

AEO FORMS

Forms Used for Administrative Enforcement under HSC 25404.1.1

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AEO02	5	CHECKLIST FOR PREPARING PROPOSED CIVIL ENFORCEMENT ACTIONS	Checklist of documents to be included when referring violations to legal counsel for civil enforcement.
AEO03	6	ENFORCEMENT ACTION SIGN OFF SHEET	May be used to document the review process when violations are referred for enforcement.
AEO04	7	CHECKLIST FOR ISSUANCE OF UNILATERAL ORDER	Lists documents to be included in a package served to a respondent. Discusses acceptable methods of serving an AEO, the importance of retaining original documents, notices of defense.
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AEO12	35	CERTIFICATE OF COMPLIANCE	States that the respondent has corrected the violations specified, that the signatory has examined any attached documentation and believes that the information is accurate and complete, and that the signatory is authorized to file the certification.
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Form #	Page #	Title	Description
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AEO21 optional	60	STIPULATION AND ORDER	Boilerplate used when a case has been settled prior to expiration of appeal period, i.e. when the Agency has issued an enforcement order, but has not filed the order with the Office of Administrative Hearings (OAH).
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**CHECKLIST FOR PREPARING
PROPOSED ADMINISTRATIVE ENFORCEMENT ACTIONS**

The package for preparing administrative enforcement actions should include:

- _____ 1. Draft Enforcement Order or draft compliance language for Enforcement Order.
- _____ 2. All exhibits referred to in the draft language.
- _____ 3. All necessary reports and copies of correspondence, including:
 - _____ a. Statement of Facts (when required);
 - _____ b. Inspection Reports;
 - _____ c. Summary of Violations (when required); and
 - _____ d. All supporting documents
- _____ 4. Penalty determination.
- _____ 5. All correspondence from the respondent concerning the violations.
- _____ 6. Sign off sheet.

CONFIDENTIAL

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**CHECKLIST FOR PREPARING PROPOSED
CIVIL ENFORCEMENT ACTIONS**

The package for referring civil enforcement actions to legal counsel should include:

- ___ 1. All inspection Reports;
- ___ 2. All Summaries of Violation (when required);
- ___ 3. All supporting documents;
- ___ 4. All correspondence and records of communications with the respondent concerning the inspection(s) and SOV(s) (when required); and
- ___ 5. Sign-off sheet.

CONFIDENTIAL

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**CHECKLIST FOR ISSUANCE OF
UNILATERAL ENFORCEMENT ORDER**

A. Issuance to Respondent. When an Administrative Enforcement Order is issued, the package of documents must be "served" by delivering it to the respondent personally or by certified U.S. mail. The package served on the respondent must include:

- ___ 1. A copy (not the original) of the Enforcement Order (Order).
- ___ 2. All exhibits referred to in the Order.
- ___ 3. Statement to Respondent.
- ___ 4. Government Code §§ 11507.5, 11507.6, and 11507.7 (attached to the Statement to Respondent).
- ___ 5. A copy (not the original) of the Proof of Service (completed by person who mails or delivers the documents).
- ___ 6. Notice of Defense forms (2 copies).
- ___ 7. Original Cover Letter. If there are multiple respondents, each respondent should have a separate original cover letter. If there is an agent for service, the agent gets the original and the owner/operator gets a copy.

B. Service.

The documents specified in section A above must be delivered to each respondent, or a duly appointed agent for the service of process, personally or by U.S. mail, certified and return receipt requested.

1. Personal service means to deliver the documents to the respondent personally, i.e., hand delivery, not by U.S. mail or a private express service. Personal service should be used only in special cases.
2. Service by certified mail means mailing the documents by the United States Post Office using certified mail. Private express services are not acceptable. A return receipt must be requested so that the Agency eventually receives back evidence that delivery has been made. Most cases will be served by certified mail.
3. The original certified mail receipt (as well as the return receipt when it is received) should be kept in the file of the office issuing the Order unless and until the attorney requests it for use at the hearing.

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4. If there is an agent for service of process, as there always is if the respondent is a

corporation, the agent must be served. You should also serve the named respondents when you serve the agent, i.e., the corporation as well as the agent, by listing the corporation as a "cc" on the cover letter and mailing it a complete copy.

C. Originals and Copies of Documents Served on Respondent.

When the action is issued, the original signed Order, together with the complete original set of documents served on the respondent should be retained in case they are required for an appeal. Copies of the Order are distributed as indicated on the copy list at the end of the cover letter (CUPA09).

D. Original and Copies of Inspection Report and Related Documents and Evidence.

The Inspection Report is the summary of the investigation. It is prepared for the use of the Agency's attorneys. It is confidential. The Inspection Report goes the attorney for the Agency. It may not be released to the Respondent, the Respondent's attorney, or anyone outside the Agency without consulting an attorney. The Inspection Report should be stamped confidential.

The office preparing the Inspection Report should retain the original together with the originals of all exhibits until a hearing is requested. If a hearing is requested, the Agency's assigned attorney will contact you concerning the originals for use in evidence.

E. Notice of Defense.

If the respondent sends the Notice of Defense to the office issuing the Order, notify the attorney immediately and mail the original to the attorney, keeping a copy in your file.

In the Matter of:

(Name)
(Address)
ID No. (_____)

Respondent.

Docket No. _____

ENFORCEMENT ORDER

Health and Safety Code
Section 25404.1.1

INTRODUCTION

1.1. Parties. The (name of agency) (Agency) issues this Enforcement Order (Order) to (name and individual or business status) (Respondent).

1.2. Site. Respondent (List business activities. Example: generates, handles, treats, stores, and/or disposes of hazardous waste) at the following site: (location) (Site).

1.3. [Alternative 1] Permit/Interim Status. The Unified Program Agency authorized Respondent to manage hazardous materials/waste through a Unified Program Facility Permit issued on (date).

[Alternative 2] Permit/Interim Status. The Respondent does not have a Unified Program Facility Permit, to manage hazardous materials/waste.

[Alternative 3] Generator. The Respondent (List business activities. Example: generates the following hazardous waste: identify waste).

1.4. Jurisdiction. Section 25404.1.1 of the Health and Safety Code (HSC) authorizes the Agency to order action necessary to correct violations and assess a penalty when the Agency determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.5. Exhibits. All exhibits attached to this Order are incorporated herein by this reference.

1.6. Applicable Statutes and Regulations. Copies of the statutes and regulations applicable to this Order are attached as Exhibit (___).

DETERMINATION OF VIOLATIONS

2. The Agency has determined:

2.1. The Respondent violated (cite the specific law, regulation, or requirement that was violated as it appears in the Violations section of the inspection report) in that on or about (transfer the language corresponding to the first violation found in the Violations section of the inspection report).

2.2. (Add a separate paragraph for each violation and number 2.2, 2.3, etc.)

SCHEDULE FOR COMPLIANCE

3. Based on the foregoing Determination Of Violations, IT IS HEREBY ORDERED THAT:

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3.1.1. (Within days of the effective date of this Order or Immediately) Respondent shall (specify the corrective action to be taken).

3.1.2. (Add a separate paragraph for each violation requiring corrective action and number 3.1.2, 3.1.3, etc.)

3.2. Submittals. All submittals from a Respondent pursuant to this Order shall be sent simultaneously to:

(insert name and address)

3.3. Communications. All approvals and decisions of the Agency made regarding submittals and notifications will be communicated to Respondent in writing by (title), or his/her designee. No informal advice, guidance, suggestions, or comments by the Agency regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

3.4. Agency Review and Approval. If the Agency determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the

environment, the Agency may:

- a. Modify the document as deemed necessary and approve the document as modified, or
- b. Return the document to Respondent with recommended changes and a date by which Respondent must

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submit to the Agency a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation: In the event that the Agency determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Agency may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

3.7. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from

liability for any conditions or claims arising as a result of past, current, or future operations of Respondent.

Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.8 Site Access: Access to the site shall be provided at all reasonable times to employees, contractors, and

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consultants of the Agency, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Agency and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times, purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Agency may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.9. Data and Document Availability. Respondent shall permit the Agency and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Agency and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the

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conclusion of all activities under this Order. If the Agency requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Agency, or permit the Agency to copy the documents prior to destruction. Respondent shall notify the Agency in writing at least six months prior to destroying any documents prepared pursuant to this Order.

3.10. Government Liabilities: The (name of agency) shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or

related parties in carrying out activities pursuant to this Order, nor shall the (name of agency) be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Agency approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Agency.

3.12. Extension Request: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

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3.13. Extension Approvals: If the Agency determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.1. Additional Enforcement Actions: By issuance of this Order, the Agency does not waive the right to take further enforcement actions.

4.2 Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to

costs, penalties, and/or punitive damages for any costs incurred by the Agency or other government agencies as a result of such failure, as provided by HSC section 25404.1.1 and other applicable provisions of law.

4.3. Parties Bound: This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

4.4. Time Periods. "Days" for purposes of this Order means calendar days.

(List name and addresses of persons to be notified.)

PENALTY

5. Based on the foregoing DETERMINATION OF VIOLATIONS, the Agency sets the amount of Respondent's penalty at \$(_____). Payment is due within 30 days from the effective

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date of the Order. Respondent's check shall be made payable to the (name of agency), and shall identify the Respondent and Docket Number, as shown in the heading of this case. Respondent shall deliver payment to:

(insert name & address)

RIGHT TO A HEARING

6. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent.

EFFECTIVE DATE

7. [Alternative 1: Personal service] This Order is final and effective fifteen days from the date it is served on Respondent, unless Respondent requests a hearing within the fifteen-day period.

[Alternative 2: Service by mail] This Order is final and effective twenty days from the date of mailing, which is the date of the cover letter transmitting the Order to Respondent, unless Respondent requests a hearing within the twenty-day period.

[Alternative 3: Immediately effective pursuant to HSC§25404.1.1] Paragraphs (insert paragraph numbers of Corrective actions from the Schedule of Compliance) of the Order are effective immediately on the date of issuance indicated below. The Agency finds that the violations associated with these paragraphs may pose an imminent and substantial endangerment to the public health or safety or the environment in

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that (insert facts supporting imminent and substantial endangerment). The remaining paragraphs of the Order are

effective [Alternative A: Personal service: fifteen days from the date this Order is served on Respondent, unless Respondent requests a hearing within the fifteen-day period.] [Alternative B: Service by mail: twenty days from the date of mailing, which is the date of the cover letter transmitting the Order to Respondent, unless Respondent requests a hearing within the twenty-day period.]

Date of Issuance _____.

(Name)

(Title)

(name of agency)

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INSTRUCTIONS FOR AEO 05

In the Matter of:

Insert the name of the company or facility as it is recorded with the Secretary of State's Office. This information can be obtained via the internet at <http://www.ss.ca.gov/business/business.htm>. If the facility is not incorporated, enter the owner's name and, if appropriate, "doing business as" together with the name under which the business operates.

The address entered in the heading should be the address of the facility or site. Note that this will often differ from the address to which the order will be mailed. (See instructions for service in AEO04, § B.)

Insert Facility's ID No.

Docket Number:

A docket number should be issued when the document is ready to issue or when a draft order is ready to send to the respondent.

1.1. Parties:

Insert name and individual or business status of each person and business concern subject to the enforcement action, i.e., owners, operators, and other violators. Respondents may be individuals or any type of business concern, e.g., partnerships, individuals doing business under fictitious names, California corporations, or out-of-state corporations. Choose the appropriate language for the status of each respondent:

- . X, an individual
- . X, an individual doing business as XYZ Plating
- . XYZ Plating, a business concern owned by (name of individual owner(s)), doing business as XYZ Plating
- . XYZ Corp., a California corporation
- . XYZ Corp., a (insert name of state of incorporation) corporation doing business in California
- . Note that there will sometimes be individuals, as well as corporations and other business concerns, as respondents. Each must be separately identified.

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1.2:

Insert:

- . appropriate description of activity at the Site.
- . address if sufficient to identify physical location or, if address is insufficient, describe location of facility.

1.3:

Choose alternative 1, 2, and/or 3 and insert:

- . whether the facility is operated pursuant to a permit, certificate, registration, or ISD, and its number, if applicable;
- . the date the document was issued; and
- . the waste or materials produced.
- . If the respondent is a generator as well as a hazardous waste facility, use alternative 1 or 2 together with 3.
- . Alternative 2 is intended for use when the respondent was engaged in illegal operation, i.e., managing hazardous waste without a permit.
- . If there are multiple respondents, this paragraph may have to be repeated for each respondent or modified.

1.5:

Delete this paragraph if no exhibits are attached.

1.6:

It is optional whether to include a copy of regulations and statutes that have been violated. In most cases the Respondent will have, or should have, copies of relevant statutes and regulations. However, in cases involving very small firms whose hazardous waste activities are minimal and incidental to their primary business activities, it may be helpful to include copies of the relevant statutes and regulations.

If copies of regulations and statutes will be forwarded to the Respondent, attach copies and fill in the exhibit number. If copies will not be sent, delete 1.6 in its entirety.

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2.1:

There should be a paragraph for each violation. Begin each paragraph with "The Respondent violated".

The inspection report should be written so that you can transfer the exact language corresponding to the first violation found in the Violations section of the inspection report. If there is no inspection report, identify the violations using the same format as required for the inspection report.

Information transferred directly from the inspection report should describe:

- . the section number of the law, regulation, or requirement violated;
- . A description of the specific facts supporting the violation; and
- . the dates on which the violation occurred (not necessarily the same as the date of the inspection).

Cite violations of statutes first, violations of regulations second, and violations of a permit, ISD, or variance last. Examples of the appropriate abbreviations showing the correct capitalization and punctuation are:

Health and Safety Code section 25201
HSC section 25201

title 22, California Code of Regulations,
section 66262.34(f)
22 CCR, section 66262.34(f)

title 40, Code of Federal Regulations, section 261.1
40 CFR section 261.1
Permit, section III.A.4.

2.2, etc.:

Paragraphs similar to 2.1 should be added for each separate violation and should be transferred directly from the inspection report.

3.:

No schedule for compliance is necessary if the violations have already been corrected; delete paragraphs 3.1 - 3.13 and instead insert: "The violations have been corrected." If a schedule for

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compliance is included, the following instructions apply to paragraphs 3.1 - 3.17.

3.1.1:

Choose effective date - immediately or within a specified time and insert the number of days from the effective day of the Order within which corrective action must be completed; and specify the corrective action to be taken.

3.1.2, etc.:

Add paragraphs specifying corrective action for each violation requiring corrective action.

5. Penalty:

Fill in the amount of the penalty and the addresses for delivery of payment and verification. Delete if there is no penalty.

EFFECTIVE DATE FOR CORRECTIVE ACTIONS:

Choose one of the alternatives for the effective date.

- Alternative 1 will apply to cases in which the respondent is served in person.
- Alternative 2 will apply to cases in which the respondent is served by mail.
- Alternative 3 will apply to imminent and substantial endangerment cases. It requires insertion of the specific numbers for the paragraphs that are effective immediately as well as facts supporting the imminent and substantial endangerment determination. It has two options, depending on how the Order is served.

Signature Block: Insert name and title of person who will sign the Order.

Note: See AEO 07 for a model cover letter to use with AEO05.

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SHOW CAUSE LETTER

(Name of UPA)
(Address of UPA)

In Reply Refer to:
(UPA Tracking Number)

(Respondent's name)
(Title)
(Address)

Re: Notification of Potential Filing of Administrative Enforcement Order

Dear Sirs:

On (Date), representatives of (name of UPA) conducted an inspection at (location), [EPA Identification Number if applicable (the "Facility")]. Based on information from the inspection, (name of UPA) is preparing to bring an administrative action against the owner of (name of business) to ensure compliance and assess penalties, pursuant to Section 25404.1.1 of the California Health and Safety Code. A copy of the inspection report is enclosed.

The administrative action being considered includes violations of the California Code of Regulations, (cite specific regulation, e.g., 22 C.C.R. § 66270.1). These regulations require the owner of (name of business), (List business activities. Example: as a generator of state-regulated hazardous waste, to comply with generator standards found in the Hazardous Waste Control Law (HWCL) and in Title 22, California Code of Regulations (CCR), Chapter 11.)

Before filing an Administrative Enforcement Order and Notice of Defense (hereinafter "Order") against the owner of (name of business), (name of UPA) is extending the opportunity to advise (name of UPA) of any other information that should be considered before filing an Order against the owner of (name of business). You may also take this opportunity to commence settlement discussions concerning the alleged violations at your business. If you wish to submit such information, please direct it to:

(Name of UPA staff issuing Order)
(Name of UPA)
(Address)

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It is our intention to file an Order against the owner of (name of business) within the next two weeks, unless you first advise us of substantial reasons not to proceed as planned. Any penalty proposed for violations of (List authority) will be calculated pursuant to (Cite the appropriate statutory penalty section)

Thank you for your prompt attention to this matter. If you have any questions, please feel free to contact (name of UPA staff) of my staff at (phone number), or have your counsel contact (name of counsel for UPA) at (phone number).

Sincerely,

(CUPA staff with signature
authority for AEOs)
(Title)
(Name of CUPA)

Enclosures

cc:
(District Attorney--if CUPA policy and agreement with DA
specify)

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IN THE MATTER OF: (Docket No.)

Dear _____:

Enclosed please find an Enforcement Order and related documents concerning violations of the California Health and Safety Code and the California Code of Regulations.

As indicated in the enclosures, you have a right to a hearing. A WRITTEN REQUEST FOR A HEARING MUST BE DELIVERED TO THE (name of agency) OR POSTMARKED WITHIN 20 DAYS OF THE DATE OF THIS LETTER OR YOU WILL WAIVE YOUR RIGHT TO A HEARING.

Whether or not you choose to request a hearing, you are encouraged to explore the possibility of settlement by contacting (name and address of contact person), at the address listed below, telephone number _____.

Sincerely,

(Name)

(Title)

Enclosure(s)

cc: (Copy to facility if letter is addressed to agent for service of process.)

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INSTRUCTIONS FOR AEO 07

Health and Safety Code section 25404.1.1(d) provides that a request for a hearing must be made within 15 days after service of the enforcement order. This period is extended for 5 days when the enforcement order is served on the respondent by mail. Therefore, the standard language of cover letter informs the respondent that he or she has 20 days from the date of the letter to deliver the request for a hearing or to have the letter postmarked.

NOTE: The date on the cover letter MUST be the date the cover letter and enforcement order are ACTUALLY MAILED. If the cover letter will not be postmarked until the following day, put the following day's date on the cover letter.

NOTE: In the rare case where the enforcement order is personally served on the respondent (handed to him or her), the request for a hearing must be filed within 15 days. The language of the cover letter should be changed accordingly.

Copies: Add or delete from the blind (bcc) copy list, as appropriate. Those receiving copies of the Enforcement Order generally need receive only the Order, not its attached exhibits and not any of the other documents served on the Respondent.

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STATEMENT TO RESPONDENT

In the Matter of: _____ Docket No. _____

Respondent: _____

An Enforcement Order (Order) is attached to this statement and is hereby served upon you. The Order has been filed by the [name of agency] (Agency).

You may choose:

- . to comply with the Order immediately,
- . to discuss the matter with the Agency at the Informal Conference scheduled below, or
- . to pursue a formal appeal.

COMPLIANCE

If you wish to comply with the Order, correct the violations and send to the person who issued the Order:

- . A signed Certification of Compliance, and
- . A check for the amount of the penalty made out to Agency as specified in the Order.

INFORMAL CONFERENCE

If you wish to discuss this matter with the Agency, an Informal Conference has been scheduled for:

Date: _____
Time: _____
Location: _____

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You may inform the Agency at the conference whether you wish to pursue a formal appeal or waive your right to a formal hearing, as explained below.

FORMAL APPEAL RIGHTS

YOU MUST FILE A WRITTEN REQUEST FOR A HEARING WITHIN TWENTY DAYS AFTER THE DATE OF THE COVER LETTER YOU RECEIVED WITH YOUR COPY OF THE ORDER IF YOU WISH TO APPEAL.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Agency within twenty days after the date of the cover letter you received with your copy of the Order, you will be deemed to have waived your right to a hearing in this matter. If you do not file a timely hearing request, the Enforcement Order becomes final automatically.

The request for a hearing may be made by delivering or mailing one copy of the enclosed form entitled "Notice of Defense" or by delivering or mailing a Notice of Defense as provided in section 11506 of the Government Code to the person who issued the Order at the address following his or her signature on the Order or by delivering the Notice of Defense to the person conducting the Informal Conference at the time and place specified above.

The enclosed Notice of Defense, if signed and filed with the Agency is deemed a specific denial of all parts of the Order, but you will not be permitted to raise any objection to the form of the Order unless you file a further Notice of Defense as provided in section 11506 of the Government Code within fifteen days after service of the Order.

If you file a Notice of Defense within the time permitted, a hearing on the allegations made in the Order will be conducted by the Office of Administrative Hearings of the Agency of General Services in accordance with the procedures specified in Health and Safety Code section 25404.1.1 and Government Code section 11507 et seq.

GENERAL INFORMATION

You may but are not required to be represented by counsel at any or all stages of these proceedings. The hearing may be postponed for good cause. If you have good cause, you must notify the Agency within ten working days after you discover the good cause. Failure to notify the Agency within ten days will

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deprive you of a postponement.

Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are attached. If you desire the names and addresses of witnesses or an opportunity to inspect and copy items in possession, custody, or control of the Agency, you may contact the person issuing the Order at the address indicated at the end of the Order.

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GOVERNMENT CODE

Section 11507.5. Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

Section 11507.6. Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions (or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

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For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

Section 11507.7. Motion to compel discovery

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

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(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

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INSTRUCTIONS FOR AEO 09

The Formal Appeal Rights section of the Statement to Respondent is worded on the basis of the typical case in which the Agency serves the enforcement order by mail. If the enforcement order is personally served on the respondent, the first sentence of the second paragraph must be changed to state:

"Unless a written request for a hearing signed by you or on your behalf is delivered to the Agency or postmarked within fifteen days after you received a copy of the Order, you will be deemed to have waived your right to a hearing in this matter."

NOTE: The Formal Appeal Rights section assumes that the date of the cover letter is the date the letter and Order are mailed. If the letter and Order are mailed on a different date, the references to the date of the cover letter must be changed to indicate the actual date of mailing.

[AEO 09 INS Form for internal use only. Do not distribute.]

NOTICE OF DEFENSE

[Heading: Name of Agency]

In the Matter of:

Docket No. _____

NOTICE OF DEFENSE

Health and Safety Code
Section 25404.1.1(d)

Respondent.

I, the undersigned Respondent, acknowledge receipt of a copy of the Enforcement Order, Statement to Respondent, Government Code sections 11507.5, 11507.6, and 11507.7, and two copies of a Notice of Defense.

I request a hearing to permit me to present my defense to the allegations contained in the Enforcement Order.

Dated: _____

(Signature of Respondent)

Please Type or Print the Name and Mailing Address of Respondent

(Name)

(Street Address)

(City) (State) (Zip)

(Telephone Number)

[AEO 10 Form for internal use only. Do not distribute]

PROOF OF SERVICE

1. I served the

a. /___/ Enforcement Order Docket No.

/___/ Statement to Respondent

/___/ 2 Blank Notice of Defense Forms

/___/ Other

(specify): _____

—

b. On Respondent

(Name): _____

—

c. By serving: /___/ Respondent

/___/ Other (Name and Title or relationship
to Respondent):

—

2. a. /___/ By personally delivering copies to (address)

—

at (time) _____ on (date)

_____.

b. /___/ By mailing copies by first-class certified mail,
Certified Mail Receipt No. _____, return

receipt requested, in a sealed envelope addressed to:

3. My name, business address, and telephone number are:

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on (date) _____ at (place) _____, California.

(Signature)

[AEO 11 Form for internal use only. Do not distribute]

CERTIFICATE OF COMPLIANCE

In the Matter of:

Docket No.

Respondent: _____

I certify under penalty of law that:

1. Respondent has corrected the violations specified in the above-entitled action.
2. I have personally examined any documentation attached to this certification to establish that the violations have been corrected.
3. Based on my examination of the attached documentation and inquiry of the individuals who prepared or obtained it, I believe that the information is true, accurate, and complete.
4. I am authorized to file this certification on behalf of the Respondent.
5. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

DATED: _____

Signed: _____

Printed or Typed

Name: _____

Title: _____

[AEO 12 Form for internal use only. Do not distribute.]

VIOLATION/FACT/EVIDENCE ANALYSIS SHEET

STATUTE, REGULATION, PERMIT OR ISD VIOLATED	ELEMENTS OF REQUIREMENT/ VIOLATION	FACTS ESTABLISHING VIOLATION	EVIDENCE (Proof of the Facts)	VIOLATION CLASSIFICATION

[AEO 13 Form for internal use only. Do not distribute]

NOTICE OF HEARING

[Heading: Name of Agency]

In the Matter of:

[1]

Respondent.

Docket No. ____ [2] _____

NOTICE OF HEARING

You are hereby notified that a hearing will be held before the Department of General Services at the Office of Administrative Hearings, ____ [3] ____, on the _____ day of _____, 20____, at the hour of _____.m., upon the allegations made in the Enforcement Order served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents, or other things by applying to the Office of Administrative Hearings, ____ [3] ____.

Dated _____ [4]

cc: Office of Administrative Hearings [3]
[5]

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INSTRUCTIONS – AEO 14

1. Name and address of Respondent as it appears on Enforcement Order.
2. Docket Number.
3. Address of OAH office at which the hearing will be held.¹
4. Name of attorney.
5. Name of supervisor and address of regional office responsible for the Order.

¹Hearings locations are:

San Diego for counties in the Fourth Appellate district:

San Diego and Imperial.

Oakland for counties in the First and Sixth Appellate districts:

San Francisco, Marin, Sonoma, Napa, Solano, Lake, Mendocino, Humboldt, Del Norte, Contra Costa, Alameda, San Mateo, Santa Clara, Santa Cruz, Monterey and San Benito.

Los Angeles for counties in the Second Appellate district:

San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Inyo, San Bernardino, Riverside, and Orange.

Sacramento for counties in the Third and Fifth Appellate districts:

Siskiyou, Modoc, Trinity, Shasta, Lassen, Tehama, Plumas, Colusa, Glenn, Butte, Sierra, Sutter, Yuba, Nevada, Yolo, Placer, Sacramento, El Dorado, San Joaquin, Amador, Calaveras, Alpine, Mono, Stanislaus, Tuolumne, Merced, Mariposa, Madera, Fresno, Kings, Tulare and Kern.

Hearings can be scheduled elsewhere by agreement of the parties or under other circumstances listed in Government Code section 11508(b).

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COVER LETTER TO ALJ

Administrative Law Judge in Charge
Office of Administrative Hearings
(address)

Dear Judge _____ :

Enclosed please find the following documents related to the above-entitled action:

- _____ Enforcement Order
- _____ Statement to Respondent
- _____ Notice of Defense (blank form)
- _____ Cover Letter to Respondent
- _____ Proof of Service
- _____ Notice of Defense Filed by Respondent
- _____ Notice of Hearing
- _____ Other: _____

I am the representative assigned to this case.

Sincerely,

(name)

[AEO 15 Form for internal use only. Do not distribute]

INSTRUCTIONS FOR AEO 15

1. Address of OAH.
2. Name and docket number of enforcement action.
3. Name of representative.

[AEO 15 INS Form for internal use only. Do not distribute]

STIPULATION TO EXTEND TIME

(Heading: Name of Agency)

In the Matter of:

[Name]

Respondent.

Docket No.

STIPULATION TO EXTEND TIME

The [Name of Agency] and Respondent hereby agree to waive the 90-day period within which Health and Safety Code section 25404.1.1(e) (1) requires a hearing to be conducted. [Optional: The parties also agree to toll the 30-day period to request discovery pursuant to Government Code section 11507.6.]

This agreement may be canceled by either party upon written notice to the other party.

Dated: _____

[Agency]

[name]

Representative for [Name of

Dated: _____

[name]

Representative for Respondent

[AEO 16 Form for internal use only. Do not distribute]

NOTICE OF DISMISSAL

[Heading: Name of Agency]

In the Matter of:

(Name)
(Address)

Respondent.

Docket No. _____

NOTICE OF DISMISSAL

The [Name of Agency] hereby dismisses without prejudice the Enforcement Order issued on (Date).

DATED: _____.

(Name)
(Title)
(Agency)

[AEO 17 Form for internal use only. Do not distribute]

NOTICE OF FINAL ORDER

[Heading: Name of Agency]

In the Matter of:

[Name]
[Address]

ID No. _____

Respondent.

Docket No. _____

NOTICE OF FINAL ORDER

TO _____ (RESPONDENT) :

PLEASE TAKE NOTICE that pursuant to Health and Safety Code section 25404.1.1 and Government Code section 11505(c), the Enforcement Order issued by the [Name of Agency] on [date] and served upon you has become final. A true and correct copy of the Enforcement Order is attached to this Notice of Final Order. By the terms of the Order, payment of the penalty of \$_____ must be mailed or delivered by [date].

Dated: _____

[Name]

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REQUEST FOR DISCOVERY

[Heading: Name of Agency]

In the Matter of:

[Name]

[Address]

ID No. [_____]

Respondent.

Docket No. _____

REQUEST FOR DISCOVERY

Government Code

Section 11507.6

TO: [Name of Respondent]

Pursuant to Government Code section 11507.6, the [Name of Agency] (Agency) requests the following: (1) the names and addresses of all witnesses to the extent known to respondent, including, but not limited to, those intended to be called to testify at the hearing, and (2) an opportunity for the Agency to inspect and make a copy of the following in the possession or custody or under the control of the respondent:

(a) All writings that respondent proposes to offer in evidence and all other writings that are relevant and that would be admissible in evidence.

(b) A statement of any person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to such person is the basis for the administrative proceeding;

(c) A statement pertaining to the subject matter of the

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proceeding made by any party to another party or persons;

(d) Statements of witnesses proposed to be called by the respondent and of other persons having knowledge of the acts, omissions, or events that are the basis for the proceeding, not included in (b) or (c) above; and

(e) Investigative reports made by or on behalf of respondent pertaining to the subject matter of the proceeding, to the extent that such reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions, or events that are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this Request for Discovery, "statements" include written statements by the person, signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of such oral statements. You are hereby further notified that nothing in this Request for Discovery should be deemed to authorize the

inspection or copying of any writing or thing that is privileged from disclosure by law or otherwise made confidential or protected as attorney's work product.

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Your response to this Request for Discovery should be made to the undersigned attorney for the Agency by directing such response to: [Name and address of attorney].

Failure without substantial justification to comply with this Request for Discovery may subject the respondent to sanctions by the Superior Court pursuant to Government Code section 11455.20.

Dated: _____

[Name of Attorney]

Attorney for the Agency

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CONSENT ORDER

Heading: Name of Agency]

In the Matter of:

(Name)
(Address)
[ID Number]

Respondent.

Docket No. _____

CONSENT ORDER

Health and Safety Code
Section 25404.1.1

The [Name of Agency] (Agency) and _____ [1]

(Respondent) enter into this Consent Order and agree as follows:

1. Respondent (List business activities. Example:
generates, handles, treats, stores, and/or disposes of)

hazardous waste at (location) (Site).

2. The Agency inspected the Site on (dates).

3. The Agency alleges the following violations:

[2].

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of
litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety
Code (HSC) section 25404.1.1.

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7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Agency from taking appropriate enforcement action concerning other violations.

9. [3: Admissions]

SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:

10.1. [4]

10.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

[5]

10.3. Communications: All approvals and decisions of the Agency made regarding such submittals and notifications shall be communicated to Respondent in writing by (add name of appropriate supervisor or manager) or his/her designee. No informal advice, guidance, suggestions, or comments by the Agency regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent

of its obligation to obtain such formal approvals as may be required.

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10.4. Agency Review and Approval: If the Agency determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Agency may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Agency a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation: In the event that the Agency determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Agency may order Respondent to stop further implementation for such period of

time as needed to abate the endangerment. Any deadline in this Consent Order

directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

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10.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Agency, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Agency and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts

relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Agency may deem necessary. Respondent shall permit

such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent

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Order.

10.9. Sampling, Data, and Document Availability:

Respondent shall permit the Agency and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Agency and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Agency requests that some or all of these documents be

preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Agency, or permit the Agency to copy the documents prior to destruction. Respondent shall notify the Agency in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.10. Government Liabilities: The [Name of Agency] shall not be liable for injuries or damages to persons or

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property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the [Name of Agency] be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Agency approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Agency.

10.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.13. Extension Approvals: If the Agency determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

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PAYMENTS

11. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Agency a total of \$(_____), of which \$_____ is a penalty and \$_____ is reimbursement of the Agency's costs. Respondent's check shall be made payable to [Name of payee], and shall be delivered together with the attached Payment Voucher to:

[6]

A photocopy of the check shall be sent to:

[7]

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to HSC §25360.1 and to pay all costs incurred by the Agency in pursuing collection including attorney's fees.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Agency does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to

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civil penalties and/or punitive damages for any costs incurred by the Agency or other government agencies as a result of such failure, as provided by HSC section 25404.1.1 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Agency and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Agency.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

[8] 12.7. Notice of Disposal: Respondent shall, by certified mail, return receipt requested, notify the following persons of the violation alleged in paragraph [9] above:

[10]

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Notices under this paragraph are subject to paragraph 10.2.

Dated: _____

Signature of Respondent's

Representative

Dated: _____

Typed or Printed Name and Title

of

Respondent's Representative

Dated: _____

[11]

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INSTRUCTIONS FOR AEO 20

In the Matter of:

Insert the name of the company or facility as it is recorded with the Secretary of State's Office. This information can be obtained at [Http:www.ss.ca.gov/business/business.htm](http://www.ss.ca.gov/business/business.htm) or by sending a stamped, self-addressed envelope and Mail-In-Request form to the Secretary of State, Corporate Filing Division. If the facility is not incorporated, enter the owner's name and, if appropriate, "doing business as" together with the name under which the business operates.

The address entered in the heading should be the address of the facility or site. Note that this will often differ from the address to which the order will be mailed. (See instructions for service in AEO04, § B.)

Insert Facility's ID No.

Docket Number:

A docket number should be issued when the document is ready to issue or when a draft order is ready to send to the respondent.

1. Respondent:

Insert name and individual or business status of each person and business concern subject to the enforcement action, i.e., owners, operators, and other violators. Respondents may be individuals or any type of business concern, e.g., partnerships, individuals doing business under fictitious names, California corporations, or out-of-state corporations. Choose the appropriate language for the status of each respondent:

- . X, an individual
- . X, an individual doing business as XYZ Plating
- . XYZ Plating, a business concern owned by (name of individual owner(s)), doing business as XYZ Plating
- . XYZ Corp., a California corporation

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- . XYZ Corp., a (insert name of state of incorporation) corporation doing business in California
- . Note that there will sometimes be individuals, as well as corporations and other business concerns, as respondents. Each must be separately identified.

2. Violations:

Alleged violations as in an enforcement order. There should be a paragraph for each violation. Begin each paragraph with "The Respondent violated". The inspection report should be written so that you can transfer the exact language corresponding to the first violation found in the Violations section of the inspection report. If there is no inspection report, identify the violations using the same format as required for the inspection report.

Information transferred directly from the inspection report should describe:

- . the section number of the law, regulation, or requirement violated;
- . a description of the specific facts supporting the violation; and
- . the dates on which the violation occurred (not necessarily the same as the date of the inspection).

Generally, the most serious violations should be cited first, violations of statutes second, violations of regulations third, and violations of a permit, or variance last. The appropriate abbreviations showing the correct capitalization and punctuation are:

Health and Safety Code section 25201
HSC section 25201

title 22, California Code of Regulations,
section 66262.34(f)
22 CCR, section 66262.34(f)

title 40, Code of Federal Regulations, section 261.1
40 CFR section 261.1

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Permit, section III.A.4.

3. Admissions:

Admissions may or may not be required in a particular case. Possible alternatives follow. If Alternative 2 or 3 applies to some, but not all, of the violations, edit the wording to specify which violations are admitted.

Alternative 1: [No admissions required. Omit paragraph.]

Alternative 2: [Allegations Fully Admitted] Respondent admits the violations described above.

Alternative 3: [Limited Admission] Respondent does not admit the violations alleged above, except as follows: Respondent admits the facts alleged above for the purposes of any subsequent action brought pursuant to the California Health and Safety Code Chapter 6.11 section 25404 et seq., within 5 years of the date the violations occurred.

4. Add separate paragraph for each corrective action to which the parties agree, including the time for completion, and number 10.1.1, 10.1.2, etc. If the violations have already been corrected, no schedule for compliance is necessary; delete all of paragraph 10 and instead insert: "The violations have been corrected."
5. List those who should receive any submittals called for by the Order. If there are violations of closure, groundwater monitoring, or other requirements that might lead to groundwater being affected, include Regional Water Quality Control Board.
6. Address for delivery of payment.
7. Name and address of inspector.
8. Include this paragraph if the Respondent has violated HSC §§ 25189(c) or (d) or 25189.2(c), and if there are persons who should be informed that an illegal disposal took place such as the property owner, the lessee, a neighbor whose property might also be affected, or other government agencies.

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9. Insert the number of the appropriate subsection of paragraph 3 alleging disposal.
10. List names and addresses of persons to be notified.
11. Name title, and name and address of agency.

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STIPULATION AND ORDER

[Heading: Name of Agency]

In the Matter of:

 [1]

Respondent.

Docket No. [2]

STIPULATION AND ORDER

Health and Safety Code
Section 25404.1.1

The [Name of Agency] (Agency) and [3]
(Respondent) enter into this Stipulation and Order (Order) and
agree as follows:

1. A dispute exists regarding the Enforcement Order
issued by the Agency on [4] . (Attached as Exhibit 1.)

2. The parties wish to avoid the expense of further
litigation and to ensure prompt action to achieve the Schedule
for Compliance below.

3. Jurisdiction exists pursuant to Health and Safety
Code (HSC) section 25404.1.1.

4. Respondent waives any right to a hearing in this
matter.

5. This Order shall constitute full settlement of the
violations alleged in the Enforcement Order, but does not limit
the Agency from taking appropriate enforcement action concerning
other violations.

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6. [5: Admissions]

SCHEDULE FOR COMPLIANCE

7. Respondent shall comply with the following:

7.1. [6]

7.2. Submittals: All submittals from Respondent pursuant to this Order shall be sent simultaneously to:

[7]

7.3. Communications: All approvals and decisions of the Agency made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Agency regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

7.4. Agency Review and Approval: If the Agency determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Agency may:

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a. Modify the document as deemed necessary and approve the document as modified; or

b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Agency a revised document incorporating the recommended changes.

7.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

7.6. Endangerment during Implementation: In the event that the Agency determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Agency may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

7.7. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from

liability for any conditions or claims arising as a result of past, current, or future operations of Respondent,

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except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

7.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Agency, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Agency and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Agency may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

7.9. Sampling, Data, and Document Availability:

Respondent shall permit the Agency and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on

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Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Agency and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Agency requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Agency, or permit the Agency to copy the documents prior to destruction. Respondent shall notify the Agency in writing at least six months prior to destroying any documents prepared pursuant to this Order.

7.10. Government Liabilities: The [Agency] shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related

parties specified in paragraph 7.16 in carrying out activities pursuant to this Order, nor shall the [Agency] be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

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7.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Agency approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Agency.

7.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

7.13. Extension Approvals: If the Agency determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

8. Within 30 days of the effective date of this Order, Respondent shall pay the Agency a total of \$(_____), of which \$_____ is a penalty and \$_____ is reimbursement of the Agency's costs. Respondent's check shall be made payable to Agency, and shall be delivered together with the attached Payment Voucher to:

[8]

A photocopy of the check shall be sent:

To:

[9]

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If Respondent fails to make payment as provided above,
Respondent
agrees to pay interest at the rate established pursuant to
HSC § 25360.1 and to pay all costs incurred by the Agency in
pursuing collection including attorney's fees.

OTHER PROVISIONS

9.1. Additional Enforcement Actions: By agreeing to
this Order, the Agency does not waive the right to take further
enforcement actions, except to the extent provided in this
Order.

9.2. Penalties for Noncompliance: Failure to comply
with the terms of this Order may subject Respondent to civil
penalties and/or punitive damages for any costs incurred by the
Agency or other government agencies as a result of such failure,
as provided by HSC section 25404.1.1 and other applicable
provisions of law.

9.3 Parties Bound: This Order shall apply to and be
binding upon Respondent and its officers, directors, agents,
receivers, trustees, employees, contractors, consultants,
successors, and assignees, including but not limited to
individuals, partners, and subsidiary and parent corporations,
and upon the Agency and any successor agency that may have
responsibility for and jurisdiction over the subject matter of
this Order.

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9.4. Effective Date: The effective date of this Order is the date it is signed by the Agency.

9.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: _____

Signature of Respondent's
Representative

Dated: _____

Typed or Printed Name and Title
of Respondent's Representative

Dated: _____

[13]

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INSTRUCTIONS FOR AEO 21

AEO21 is appropriate to use when the case has been settled prior to expiration of the time period to request a hearing, i.e. when the Agency has issued an enforcement order, but has not filed the order with the Office of Administrative Hearings (OAH). This would be the situation only during this interim period. If an agreement is reached during this period, the Stipulation and Order can serve as both the stipulation between the parties and the Agency's final order. There is no requirement to file any document with OAH in this situation.

If there is neither a settlement agreement nor a request for a hearing within this time period, the order becomes final.

If a Notice of Defense is filed in time, the action must be filed with OAH (unless a local hearing officer was selected) and a settlement agreement would have to be formalized through OAH. AEO21 could be used for this situation with minor modifications.

1. Name and address of Respondent as it appears on Enforcement Order.
2. Docket Number.
3. Name of Respondent.
4. Date of Enforcement Order.
5. Admissions may or may not be appropriate in a particular case. Possible alternatives follow. If Alternative 2 or 3 applies to some, but not all, of the violations, edit the wording to specify which violations are admitted.

Alternative 1: [No admissions required. Omit paragraph.]

Alternative 2: [Allegations Fully Admitted] Respondent admits the allegations made in the Enforcement Order.

Alternative 3: [Limited Admission] Respondent does not admit the allegations made in the Enforcement Order, except as follows: Respondent admits the facts alleged in the Enforcement Order for the purposes of any subsequent action brought pursuant to Health and Safety Code section 25404.1.1 et seq., within 5 years of the date the violations alleged in the Enforcement Order occurred.

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6. Add separate paragraph for each corrective action to which the parties agree, including

the time for completion, and number 7.1.1, 7.1.2, etc. If the violations have been corrected, no schedule for compliance is necessary; delete all of paragraph 7 and instead insert: "The violations have been corrected."

7. List those who should receive any submittals called for by the Order. If there are violations of closure, groundwater monitoring, or other requirements that might lead to groundwater being affected, include the regional board.
8. Address for delivery of payment.
9. Name and address of inspector.
10. Include this paragraph if the Respondent has violated HSC § 25189.2(c), and if there are persons who should be informed that an illegal disposal took place such as the property owner, the lessee, a neighbor whose property might also be affected, or other government agencies. If Respondent has not violated HSC § 25189.2(c), delete this paragraph.
11. Insert number of paragraph in the Enforcement Order alleging disposal.
12. List names and addresses of persons to be notified.
13. Name and title of person who will sign for Agency and name of agency.

Related forms: Note that it is not necessary to send the respondent copies of the Statement to Respondent, Government Code sections, Proof of Service, or Notice of Defense when you send respondent a Stipulation and Order since respondent is agreeing not to contest the order.

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