

California Environmental
Protection Agency



Linda S. Adams
Secretary for Environmental Protection

California CUPA
Forum



Randy Sawyer
Board Chairman

Guidance Document for Inspection and Enforcement

Final April 15, 2008

**Prepared by
Unified Program Administration and Advisory Group
Inspection and Enforcement Steering Committee**

Introduction

Unified Program Agencies (UPA's) are charged under the California Health and Safety Code (Health & Saf. Code) with responsibility for enforcement of the legal requirements of the six underlying environmental and public safety programs. To "...ensure coordinated, efficient, and effective enforcement ..." of these six programs (Health & Saf. Code, § 25404.2), each UPA is required to develop and implement a single unified inspection and enforcement program meeting the specific requirements in both statute and regulation.

Inspection and enforcement are uniquely complex and require consideration of a broad range of options with various decision points assigned to appropriate staff levels. This guidance is an update and expansion of a 2000 version and is intended to establish a broad framework for UPA's inspection and enforcement programs. In addition, this document has many resources and links to other training, guidance, protocols, and tools regarding inspection and enforcement topics and concerns. More detailed guidance for specific elements of the program is referenced within the text of this framework. As other guidance is developed, regulations promulgated or statutes enacted, additional references will be added as necessary. In the unlikely event that any portion of this guidance document conflicts with existing statutes or regulations, those statutes or regulations shall prevail.

This guidance document was developed by a combined local /state workgroup under the direction of the Unified Program Inspection and Enforcement Steering Committee, a standing committee of the Unified Program Administration and Advisory Group (UPAAG). It is not intended to replace or supplant the Inspection and Enforcement Plan unless specific requirements are called to question.

Acknowledgements

Many thanks to the Inspection and Enforcement Steering Committee and the *Guidance Document for Inspection and Enforcement Workgroup* members for their hours of work on this project:

Inspection and Enforcement Steering Committee Co-chairs

Bill Jones, Los Angeles County
Larry Matz, California Environmental Protection Agency

Workgroup Co-chairs

JoAnn Jaschke, California Environmental Protection Agency
Dennis Karidis, Sacramento County

Committee and Workgroup Members

California Environmental Protection Agency

Lisa Brown
Don Johnson
Loretta Sylve
Mary Wilson

Department of Toxic Substances Control

Asha Arora
Charles McLaughlin
Mickey Pierce
Yvonne Sanchez
Maria Soria

City of Anaheim

Don Allinder

City of Long Beach

Linda Kolinski

City of Oxnard

Ines Gonzalez
Steve Mattern

City of Palo Alto

Dan Firth

City of Pasadena

James Weckerle

City of Pleasanton

Renee Perko

City of Santa Fe Springs

Steve Koester

Fresno County

Vince Mendes

Humboldt County

Melissa Martel
Jeff Poel
Kern County
Joe Canas
Vicky Cheung
Los Angeles County
Tony Payne
Marin County
Julia Barnes
Michael Frost
Christie Woolard
Office of Emergency Services
Brian Abeel
Orange County
Denise Fennessy
Christine Lane
Lisa Wales
Riverside County
Martha Bahia
Sacramento County
Dennis Green
Heather Tanner
San Bernardino County
Holly Clark
Doug Snyder
Kate Sulka
San Diego County
Mary Avastu
San Joaquin County
Kasey Foley
Santa Barbara County
Chris Han
Ann Marie Nelson
State Water Resources Control Board
Terry Brazell
Marci Christofferson
Kevin Graves
Leslie Graves
Amantha Henkel
Ventura County
Greg Smith
Jim Wada
Yuba County
Clark Pickell

Table of Contents	Page
I. Inspection and Enforcement Plan Requirements.....	1
II. Data Tracking and Reporting.....	2
A. California Environmental Protection Agency Reporting	2
B. Department of Toxic Substances Control Reporting..... for Large Quantity Generators	2
C. Underground Storage Tank Reporting.....	2
III. Inspection Component.....	3
A. General.....	3
B. Specific.....	3
1. Purpose of an Inspection	
2. Role of Inspector	
3. Inspection Limits	
4. Inspector Liability	
5. Inspector Obligation	
6. Site Safety	
7. Interviewing Techniques for Inspectors	
C. Inventory of Regulated Facilities.....	7
D. Frequency and Coordination of Inspections	8
1. Required Minimum Mandated Inspection Frequencies	
2. Universal Waste and Silver Only Facilities	
3. Certified Appliance Recyclers	
4. Integrated or Multi-Media Inspections	
E. Inspecting Indian Land, Local and State Government Facilities, and Federal Government Facilities.....	11
1. Indian Land	
2. Local and State Government Facilities	
3. Federal Government Facilities	

Table of Contents (Continued)	Page
F. General Inspection Procedures.....	13
1. General Protocols	
2. Pre-inspection Procedures	
3. On-site Procedures	
4. Report Writing Procedures	
5. Inspection Follow-up	
G. Gathering Evidence and Collecting Samples.....	18
H. Availability of Records.....	18
1. California Accidental Release Program	
2. Underground Storage Tank	
3. Hazardous Waste	
4. Hazardous Materials Release Response Plans	
I. Flowchart of Inspection Process.....	20
IV. Enforcement Component.....	21
A. Enforcement Philosophy.....	21
B. Environmental Task Force Coordination.....	21
C. Definitions of Formal Enforcement and Informal Enforcement.....	22
D. General Enforcement Procedures.....	22
E. Confidentiality.....	23
F. Flowchart of General Enforcement Procedures.....	24
G. Enforcement Options.....	25
1. Referral to Prosecuting Agency	
2. Multi-County and Statewide Actions	
3. Internal Investigations	
4. Penalties	

Table of Contents (Continued)

Page

H. Enforcement Tools.....27

- 1. Notice of Violations
- 2. Summary of Violations
- 3. Notice to Comply
- 4. Notice of Significant Violations UST
- 5. Office Meeting
- 6. Permit Revocation
- 7. Facility Closure
- 8. Business License Revocation
- 9. Administrative Enforcement Orders
- 10. Quarantine Hazardous Waste Generators/Tiered Permitting Facilities
- 11. Referral to State Agency
- 12. Referral to U.S. EPA
- 13. Civil Case
- 14. Criminal Case

I. Tables of Possible Enforcement Tools.....33

J. Program Specific Enforcement Authorities.....34

K. Joint, Combined, and Integrated/Multi-Media Enforcement.....36

V. Training Component.....37

- A. All Programs.....37
- B. Technical Staff and Supervisors.....37
- C. Underground Storage Tank Program.....39
- D. Aboveground Storage Tank Program.....39

This space is left blank intentionally.

Guidance Document for Inspection and Enforcement

I. Inspection and Enforcement Plan Requirements

The California Code of Regulations (Cal. Code Regs.), title 27 section 15200 requires UPA's to develop a plan for implementing their inspection and enforcement program. This was initially done as part of the certification process for UPA's in the mid 1990's. An Inspection and Enforcement Plan must be utilized by both the Certified Unified Program Agency (CUPA) and any Participating Agencies (PA's) with reference to how it was prepared in cooperation with all the PA's.

UPA's are required to address the following 12 items within their plan.

- Provisions for administering all program elements, even the specific elements implemented by the PA's.
- The types of inspections that shall be conducted according to the standards in statute and regulations.
- An inspection frequency schedule.
- Coordination of inspection efforts between the CUPA and its PA's.
- Enforcement notification procedures.
- Identification of all available enforcement options.
- Uniform and coordinated application of enforcement standards.
- Identification of penalties and enforcement actions.
- A graduated series of enforcement actions that may be taken by the UPA's, based upon the severity of the violation.
- Provisions for multi-media enforcement.
- A description of how the UPA minimizes or eliminates duplication, inconsistencies, and lack of coordination.
- Provisions for coordinating enforcement efforts between the CUPA and its PA's.

Inspection and Enforcement Plans must be reviewed at least annually and updated to maintain compliance with all federal, state and local requirements. The plan should explain how the CUPA and PA's intend to review, summarize the review, and update the plan.

II. Data Tracking and Reporting

By tracking inspection and enforcement information, UPA's can comply with the following state reporting requirements and monitor what is happening within their jurisdiction.

A Cal/EPA Reporting

Under California Code of Regulations, title 27 section 15290, UPA's are required to report information to the California Environmental Protection Agency (Cal/EPA). Inspection and enforcement data should be tracked for inclusion in the Annual Summary Reports (Reports 2, 3, and 4) submitted to Cal/EPA. The reports and instructions for completing the reports are available at: <http://www.calepa.ca.gov/CUPA/Publications/#CUPAtostate>.

Inspection and enforcement data, listed by UPA's are available at: <http://www.calepa.ca.gov/cupa/publications/#summaryreportdata>.

B Department of Toxic Substances Control (DTSC) Reporting for Large Quantity Generators (LQG)

DTSC and Cal/EPA request information from UPA's regarding inspection and enforcement activities at Resource Conservation and Recovery Act (RCRA)-regulated Large Quantity Generator (LQG) facilities. This information is provided to U.S. EPA to meet the RCRA grant commitments U.S. EPA has entered into with DTSC. The LQG data assists in informing U.S. EPA of such inspection and enforcement activities until such time that U.S. EPA can access that information. LQG data submittal is requested on a quarterly basis to DTSC pursuant to Health and Safety Code section 25187, subdivision (m) and California Code of Regulations, title 27, section 15290, subdivision (g).

C Underground Storage Tank (UST) Reporting

Health and Safety Code section 25299.7 authorizes the State Water Resources Control Board (SWRCB) to adopt regulations that provide for the submittal of information required by the U.S. EPA. The California Code of Regulations, title 23 section 2713 contains the local agency reporting requirements, which include: number of facilities inspected during the reporting period and their compliance status in regards to Significant Operational Compliance (SOC) release detection and release prevention criteria, and data on red tags issued. This information is reported semi-annually using "Report 6", and UPA's can provide the information by e-mail or fax. Additional reporting of formal and informal enforcement is provided using "Report 4" and is submitted annually as required by CalEPA.

III. Inspection Component

A. General

The purpose of the Unified Program is to protect human health, safety, and the environment by facilitating, encouraging and ensuring compliance with environmental laws and regulations in part through inspections.

B. Specific

UPA's should consider addressing the following elements within their inspection program.

1. Purpose of an Inspection

The purpose of inspections is to assess the level of compliance within the regulated community, ensure a level playing field, eliminate economic incentives to violate, ensure public safety, and respond to complaints.

2. Role of the Inspector

The role of the UPA inspector is to determine compliance and take appropriate action to ensure compliance by persons, businesses, and all facilities and entities defined in California Code of Regulations, title 27, section 15110 subject to regulations under the Unified Program. In this guidance, all such persons, businesses, and all facilities and entities subject to UPA regulations are referred to as "regulated facilities."

Inspectors are encouraged to use a variety of educational options to inform regulated facilities of compliance standards. These tools may include providing the regulated facilities with newsletters, informational brochures, on-line resources, information on available training workshops and seminars as well as technical assistance, compliance manuals and checklists.

UPA's may want to consider stating the nature of the visit (complaint response, routine inspection, incident response, etc.) Inspectors are not required to do this and in some cases this may not be advisable. For instance, if the inspection is a complaint response, advising the facility of that may then lead to questions such as "who complained?", which the inspector may not be at liberty to answer. Inspectors should follow their agency or legal counsel policy.

Inspectors should request and obtain consent to conduct the inspection from the authorized agent before beginning the inspection. This should include obtaining consent to take photographs, conducting sampling

activities, and reviewing and copying documents. It is best to request this complete authorization at the beginning of the inspection even though the inspection may not require all these activities, as this removes the need to obtain additional consent later in the inspection.

Even though inspectors have statutory authority to inspect for a variety of legal and safety reasons, inspectors should always obtain and document consent to enter a facility. There are certain exceptions too lengthy for inclusion in this guidance. All inspectors should have training on entry, access and warrants available at the Cal/EPA Basic Inspector Academy and other UPA and Cal/EPA training on this subject. If consent is denied, the inspector should inform the business representative that they will be obtaining an inspection warrant to conduct/complete the inspection. Refusal to consent to an inspection should always be followed up with the appropriate warrant to gain entry and/or appropriate enforcement action. UPA inspection plans should include information on protocols for getting inspection warrants.

The following code sections give UPA's the authority to inspect:

- Hazardous Waste (Health & Saf. Code, § 25185, subd. (a));
- CalARP (Health & Saf. Code, § 25534.5);
- HMRRP (Health & Saf. Code, § 25508, subd. (a));
- UST – (Health & Saf. Code, § 25289); and
- AST – (Health & Saf. Code, § 25270.5, subd. (a)).

If consent is denied or withdrawn at any time, the inspector should leave the facility, following the UPA's procedures. The UPA's procedure should include notifying the inspector's supervisor and explaining how the inspector should document the denial or withdrawal in the inspection report. The notation on the inspection report should include the time at which consent was denied or withdrawn, and name and title or position of the person denying or withdrawing consent to conduct the inspection.

Procedures and criteria for obtaining a warrant can be found at: (<http://www.calepa.ca.gov/Enforcement/policy/SearchGuide.pdf>). If the inspector expects consent to be refused, he or she may make advanced preparations for obtaining a warrant.

Information on inspection warrants, including a sample inspection warrant and a sample affidavit for an inspection warrant is available at: <http://www.calepa.ca.gov/CUPA/Resources/>.

3. Inspection Limits

Inspectors should understand the limits associated with conducting inspections. Inspections determine compliance and while it is acceptable to educate the regulated facilities, inspectors should avoid the following:

- providing recommendations regarding specific equipment types or modifications required;
- recommending any specific service provider;
- opening drums – ask the facility representative to have someone open the drums;
- touching any monitoring panels and equipment; and
- becoming the facilities consultant– instead explain what the law states or allows.

4. Inspector Liability

Under Government Code section 820.2 et seq., government entities and their inspectors have a qualified immunity for their actions (any decision or recommendation that the inspectors make, regardless of whether it is made to a business that later incurs a loss attributable to the inspector's decision) conducted in the normal course of the governmental business unless they are grossly negligent.

Government Code section 820.2 reads “Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.”

Government Code section 820.4 reads “A public employee is not liable for his act or omission, exercising due care, in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment.”

Government Code section 821.6 reads “A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.”

5. Inspector Obligation

1986 Proposition 65 is in the Government Code and is intended to protect California citizens and the state's drinking water from chemicals known to cause cancer, birth defects, or other reproductive harm. Government Code section 25180 requires a designated government employee (any employee who files a form 700 with the Fair Political Practices

Commission) who obtains information on the job of an illegal release or threatened release of hazardous waste likely to cause substantial injury to public health or safety must disclose such information to the Board of Supervisors and Local Health Officer. Additional information is available on Cal/EPA technical inspection and enforcement reference Web page at: <http://www.calepa.ca.gov/CUPA/Resources/>.

6. Site Safety

Inspectors should be trained in general site safety and complete the appropriate hazardous waste operations training for the type of inspection being undertaken. UPA's should comply with the Cal/OSHA regulations concerning the hazards to which their inspectors may be exposed. Cal/OSHA regulations incorporate sound industrial hygiene principles and safety procedures that will help field inspectors minimize the risks in performing their duties. The regulations under California Code of Regulations, title 8 most relevant to UPA inspectors include the following:

- Injury and illness prevention programs, section 3203;
- Personal protection equipment, sections 3380 through 3385;
- Respiratory protection, section 5144;
- Regulated carcinogens, section 5200 through 5220;
- Hearing conservation, sections 5095 through 5100;
- Ladders, section 3276;
- Guardrails, section 3209;
- Elevated locations, section 3210;
- Personal fall protection, section 3299;
- Hazard communication, section 5194;
- Permit-required confined spaces, section 5157; and
- Flammable liquids, gases, and vapors, sections 5415 through 5420.

Specialized health and safety training is required for personnel involved in activities at hazardous waste sites, performing emergency response to a hazardous materials release, and specialized toxics inspections like asbestos, lead, and beryllium.

California Code of Regulations, title 8 section 5192 requires employees who are potentially exposed to hazardous substances and health hazards receive 40 hours of instruction in the hazards present, use of personal protective equipment, safe work practices, use of engineering controls, and medical surveillance requirements. Employees who perform specific limited tasks are required to receive 24 hours of instruction.

The UPA should provide the inspector with safety equipment as outlined in their Injury and Illness Prevention Plan, which is a Cal/OSHA standard.

Information is available at:

<http://www.dir.ca.gov/dosh/EmployerInformation.htm>.

Inspectors should know when and how to wear personal protective equipment appropriate for the type of facility being inspected and always have possession of his or her safety equipment, kept in good working order. The inspector should inquire if the facility that is being inspected has any areas that require specialized personal protective equipment prior to entering the area of concern. The inspector should conduct the inspection with an escort of the facility and follow all required safety protocols at the facility. A fact sheet on inspector safety is available at:

<http://www.calepa.ca.gov/CUPA/Resources/>.

7. Interviewing Techniques for Inspectors

Critical information is often obtained when interviewing people. It is important for inspectors to properly conduct and document an interview. An inspector should confirm the interviewee's name, title, and position. Additionally, an inspector should ask the source of information – “Did someone tell you (if so, who)?” or “Did you see and/or hear what you are telling me?” A fact sheet on interviewing techniques is available at:

<http://www.calepa.ca.gov/CUPA/Documents/Inspection/FctIntervtec.pdf>.

Training on conducting interviews is offered by various entities, for example Western States Project, <http://www.regionalassociations.org/>, offers this training as well as the California CUPA Forum Board during the Annual California Unified Program Conference

<http://www.calcupa.net/conference.html>.

C. Inventory of Regulated Facilities

Effective implementation of the Unified Program requires that every facility subject to regulation be in compliance with all regulatory requirements. The constantly changing universe of potentially regulated facilities within each UPA's jurisdiction requires a continual dedicated effort to identify and properly address facilities that declare themselves through the normal notification processes and those that operate illegally. Each UPA should implement a process to ensure inclusion of all regulated facilities within their jurisdiction. This may include routine data sharing with business license, tax assessor, fire, health and other regulatory or business agencies, data “mining” (e.g., manifest system reports, phone directories, industry association data bases, and self reported data such as Dun and Bradstreet), agency “sweeps” of specific geographic areas, Environmental Crimes Task Force discussions and similar efforts to find those who may not have applied for and received a permit or other authorization.

Since a primary tenet of governmental regulation is to level the playing field for all businesses, it is important for UPA's to have policies that nullify the economic incentive for noncompliance. When a noncompliant business is identified via one of the methods described above, the UPA should determine the length of time that fees should have been paid, business plans should have been filed, permits should have been paid for and adhered to, etc.

UPA's should have a provision to penalize noncompliant facilities. For example UPA's have collected back fees (including the state surcharge fee) and levied the appropriate late payment penalties. Daily penalties for the period of noncompliance have also been applied for a prophylactic effect.

D. Frequency and Coordination of Inspections

UPA's are required to establish a schedule of the frequency of routine inspections to be conducted for each program element, which shall meet or exceed the minimum mandated inspection frequencies. A UPA's inspection and enforcement program should also address universal waste and silver only facilities, certified appliance recyclers, and integrated or multi-media inspections.

1. Required minimum mandated inspection frequencies are:

Program	Frequency
HMRRP Health and Safety Code section 25508, subdivision (b)	Once every 3 years
CalARP* Health and Safety Code section 25537, subdivision (a)	Once every 3 years
UST Facilities Health and Safety Code section 25288, subdivision (a)	Once per year
AST Facilities Health and Safety Code section 25270.5(a))	Once every 3 years
Generators (All)	None**
RCRA Large Quantity Generators	None**
Certified Appliance Recyclers Health and Safety Code sections 25211 – 25214)	None**
Universal Waste Household (Cal. Code Regs., tit. 22, § 66273.8, subd. (b)) CESQUWG (Cal. Code Regs., tit. 22, § 66273.8, subd. (c)) SQHUW (Cal. Code Regs., tit. 22, §§ 66273.10 - 66273.21) LQHUW (Cal. Code Regs., tit. 22, §§ 66273.30 - 66273.41)	None**

Program	Frequency
Silver only Health and Safety Code section 25143.13	None**
On-site Hazardous Waste Treatment (All) Health and Safety Code section 25201.4, subdivision (b)(2)	Every 3 years
Permit By Rule (PBR) Conditionally Authorized (CA) Conditionally Exempt (CE) Health and Safety Code section 25201.4, subdivision (b)(2)	Every 3 years Every 3 years Every 3 years
Permit by Rule for Household Hazards Waste Health and Safety Code section 25201.4, subdivision (b)(2)	Every 3 years

*Note: Facilities subject to the CalARP regulations must be inspected once every three years for compliance with title 19, chapter 4.5, section 2775.3. “In addition to inspections for the purpose of regulatory development and enforcement of the federal CAA (Clean Air Act), the AA (Administering Agency, which in most cases means the UPA, has this responsibility) shall periodically audit Risk Management Plans (RMP’s) submitted under article 3 of this chapter to review the adequacy of such RMP’s and require revisions of RMP’s when necessary to ensure compliance with article 3 of this chapter...” (Cal. Code Regs. title 19, section 2775.2(a)).

**Note: California Code of Regulations, title 27, section 15200, subdivision (a)(3)(A) requires UPA’s to consider the following: local zoning requirements, population density, local groundwater conditions, identified hazards of a type of business, quantity and types of hazardous materials, emergency response capability, compliance history, and any other pertinent local issues when there is no mandated inspection frequency.

Although not specifically noted in the regulations, the plan should also describe the non-routine types of inspections the agency will conduct such as re-inspections to verify compliance improvement, complaint investigations – include complaint examples, initiative implementation and the criteria used for selection of each.

2. Universal Waste and Silver Only Facilities

The following three documents are available to assist UPA’s:

- a. Letter to CA CUPA Forum from DTSC identifying each agency with primary responsibility for implementing the hazardous waste program

for universal waste in a variety of situations, available at:

http://www.calcupa.net/programs/hazwaste/dorsey_letter.pdf,

- b. Letter to UPA's and PA's from CA CUPA Forum explaining compliance options for CESQG's and Small Quantity handlers of Universal Waste, available at:

<http://www.calcupa.net/programs/hazwaste/cesgissue.pdf>,

- c. Worksheet to allocate resources to the oversight of CESQG's and Small Quantity handlers of Universal Waste is available at:

<http://www.calcupa.net/programs/hazwaste/cesqworksheet.pdf>.

3. Certified Appliance Recyclers

The following statutes and documents are available to assist the UPA's:

- a. Health and Safety Code sections 25211 – 25214 establish the requirements for regulating certified appliance recyclers.
- b. A fact sheet on the New Laws for Appliance Recycling AB 2277, available at:
<http://www.dtsc.ca.gov/HazardousWaste/Mercury/upload/Fact-Sheet-New-Laws-for-Appliance-Recycler.pdf>, explains that a facility must be a Certified Appliance Recycler to remove materials from major appliances that require special handling.

4. Integrated or Multi-Media Inspections

UPA's are required to participate in a multi-media approach to the unified inspection and enforcement program. Integrated or multi-media inspections are inspections involving Unified Program and non-Unified Program agencies and/or involving more than one environmental medium (i.e., air, water, soil) of a regulated business that results in consolidating inspections. U.S. EPA developed a Multi-Media Investigation Manual that is a guide for investigators who conduct multi-media environmental compliance investigations of facilities that discharge, emit, prepare, store, or dispose of pollutants regulated by federal, state, and local environmental laws and regulations, available at:

http://www.epa.gov/Compliance/resources/publications/civil/programs/mm_mall.pdf.

Following are sample multi-media provisions that UPA's have included in their plans:

- a. Inspectors cover both UPA and non-UPA program areas during an inspection. Non-UPA programs include public drinking water systems, retail food facilities, public swimming pools, solid waste facilities, medical waste generators, and tattooing and body piercing facilities.
- b. The UPA regularly attends and participates in Enforcement Task Force meetings. Other agencies involved in this group include: local code

enforcement officers, local law enforcement agencies, SWRCB, Department of Fish and Game, and the local regional water quality control board. Ongoing enforcement cases are discussed at this meeting and where possible, follow-up inspections and enforcement activities are coordinated between the various agencies involved.

- c. Inspectors become familiar with the responsibilities and jurisdictions of all other state and local environmental regulatory agencies through in-house technical training for new employees and through cross training of existing staff. In addition, UPA's should maintain a contact list for these other agencies. These agencies include: the DTSC, SWRCB, local fire departments, local planning and public works departments, Cal OSHA, Regional Water Quality Control Board, State Department of Fish and Game, State Department of Health Services, California Department of Transportation, State Contractor's Licensing Board, local sewer agencies, State Department of Pesticide Regulation, and local agricultural commissioner. UPS's should also add their local enforcement code information.
- d. Representatives from other regulatory agencies are invited to speak at staff meetings to improve the inspectors' understanding of the role of the other agency and to facilitate interagency communication. In addition, where possible, inspectors are sent to multi-media inspection training such as the annual training sponsored by Cal/EPA Cross-media Enforcement Symposium
<http://www.calepa.ca.gov/Enforcement/Training/>.
- e. All inspectors are encouraged to develop positive working relationships with contacts from other regulatory agencies within their assigned districts, which includes performing joint inspections as necessary. If violations involve multiple regulatory agencies, the inspector will attempt to schedule a joint inspection with the other agencies. If meetings are scheduled to work out a compliance schedule, members of other agencies who may have an interest in the facility are invited.

E. Inspecting Indian Land, Local and State Government Facilities, and Federal Government Facilities

1. Indian Land

Recognized federal Indian tribes are domestic dependent nations who exercise certain sovereign powers over their members and territory as provided for by federal law. Unfortunately, there is no controlling law as to the extent of state (and local) environmental regulatory jurisdiction on Indian lands. Most tribes take the position that the state (and therefore the UPA's) has no such jurisdiction. Some tribes in California have their own environmental regulatory programs and staff. All Indian land is subject to federal environmental laws and may be inspected by U.S. EPA. Therefore, it is suggested you work with U.S. EPA and your local tribe to reach agreement

about environmental issues that may impact your jurisdiction. Any problems in this area should be discussed with Cal/EPA Unified Program staff for assistance.

2. Local and State Government Facilities

Unless explicitly provided, local and state government facilities do not have exemptions from state or federal environmental laws. Local and state government facilities should be treated the same as any other regulated facility. If a UPA has any difficulty or conflict of interest associated with inspecting or taking enforcement against a local government facility, the UPA should contact the Cal/EPA Unified Program staff for assistance.

3. Federal Government Facilities

Since federal government facilities are also subject to inspection and enforcement, see Unified Program Bulletin [0405-03](#), (April 7, 2005) and [0607-01](#), (June 6, 2007), any violations should be properly documented on the inspection report. Inspectors should be aware that federal facilities often limit access to areas, activities (such as photography) or information due to security reasons. In these instances, inspectors should obtain as much information as possible, discuss the possibility of having the facility take photos or review photos at the time they are taken, and discuss access to areas prior to entering and conducting the inspection. Any denial of entry to an area or information should be noted in the inspection report. Wastes generated on federal vessels (ships) are not subject to regulation until the waste is transferred ashore or the vessel is placed in reserve or removed from service (42 U.S.C. § 6939d).

For some federal government facilities, such as military bases, announced inspections may be required, so access and escort arrangements may be necessary. Make sure the inspector has a contact name, address and telephone number to give to security personnel when you arrive at the main gate to the facility. If the inspector plans to drive within the facility, be sure they bring their drivers license and proof of insurance. They may wish to request a "Contractor" identification badge from their base liaison, or contact, for ease of getting onto the base.

Federal government facilities may be unaware of state requirements. Many operational guidance documents at federal government facilities may meet federal, but not state, requirements. The local inspector may need to provide educational opportunities for the federal government facility program managers to ensure that state requirements are incorporated into operational procedures and that there is a full understanding of the requirements. Any problems in this area should be discussed with Cal/EPA Unified Program staff for assistance.

F. General Inspection Procedures

In general, the following inspection procedures should be appropriate for all UPA inspections:

1. General Protocols

- a. Unannounced inspections are preferred to announced inspections. However, there may be instances where announced inspections are necessary (e.g., access to equipment, security, contacts, etc.).
- b. Inspectors should maintain a professional, courteous, and respectful demeanor.
- c. Safety must be a primary consideration when involved in any fieldwork. UPA's should follow their department's safety guidelines prior to conducting an inspection.
- d. When in the field, inspectors should wear appropriate clothing and safety equipment (steel-toed safety boots, safety glasses, hardhats, ear protection, etc.).
- e. Inspectors should always be aware of their surroundings. Inspectors should never enter an area where unknown hazards are likely without taking the proper precautions.
- f. If safety issues arise, an inspector should advise the facility operator to mitigate the safety issues or discontinue the inspection, document the situation and confer with your supervisor.
- g. Inspectors should display agency identification.

2. Pre-inspection Procedures

- a. Inspectors should routinely review his/her district's list of assigned facilities. Factors that should be considered when prioritizing inspections are:
 - facilities with a history of noncompliance;
 - oldest date of last completed inspection; and
 - other environmental or public health risk factors, e.g., proximity of USTs to drinking water sources.
- b. UPA's may want to consider coordinating inspections with other agencies.
- c. Prior to performing an on-site inspection, inspectors should conduct an office audit of the facility that includes the following:
 - Review the facility file to become familiar with facility operations and inspection history. Be sure to note any uncorrected violations or a pattern of repeat discrepancies.
 - If the latest inspection was conducted by another inspector, contact that staff member as necessary to gain familiarization with the facility and to note any unique issues.

- Review any submitted Business or Emergency Response Plans for completion and adequacy based on facility operations.
- When appropriate, review any written monitoring plans and financial responsibility forms.
- Review EPA ID number status and manifest tracking information.
- Review any appropriate industry and/or regulatory background information needed to perform the inspection (i.e., process or equipment familiarization).
- Verify database information, including fee status, contact information, etc.

3. On-site Procedures

Depending on the facility, personnel should refer to the appropriate checklist while conducting the inspection. In general, upon arriving at the facility, inspectors should complete the inspection performing the following tasks:

- a. Observe any relevant activity or physical evidence for appropriate immediate action before entering the facility (i.e., improper discharge to storm drain in a parking lot, unsafe storage, etc.).
- b. Consider displaying proper photo identification and provide a business card to the facility representative.
- c. UPA's may want to consider stating the nature of the visit (complaint response, routine inspection, incident response, etc.) Inspectors are not required to do this and in some cases this may not be advisable. For instance, if the inspection is a complaint response, advising the facility of that may then lead to questions such as "who complained?", which the inspector may not be at liberty to answer. Inspectors should follow their agency or legal counsel policy.
- d. Request, obtain, and document consent (see page 4 for more information)
- e. Request accompaniment during the inspection by the facility manager or other qualified business representative (owner, emergency coordinator, etc.).
- f. Perform a facility walk-through.
- g. Record inspection observations on agency inspection report/notes form.
- h. Request review of required site-specific environmental permits or documents (i.e., industrial waste discharge permit, spill prevention control and countermeasure plan, etc.).
- i. Document any noted violations and the collected evidence as appropriate.

4. Report Writing Procedures

Detailed inspection report writing guidance can be found at: <http://www.calepa.ca.gov/CUPA/Resources/>. In general, when writing an inspection report, the following tasks should be performed:

- a. Complete the inspection report (i.e. Notice to Comply (NTC)/Summary of Violations (SOV)/Notice of Violations, (NOV) recording noted violations, required corrective actions, and the date by which corrective action is required for each violation. Each cited violation must be listed separately, identified by violation class (See Violation Classification Guidance at: <http://www.calepa.ca.gov/CUPA/Resources/>), and includes the manner in which each may be brought into compliance.

NOTE: An NTC should not be issued for any minor violation corrected in the presence of the inspector; however, these corrections must be documented in the inspection report.

Properly documenting violations in an inspection report will greatly increase the probability that the violation will be enforceable and be upheld in a court of law should the violation be challenged during enforcement. There are four key elements to documenting a violation:

- identifying the violation as minor, class II, or class I
 - explaining the evidence that supports the violation
 - providing corrective action requirements
 - establishing and documenting compliance. When all four of these elements are present, the inspection report will demonstrate a “closed loop” of discovery, action, and correction/closure.
- b. The return to compliance timeframes for violations noted in an inspection report or audit, are as follows:
 - Not more than 30 calendar days from the date of the NTC in which to correct any minor violations (Health & Saf. Code, § 25404.1.2, subd. (c)(1)).
 - For non-minor violations refer to compliance timeframes as outlined in statute and regulations (e.g., red tag authority for UST’s), or UPA’s policy.
 - c. Inspection forms, reports and other correspondences should be worded carefully to avoid giving the impression of “approving” non –compliance for some designated period of time. With few statutory exceptions, such as minor violations, an entity that is out of compliance remains in

violation and subject to penalties and other sanctions during whatever time is required to correct the violation.

- d. Review the inspection report with the facility representative and discuss any questions or observations they may have concerning the inspection. Specifically state that a signed Return to Compliance (RTC) statement must be returned with evidence of compliance (photos, disposal records, etc.) within the time specified. A notice to comply issued to a hazardous waste facility for minor violations shall contain an explicit statement that the facility may be subject to reinspection at any time by the UPA that issued the notice to comply (Health & Saf. Code, § 25187.8, subd. (h)).
- e. Obtain the facility representative's signature and title on the inspection report. It may be useful to obtain the business card of this person.
- f. The inspector shall sign and date the inspection report.
- g. Issue a copy of the inspection report to the facility representative. (For UST's, issue a copy to the permit holder and the owner or the operator if different from the permit holder.)

NOTE: The inspector may be unable to issue the inspection report at the time of inspection (For hazardous waste violations statute requires you leave a Summary of Violations at the conclusion of the inspection). This may occur if the inspector needs to consult with a supervisor or research applicable statutes or regulations concerning a potential violation. In this case, personnel can either send the completed inspection report to the facility via "proof of service" certified mail or deliver the form in person. In all cases, the inspection report should be delivered to the facility within five calendar days of preparation of the report and not later than 65 calendar days from the date of inspection.

- h. If available, provide the facility representative with appropriate educational or reference materials.
- i. If the inspector believes the violations are of a criminal nature, the information from an inspection report, or the report itself, (not the summary of violations and the notice to comply for hazardous waste) may be withheld by the UPA if the UPA determines that pursuant to criminal investigation or other ongoing investigation may result in a substantial probability of destruction of evidence, intimidation of witnesses, or other obstruction of justice. It is valuable to discuss these types of violations with the supervisor or prosecuting agency.
- j. It is recommended that, all non-minor violations capable of being visually documented should be photographed. Cal/EPA has guidelines on digital photographs, available at:
<http://www.calepa.ca.gov/CUPA/Documents/Inspection/Guddigtlphts.pdf>.

5. Inspection Follow-up

After completing the on-site inspection, the inspector should perform the following tasks per a UPA's policy and procedure. For example:

- a Update database information, including fee status, contact information, etc.
- b Catalog and index photographs taken during the inspection.
- c Track facility's compliance time for violation follow-up.
- d If non-minor violations (class I, class II, and significant) were observed during the inspection and noted on the inspection report, the inspector should consult with his/her supervisor about the inspection report and any potential enforcement action. It is not appropriate to delay formal enforcement based on completion of any return to compliance activities. If a non-minor violation has occurred it may be sufficiently serious to warrant formal enforcement regardless of and in addition to return to compliance. See Enforcement Section for procedures.
- e Review all return to compliance documentation submitted by the facility owner/operator for completeness and adequacy. Close out all appropriate violations upon approval of all return to compliance documentation. If a facility received an NTC and disagrees with one or more of the alleged violations, they must give written notice of the disagreement per Health and Safety Code section 25404.1.2, subdivision (e).
- f Within 30 working days from the date of receipt of the facility's response/Return to Compliance (RTC) which documents or proposes corrective action, or which disputes the existence of a violation, determine whether the corrective actions documented or proposed to be taken by the operator are adequate. If the facility's response is inadequate, submit a written copy of that determination to the operator.
- g If a determination is not made and submitted to the facility within 30 working days from the date of receipt of the operator's response, the UPA may not seek penalties for continuing violations or any alleged new violations caused by the corrective actions taken by the operator, until the UPA submits the determination to the operator and provides the operator with a reasonable time in which to make necessary operational modifications which differ from those proposed to the UPA.
- h Failure of the facility to submit return to compliance documentation within the specified timeframes should be evaluated to determine if a re-inspection to verify compliance or enforcement is necessary. It is important to note that there are not timeframes that must be exhausted prior to initiation of any kind of formal enforcement. Return to compliance is always in addition to any enforcement sanctions warranted by the documented violation. Failure to achieve compliance within these statutory timeframes is a separate additional violation.

- i Regardless of any enforcement actions initiated for observed violations, if the required corrective action is not taken by the operator within a reasonable time, appropriate additional enforcement action should be taken by the UPA to compel timely compliance.

A flowchart is attached on page 21 describing the inspection process.

G. Gathering Evidence and Collecting Samples

Evidence is what supports the inspector's conclusion as to the compliance status of the facility and is needed for any enforcement action whether administrative, civil, or criminal. UPA's should include common methods for gathering evidence within their program. The methods explained should address all procedural aspects of gathering evidence – collecting samples, preservation, storage, shipping, and chain of custody. Sample chain of custody forms and a fact sheet on gathering evidence and collecting samples is available at: <http://www.calepa.ca.gov/CUPA/Resources/>.

Refer to Cal/EPA Guidance on handling digital evidence, available at: <http://www.calepa.ca.gov/CUPA/Documents/Inspection/Guddigtlphs.pdf>.

H. Availability of Records

1. CalARP

Pursuant to Health and Safety Code section 25534.5, the administering agency with jurisdiction over a stationary source or facility may have access to inspect the regulated facility (((see page 3 of this document))) and review all technical and other information in the regulated facility's possession which is reasonably necessary to allow the administering agency to make a determination regarding the regulated facility's compliance with this article. Upon request of the administering agency, the regulated facility shall provide to the administering agency information regarding the regulated facility's compliance with this article.

Pursuant to California Code of Regulations, title 19, section 2775.1, the owner or operator shall maintain records supporting the implementation of this chapter for five years unless otherwise provided in article 6 of this chapter.

2. UST

UST records are required to be available in statute and regulations (Health & Saf. Code, §§ 25289, subdivision (b) and 25293, and Cal. Code Regs., tit. 23 § 2712, subd. (b)). In addition, designated operators records must be available on-site or an off-site location approved by the local agency in California Code of Regulations, title 23, section 2715, subdivision (e).

3. Hazardous Waste

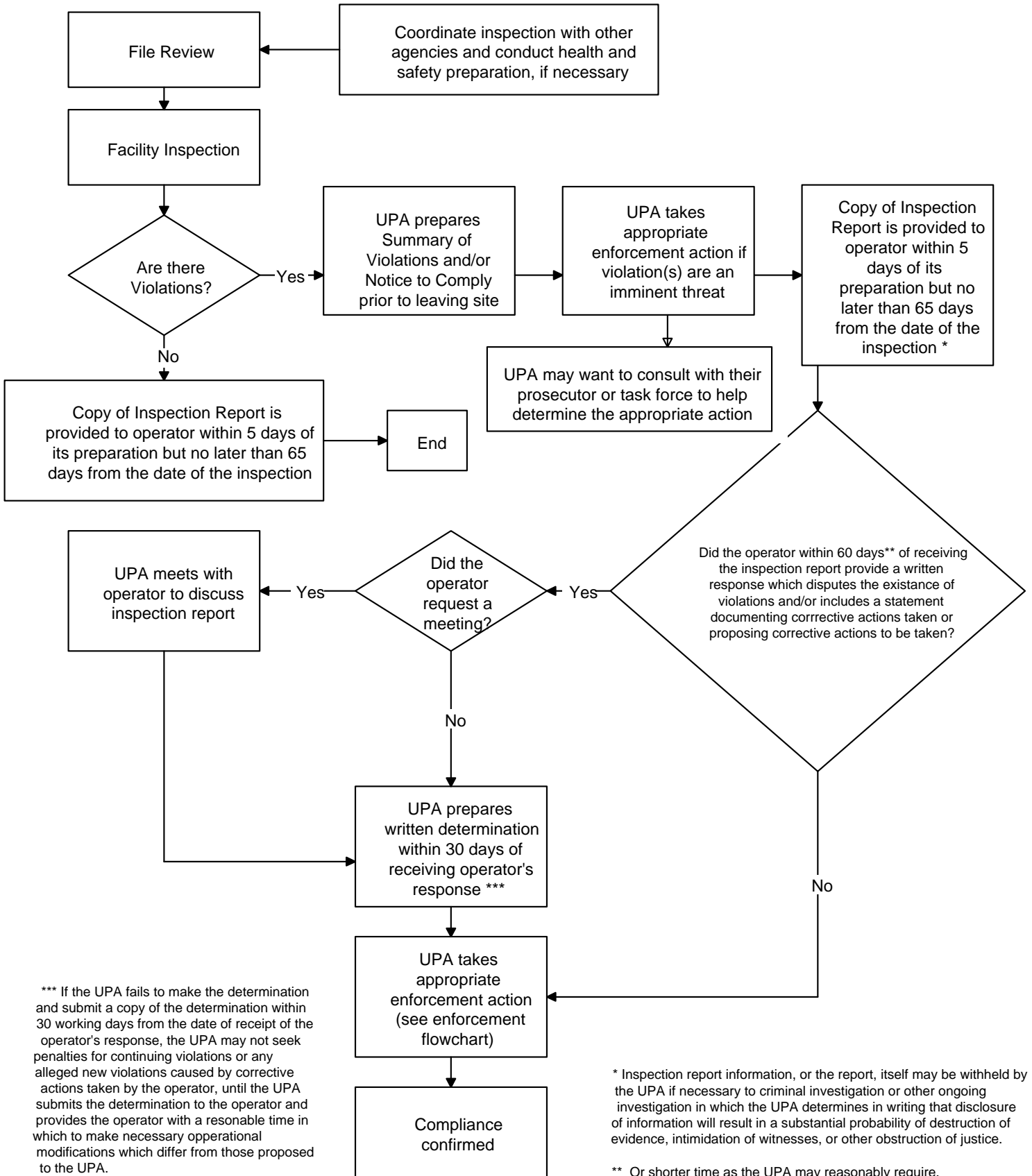
The majority of hazardous waste documents that are reviewed during an inspection are required to be maintained by a business. There is no clear, concise single terminology that applies to all documents stating that they must be made available during an inspection or that they be maintained at the site being inspected (the exceptions being the contingency plan and land disposal restrictions documentation.) Generally, language requires a generator to “keep” records for a period of time. DTSC has, as a policy, decided that “keep” can be interpreted to mean “provide within a timely manner, but not limited to the date of inspection”. If documents are not available for review, it is suggested that inspectors cite a violation and provide a timeframe for the facility to provide the documents to be reviewed. Alternately, the inspector may choose to allow the business the time to collect the documents, and choose to “continue” the inspection at that time. A summary of violations would not need to be left until the conclusion of the inspection, which would now include the return visit for the review of documents.

4. HMRRP

Under Health and Safety Code section 25504, subdivision (c), regulated facilities are required to provide employees with training in safety procedures in the event of a release or threatened release of a hazardous material. During an inspection, inspectors should ask the facility representative for documentation of their training to prove they have trained their employees. If the facility is unable to show documentation then the inspector should interview one or more employees and ask them about their safety training related to emergency release/spills. If the employees are unable to answer the questions or they state they have not received any training, the inspector should cite a violation and provide a timeframe for the facility to either provide their employees with training or provide the training documentation showing their employees have been trained.

In addition, the HMRRP program, under Health and Safety Code section 25505, subdivision (e)(1), requires regulated facilities to maintain the complete business plan at the site where the inventory is stored. The UPA, with concurrence of the local fire chief, may allow the regulated entity to submit only the inventory information, a list of emergency contacts, a site plan, and a certification that the handler has prepared a complete business plan that meets the requirements in lieu of submitting the entire business plan.

I. Inspection Process



IV. Enforcement Component

A. Enforcement Philosophy

Enforcement is an essential element of the UPA program that levels the playing field for all regulated facilities, deprives violators of economic gains obtained by violation, and deters other potential future violators. While compliance is the ultimate goal and a variety of program activities can help meet that goal, enforcement options are the critical foundation that backs up any other compliance training or assistance efforts. Unified Program regulations require that the enforcement component of the program contain a graduated series of enforcement actions that may be taken based on the severity of the violations. For the most serious (class one) violations, formal administrative, civil or criminal enforcement is essential. Each UPA should implement its enforcement actions to accomplish the following goals:

1. Return violators to compliance in a timely manner.
2. Penalize violators.
3. Deprive violators of any significant economic benefit gained from violations.
4. Treat similar facility owners and operators equally and consistently with regard to the same types of violations.
5. Initiate and conclude enforcement activities in a timely manner.
6. Promote compliance with statutes and regulations.
7. Prevent any businesses from having an unfair business advantage through non-compliance.
8. Deter violators of hazardous material/waste rules and regulations.

B. Environmental Task Force Coordination

UPA's should participate in regional task forces that facilitate the pooling and exchange of resources dedicated to the deterrence, detection, investigation, and prosecution of environmental violations. The task force approach of combining federal, state, and local regulatory and law enforcement resources has proved to be a particularly effective tool because of the multi-media nature of environmental enforcement. These cooperative partnerships allow the task force members to pursue investigations that no single entity has the resources to complete individually. Information on Environmental Task Forces is available at: <http://www.calepa.ca.gov/Enforcement/TaskForce/>.

C. Definitions of Formal Enforcement and Informal Enforcement

According to California Code of Regulations, title 27, section 15110, subdivision (d):

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

Informal enforcement is an action other than a formal enforcement action that notifies the regulated business of its non-compliance and establishes a date by which that non-compliance is to be corrected. Examples include letter, notices of violation and verbal warnings or notices. Informal actions do not impose sanctions. Informal enforcement can be a useful tool and should always be documented. However, it should not be the only enforcement tool used by UPA's.

D. General Enforcement Procedures

1. After an inspection is conducted, a written report is issued to the responsible party (RP) listing the specific violations.
2. Enforcement action is generally taken after an inspection report is completed. Depending on the severity of the violation, formal enforcement action may be taken as the initial enforcement option in addition to any informal action required by law (e.g., summary of violations).
3. All violations should be classified in accordance with the Violation Classification Guidance, available at:
<http://www.calepa.ca.gov/CUPA/Documents/ViolationGuide.pdf>.
4. For minor violations the responsible party is given up to 30 days to comply. The responsible party is required to submit a certificate of compliance within five days of returning to compliance to verify correction of the violations.
5. A formal enforcement action can be initiated for all non-minor violations (class I violations require formal enforcement). See the enforcement tools section for options.
6. If compliance is not achieved in the timeframe required it may constitute an additional violation that should be added to any proposed action or addressed in a subsequent action.
7. If an UPA has a conflict of interest associated with inspecting or taking enforcement against a local government facility, the UPA should contact the state or the U. S. EPA for assistance.

E. Confidentiality

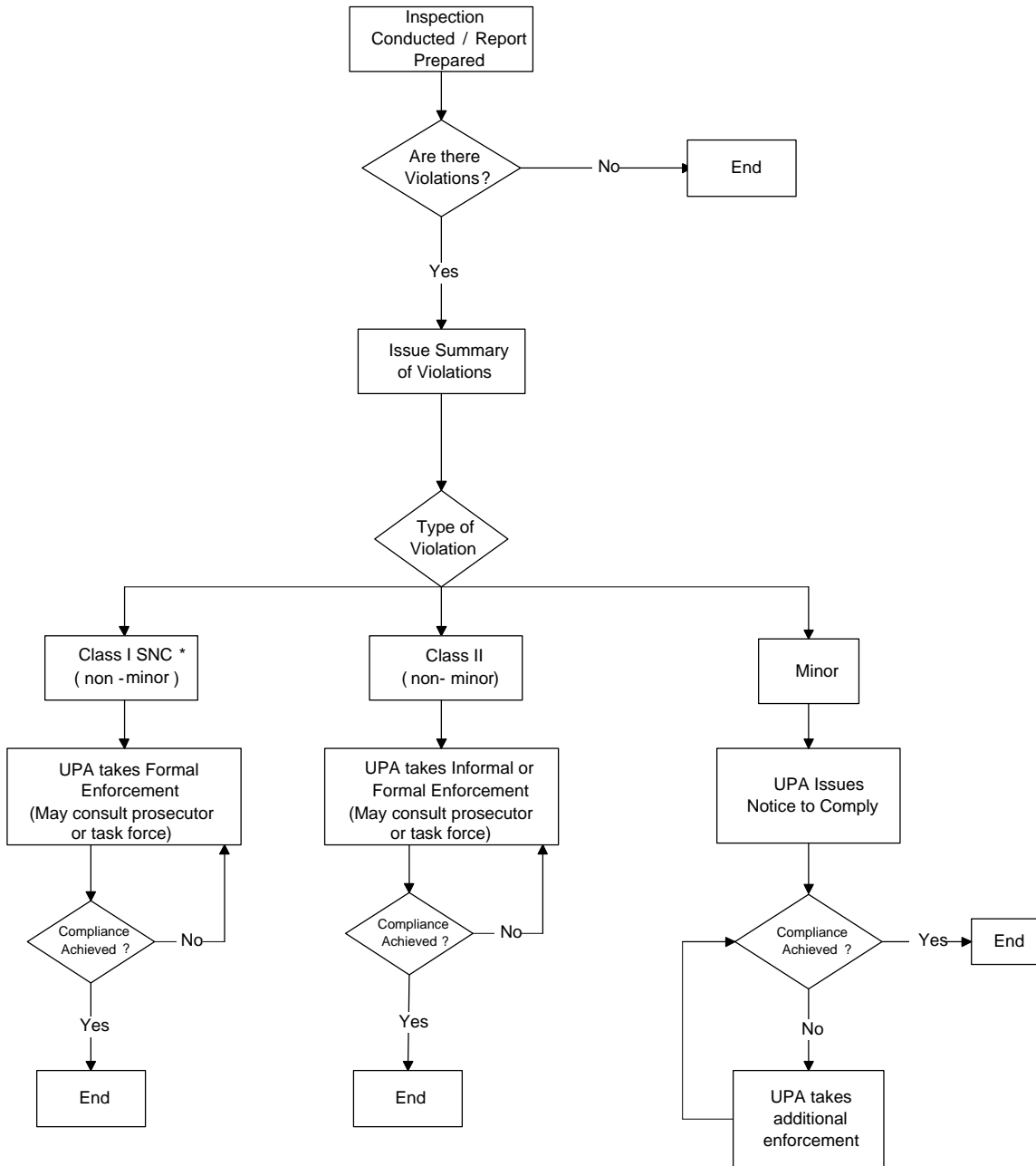
Although the need for confidentiality varies case by case, in general, current or potential enforcement actions should not be discussed with anyone other than supervisors, legal counsel or other appropriate government personnel. This does not prohibit you, for example, from discussing matters at an enforcement task force meeting.

Inquiries from the press require review with management and your agency's information officer. In general, details regarding current enforcement investigation should not be released to the press. There may be a need to discuss certain matters such as any public health dangers or matters of public record. Remember also the reporting requirements of Government Code section 25180.7 (Prop. 65), discussed above. If the case was referred to a prosecutor, questions concerning the case should be referred to that office.

Pending enforcement cases may be exempt from release under the Public Records Act (Gov't Code section 6254 et seq). UPA's should consult their legal counsel for guidelines. "Pending enforcement" refers to any matter where the UPA is considering formal enforcement from the time of inspection or incident until all enforcement action is final, including appeal. This exemption only applies while the case is pending and absent other exemptions all records of the investigation will become releasable once the matter is final. This exemption can be waived at the discretion of the agency that has the records. Any waiver of the exemption should be reviewed with legal counsel and other agencies involved in the investigation.

This space is left blank intentionally.

F. General Enforcement Procedures



* SNC: Significant Non-Compliers are U.S. EPA's highest priority violators that have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents, are chronic or recalcitrant violators, and have deviated substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements

Class I's and SNCs Similarities: Threat to human health or safety or the environment

Class I's and SNCs Differences: SNC designation is based on a facility-wide determination, considers deviation from requirements, and considers chronic or recalcitrant violators under any program *e.g., Clean Water Act, Clean Air Act, etc.

G. Enforcement Options

The appropriate level of enforcement response involves a variety of factors that lead to a classification of the violations and/or the violator. The Violations Classification Guidance, available at:

<http://www.calepa.ca.gov/CUPA/Documents/ViolationGuide.pdf>, and should be reviewed for a detailed discussion of these factors including:

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

In addition to violation and violator classification, the facts of a specific case, and the interest and capacity of a prosecuting agency to handle the case must be considered when determining the appropriate enforcement option.

1. Referral to Prosecuting Agency

A referral to your UPA's prosecuting agency's office, such as district attorney, city attorney, county counsel, attorney general, and/or U.S. attorney should be considered in accordance with the Referral Guidance available at:

<http://www.calepa.ca.gov/CUPA/Resources/> and/or any agreement reached between the UPA and the prosecuting agency. Prosecuting agency referrals can be done using the sample referral letter format available at: <http://www.calepa.ca.gov/CUPA/Resources/>.

The referral process should include the following:

- a standardized referral process and format;
- a specific timeframe in the referral letter, after which the UPA may consider alternative action;
- internal tracking to include the date the referral was made and the date specified in the referral letter for potential alternative action;
- the ultimate outcome of the referral, with a date; and
- the alternative action taken and date.

UPA's should follow up with the prosecuting agency prior to taking any alternative action that may be specified in the referral letter. This process respects the prosecuting agency's authority to make civil, criminal or other filing decisions based on the information provided and retains the UPA's ability to make a different enforcement decision if the prosecuting agency

decides not to accept the case. It also ensures continuing coordination by consulting the prosecutor prior to taking any alternative action.

UPA's should not put themselves in a position to determine the appropriate filing and disposition decision of a case which could be either civil, criminal, or both. This decision is and should be left up to the prosecuting agency.

In those cases where class I violations have been referred to a local (city or county) prosecuting agency for civil or criminal filing and the prosecutor is unable to file, subsequent referral to the Attorney General may be appropriate. The local prosecuting agency referral and refusal should be documented and discussed with the Unified Program staff at Cal/EPA for assistance. To assist those discussions it will normally be necessary to forward copies of these documents with a request for referral to the Attorney General

2. Multi-county and Statewide Actions

Multi County and statewide enforcement actions are often appropriate to address within a single enforcement action of a large business entity operating in a number of UPA jurisdictions. This single action can consider the totality of the company's conduct in California, and assess penalties and impose injunctive relief or other sanctions accordingly. It relieves each UPA from the need to individually take action for the smaller part of the problem observed only during inspections within that jurisdiction. These actions also commonly address violations in other media so that the total environmental impact is brought into compliance at one time. These more efficient and more effective actions are usually initiated by one or more local prosecuting agencies in cooperation with their counterparts in those jurisdictions where the facility is operating. UPA inspection findings and other information relative to the subject company often form the basis for, or provide valuable additional bases for these actions. However they can be difficult to coordinate between UPA's and prosecuting agencies and can impact UPA inspection schedules and resource utilization.

Each UPA may want to consider participating in these actions and ensure proper coordination by working through their local prosecutor, first to determine if they might be interested in taking a case statewide and second whether they are involved at all with statewide efforts. If a particular case has statewide implications, the locally involved prosecutor will discuss the case merits with their other local counterparts or the state Attorney General's office and make a decision. Should a UPA have any questions about a statewide issue and how to handle referrals, ongoing inspections and enforcement and other case related questions, they are encouraged to contact their local prosecutor or the UPA Forum Enforcement Issue Coordinator (see CUPA Forum Web site).

A good place to make contact with your local prosecutor is your local (usually county) task force meeting. For information see: <http://www.calepa.ca.gov/Enforcement/TaskForce/>. Informal discussion of cases prior to referrals can assist in the referral process. Also helpful are regional technical advisory group meetings.

3. Internal investigations

UPA's are required to investigate and take enforcement action on non-compliance by local governmental entities even when they operate under the same management structure as the UPA, for example UST's owned or operated by the same city or county as the UPA. These investigations may be difficult to conduct impartially. Therefore, UPA's may want to consider contacting Unified Program staff at Cal/EPA to discuss alternatives, such as referring the case to the state or U.S. EPA.

4. Penalties

Formal administrative enforcement generally includes assessment and collection of appropriate penalties. Penalties may be considered appropriate when consistent with criteria in the authorizing statutes and implementing regulations applied to the authorized penalty maximums for that program element. For example, administrative penalties assessed for hazardous waste violations must be consistent with the regulations for penalty assessment in California Code of Regulations, title 22, section 66272.62 et seq and Health and Safety Code section 25187. Health and Safety Code section 25404.1.1 requires UPA's to consider the nature, circumstances, extent, 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 when assessing other administrative penalties. Penalties imposed pursuant to civil or criminal actions will be addressed by the judicial system and any negotiations pursuant to those processes.

Some UPA's use penalty matrixes when calculating the amount of an administrative penalty. Sample penalty matrixes are available at: <http://www.calepa.ca.gov/CUPA/Documents/Inspection/PenaltyMatrx.pdf>.

H. Enforcement Tools

UPA's may utilize the following enforcement tools as appropriate. Items 1, 2, 3, and 5 are considered informal enforcement and items 4 and 6 through 12 are considered formal enforcement. The referral in itself for items 11 and 12 is not considered formal enforcement; a civil or criminal case is formal enforcement.

1. Notice of Violation (Citation)

An inspection is conducted and violations are identified. A notice of violation or similar citation may be issued to the facility with a specific time period for compliance. For minor violations, an UPA may require the business to respond with a signed certificate of compliance indicating the violations have been corrected and/or a reinspection may be conducted. Reinspections should be conducted when significant violations occur or the facility has a history of noncompliance.

Note: Health and Safety Code section 25285, subdivision (b) states that the local agency shall not issue or renew a permit if the local agency inspects the tank and determines that the tank does not comply with the UST laws.

2. Summary of Violations (Health & Saf. Code, § 25185, subd. (c)(1) Hazardous Waste)

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

3. Notice to Comply (Health & Saf. Code, § 25404.1.2)

When an inspection is conducted and minor violations are identified, the inspector shall issue a notice to comply before leaving the site.

4. Notice of Significant Violations UST (Also classified as a class I violation)

Pertains to UST Red Tag Authority (Health & Saf. Code, § 25292.3 and Cal. Code Regs., tit. 23 §§ 2717 through 2717.7)

UPA's may, upon the discovery of a significant violation that poses an imminent threat to human health, safety, or the environment, immediately affix a red tag to the fill pipe to provide notice that the delivery of petroleum into the UST system is prohibited.

California Code of Regulations, title 23, section 2717 defines: "significant violation" and "imminent threat to human health or safety or the environment."

California Code of Regulations, title 23, section 2717.1 explains the requirements for affixing red tags.

California Code of Regulations, title 23, section 2717.2 explains the requirements for removing red tags.

California Code of Regulations, title 23, section 2717.3 explains the removal of red tags from emergency generator tank systems prior to correcting the significant violation.

California Code of Regulations, title 23, section 2717.4 explains that the local agency shall notify the owner or operator in writing that the significant violation has been corrected.

California Code of Regulations, title 23, section 2717.5 explains that the local agency may issue a notice of significant violation and/or affix red tag(s) if:

- (a) “the violation poses an imminent threat to human health or safety or the environment;” or
- (b) “there is evidence the component in violation has been tampered with;” or
- (c) “the owner or operator fails to take appropriate action to correct the violation.”

California Code of Regulations, title 23, section 2717.6 explains the content of red tags.

California Code of Regulations, title 23, section 2717.7 explains the enforcement scope of the red tag authority.

The statute and regulation citations are available at:
<http://www.calepa.ca.gov/CUPA/Resources/>.

5. Office Meeting

If the violations are not class I and the violator does not have a history of repeat or recalcitrant violations but has not come into compliance with a notice of violation an office hearing may be scheduled with the owner/operator. The purpose of the meeting is to convey the importance of compliance and explain the possible consequences of non-compliance. If appropriate, a compliance agreement may be reached however, remember that government cannot agree to or approve non-compliance. A letter confirming the meeting and any agreements should be prepared after the meeting and a follow-up inspection conducted.

Office meetings are not formal enforcement action nor are they required to be held prior to taking formal enforcement action.

6. Permit Revocation

The operating/consolidated permit issued by the UPA under local ordinance or city code may be revoked. If the business is in serious violation (class I), the violator has a continuing history of violation or is not responding to previous informal enforcement actions, the permit may be revoked, effectively shutting down the business. UPA's may revoke the operating permit pursuant to local administrative procedures. The specific local authority and procedures for permit revocation should be identified in the program plan.

In addition, Health and Safety Code section 25285.1 allows the UPA's to revoke an underground storage tank permit for cause, including, but not limited to, any of the following:

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

The local agency shall revoke the permit of an underground storage tank issued pursuant to Health and Safety Code section 25284 if the owner or operator is not in compliance with article 3 commencing with Health and Safety Code section 25299.3 of chapter 6.7 on the date three months after the date on which the owner or operator of the tank first becomes subject to article 3 commencing with Health and Safety Code section 25299.3 of chapter 6.7.

The UPA's may also refer to DTSC conditional authorization, conditional exemption or permit by rule facilities for permit revocation or suspension pursuant to Health and Safety Code section 25186.7.

Health and Safety Code section 25404.1.1, subdivision (k) authorizes UPA's to suspend or revoke a permit for not paying permit fees, fines, or penalties. "A unified program agency may suspend or revoke any unified program facility permit, or an element of a unified program facility permit, for not paying the permit fee or a fine or penalty associated with the permit in accordance with the procedures specified in this subdivision."

7. Facility Closure

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

8. Business License Revocation

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

9. Administrative Enforcement Orders (Health & Saf. Code, § 25404.1.1)

The administrative enforcement order (AEO) is a formal means of enforcement utilized when class I violations are documented, a violator has a history of repeat or continuing violations or does not respond to a notice to comply or a notice of violation for less serious violations.

Typically, an UPA will issue the regulated facility a Show Cause letter that notifies the facility that the UPA is planning on taking an AEO action and encourages the facility to contact the UPA to discuss a settlement. The Show Cause letter does not constitute a formal action. The letter establishes the UPA's intent to pursue formal enforcement and encourages a consensual resolution.

Specific AEO Guidance should be consulted for details and is available at: <http://www.calepa.ca.gov/CUPA/Documents/AEOGuidance.pdf>. The AEO basically consists of:

- Notification of violation and corrective action schedule required to correct the violation;
- An assessment of penalties; and
- Notice of the respondent's rights and process details.

Some UPA's have developed penalty matrixes. Sample penalty matrixes are available at: <http://www.calepa.ca.gov/CUPA/Resources/>.

10. Quarantine (Health & Saf. Code, § 25187.6) Hazardous Waste Generators/Tiered Permitting Facilities

If an inspector has probable cause to believe that any hazardous waste, or any material which the inspector reasonably believes to be a hazardous waste is stored, transported, disposed of, or handled in violation of this chapter (Health & Saf. Code, chapter 6.5) or in a manner that will constitute a violation of this chapter, and that the violation may threaten public health and safety or the environment, the inspector may issue an order of quarantine by affixing a tag or other appropriate marking to the container containing, or to the vehicle transporting the hazardous waste. A hearing shall be held within 24 hours if one is requested by the person subject to the order.

11. Referral to State Agency

In some programs, referrals may be made to a state agency for enforcement action. The referral should include a statement of facts and all information necessary for the agency to take action. Prior to referral, the UPA should consult with the agency to determine if the agency will accept the case. If the referral is not accepted or acted on by the state, the UPA must take other independent formal enforcement action because the referral in itself is not considered formal enforcement.

Violations of the UST and AST may be referred to UST Enforcement Unit at the SWRCB. Hazardous waste generator/tiered permitting facilities may be referred to DTSC for permit revocation or suspension (Health & Saf. Code, § 25186.7) or for administrative or civil action.

Neither the State Fire Marshal nor OES has jurisdiction to take enforcement actions, so HMMP, Cal/ARP and fire code violations may not be referred to those agencies.

12. Referral to U.S. EPA

The violations of AST, UST, hazardous waste, Cal/ARP and HMRRP may be referred to U.S. EPA for appropriate enforcement action if the violations are violations of federal law. The referral shall include a statement of facts and all information necessary for the agency to take action. Prior to referral the UPA should consult with the U.S. EPA to determine if the agency will accept the case. If the referral is not accepted or acted on by U.S. EPA, the UPA must take other independent formal enforcement action because the referral in itself is not considered formal enforcement.

13. Civil Case (Various Health and Safety Code sections)

The UPA may refer the case to the district attorney, city attorney or attorney general for civil prosecution under the appropriate statutes. The referral shall include a statement of facts and all information necessary for the prosecuting agency to take action. If the referral is not accepted or acted on by the prosecutor in a timely manner, the UPA must take other formal enforcement action such as an AEO. This should only be done after notice to the prosecuting agency. Additionally, if the UPA is experiencing significant delay in action on referred cases and attempts to communicate with the prosecuting agency are not working, the UPA should notify the Cal/EPA Unified Program of the issue for possible assistance. Note that the actual referral should not designate whether the case should be filed as a criminal case or a civil case as that is within the discretion of the prosecuting agency. See sample referral letter.

14. Criminal Case (Various Health and Safety and other code sections)

The UPA may refer the case to the U.S. attorney, district attorney, city attorney (in large cities where the city attorney has authority to file misdemeanors under state law) or attorney general for criminal prosecution. The referral shall include a statement of facts and all information necessary for the prosecuting agency to take action. If the referral is not accepted or acted on by the prosecutor in a timely manner the UPA must take other formal enforcement action such as an AEO. This should only be done after notice to the prosecuting agency. Additionally, if the UPA is experiencing significant delay in action on referred cases and attempts to communicate with the prosecuting agency are not working, the UPA should notify the Cal/EPA Unified Program of the issue for possible assistance. Note that the actual referral should not designate whether the case should be filed as a criminal case or a civil case as that is within the discretion of the prosecuting agency. See sample referral letter.

For referrals to the attorney general, the Cal/EPA Unified Program staff should be contacted for assistance.

If UPA's have difficulty finding a prosecuting agency to take the case, they may consider contacting the Cal/EPA Unified Program for assistance. See the agency referral section for guidelines.

I. Tables of Possible Enforcement Tools

The following two tables summarize the enforcement options available to UPA's. Table 1 includes possible enforcement options available under statute, and table 2 includes possible enforcement options that may be available to UPA's, under the UPA's local ordinances.

Table 1: Possible Enforcement Tools Available under Health and Safety Code

	Enforcement Option	HW Generator	CalARP	HMRRP (HMMP/ HMIS)	UST	AST
1	Notice of Violation	X	X	X	X	X
2	Summary of Violations	X				
3	Notice to Comply	X				
4	Notice of Significant Violations (Pertains to UST Red Tag)				X	
9	Administrative Enforcement Order	X	X	X	X	X
10	Quarantine	X				
13	Civil Case	X	X	X	X	X
14	Criminal Case	X	X	X	X	

Table 2: Other Possible Enforcement Tools That May Be Available Under an UPA’s Local Ordinance

	Enforcement Option	HW Generator	CalARP	HMRRP (HMMP/ HMIS)	UST	AST
1	Notice of Violation	X	X	X	X	X
5	Office Meeting (Hearing)	X	X	X	X	
6	Permit Revocation	X	X	X	X	X
7	Facility Closure	X	X	X	X	
8	Business License Revocation	X	X	X	X	
11	Referral to State Agency	X			X	X
12	Referral to Federal Agency	X	X		X	X

Notes on Tables:

Proposed regulations amending California Code of Regulations, title 27 would grant all Unified Program elements the same range of enforcement.

Shaded items indicate informal enforcement options. Items in bold print indicate formal enforcement action options.

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

UPA’s may have local ordinances that may have additional enforcement tools.

J. Program Specific Enforcement Authorities

The following listing identifies the specific enforcement authorities for each program area.

1. HMRRP

- Health and Safety Code section 25514, subdivision (a)
- Health and Safety Code section 25414.3
- Health and Safety Code section 25514.5, subdivision (a)
- Health and Safety Code section 25514.5, subdivision (b)
- Health and Safety Code section 25515
- Health and Safety Code section 25515.1

2. CalARP

- California Code of Regulations, title 19, section 2775.4
- Health and Safety Code section 25540
- Health and Safety Code section 25541

3. UST

- Health and Safety Code section 25292.3
- Health and Safety Code section 25299
- Health and Safety Code section 25299.01
- Health and Safety Code section 25299.02
- Health and Safety Code section 25299.03
- Health and Safety Code section 25299.04
- Health and Safety Code section 25297: The local agency may request the DTSC or RWQCB to utilize their authority to remedy the effects of, and remove, any hazardous substance which has been released from the UST

4. AST

- Health and Safety Code section 25270.12 (SPCC)
- Health and Safety Code section 25404.1.1

Facilities that have the storage capacity of at least 1,320 gallons and less than 10,000 gallons of petroleum are only subject to the SPCC requirements.

Facilities with a storage capacity of 10,000 gallons or more are subject to both the SPCC and inspection requirements.

5. Generators (All) and Tiered Permitting Facilities (Three lower tiers – PBR, CA, CE)

- Health and Safety Code section 25180
- Health and Safety Code section 25187
- Health and Safety Code section 25188
- Health and Safety Code section 25189
- Health and Safety Code section 25190
- Health and Safety Code section 25191
- Health and Safety Code section 25192

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

- Class I violations (Health & Saf. Code, § 25110.8.5) In California all class I violations are considered Significant Non-Compliers (SNC);
- Class II violations; or
- Minor violations (Health & Saf. Code, § 25117.6).

Detailed information can be found in the Violation Classification Guidance for Unified Program Agencies, available at:

<http://www.calepa.ca.gov/CUPA/Documents/ViolationGuide.pdf>.

6. Recyclers

Enforcement for on-site recyclers is the same as for generators.

7. On-site Hazardous Waste Treatment (PBR, CA, CE)

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

8. Permit by Rule (HHW)

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

Prosecutors may use Business and Profession Code section 17206 in civil cases which states:

Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed \$2,500 for each violation.

Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by chapter 1 (commencing with section 17500) of part 3 of division 7 of the Business and Professions Code.

K. Joint, Combined and Integrated/Multi-media Enforcement

The UPA's, state and federal agencies should coordinate enforcement activities to eliminate duplicative enforcement efforts.

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

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

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

V. Training Component

This section should identify the mechanism used to ensure that inspector training meets or exceeds the requirements currently set forth in statute or regulation and the methods used to cross train staff. Specific requirements include:

A. All Programs

Education, Technical Expertise, and Training (Cal. Code. Regs., tit. 27, § 15260)

UPA technical program staff and supervisors who are involved in specific activities associated with oversight of the local Unified Program requirement shall have 100 hours of training or experience for all the following subject areas:

- Regulatory overview;
- Classification, identification, and chemistry of hazardous materials and hazardous waste;
- Health and environmental effects of hazardous substances, including chemical exposure and route of entry;
- Sampling methodologies and use of instrumentation for detection and sampling of hazardous substances;
- Conducting inspections and enforcement actions, and writing inspection reports and notice of violation; and
- Interviewing, case development, and collection and preservation of evidence.

B. Technical staff and supervisors of the UPA's shall receive training in the following areas:

- Hazardous materials and hazardous waste permitting, inspection and enforcement duties and responsibilities pursuant to state law and regulation, and to local ordinances and resolutions;

- Inspection techniques and scheduling, including evidence collection, chain of custody, sample preservation, and interviewing;
- Administration practices within a hazardous materials and hazardous waste program;
- Monitoring equipment, data evaluation, and interpretation of the results as related to hazardous materials and hazardous waste analysis; and
- Field staff health and safety training including: planning field inspections, safety equipment, on-site procedures, decontamination and hazard recognition and avoidance.

One or more UPA technical staff or supervisors needed to effectively meet the requirement for the 100 hours of training/experience listed above and educational requirements found under California Code of Regulations, title 27 section 15260, subdivision (a)(1)(A) shall meet the following requirements:

- Participating staff shall have a minimum of one year experience in conducting hazardous materials or hazardous waste regulatory compliance inspections.
- Staff issuing enforcement orders shall complete the following minimum training:
 - Health and safety training as specified in section 5192(e) title 8, California Code of Regulations;
 - One hundred hours of training in regulatory investigative techniques including training in the following subjects:
 - ✓ Federal and state statutes and regulations on hazardous waste control;
 - ✓ Conducting an inspection;
 - ✓ Waste classification;
 - ✓ Inspection report writing;
 - ✓ Collection and preservation of samples;
 - ✓ Enforcement response options;
 - ✓ Writing reports of violation;
 - ✓ Interviewing;
 - ✓ Case development;
 - ✓ Collection and preservation of evidence;
 - ✓ Witness training; and
 - ✓ Rules of evidence and the administrative hearing process.
 - Twenty-four hours of training in the following additional areas:
 - ✓ Training on penalty assessment; and
 - ✓ Negotiation techniques.

It shall be the responsibility of the UPA to document the training and experience of staff participating in this program.

C. Underground Storage Tank Program

Under California Code of Regulations, title 23 section 2715, subdivision (j) Local agency inspectors or special inspectors conducting underground storage tank inspections must meet the following requirements:

- Effective September 1, 2005, these individuals shall possess a current inspector certificate issued by the International Code Council (ICC), indicating he or she has passed the ICC California UST Inspector exam.
- Local agency inspectors hired on or after September 1, 2005, are subject to this requirement 180 days from the date of hire.
- These individuals shall renew the California inspector certificate every 24 months, by either passing the ICC California UST Inspector exam or satisfying equivalent criteria as approved by the Division of Water Quality Underground Storage Tank Program Manager.

D. Aboveground Storage Tank Program

Under Health and Safety Code section 25270.5, subdivision (c) an inspection conducted pursuant to this section does not require the oversight of a professional engineer. The person conducting the inspection shall meet both of the following requirements:

- Complete an aboveground storage tank training program, which shall be established by the Secretary for Environmental Protection.
- Satisfactorily pass an examination developed by the secretary on the spill prevention control and countermeasure plan provisions and safety requirements for aboveground storage tank inspections.

Cal/EPA maintains a Web page listing various inspector trainings that are available at: <http://www.calepa.ca.gov/Enforcement/Training/Clearinghouse.htm>.