issues a proposed decision. UPA either concurs, modifies, or rejects the decision. Respondent may appeal to Superior Court.
4. Respondent does not submit NOD. The AEO becomes final after 15 days. Rights to a formal hearing are forfeited.
5. Collect and distribute penalty and assure that compliance tasks are completed.

Chart IV: The Administrative Enforcement



*If the UPA has established a local hearing officer and the respondent selects them, follow local procedures.

D. Settlement Discussions/Settlement Agreement

1. Settlement discussions between the UPA and the respondent can occur at any time in the process. The UPA should encourage settlement discussions whenever possible. Statutory time frames for requesting and proceeding to hearing may be stayed by agreement between the respondent and the UPA.
2. The UPA should set a time and place for any settlement discussion meeting. If the UPA and the respondent are able to reach settlement, the UPA will issue a Consent Order (Form AEO 18). At a minimum, a Consent Order shall mandate:
 - Compliance with applicable laws;
 - Payment of fees and/or costs due to the UPA; and
 - Payment to the UPA of any penalty assessed.

E. Administrative Hearings

1. HSC Section 25404.1.1. (d) allows the respondent to request a hearing on the order within 15 days after service of the order. This timeframe cannot be extended. A request for a hearing is referred to in HSC Section 25404.1.1. (d) as an “NOD” (Form AEO 08). The NOD must be filed with the UPA that issued the order within 15 days of service. It is acceptable if the NOD is postmarked within that 15 day period. If the respondent does not submit a notice of defense within the 15 days after service, the order becomes final.
2. If the UPA has procedures in place to designate a local hearing officer and receives a NOD within the 15-day time period requesting a hearing before a local hearing officer, then the hearing officer is notified and the hearing is set based on local procedures. The local hearing officer shall conduct the hearing in accordance with the Administrative Procedures Act. (Government Code Section 11400 et seq.)
3. If a UPA receives a NOD within the 15 day time period requesting a hearing before the OAH, it must immediately transmit the NOD to OAH (Refer to procedures for accessing OAH). Form AEO 13 is a cover letter to the presiding ALJ that accompanies an NOD transmitted by a UPA. The UPA must also notify the respondent that a hearing with an ALJ has been scheduled; Form AEO 12 can be used for this purpose. OAH

then has 90 days to hold the hearing. The 90 days may be extended upon mutual agreement between the UPA and the respondent (Form AEO 14).

4. While not required, it is generally advisable for UPAs to be represented by counsel during the OAH hearing process. Form AEO 17 includes the type of information that a respondent is legally obligated to provide the UPA prior to the hearing. UPAs and respondents have similar discovery rights and obligations.
5. The UPA should remain in contact with the respondent and offer the opportunity to settle the case prior to the hearing date.
6. After the hearing, the ALJ issues a proposed decision within thirty (30) days to the UPA. The UPA decides whether to adopt, modify, or reject the proposed decision. To adopt the proposed decision, the UPA serves the respondent with a letter, stating that it is adopting the proposed decision and serves this package on the respondent, including a copy of the ALJ Order. Such orders are effective and final upon issuance, and the respondent has 30 days to make payment. A copy of the order must be served by personal service or by certified mail.

F. Court Review

Within thirty (30) days after service of a copy of an Order issued by a UPA, the respondent may file with the Superior Court a Petition for Writ of Mandate for review of the Order. The filing of such Petition for Writ of Mandate does not stay any penalties assessed. Any Respondent who fails to file the Petition within this thirty (30) day period may not challenge the Order. [*Government Code §11523*]

VI. PENALTIES

A. Penalty Maximums and Calculations

Penalty maximums are set forth in statute for the Hazardous Waste, Underground Storage Tank, Above Ground Storage Tank, California Accidental Release Prevention, and Business Plan programs (See (a) – (e) below). Currently, the penalty calculation procedures are set forth in regulations (CCR Title 22 section 66272.60 - 66272.69) for calculating penalties for violation of the Hazardous waste requirements. No corresponding regulatory procedures exist for the other program elements. However, the statutory factors that must be considered in assessing hazardous waste penalties and any penalty under the HSC Section 25404.1.1 authority are essentially the same. The rationale and process (not the amounts) in these regulations can also provide additional guidance for consistent calculation of penalties under other program elements. Please note that in no case can the penalty calculated exceed the statutory maximum for that program element.

1. Statute and Regulations

(a) Hazardous Waste

For violations of HSC Chapter 6.5, the violator shall be liable for penalties as provided in section 25189.2 (a-c). Administrative penalties must be assessed following the procedures set forth in regulation (CCR Title 22 section 66272.60 - 66272.69). The total penalty calculated for any single violation shall not exceed the amount specified in statute; \$25,000 per day, per violation (HSC Section 25189.2).

(b) Underground Storage Tanks

For violations of HSC Chapter 6.7, the violator shall be liable for a penalty as provided in Section 25299(a-c).

HSC Section 25299(a) and (b) call for penalties no less than \$500 or no more than \$5,000 per day, per violation, per Underground Storage Tank.

For violations of HSC 25299(c), the respondent is liable for no more than \$5000 per day, per violation, per UST.

- (c) Above Ground Storage Tank Program - For violations of HSC Section 25270.5, the violator shall be liable for a penalty of not more than five thousand dollars (\$5,000) for each day on which the violation continues. If the violator commits a second or subsequent violation, a penalty of not more than ten thousand dollars (\$10,000) for each day on which the violation continues may be imposed.
- (d) Hazardous Materials Release Response Plan Program - For violations of HSC Chapter 6.95, Article 1, the violator shall be liable for a penalty consistent with the administrative penalties as described in Section 25514.5.

HSC Section 25514.5(a) establishes a penalty which shall be set by the governing body of the administrating agency but not greater than two thousand dollars (\$2,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire or health or medical problem requiring toxicological, health, or medical consultation, the business shall also be assessed the full cost of the county, city, fire district, and/or local EMS agency designated pursuant to Section 1797.200, or poison control center as defined by Section 1797.97, emergency response, as well as the cost of cleaning up and disposing of the hazardous materials, or acutely hazardous materials.

HSC Section 25514.5(b) establishes an administrative penalty for knowing violation after reasonable notice in an amount that shall be set by the governing body of the administrating agency but not greater than five thousand dollars (\$5,000) for each day in which the violation occurs.

- (e) California Accidental Release Prevention Program - For violations of HSC Chapter 6.95, Article 2, the violator shall be liable for a penalty consistent with the administrative penalties as described in Section 25540 or 25540.5.

HSC Section 25540(a) establishes a penalty of not more than two thousand dollars (\$2,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire, the stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

HSC Section 25540(b) establishes a penalty for knowing violations after reasonable notice in an amount not to exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

HSC Section 25540.5 states that any person or stationary source who violates any rule or regulation, emission limitation, permit condition, order, fee requirement, filing requirement, duty to allow or carry out inspection or monitoring activities, or duty to allow entry, established pursuant to this article and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subsections (l) and (r) of Section 112 of the Clean Air Act [42 U.S.C. Sections 7412(l) and 7412(r)] or the regulations adopted pursuant thereto, is strictly liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

2. Statutory factors

HSC Section 25404.1.1(b) states that in establishing a penalty amount and ordering that the violation be corrected pursuant to this section, the UPA shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay

the penalty, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

3. Multi-day Violations

Multi-day penalties are set forth in statute for Hazardous Waste, Underground Storage Tank, Above Ground Storage Tank, California Accidental Release Prevention, and Business Plan programs as stated above under statutory and regulatory penalties. Title 22 Section 66272.65 addresses the calculation of multi-day penalties for Hazardous Waste violations. No corresponding regulations exist for the other program elements. The rationale and process found in these regulations provides for 2% of the penalty calculated for the first day of violation to be multiplied by the total number of additional days the violation occurred to arrive at the total multi-day penalty. This penalty amount is then added to the amount calculated for the first day of violation. While not required for calculating multi-day penalties for other program elements, this process can be considered for additional guidance.

4. Multiple Violations

Calculation of multiple violations within an individual program element is found for the Hazardous Waste program under Title 22 Section 66272.64. No corresponding regulations exist for the other program elements. The rationale and process found in these regulations can provide additional guidance for calculating multiple penalties for each of the other program elements.

5. Multi-Program Violations

Calculation of penalties for violations of multiple program elements within the same AEO should begin with calculation of initial and multi-day penalties for each program element separately. Once the penalties within each program element have been calculated, add the totals together into a single penalty amount for all violations addressed by that AEO.

6. Ability to Pay

The UPA is required to consider the respondent's ability to pay the assessed penalty (HSC Section 25404.1.1(b)). Often in the course of discussing settlements, respondents assert that they do not have the financial means to pay the proposed penalty or that paying the penalty will lead to bankruptcy or severe economic hardship. If ability to pay is at issue, the UPA should request from a respondent any financial information the UPA needs to evaluate the claim of financial hardship. A respondent who raises the issue has the burden of providing information to demonstrate financial hardship. It is recommended that the determination of ability to pay be made on the total penalty assessed in the AEO for all violations rather than separately for the penalty for each program element. It is recommended that any reduction to reflect the violator's inability to pay the entire assessment also be made to the total penalty and distributed proportionally to the penalties calculated for the individual program violations rather than to make this adjustment disproportionately in individual program element penalties.

US EPA uses financial models to help assist in determining a business's ability to pay. There are three applicable models accessible to CUPAs – ABEL, INDIPAY (Individual Ability to Pay), and BEN. ABEL (not an acronym) is used to assess a company's ability to pay proposed penalties. INDIPAY is used to assess an individual's or a sole proprietor's ability to pay proposed penalties. BEN (also not an acronym) calculates the economic benefit of non-compliance and is typically reserved for cases where the economic benefit is substantial. These models can be found on the US EPA web site www.epa.gov/. However, the models are not definitive and often do not consider all the variables in a respondent's financial situation.

Financial information to request from for-profit entities may include the most recent three to five years of:

- Tax returns;
- Balance sheets;

- Income statements;
- Statements of changes in financial position;
- Statements of operations;
- Retained earnings statements;
- Loan applications, financing agreements, security agreements;
- Annual reports;
- Security and exchange filings.
- Credit report

The UPA may also use business service companies such as Dunn and Bradstreet to assist in determining ability to pay. If a respondent refuses to give the UPA the information to evaluate ability to pay or provides inadequate information to substantiate their claim of inability to pay, the UPA should seek the fully calculated penalty amount under the assumption that the respondent has the ability to pay.

B. Cost Recovery

There is no statutory provision for cost recovery in AEOs. Costs may be recovered in a negotiated settlement of an AEO. Cost recovery should never exceed actual costs.

C. Penalty Disposition

HSC Section 25404.1.1(i) states that all administrative penalties collected shall be paid to the UPA that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the activities of the UPA in enforcing this chapter.

D. Confidentiality of Financial Information

A respondent can claim confidentiality for financial information submitted to a public agency. If the respondent submits financial information without a confidentiality claim, the agency may release the information without further notice to the respondent.

Information in published annual reports or other published publicly available documents would not be entitled to confidential treatment.

UPAs should have a procedure in place for securing confidential business information in accordance with HSC Section 25173 & 22 CCR, section 66260.2 (HW program); HSC Section 25511, 25538, & 25506(a) (Business Plan & CalARP); and Public Records Act (Government Code), section 6254(v).

E. Supplemental Environmental Projects

Supplemental Environmental Projects (SEPs) can be sensitive, and a variety of complicated issues may apply. If SEPs are desired, UPAs are strongly encouraged to use counsel in developing and negotiating SEPs. DTSC, Cal/EPA, US EPA, and SWRCB have issued guidance on SEPs, which can be consulted. Cal/EPA's policy on SEPs can be obtained at:

<http://www.calepa.ca.gov/programs/enforce/ensec9.htm>

US EPA's policy on SEPs can be obtained at:

<http://www.epa.gov/compliance/resources/publications/civil/programs/sepbrochure.pdf>

VII. CASE CLOSURE

Final case closure includes collection of all penalties, verification of compliance and summary reporting.

A. Collection and Accounting for Penalties

Full penalties should be collected. A UPA should have a system to track payment, payment history and other necessary/required information. It is usually easiest to require full payment before issuance of a final order in a negotiated settlement.

B. Uncollected Penalties

Each UPA should discuss internal options for pursuing uncollected penalties. Each option should be evaluated and examined in the context of what your counsel is comfortable with and what is available locally. Also, if counsel has not previously been involved with some of the options being explored, pre-discussions are recommended.

It is generally recommended that a Demand Letter be issued as the initial step following settlement. While the Demand Letter cannot change the amount, terms or any other aspect

of the settlement it serves to notify the respondent that the proceedings are over and they owe the designated amount by the date indicated. Additional useful information can include the name to be placed on the check, the address to send it to and who to contact if questions arise regarding actual payment. Inclusion of a self-addressed, stamped envelope for return of payment is also often useful. At a minimum the letter can help demonstrate a good faith attempt to collect prior to asking a judge to take other more stringent action

Some of the options to consider invariably take the matter to a higher or augmented level. One factor to include is the type of enforcement case, for example, is it a permit issue or a violation of statutes or codes? Specifically, are you dealing with penalties for not having a permit or not reporting a release or an illegal disposal issue? Another factor is consideration of what a local prosecutor is willing or able to handle. Lastly, consider how much time and resources will be required to collect and how much is the amount you are trying to collect. For example, you would not want to spend \$5,000 to recover \$500.

Examples of ways to handle uncollected penalties include:

1. Conversion of a final order into a civil judgment (see H&SC 25404.1.3). Civil judgments may then be collected in many ways such as using liens, collection agencies etc This is a relatively simple process, but it does require some involvement of your County Counsel. Typically, County Counsel would be involved unless your local prosecutor is open to this option. Judgments also accrue interest at a statutory rate.
2. Small Claims Court. If the matter is under \$5,000, this might be an easy venue for fee or penalty payment. However, each jurisdiction will need to work with their own Small Claims Court for process details. This might also be a venue for originally pursuing non-payment of permits/license fees.
3. Your city or county collection office. In some cases, agencies have realized success having their County Counsel send out notices. Depending on the agency, various tools might be available.

4. External collection agencies. They will do the work of sending out collection letters and will often add their own fees on top of what is being requested by the agency (typically 30-40%).
5. Liens. This option might require a judgment (see above) is more passive and requires the sale or re-finance of the business or property for the payment to be realized. Many people, who aren't willing to pay their original fees or penalties, will often ignore liens. However, if the property is sold or refinanced, the lien will have to be paid first.
6. Permit Revocation (see H&SC 25404.1.1(k) (l). This can be a useful tool especially if local ordinance allows for closure. CUPAs were required to put a Permit Revocation process in their original application and must also have an appeal process in place. Although still an issue that may require injunctive relief, voluntary closure or the threat of closure is typically a strong tool.
7. Referral to a prosecutorial agency for a civil action. This action is to obtain injunctive relief and additional penalties (if violations continue). Criteria for referring non-compliant AEO cases should be coordinated beforehand with the appropriate prosecutorial entity.

C. Verification of Compliance with the Administrative Order.

The UPA(s) should verify compliance with directives mandated by the AEO at or near the dates specified in the order. This does not preclude a facility from demonstrating compliance sooner. Verification can be by a site visit, compliance certification (e.g. Certificate of Compliance – Form AEO 10) by the respondent, or other documentation as deemed appropriate by the UPA.

D. Multi-agency

Agencies should discuss details of collection, penalty tracking and distribution before case closure. It is recommended that a single agency be designated to collect, track, and distribute penalties.

VIII. RESPONSE TO NON-COMPLIANCE WITH ADMINISTRATIVE ORDER

A Final Order may be amended if the respondent requests and the UPA agrees that an amendment is appropriate. Amendments may be requested if certain compliance tasks are legitimately taking longer than originally agreed. If the UPA receives a request for an amendment, the UPA should require that the respondent clearly document why the amendment is needed and what measures will be taken to ensure that future amendments are not necessary.

If any respondent is found to be non-compliant with an AEO, the case should be referred to the appropriate prosecutorial agency (i.e. District Attorney, County Attorney, City Attorney, State Attorney General, US Attorney). Form AEO 03 is a checklist that can be used for such referrals. If no prosecutorial agency is willing to take the case, other formal enforcement options, including a referral to the appropriate state/federal agency, can be considered.

IX. APPENDIX TABLE

A. Appendix I Checklist for AEO Implementation

APPENDIX I

CHECKLIST FOR AEO IMPLEMENTATION

Checklist 1: General Administrative Order Procedures	YES	NO	Comments
1) Did you consult with the legal counsel while preparing these procedures?			<i>See page 13. "Roles and Responsibilities: 1. Counsel"</i>
2) Does the UPA have written policies and procedures for what response to take when there are violations?			<i>A policy similar to DTSC's Enforcement Response Policy that outlines when to take informal or formal enforcement action. Formal enforcement includes administrative, civil or criminal.</i>
3) Does the UPA have written procedures for issuing informal actions such as Notice of Violation and Notice to Correct?			<i>See Chart 1a</i>
4) Does the UPA have written procedures for using the Show Cause approach?			<i>See page 17. "Options for Administrative Enforcement Order Issuance: 1. Show Cause"</i>
5) Does the UPA have written procedures on how to issue an administrative order?			<i>See page 30. This approach is required. Other approaches are optional. Docket log numbers or Tracking numbers.</i>
6) Does the UPA have written procedures on how to amend an AEO?			<i>See page 31. "Amending an AEO"</i>
7) Does the UPA have written procedures on how to withdraw an AEO?			<i>See page 32. "Amending an AEO"</i>
8) Does the UPA have written procedures for issuing a Draft AEO?			<i>See page 24.</i>
11) Do the procedures identify the roles and responsibilities?			<i>Please refer to Checklist 2 for specific roles and responsibilities.</i>
10) Does the UPA have written procedures for certifying compliance with an AEO?			<i>See page 44. "Verification of Compliance Order"</i>

Checklist 1: General Administrative Order Procedures	YES	NO	Comments
11) Does the UPA have procedures for addressing a respondent's non-compliance with an order, including referral to legal counsel for civil or criminal prosecution			<i>See Page 44. "Response to Non-Compliance with an Order"</i>
12) Does the UPA have procedures for entering inspection and enforcement data into a data collection system?			See Title 27.
15) Does the UPA have agreement with their DA, or equivalent, to provide legal representation at a hearing before an ALJ?			<i>See page 34. "Appeals to an ALJ"</i>
14) Does the UPA have procedures for processing and acting upon the ALJ's proposed decision?			<i>See page 34. "Appeals to an ALJ"</i>

Checklist 2: Specific Roles and Responsibilities.	Position/Person	Comments <i>See pages 13 - 16.</i>
1) Who conducts the inspection?		
2) Who reviews the inspection report?		
3) Who determines the appropriate enforcement approach?		
4) Who drafts the show cause letter or Draft Administrative Order?		
5) Who calculates the penalty?		
6) Who reviews the penalty calculation?		
7) Who develops compliance tasks?		
8) Who assigns the tracking number for administrative orders?		
9) Who reviews the order?		
10) Who signs the order?		
11) Who serves the order to the respondent?		
12) Who at the UPA receives and follows up on the Notice of Defense from the respondent?		
13) Who participates in settlement discussions?		
14) Who reviews ability to pay information?		

Checklist 2: Specific Roles and Responsibilities.	Position/Person	Comments <i>See pages 13 - 16.</i>
16) Who drafts the consent agreement (Stipulation and Order)?		
17) Who signs the consent agreement (Stipulation and Order)?		
18) Who sends the Notice of Defense to the OAL.		
19) Who represents the UPA before the ALJ.		
20) Who at the UPA does the ALJ send its decision to?		
21) Who at the UPA makes the final decision to accept or if rejected, or modifies the ALJ's proposed decision?		
22) Who and where does the respondent send the penalty to?		
23) Who will enter data into the data system.		

Checklist 3: Timeliness of Enforcement	YES	NO	Number of Days	Comment <i>See page 17.</i>
<i>The UPA should establish time lines as goals for completing activities. When these time lines are not met, management should be consulted.</i>				
1) Number of days from inspection to completion of report.				<i>HSC Section 25185(c)(2): must be mailed to business within 65 days of inspection. SWRCB references?</i>
2) Number of days after report is completed to make the decision on appropriate enforcement.				
3) Number of days from enforcement decision to issuance of non-formal enforcement (NOV, Warning Letter, Notice to Correct, etc.)				
4) Number of days from enforcement decision to issuance of an AEO.				<i>DTSC's ERP establishes a 135-day goal from date of inspection for DTSC enforcement actions. SWRCB requirements?</i>
5) Number of days to issue or settle order.				

Checklist 4: Confidential Information	YES	NO	Comments <i>See page 43: "Confidentiality of Financial Information"</i>
<i>In the course of conducting investigations, the UPA may need access to material a business considers confidential. The UPA should be prepared to access this information and respect the claim.</i>			
1) Does the UPA have written procedures for maintaining both confidential business information and enforcement sensitive information?			
2) Does the UPA have a secure storage area for Confidential Business Information (CBI)?			
3) Does the UPA have procedures for how they will protect the request for confidentiality?			
4) Does the UPA have procedures for evaluating a CBI claim (to either accept or deny the claim)?			
5) Does the UPA have procedures for responding to a public records request when there is CBI claimed material in the file?			
6) Does the UPA have procedures for staff access to CBI claimed material?			<i>Who can access CBI material, how long can material be checked out and when checked out, how will material be protected.</i>
7) Does UPA have a training class or procedures for certifying staff that are authorized access to CBI material?			<i>Staff should be briefed and trained on their personal responsibility.</i>

Checklist 5: Penalties	YES	NO	Comments
1) Does the UPA have forms to assist in assessing penalties?			<i>See DTSC regulations "Assessment of Administrative Penalties".</i>
2) Does the UPA have a process for reviewing penalty calculations and obtaining supervisory concurrence?			
3) Does the UPA have confidentiality policies for penalty assessment documentation?			
4) Does the UPA have a SEP policy?			<i>See page 43. "Supplemental Environmental Projects"</i>
5) Does the UPA have a policy on penalty payment schedules?			
6) Does the UPA have a policy on the payment of interest when there is a penalty schedule?			
7) Does the UPA have procedure for collection and accounting of penalties?			
8) Does the UPA have procedures for pursuing uncollected penalties?			<i>See page 44.</i>
9) Does the UPA have a policy on cost recovery for inspection and enforcement resources?			<i>See page 42.</i>

Checklist 5: Penalties	YES	NO	Comments
10) Does the UPA have procedures for assessing a company's ability to pay a penalty?			<i>See page 41.</i>

Checklist 6: Boilerplate forms	YES	NO	Comment
1) Does the UPA have an approved boilerplate “Show Cause” letter?			
2) Does the UPA have an approved boilerplate AEO?			
3) Does the UPA have an approved boilerplate “Statement to Respondent”?			
4) Does the UPA have an approved boilerplate Notice of Defense form?			
5) Does the UPA have an approved boilerplate Stipulation to extend time?			
6) Does the UPA have an approved boilerplate Notice of Dismissal?			
7) Does the UPA have an approved boilerplate Notice of Final Order?			

Checklist 6: Show Cause Letter	YES	NO	Comments
Does the UPA have a boilerplate Show Cause letter?			
Does the letter indicate a number of days for response?			
Does the letter include the UPA's intent to issue an AEO?			
Does the letter identify the alleged violations?			