

Sample Policy with Matrixes for Administrative Penalties

Here is a sample policy with penalty matrixes that some UPAs use.

A. General Policy

1. The following will be considered when calculating the amount of an administrative penalty:
 - a. The nature, circumstances, extent, and gravity of the violation.
 - b. The violator's efforts to prevent, abate, or clean up conditions posing a threat to public health or the environment.
 - c. The violator's ability to pay.
 - d. The deterrent affect of the penalty

B. Steps in Determining Penalties

1. Initial Penalty. The UPA will determine an initial penalty for each violation by considering the actual and potential harm and the extent of the deviation from hazardous waste management requirements. See Attachment.
 - a. Including, assigning degrees of actual and potential harm.
 - (1) Major – the characteristics and/or amount of the substance involved present a major threat to human health or safety or the environment and the circumstances of the violation indicate a high potential for harm.
 - (2) Moderate – the characteristics and/or amount of the substance involved do not present a major threat and the likelihood of harm from noncompliance is not high.
 - (3) Minimal – the overall threat to human health or the environment is low.
 - b. A violation must involve the actual management of a hazardous substance for it to have a major potential for harm.
 - c. Assigning degrees of extent of the deviation.
 - (1) Major – the act deviates from the requirement to such an extent that the requirement is completely ignored or the function of the requirement is rendered ineffective because some of its provisions are not complied with.

(2) Moderate – the act deviates from the requirement but functions to some extent.

(3) Minimal – the act deviates from the requirement but functions nearly as intended.

d. For requirements with several components, consider the extent of the violation in terms of the most significant component.

2. Adjusted Initial Penalty

a. The initial penalty may be adjusted based on the violator's intent in committing the infraction. The following factors will be considered as a basis for adjustment.

ADJUSTMENT FACTOR	CIRCUMSTANCES
Downward adjustment of 100%	Violation was completely beyond the control of the violator.
Downward adjustment of 0 to 50%	Violation occurred even though good faith efforts to comply with regulations were made.
No adjustment	Violation indicated neither good faith efforts nor intentional failure to comply.
Upward adjustment of 50 to 100%	Violation was the result of intentional failure to comply.

b. Economic Benefit Adjustment. The initial penalty may be increased if, in the opinion of SCEMD, the violator realized significant economic benefit as a result of the failure to comply.

(1) The adjustment to the initial penalty cannot exceed the statutory maximum.

(2) Economic benefits to consider include: avoided or delayed costs, or increased profits.

3. Combining Multiple Violations. A single penalty may be assessed for multiple violations for the following situations:

a. The facility has violated the same requirement in different locations or units within the facility.

b. The facility has violated the same requirement on different days. This would not be appropriate if the facility has been notified of the violation and has had sufficient time to correct the violation.

4. Multi-day Violations. For days following the first day of violation, the multi-day component of the penalty shall be calculated by determining 2% of the adjusted initial penalty times the number of days after the initial day.
5. Base Penalty. The base penalty for a one day violation occurrence is the adjusted initial penalty. The base penalty for multi-day violations is the adjusted initial penalty for the first day of the violation plus the penalty for the additional days of the violation.
6. Total Base Penalty. The total base penalty is the sum of all base penalties for all violations incurred at a given facility.
7. To determine the Final Penalty, adjustments to the total base penalty may be made based on the following factors.

a. Adjustment factors for cooperation.

Degree of Cooperation/Effort	Adjustment Factor	Circumstance
Extraordinary	Downward adjustment of up to 25 %	Violator exceeded minimum requirements in returning to compliance or returned to compliance faster than requested.
Good Faith	No adjustment	Violator demonstrated a cooperative effort.
Recalcitrance	Upward adjustment of up to 25 %	Violator failed to cooperate, delayed compliance, created unnecessary obstacles to achieving compliance, or the compliance submittal failed to meet requirements.
Refusal	Upward adjustment of 50 to 100 %	Violator intentionally failed to return to compliance with regulations or to allow cleanup operations to take place. This does not include refusal to allow inspection.

- b. Adjustment to create a preventive or deterrent effect. The total base penalty may be adjusted upward or downward to ensure that the penalty is sufficient to provide a deterrent effect on both the violator and/or the regulated community as a whole.
- c. Adjustment for compliance history. The total base penalty may be adjusted upward or downward based on the facility's compliance history.

(1) General considerations.

(a) Previous violations at the site should receive more weight than previous violations at another site owned or operated by the same person.

(b) Recent violations should receive more weight than older violations.

(c) The same or substantially similar previous violations should receive more weight than previous unrelated violations.

(2) Specific guidance.

(a) Downward adjustments of up to 5% for each previous consecutive inspection with no violations can be made up to a maximum of 10%.

(b) Downward adjustments of up to 15% can be made if the facility has an ISO 14001 certificate.

(c) Upward adjustments of up to 100% can be made if a facility has a consistent history of noncompliance over the past five (5) years.

d. Ability to pay adjustments. No adjustments for ability to pay may be made if the penalty has been adjusted upward because of failure to cooperate or because of the facility's poor compliance history. In light of these exceptions, ability to pay adjustments to the total base penalty may be made if either:

(1) Immediate payment of the final penalty would cause financial hardship. In this case, consideration may be given to payments extended over a certain term.

(2) Extending the penalty over a period of time would cause extreme financial hardship. In this case, consideration may be given to reduce the total base penalty.

8. FINAL PENALTY. The final penalty consists of the total base penalty with all adjustments made.

Attachment
Sample Penalty Matrixes

1. Hazardous Waste

For violations of CHSC Chapter 6.5, the violator shall be liable for penalties as provided in §25189.2 (a-c).

a. The total penalty calculated for any single violation shall not exceed the amount specified in statute; \$25,000 per day, per violation (CHSC, §25189.2).

Initial Penalty Matrix

	ACTUAL OR POTENTIAL HARM	Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major		Maximum \$25,000 Average \$22,500 Minimum \$20,000	\$20,000 \$17,500 \$15,000	\$15,000 \$10,500 \$6,000
Moderate		Maximum \$20,000 Average \$17,500 Minimum \$15,000	\$15,000 \$10,500 \$6,000	\$6,000 \$4,000 \$2,000
Minimal		Maximum \$15,000 Average \$10,500 Minimum \$6,000	\$6,000 \$4,000 \$2,000	\$2,000 \$1,000 \$0

2. Underground Storage Tanks (UST)

For violations of CHSC Chapter 6.7, the violator shall be liable for penalties as provided in §25299 (a-c).

a. CHSC §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.

b. For violations of CHSC §25299 (c), the respondent is liable for no more than \$5,000 per day, per violation, per Underground Storage Tank.

c. The following matrix will be used to determine initial penalty for an underground storage tank system violation:

Initial Penalty Matrix

	ACTUAL OR POTENTIAL HARM	Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major		Maximum \$5,000 Average \$4,000 Minimum \$3,000	\$3,000 \$2,500 \$2,000	\$2,000 \$1,500 \$1,000
Moderate		Maximum \$3,000 Average \$2,500 Minimum \$2,000	\$2,000 \$1,500 \$1,000	\$1,000 \$750 \$500
Minimal		Maximum \$2,000 Average \$1,500 Minimum \$1,000	\$1,000 \$750 \$500	\$500 \$250 \$0

3. Hazardous Material Business Plan Program

For violations of CHSC §25514.5. Any business/facility that violates Article 1, Chapter 6.95, Division 20 of the CHSC is liable for an amount not greater than \$2,000 for each day in which the violation occurs, or greater than \$5,000 for each day in which the violation occurs for any business that knowingly violates after reasonable notice of the violation.

Initial Penalty Matrix

	ACTUAL OR POTENTIAL HARM	Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major		Maximum \$2,000 (\$5,000) Average \$1,600 (\$4,000) Minimum \$1,200 (\$3,000)	\$1,200 (\$3,000) \$1,000 (\$2,500) \$800 (\$2,000)	\$800 (\$2,000) \$600 (\$1,500) \$400 (\$1,000)
Moderate		Maximum \$1,200 (\$3,000) Average \$1,000 (\$2,500) Minimum \$800 (\$2,000)	\$800 (\$2,000) \$600 (\$1,500) \$400 (\$1,000)	\$400 (\$1,000) \$300 (\$750) \$200 (\$500)
Minimal		Maximum \$800 (\$2,000) Average \$600 (\$1,500) Minimum \$400 (\$1,000)	\$400 (\$1,000) \$300 (\$750) \$200 (\$500)	\$200 (\$500) \$100 (\$250) \$0 (\$0)

4. Failure to Report Unauthorized Spill or Release of Hazardous Material or Waste

a. Businesses or facilities shall, upon discovery, immediately report any release or threatened release of a hazardous material to SCEMD and the Governor’s Office of Emergency Services Warning Center. In addition, each business or facility and any employee, authorized representative, agent, or designee of the business or facility shall provide all state, city, county fire or public health or safety personnel and emergency rescue personnel with access to the facility.

b. Pursuant to §25514.5(a) of the CHSC, any business or facility that violates these requirements are civilly liable in an amount not to exceed \$2,000 per day for each violation.

Initial Penalty Matrix – Unreported Spills or Releases

	ACTUAL OR POTENTIAL HARM	Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major		Maximum \$25,000 Average \$20,000 Minimum \$15,000	\$15,000 \$12,500 \$10,000	\$10,000 \$7,500 \$5,000
Moderate		Maximum \$15,000 Average \$12,500 Minimum \$10,000	\$10,000 \$7,500 \$5,000	\$5,000 \$3,750 \$2,500
Minimal		Maximum \$10,000 Average \$7,500 Minimum \$5,000	\$5,000 \$3,750 \$2,500	\$2,500 \$1,250 \$0

5. California Accidental Release Prevention (CalARP) Program

a. Chapter 6.95, Article 2 of the CHSC stipulates regulatory requirements that must be followed by businesses or facilities that store or maintain acutely hazardous materials in quantities above threshold levels.

b. Pursuant to Chapter 6.95, Article 2, §25540(a) of the CHSC, any stationary source that violates this article shall be liable in the amount of not less than \$2,000 per day in which the violation occurs.

c. Pursuant to Chapter 6.95, Article 2, §25540(b) of the CHSC, any stationary source that knowingly violates this article after reasonable notice of the violation shall be liable in an amount not to exceed \$25,000 per day for each day in which the violation occurs.

Initial Penalty Matrix

	ACTUAL OR POTENTIAL HARM	Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major		Maximum \$2,000 (\$25,000) Average \$1,600 (\$20,000) Minimum \$1,200 (\$15,000)	\$1,200 (\$15,000) \$1,000 (\$12,500) \$800 (\$10,000)	\$800 (\$10,000) \$600 (\$7,500) \$400 (\$5,000)
Moderate		Maximum \$1,200 (\$15,000) Average \$1,000 (\$12,500) Minimum \$800 (\$10,000)	\$800 (\$10,000) \$600 (\$7,500) \$400 (\$5,000)	\$400 (\$5,000) \$300 (\$3,750) \$200 (\$2,500)
Minimal		Maximum \$800 (\$10,000) Average \$600 (\$7,500) Minimum \$400 (\$5,000)	\$400 (\$5,000) \$300 (\$3,750) \$200 (\$2,500)	\$200 (\$2,500) \$100 (\$1,250) \$0 (\$0)

6. Above Ground Storage Tank Program

- a. For violations of CHSC §25270.5, the violator shall be liable for a penalty of not more than \$5,000 for each day on which the violation continues.
- b. If the violator commits a second or subsequent violation, a penalty of not more than \$10,000 for each day on which the violation continues may be imposed.

Initial Penalty Matrix

	ACTUAL OR POTENTIAL HARM	Major	Moderate	Minimal
EXTENT OF DEVIATION				
Major		Maximum \$5,000 (\$10,000) Average \$4,000 (\$8,000) Minimum \$3,000 (\$6,000)	\$3,000 (\$6,000) \$2,500 (\$5,000) \$2,000 (\$4,000)	\$2,000 (\$4,000) \$1,500 (\$3,000) \$1,000 (\$2,000)
Moderate		Maximum \$3,000 (\$6,000) Average \$2,500 (\$5,000) Minimum \$2,000 (\$4,000)	\$2,000 (\$4,000) \$1,500 (\$3,000) \$1,000 (\$2,000)	\$1,000 (\$2,000) \$750 (\$1,500) \$500 (\$1,000)
Minimal		Maximum \$2,000 (\$4,000) Average \$1,500 (\$3,000) Minimum \$1,000 (\$2,000)	\$1,000 (\$2,000) \$750 (\$1,500) \$500 (\$1,000)	\$500 (\$1,000) \$250 (\$500) \$0 (\$0)