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# **VIOLATION CLASSIFICATION**

## **GUIDANCE FOR**

### **UNIFIED PROGRAM AGENCIES**

## **Introduction**

Compliance with the Unified Program provides an effective safeguard for public health and the environment by mitigating the risk that hazardous materials/wastes would otherwise pose. Unified Program Agencies (UPAs) have a vital role in protecting health and the environment by ensuring compliance with these requirements through routine oversight and consistent enforcement response. UPAs have a variety of available informal and formal enforcement responses that can be employed when violations are found. Selecting the appropriate response is often a difficult decision. The circumstances surrounding every violation vary depending on a multitude of factors. Not every violation poses the same threat but all require some type of follow-up and correction. This document establishes guidelines and provides examples to assist UPAs in determining when informal or formal enforcement is appropriate based solely on the initial classification of a violation.

## **Purpose**

This Violation Classification Guidance Document has been established to create a standard classification protocol for all Unified Program violations that will facilitate more consistent enforcement response actions throughout California. Nothing in this guidance prohibits or limits a CUPA from taking any enforcement action they deem appropriate in any given case. The guidance creates a “floor”, not a “ceiling”, for enforcement actions by promoting consistent classification of similar violations between, and within, agencies. Violations, when consistently classified based on factors such as risk (and those other factors presented in this document), can more efficiently be evaluated by an agency to determine if, and when, enforcement may be warranted. This guidance is not intended to describe enforcement requirements such as when to take enforcement. These issues are addressed in other Inspection and Enforcement Guidance documents and specifically in each Agency’s Inspection and Enforcement Plan.

## **Reason**

There are existing statutory and regulatory violation classification definitions for some Unified Program violations, but not all. This guidance is intended to provide a consistent classification system for all Unified Program violations found throughout the state. Statewide consistency is a program mandate and a responsibility that encourages compliance and maximizes program effectiveness.

## **Classes of violations**

### **Existing Nomenclature**

In the California Health and Safety Code and California Code of Regulations, Title 22, there are definitions of some classifications of violations. Each of these statutory or regulatory definitions is listed below.

**Minor (Unified Program)**

*Health and Safety Code, Section 25404*

(a) For purposes of this chapter, the following terms shall have the following meanings:

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

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

*Health and Safety Code, Section 25404.1.2*

(b) A notice to comply shall be the only means by which a UPA may cite a minor violation, unless the person cited fails to correct the violation or fails to submit the certification of correction within the time period prescribed in the notice, in which case the UPA may take any enforcement action, including imposing a penalty, as authorized by this chapter.

(c) (1) A person who receives a notice to comply detailing a minor violation shall have not more than 30 days from the date of the notice to comply in which to correct any violation cited in the notice to comply. Within five working days of correcting the violation, the person cited or an authorized representative shall sign the notice to comply, certifying that any violation has been corrected, and return the notice to the UPA.

**Class I (Hazardous Waste)**

*Health and Safety Code, Section 25110.8.5. & Title 22, Section 66260.10.*

"Class I violation" means any of the following:

(a) A deviation from the requirements of this chapter, or any regulation, standard, requirement, or permit or interim status document condition adopted pursuant to this chapter, that is any of the following:

(1) The deviation represents a significant threat to human health or safety or the environment because of one or more of the following:

- (A) The volume of the waste.
- (B) The relative hazardousness of the waste.
- (C) The proximity of the population at risk.

(2) The deviation is significant enough that it could result in a failure to accomplish any of the following:

- (A) Ensure that hazardous waste is destined for, and delivered to, an authorized hazardous waste facility.
- (B) Prevent releases of hazardous waste or constituents to the environment during the active or postclosure period of facility operation.
- (C) Ensure early detection of releases of hazardous waste or constituents.
- (D) Ensure adequate financial resources in the case of releases of hazardous waste or constituents.
- (E) Ensure adequate financial resources to pay for facility closure.
- (F) Perform emergency cleanup operations of, or other corrective actions for, releases.

(b) The deviation is a Class II violation which is a chronic violation or committed by a recalcitrant violator.

### **Class II (Hazardous Waste)**

*California Code of Regulations, Title 22, Section 66260.10*

“Class II Violation” means a deviation from the requirements specified in Chapter 6.5 of Division 20 of the Health and Safety Code, or regulations, permit or interim status document conditions standards, or requirements adopted pursuant to that chapter, that is not a Class I violation.

### **“New” Nomenclature**

The Hazardous Waste Program utilizes a three-tiered system of violation classification. This guidance suggests a similar approach across all programs as the most effective way to determine enforcement response.

### **Class I**

The most egregious type of violation should be classified as a “Class I”. For other (non-hazardous waste) Unified Program elements, Class I violations are those violations that are willful, intentional, negligent, knowing or should have known, include false documents, violations that pose a significant threat of harm to the environment or human life. Chronic violations may be considered Class I. Violations committed by a recalcitrant violator may also be considered Class I.

## **Class II**

“Class II” violations are those violations that do not meet the criteria for Class I violations, but are also not minor. Failure to correct or certify correction of a minor violation within the prescribed timeframe is a Class II violation.

## **Minor**

There are no changes to the definition of a “minor” violation from those that already exist. The definition of a minor violation provided in Health and Safety Code section 25404(c)(3) will be used to define minor violations.

## **Definitions and Clarification of terms**

**Significant Threat:** Significant threats are to be determined by the inspector based on the volume and relative hazard of the material/waste, and the potential harm to public health and the environment.

**Chronic:** Chronic is defined as a habit or pattern of behavior or frequent recurrence. For the purposes of applying this definition to violation classification, violations of the same requirement identified in two consecutive inspections may be considered chronic.

**Recalcitrant violator:** A recalcitrant violator is a person who actively refuses to comply with the regulatory requirements or a person who has engaged in a pattern of neglect or disregard for statutory or regulatory requirements.

**Economic Benefit:** Economic benefit focuses on the violator's economic gain from noncompliance, i.e., the extent to which the violator is financially better off because of its noncompliance. This economic benefit can accrue to the violator in three basic ways:

- (1) Delaying necessary compliance expenditures;
- (2) Avoiding necessary compliance expenditures; and/or
- (3) Obtaining an illegal competitive advantage.

In some instances the economic benefit may be negligible, inconsequential and/or not worth the time required to calculate. See discussion under minor violation definitions.

*Note: The clarification of the term “economic benefit” as provided above refers only to the phrase as it is used in the definition of a minor violation [reference HSC, section 25404(c)(3)]. For the purposes of defining and determining economic benefit in the calculation of penalties during enforcement, please refer to the Model Inspection and Enforcement Program Plan or U.S. EPA’s BEN model for calculating economic benefit ([www.waterboards.ca.gov](http://www.waterboards.ca.gov), then search “this site” for BEN)*

**Person:** For the purposes of use in this guidance document, “Person” means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. "Person" also includes any city, county, district, commission, the state or any department, agency, or political

subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.

*Note: Each Unified Program element has a slightly different definition of “Person” than the definition provided above. The Business Plan program does not define a “person” but does provide a similar definition of a “business”. For each program element, please refer to the statute or code for the strict definition of “Person”. UST—(Chapter 6.7) HSC 25281(l); UST (Chapter 6.75) HSC 25299.25; AST (Chapter 6.67) HSC 25270.2(f); HW (Chapter 6.5) HSC 25118; Business Plans (Chapter 6.95) HSC 25501(d); Fire Code, UFC Article 9, section 9.118.*

## **Classifying Violations**

There are always variations in the specific details and circumstances surrounding each identified violation. Careful consideration of the nature, circumstances, and evidence must be applied by inspectors in almost all cases when classifying violations. Inspectors should try to determine if the circumstances surrounding the violation would reasonably meet the criteria of each violation class. The most appropriate way to determine the proper classification of a violation is to follow the following three steps:

1. Confirm or eliminate the criteria that would classify the violation as a Class I.
2. Confirm or eliminate the criteria that would classify the violation as a Minor violation.
3. Classify the violation as a Class II if it does not meet the guidelines for Class I or minor violations.

## **Things to consider when classifying violations**

All of the factors listed below should be considered both independently and cumulatively when classifying violations.

Various terms and phrases have been included in this document in an attempt to clarify their meanings and uses. Begin by consulting these “definitions” in an attempt to narrow the scope of the violation classification.

The extent of deviation from regulatory requirements should be examined when classifying violations. If the violator deviates from a requirement of regulations or statute to such an extent that most of the requirement is not met, then this may present a significant threat to human health or safety or the environment. For example, there is a difference between a business that does not have a contingency/emergency plan and a business that has an incomplete plan.

The number of violations found during an inspection should be considered when classifying violations. This may be indicative of a pattern of neglect or disregard with respect to applicable regulatory requirements.

The volume of the hazardous material/waste should be considered when classifying a violation and determining whether it poses a significant threat. A

facility that has 30 drums of waste onsite, 15 of which are unlabeled may pose a greater threat than a facility that has 4 containers of waste onsite, 2 of which are unlabeled. It is appropriate to elevate the classification of a violation based on an increased threat posed by the volume of material/waste.

The relative hazard of the material/waste should be considered when classifying a violation and determining whether it poses a significant threat. The greater the hazard a material poses, the greater potential for harm to human health or safety or the environment. For example, the management of waste containing cyanide and acidic wastes at a metal plating business represents a greater threat to human health or safety than the management of used antifreeze and oil at an auto repair business. The reason being is that if cyanide and acidic wastes mix as a result of a spill, a toxic gas could be created. Therefore, a metal plating business that fails to properly manage containers of cyanide or acidic waste poses a greater threat to human health and safety. The same factors should be considered for a material that poses a significant threat to the environment as well. For example, a material that is persistent or bioaccumulative may present a significant threat to the environment.

The proximity of the population at risk to the hazardous material also needs to be considered when classifying a violation and determining whether it poses a significant threat. For example, a facility that stores hazardous materials or generates hazardous waste in proximity to a neighborhood or business offices creates a higher potential for harm to human health or safety than a business that is isolated by a long distance. The same factors should be considered for a facility that is in proximity to environmental receptors such as a creek or a well.

The intent of the action that led to the violation may be considered when classifying violations. Violations that demonstrate a knowing disregard for regulatory requirements are generally considered to be more serious. While inspectors are always responsible for obtaining evidence necessary to prove violations it will be especially important to prove the “mental state” of intent if the classification of a violation is to be based solely on intent. For most violations it is not required to prove intent to demonstrate that a violation has occurred. However, motive and intent, if present and documented, are important factors to consider.

The regulatory history of the facility should be considered when classifying violations. Violations of the same requirement in two consecutive inspections may be considered chronic. If the violations are chronic, the classification of violations should be elevated. Violations of multiple regulatory requirements from inspection to inspection may result in finding the person recalcitrant. Violations committed by a recalcitrant person should be elevated.

## **Things not to consider when classifying violations**

The size or fiscal health of the business should not factor into the classification of violations. These should be factored into, and adjusted for, during penalty calculations.

Potential outcomes of future enforcement should not be taken into account at the time of violation classification. It is understood that there are many factors that may affect enforcement decisions; for example, the level of attorney support and workload for development and follow-through of enforcement. However, none of these factors should affect the proper classification of violations.

Subjectivity should not factor into the classification of violations. For example, unpleasant people should not be penalized any more than any other person. Conversely, pleasant people should not be given a break. An inspector should consistently classify similar violations found at different facilities.

## **Examples of Violations**

**The examples provided below are not an exhaustive list and may not be appropriate depending on the circumstances of each violation.**

### **Minor violations**

#### Hazardous Materials Business Plan Program

- Failure to submit annual certification when there is no change in chemical inventory.
- Failure to submit an annual inventory change when the chemical inventory decreases.
- Failure to specify the location of a low hazard chemical on the facility site map.
- Training program was not complete but employees were aware of requirements.
- Failure to use the Unified Program Consolidated Form or local agency adopted form when reporting a hazardous material.

#### Underground Storage Tank Program

- Failure to update or submit complete tank and facility forms.
- No maintenance and monitoring records onsite (Unless offsite storage allowed by the CUPA).
- Training records were not onsite but employees were aware of the requirements
- One of the twelve monthly inspection records was not maintained onsite (Unless offsite storage allowed by the CUPA).

#### California Accidental Release Prevention Program

- A required data element is missing from the submitted Registration Information.



- A stationary source reported gallons instead of pounds for a regulated substance in the initial RMP.
- Review of documentation required for a RMP is incomplete for a single required element. Examples may include:
  - Training documentation is missing dates
  - Program 2 Maintenance Program is incomplete
  - Program 3 Operating Procedures do not include steps for each operating phase
  - Program 3 Process Safety Information provided incorrect health and safety information
- Owner/operator of a Program 3 process did not annually certify operating procedures.

#### Hazardous Waste Program

- Incomplete label (excluding accumulation start date).
- Failure to update an EPA ID number by not responding to the annual Verification Questionnaire.
- A covered container of non-liquid waste with an unsecured lid.
- A drum with minor damage that is not leaking.
- Failure to submit a copy of the manifest to DTSC.
- Hazardous Waste label was not readily visible for inspection.

### **Class II violations**

#### Hazardous Materials Business Plan Program

- Failure to submit and/or implement a business plan for businesses with solely low volume- low hazard materials.
- Failure to include a hazardous material in a hazardous materials inventory submission.
- Failure to provide or update emergency contacts.
- Failure to indicate hazardous material locations on the facility/site map
- Failure to provide annual refresher training.

#### Underground Storage Tank Program

- Failure to document a recordable release.
- Mechanical monitoring device within the under dispenser containment is not operational.
- A device to remove liquid from the spill bucket is not available/functional.
- Timely repairs were not made following a failed secondary containment test.
- Owner/Operator did not designate an International Code Council certified designated UST operator.
- Owner/Operator does not have monthly inspection records and all attachments.

#### California Accidental Release Prevention Program

- RMP five year update was submitted late.
- RMP not updated within six months of an accidental release.
- Owner/operator did not meet the internal 3 year internal compliance audit requirements for Program 3. They only retained one of the last two internal compliance audit reports
- Owner/operator did not meet the management of change requirements for Program 3. Did not document a technical basis for the change
- Owner/operator did not maintain investigation reports for releases.
- No hot work permits were issued for program level 3 stationary source when flammable or combustible materials onsite.
- Failure of the owner or operator to correct deficiencies found from an RMP review during the specified time frame.
- PHA or Hazard Review not revalidated every 5 years.
- Failure of the owner or operator to revise/correct /update the RMP thirty days of a UPA inspection where the inspection report identifies a revision/correction/ update is required.

#### Hazardous Waste Program

- Hazardous waste in secondary containment was not cleaned up within a timely manner.
- Failure to minimize a release or potential release.
- Failure to maintain paperwork for required timeframes.
- Failure to update closure costs annually for PBR or CA.
- Inadequate training documentation.
- Failure to obtain an EPA ID number.
- Failure to make a hazardous waste determination.

### **Class I violations**

#### Hazardous Materials Business Plan Program

- Fails to submit or implement a business plan after notice.
- Failure to submit or implement a business plan at high volume-high risk facilities.
- Failure to report a release or threatened release.
- Knowingly or willfully failing to report a 100% increase in quantities within 30 days.
- Failure to report within 30 days a new chemical that poses a significant threat and was not previously disclosed.

#### Underground Storage Tank Program

- Tampering with monitoring equipment.
- Failure to repair non-functional monitoring equipment.
- Failure to report an unauthorized release.
- Failure to repair secondary containment.

- Failure to complete/pass secondary containment testing.
- Failure to properly close a UST.

#### California Accidental Release Prevention Program

- No incident investigation conducted for significant releases.
- Failure of the owner or operator to submit an initial RMP after notification from the CUPA.
- Failure to update the RMP that requires an revise Offsite Consequence analysis, within 6 months of change.
- Owner/Operator did not complete an initial hazard review (Program 2) **OR** owner/operator did not complete an initial process hazard analysis (Program 3).
- A certified RMP misrepresents what programs are in place.
- If an audit determines that CalARP program prevention element is missing completely or significantly enough to render it ineffective.
- Not completing action items from internal and/or external compliance audits, internal hazard reviews or PHAs, incident investigations, etc.
- If a facility has an incident that adversely impacts the community, workers, or the environment, and a CalARP program element is found to be inadequate and attributable to the cause of the incident.
- Failure to implement a Prevention Program

#### Hazardous Waste Program

- Disposal at a location not authorized to receive the hazardous waste (Illegal Disposal).
- Failure to maintain financial assurance for PBR and CA facilities.
- Failure of a Large Quantity Generator to install secondary containment for hazardous waste tanks.
- Failure to use a registered hauler.
- Shipping without a manifest, consolidated manifest, or other authorized shipping paper. (Illegal Transportation)
- Failure to obtain a permit or authorization for treatment of hazardous waste. (Illegal Treatment)
- Waste stored in an incompatible, damaged, or deteriorating container that results in a release or poses a serious threat of a release.

### **Examples of violation classification with escalating classification based on circumstances (*Thought process behind decisions in italics*)**

#### Hazardous Materials Business Plan Program

- 1. Failure to report a hazardous material inventory – Health and Safety Code, Section 25504(a)/25509**

**Minor:** A business that has implemented a hazardous materials business plan and historically reports its hazardous materials inventory accurately fails to report one cylinder containing greater than 200 cubic feet of compressed carbon dioxide in the facility inventory.

*The facility failed to report one inventory item that is relatively benign and handled in a relatively small quantity.*

**Class II:** A business that has implemented a hazardous materials business plan and historically reports its hazardous materials inventory accurately fails to report ten cylinders containing greater than 2000 cubic feet of compressed carbon dioxide in the facility inventory.

*The facility failed to report one inventory item that is relatively benign and handled in a relatively large quantity.*

**2. Failure to report a hazardous materials inventory – Health and Safety Code, Section 25504(a)/25509**

**Class II:** A business that has implemented a hazardous materials business plan and historically reports its hazardous materials inventory accurately fails to report one drum containing 55-gallons of a 37% solution of hydrochloric acid in the facility inventory.

*The facility failed to report one inventory item that is highly corrosive but handled in a relatively small quantity.*

**Class I:** A business that has implemented a hazardous materials business plan and historically reports its hazardous materials inventory accurately fails to report ten drums containing 55-gallons of a 37% solution of hydrochloric acid in the facility inventory.

*The facility failed to report one inventory item that is highly corrosive and handled in a relatively large quantity.*

Underground Storage Tank Program

**1. Failure to maintain written monitoring records onsite - Title 23, CCR, Section 2712(b)**

**Minor:** During an annual monitoring system inspection it was noted that all sensors were functional and properly positioned. An alarm history showed a leak alarm on a sump sensor. The record of repair indicated that a sump sensor was in alarm, then repaired by a certified technician in conformance with UPA's requirements. There was no written monitoring record of the reason for the alarm or of repairs.

*Repairs were made, although a copy of the monitoring record was not on site and the system was being monitored accordingly.*

**Failure to maintain monitoring equipment to detect a leak at the earliest possible opportunity – Title 23, CCR, Section 2630**

**Class II:** During an annual monitoring system inspection, one leak detection sensor was not properly positioned within the sump (sensor was four inches from the lowest portion of the sump). The sump was clean and dry. There was a written record by the designated operator, during the monthly inspection, which showed the sensor to be malfunctioning. The following day the record showed that ABC repair had come out and repaired the sensor.

*The sensor was not positioned properly but there was no evidence of intent on the part of the operator to disable the monitoring system and a good faith effort to have the system repaired was made.*

**Intentionally disabling or tampering with an automatic leak detection system – Health and Safety Code, Section 25299(f)(2) or Designated operator failed to conduct monthly inspections - Title 23, CCR, Section 2715(c)(4)**

**Class I:** During an annual monitoring system inspection a sump sensor was observed approximately two feet above 12 inches of fuel in the bottom of a sump. The sensor functioned properly when tested. The alarm history showed the sensor went into alarm over a month prior to the inspection. There was no written record of any monitoring or maintenance of the system.

*The system appeared to be intentionally tampered with to continue operation and clear the alarm. The designated operator was not conducting monthly inspections.*

**2. Failure to conduct annual monitoring system certification every 12 months- Title 23, CCR, Section 2638**

**Minor:** During an annual monitoring system inspection it was noted that the annual monitoring was done one month late. All on-site written records indicate that they had done their annual certification within the required 12 months for the three prior years.

*The facility did not meet the current 12-month certification date but were regularly conducting the annual certification and they had no prior record of not conducting the certification within the 12-month time frame.*

**Class II:** During an annual monitoring system inspection it was noted that the certification was done 15 months after their last certification. Written records indicate that the three previous years certifications were conducted greater than every 12 months. 23CCR §2638 “All monitoring equipment used to satisfy the requirements... and certified every 12 months for operability...”

*The facility is showing a pattern of missing the 12 month frequency deadline.*

**Class I:** During a paperwork audit it was noted that a facility had not conducted their annual monitoring system certification. A notice of violation was sent to the facility via registered mail. A return receipt was received back signed by the operator of the facility. The monitoring system had not been certified within the timeframe specified in the notice of violation. 23CCR §2638 “All monitoring equipment used to satisfy the requirements... and certified every 12 months for operability...”

*The monitoring system was not certified after a written notification was given.*

### California Accidental Release Prevention Program

#### **1. RMP Review Process- Title 19, CCR, section 2745.2**

**Minor:** A submitted RMP is provided to the Administering Agency (AA). The document is complete but has some math errors and other deficiencies found during the review. The AA should note these deficiencies in a letter to the owner/operator and request corrections.

*There is no economic benefit and no significant threat to human health or the environment.*

**Class II:** A submitted RMP is provided to the Administering Agency (AA). The document is complete but has some math errors and other deficiencies found during the review. The AA noted the deficiencies in a letter to the owner/operator. The owner/operator has not corrected the deficiencies within the allowed timeframe.

*There is some economic benefit, the writer saved time and money.*

#### **2. Implementation of a Program 3 Prevention Program- Title 19, CCR, section 2760.2**

**Minor:** Some of the design information is missing for equipment that will not lead to a release if broken or out of service when the facility was performing a PHA or hazard review. The PHA was completed on time.

*No increased risk, no economic benefit since equipment is present*

**Class II:** Some of the design information is missing for equipment that will not lead to a release if broken or out of service when the facility was performing a PHA or hazard review. The PHA was not completed on time or within 5 years.

*Economic benefit due to delayed costs, cost savings from not completing PHA on time.*

**Class I:** Some of the design information is missing for equipment that will not lead to a release if broken or out of service. PHA was not completed.

*Disregard for rule by not completing PHA, possibility of significant risk from missing PHA.*

### Hazardous Waste Program

#### **1. Incomplete Training Plan - Title 22, CCR, Section 66262.34(a)(4)/66265.16.**

**Minor:** The training records for employees at a LQG do not specifically address hazardous waste issues such as labeling or response to emergencies. The majority of containers are properly labeled and employees were aware of emergency procedures and locations of emergency equipment during inspection. Employees can clearly recall being trained on the subjects when asked.

*There is no economic benefit since training is being provided even though it documentation is not complete. The missing elements do not demonstrate an increased risk as seen by current compliance*

**Class II:** The training records for employees at a LQG do not specifically address hazardous waste issues such as labeling or response to emergencies. Half or more of the containers are not properly labeled and employees were not aware of emergency procedures or locations of emergency equipment during inspection. Employees “kinda remember” talking about labels for a few minutes, but can’t clearly recall talking about hazardous waste labeling.

*There is no economic benefit readily evident, but there may have hidden savings by providing abbreviated information during training. Additionally, the risk is increased as evidenced by a lack of awareness of staff and the level of non-compliance with other requirements.*

**Class I:** The training records for employees at a LQG do not specifically address any hazardous waste issues, including labeling or response to emergencies. The majority of containers have labels affixed to them, but the labels are not properly completed, and containers were seen open. The facility indicates that their staff do not do this work, but that their hired transporter does all of the labeling for them at the time of pick-up.

*The overall state of facility compliance provides for increased potential for emergency or significant threat. Obvious economic benefit gained by not providing any waste-specific training to employees. With more evidence gathering, the facility may be considered negligent based on the fact that regulations specifically state that it is the generator’s responsibility, and the generator has clearly stated that they rely on the transporter, in total disregard for multiple requirements.*

**2. Open container –Title 22, CCR, Section 66262.34/66265.173 or 66262.34/40CFR 262.34(d)(2)/40CFR265.173**

**Minor:** An open 55-gallon drum of copper containing paint flake and sludge from boat maintenance is seen at a marina. The drum is located in the maintenance shed, and is in a containment area within a secured building.

*There is little/no economic benefit from open container, and no perceived significant threat associated with the container being open since in a covered, secure location. Even though it’s near a population at risk, the proximity is mitigated by the berms and building.*

**Class II:** An open 55-gallon drum of copper containing paint flake and sludge from boat maintenance is seen at a marina. The drum is located at the end of a pier used for the loading and unloading of goods from boats.

*There is little/no economic benefit from open container, but an increased risk associated with it being open since it is located in a high traffic area and thus more prone to being knocked over, and the material has strong effects on a population at risk which is in close proximity.*

**3. Storage without a permit longer than the allowable timeframes –Title 22, CCR, Section 66262.34/HSC 25189**

**Class II:** During an inspection of a small quantity generator on July 1, 2005 a label is observed with an accumulation start date of December 23, 2004. The

operator indicates that the facility was closed for maintenance the week after Christmas, and that the pick-up was scheduled for June 30, but the transporter called and asked to delay pick up for 2 days. The facility has a manifest history of shipping its wastes every 170-180 days.

*There is clear economic benefit – minor, but measurable that exists by extended storage times. Not a class I since the history of compliance, circumstances of extended time, and lack of significant threat.*

**Class I:** During an inspection of a small quantity generator on July 1, 2005 a label is observed with an accumulation start date of September 3, 2004. The operator indicates that the facility only really generates that waste in the fall due to changes in seasonal production, “business is always in slow during winter months”, and that it takes longer to actually fill the drum. The facility was planning to continue to fill the drum because it costs too much to ship drums that aren’t full. Manifests show that very little waste is shipped from the facility in the spring in past years.

*Class I because the majority of the requirement is being ignored - storage without a TSDF permit. The facility has pattern of neglecting the requirement during lower production times and with this waste.*