

Unified Program Enforcement Plan

Part 2 - Unified Program Inspection and Enforcement Plan
(Health and Safety Code section 25404.2. (a) (3))

Amador County Environmental Health Department
[Revised 2015]

Developed by the Hazardous Materials Advisory Committee and Unified Program staff, the enforcement program provides a graduated enforcement policy to allow for easy return to compliance for minor violations. Significant violations are evaluated through a standardized matrix to insure consistent even handed enforcement.

Enforcement Plan	1
I. Statutory Authority	3
II. General Information	3
A. Timeliness	
B. Documentation	
C. Roles and Responsibilities	
III. Guidelines for Case Referral to Outside Agencies	4
IV. Definitions	5
V. Administrative Enforcement Order Process	8
VI. Administrative Enforcement Order Options	8
A. Show Cause Letter	
B. Consent Order	
C. Unilateral Order	
D. Cease and Desist Order	
E. Settlement Discussions / Settlement Agreement	
VII. Failure to Return to Compliance Notifications	11
VIII. Re-inspections	11
IX. Revocation, Modification or Suspension of Permit	12
X. Cease and Desist Orders	12
XI. Red Tag Procedures (Underground Storage Tank)	12
XII. Administrative Hearing Process	13
XIII. Decision and Order	14
XVI. Administrative Penalties	14
A. General Policy	
B. Steps in Determining Penalties	
C. Initial Penalties	
XV. Enforcement Revenue Offset Program	20
Appendix A - Administrative Enforcement Order Flow Chart	21
Appendix B - Permit Conditions and File Review Checklist	22
Appendix C - Procedure for use of Office of Administrative Hearings	24

Enforcement

I. Statutory Authority

Pursuant to H&SC §25404.1.1, if the ACEHD determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that the ACEHD is authorized to enforce or implement, the ACEHD may issue an Administrative Enforcement Order under Amador County Code Section 7.25 requiring that the violation be corrected and imposing an administrative penalty. This authority can be used to address violations of the following requirements:

- Hazardous Waste and Tiered Permitting Program: H&SC §25100 *et seq.*
- Underground Storage Tank Program: H&SC §25280 *et seq.* Not including violations of corrective action requirements established by or issued pursuant to §25296.10.
- Aboveground Petroleum Storage Program: H&SC §25270 *et seq.*
- Hazardous Materials Business Plans: H&SC §25500 *et seq.*
- California Accidental Release Prevention Program: H&SC §25531 *et seq.*

II. General Information

It is the policy of the ACEHD to achieve compliance with applicable environmental laws and regulations through educational outreach efforts, an inspection program, and, if necessary, the initiation of appropriate enforcement action(s). The goal of any enforcement action is to obtain compliance in a timely manner; eliminate economic benefit realized by noncompliance; punish violators and deter future noncompliance.

A. Timeliness. In order to achieve the maximum effectiveness from a specific enforcement action, timeliness is essential. Violations are measured from the date of the inspection or incident when the violation(s) were first detected. If an Administrative Enforcement Order (AEO) is the selected enforcement option, then the goal of the ACEHD is to issue a Final Order within 180 calendar days of the inspection or incident. If the case is to be referred to an outside enforcement agency such as the Amador County District Attorney's Office, then the goal is to make that referral within 60 calendar days of the date of inspection or incident.

B. Documentation. Proper documentation forms the basis for any contemplated enforcement action including:

1. Issuing adequate and proper notices describing the violations.
2. Use of photographs depicting the violations.
3. Clearly and completely documenting interviews with witnesses.
4. Sampling or otherwise preserving physical evidence.
5. Maintaining an accurate chronology of events.

C. Confidential Document Handling and Retention. Confidential documents will be stored in a separate locked file cabinet in the Environmental Health Department Office under the control of the Environmental Health Department Administrative Technician. After resolution, confidential documents would be subject to the Environmental Health Department handling and retention policy.

D. Roles and Responsibilities - ACEHD staff will conduct periodic inspections of regulated businesses/facilities and respond to complaints of alleged violations of environmental laws and/or regulations. ACEHD Environmental Health Specialists (EHS) will prepare inspection reports, initial warnings, and notices of violation when reasonable cause exists to believe a violation has occurred. The EHS shall issue a written warning (Opportunity to Correct Letter) for minor violations (minor deviation) giving a suspected violator a reasonable time but not less than ten days to eliminate the violation, within which time the alleged violator may meet and confer with ACEHD. The warning shall expressly state the state law or code section of which has been violated, the specific actions, which must be completed to eliminate the violation; and the actions that Amador County may take any action against the violator unless such violation is eliminated within a certain time, or a schedule for compliance established.

The warning letter will include the name and phone number of the EHS from whom information may be obtained. The warning may be served on a violator by certified mail (return receipt requested), first class mail, or personal service. If the violator maintains that the violation has been eliminated, the ACEHD shall determine whether the violation has been eliminated. In the event of noncompliance with the first warning, ACEHD will issue an additional warning (Notice of Violation) to the violator. In the event of continued noncompliance, a formal enforcement action will be initiated utilizing, where possible, Administrative Enforcement Orders.

The Director shall review and approve the implementation of the Administrative Enforcement Order process, including all "Show Cause Letters, Consent Orders, Unilateral Orders, Cease and Desist Orders, Decision and Orders, and Permit Revocation Actions". No warning need be given and immediate action can be taken by the Director when there is reasonable cause to believe that the violation constitutes an immediate threat to the health and safety of any person including that of the alleged violator or to any real property.

III. Guidelines for Case Referral to Outside Agencies

To the greatest extent possible, ACEHD will utilize the Administrative Enforcement Order (AEO) process to achieve compliance with applicable laws and regulations. However, cases will occur where action by outside agencies such as the Amador County District Attorney's office or the State Attorney General is appropriate. The following are examples of case situations that may warrant referral to an outside agency for possible enforcement action:

1. Criminal prosecution is warranted.

2. Multiple locations (facilities) are involved that may suggest an industry or company wide pattern of non-compliance.
3. The case requires additional investigation that is beyond the capability of ACEHD

The Director will evaluate each case regarding the factors listed above and, if referral to an outside agency for enforcement is appropriate, the Board of Supervisors shall approve any referral to the outside enforcement agency selected.

IV. Definitions

1. Formal Enforcement. Formal enforcement is an action that mandates compliance and initiates a civil, criminal, or administrative process that results in an enforceable agreement or Order. Enforceable means the instrument creates an independent, affirmative obligation to comply and imposes sanctions for the prior failure to comply. Sanctions include fines and penalties as well as other tangible obligations, beyond returning to compliance, that are imposed upon the regulated business [Title 27 CCR §15110].

2. Administrative Enforcement. Administrative enforcement allows the ACEHD to pursue action independent of an outside prosecutorial agency. ACEHD determines the appropriate penalty based on the circumstances of the violation and the violator, and statutory or regulatory penalty criteria. The ACEHD may set the penalty and the time frame for the violator's return to compliance. If the alleged violator chooses to contest the case, ACEHD will schedule a hearing at which there is the opportunity to refute the allegations and present any mitigating factors that may affect the penalty.

3. Informal Enforcement – Informal enforcement is verbal and written notification of minor violations with direction for the correction of the violation. Written notice for minor violations (minor deviation) will provide a reasonable time but not less than ten days to eliminate the violation, within which time the alleged violator may meet and confer with ACEHD. The warning shall expressly state the state law or code section of which has been violated and the specific actions, which must be completed to eliminate the violation.

4. Administrative Enforcement Order. This includes any of the order variations including the Consent Order, Unilateral Order, Cease and Desist Order, and Decision and Order.

5. Respondent. A respondent is the person, business, or facility that is the alleged violator.

6. Supplemental Environmental Project (SEP) means an environmentally beneficial project or projects that a business agrees to undertake in settlement of an enforcement action, but which the business is not otherwise legally required to perform.

7. Final Order means, for purposes of this guidance, an AEO that has been formally issued, with (Consent) or without the consent (Unilateral) of the respondent and has become final.

8. Violations Hazardous Waste, Aboveground Petroleum Storage, Business Plan, and Accidental Release Programs

Class I Violation (significant deviation) - A deviation from the requirements of the Health and Safety Code (H&SC) or any regulation, standard, requirement, or permit condition adopted pursuant to the H&SC, that represents a significant threat to human health or safety or the environment because of the volume of the hazardous waste or material, the relative hazard of the hazardous waste or material or the proximity of the population at risk.

A deviation that could result in a failure to ensure that hazardous waste is destined for, and delivered to, an authorized hazardous waste facility (failure to manifest hazardous waste, use of an unregistered hazardous waste transporter and treatment, storage, or disposal at an unauthorized point.)

A deviation that could result in a failure to prevent releases of hazardous waste or material to the environment during the active or post closure period of facility (waste stored or transported in incompatible, damaged or deteriorated containers or incompatible waste or material stored together).

A deviation that could result in a failure to ensure early detection of releases of hazardous waste or material; to ensure adequate financial resources in the case of release of hazardous waste or material or to pay for facility closure. A deviation that could result in a failure to perform emergency cleanup operations of, or other corrective actions for hazardous waste or material releases.

Class II Violation (moderate deviation) - A deviation from the requirements of the Health and Safety Code (H&SC) or any regulation, standard, requirement, or permit condition adopted pursuant to the H&SC, that is not a Class I violation (example, minor violation that has been repeatedly noted and documented on previous inspections).

Minor Violation. (minor deviation) - A failure 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 ACEHD is authorized to implement or enforce pursuant to H&SC Chapter 6.11, §25404(a) (3), and does not otherwise include any of the following:

- a. A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.
- b. A knowing willful or intentional violation.
- c. A violation that is a chronic violation, or is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, ACEHD 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 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 Chapter 6.5 of the H&SC §25117.6.

g. A Class II violation committed by a chronic or a recalcitrant violator, as provided in Chapter 6.5 of the H&SC §25110.8.

h. A violation that hinders the ability of ACEHD to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

Significant Non-Complier - A Significant Non-Complier (SNC) is a business that has caused actual exposure or substantial likelihood of exposure to hazardous waste or hazardous materials; is a chronic (regularly found to have many Class I or Class II violations) or recalcitrant (intentionally refuses to comply with the regulatory requirements) violator; or deviates from the terms of a permit, order, settlement or decree by not meeting the requirements in a timely manner and/or by failing to perform work as required by terms of permits, orders, settlement agreements, or decrees; or substantially deviates from statutory or regulatory requirements.

Examples of potential SNC include, but are not limited to: failure to comply with an enforcement order; having previous Class I violation(s) (within three years), repeating the same Class II violation within three years, operating a facility without a permit or other grant of authorization, disposal of hazardous waste at a non-authorized site, systemic failure to follow container/tank labeling requirements, failure to manage ignitable, reactive, or incompatible wastes as required by Title 22, CCR, §66264 and §66265.17(b) (1), (2), (3), (4), and (5), and systemic use of containers that are in poor condition.

9. Violations – Underground Storage Tank Program

Significant Violation (Class I Violation) - The failure of a person to comply with any requirement of H&SC, Chapter 6.7 or any regulation adopted pursuant to Chapter 6.7, not including the corrective action requirements in H&SC, §25296.10 and 23 CCR, Article 11, Chapter 16, that is a violation causing, or threatens to cause a liquid release of petroleum from an underground storage tank system.

The failure of any required overfill prevention system, where the failure is causing or threatens to cause a release; or the failure of a required spill containment structure, where the failure is causing or threatens to cause a release to the environment due to a spill or overfill.

Allowing a condition that impairs the ability of an underground storage tank system to detect a liquid leak or contain a liquid release of petroleum in the manner required by

law. The tampering with leak detection equipment so that the equipment is no longer capable of detecting a leak at the earliest possible opportunity.

Chronic Violation (Class II Violation) - A violation that is committed by a recalcitrant violator where there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to any requirement of Chapter 6.7 of the H&SC or of any regulation adopted pursuant to Chapter 6.7, not including the corrective action requirements in §25296.10 of the H&SC and 23 CCR, Article 11, Chapter 16.

Imminent and Substantial Threat to Human Health or Safety or the Environment - A condition that requires an immediate action to prevent, reduce or mitigate the actual or potential damages to human health or safety or the environment.

V. Administrative Enforcement Order

ACEHD is authorized by Chapter 6.11 of the H&SC §25404.1.1 to issue an Administrative Enforcement Order (AEO) if it has determined that a respondent has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that ACEHD is authorized to enforce or implement pursuant to Chapter 6.11, Division 20 of the H&SC and to impose administrative penalties.

The goal of the AEO is, among other things, to return a facility to compliance in a timely manner; eliminate economic benefit realized by the noncompliant facility, and create deterrence against future noncompliance. ACEHD will encourage the respondent to enter into settlement discussions to expedite achieving the enforcement goal using the administrative order process. Settlement discussions can occur at any time, prior to issuance of a Final Order, after issuance of a Final Order and during the period before and after the appeal is heard by the Hearing Authority. The Director will determine the appropriate AEO option to be utilized. H&SC §25187 provides multiple options for initiating, settling, and issuing administrative orders depending on the circumstances of each case.

VI. Administrative Enforcement Order Alternatives

A. Show Cause Letter

The violations do not pose a significant or imminent and substantial threat to public health or the environment and have not resulted in a significant release to the environment. The respondent may be a repeat violator, have a history of noncompliance, or have been recalcitrant or uncooperative. Statutory time frames for filing a notice have not started and a deadline for compliance has not been established.

A “Show Cause” letter may be issued to a respondent, notifying it that ACEHD is planning to take an AEO action and encouraging the business to discuss settlement. The Show Cause letter is a public document and is not enforcement confidential. It does not constitute a formal enforcement action but establishes ACEHD’s intent to pursue formal

enforcement and encourages a consensual resolution. The goal of this process is to enter into settlement discussions between the respondent and ACEHD and reach agreement on compliance, timeliness, and penalties; and formalize the agreement in a Final Order.

B. Consent Order

The violations are not serious, are simple and easily understood, the compliance issues are straightforward, and a compliance schedule is required. The respondent may be a recalcitrant or repeat offender and the anticipated penalties are relatively small and prompt settlement is expected.

Under this alternative, ACEHD may issue a Consent Order to the respondent and request, in a cover letter, concurrence, and signature to finalize the Order. This alternative provides a means of resolution on simple cases, where the respondent is not likely to contest the Order. The Consent Order alternative should be used for less serious, simple, and easily understood violations and when the compliance issues are straightforward. The Consent Order is appropriate when the respondent is a recalcitrant / repeat violator, the penalties are relatively small, a compliance schedule is required, and a prompt settlement is anticipated. Consent Orders with total assessed penalty(s) greater than five thousand dollars \$5,000.00 require approval by the Board of Supervisors.

C. Unilateral Order (Unilateral Orders are not final until the “Hearing Period” has passed.)

This alternative provides a means of resolution where the respondent is a repeat violator or has a history of noncompliance and agreement on a Consent Order can not be achieved; the violations pose a significant or imminent and substantial threat to public health or the environment; or have resulted in a significant release to the environment. The Unilateral Order, depending on the circumstances of the violation, may not allow for consideration of the respondent’s response prior to formal public action. Unilateral Orders are not final until the “Hearing Period” has passed.

ACEHD will issue a Unilateral Order to a respondent, without prior discussion or negotiation or if a satisfactory settlement cannot be achieved. The Show Cause alternative anticipates the possibility of the issuance of a Unilateral Order as an outcome if a settlement cannot be reached.

The Unilateral Order alternative is appropriate when the respondent is a repeat violator, has a history of being uncooperative, noncompliance, or recalcitrant. The Unilateral Order should also be used when the violations pose a significant or imminent and substantial threat to public health or the environment; or have resulted in a significant release to the environment. The Unilateral Order can be a necessary escalation when settlement is not achieved with the Show Cause alternative.

When preparing a Unilateral Order, all of the following documents must be included in the package served on the respondent:

- (1) A copy of the signed Order.

- (2) All exhibits or attachments referred to in the Order.
- (3) Statement to the respondent.
- (4) A copy of proof of service.
- (5) Cover letter to respondent.
- (6) Two copies of Notice of Defense (NOD) form.

An Order shall be served in person or by “proof of service” certified mail. If a Notice of Defense (NOD) is not received within 15 calendar days of service of the Order, the Order becomes final. A proof of service form must be completed and included in the package. Pursuant to H&SC, §25404.1.1(d) – A notice of defense shall be deemed filed within that 15-day period if it is post-marked within that 15-day period.

A Unilateral Order may be amended in two situations:

- 1) When the respondent files a request for amendment that is agreed to by ACEHD, ACEHD will make the appropriate amendments to the Order and send a copy to the respondent. This action does not constitute a new Order and does not create new appeal rights.
- 2) When ACEHD determines that a correction to the order is necessary. The issuance of an amended Unilateral Order in this situation requires the re-issuance of the complete service package and may create new appeal rights.

If ACEHD decides to withdraw a Unilateral Order, a Notice of Dismissal must be completed with a letter, with return receipt requested, officially notifying the respondent that the Order is being withdrawn.

D. Settlement Discussions

Settlement discussions between ACEHD and the respondent can occur at any time in the process. Statutory time frames for requesting a hearing may be stayed by agreement between the respondent and ACEHD during the course of settlement discussions. ACEHD will set a time and place for any settlement discussion meeting. If ACEHD and the respondent are able to reach a settlement, ACEHD will issue a Consent Order. At a minimum, a Consent Order shall mandate compliance with applicable sections of Federal, State and Local statutes, regulations, and/or ordinances; payment of fees and / or costs due to ACEHD; and payment to ACEHD of any penalty(s) assessed.

Failure to comply with any term of the Settlement Agreement shall void the Agreement and ACEHD may proceed with any and all actions lawfully available. However, so long as the respondent well and faithfully performs under the Agreement, ACEHD shall suspend any enforcement actions associated with the subject violation. Where the respondent has waived the right to a hearing or where ACEHD and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

VII. Failure to Return to Compliance Notifications

On a quarterly basis, ACEHD will identify businesses and facilities with documented minor violations that have not been corrected within stipulated deadlines. These businesses and facilities will be issued a “Notice of Violation” (NOV) stating the failure to correct the noted discrepancies or submit documentation of the corrective actions and the possibility of administrative enforcement actions if subsequent re-inspection reveals uncorrected violations. The NOV notice will include the date of their most recent inspection and notification that they are subject to re-inspection and re-inspection fees.

In order to avoid a re-inspection and any follow-up enforcement actions, 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. ACEHD staff will review all businesses and facilities that continue to have open violations for targeted re-inspections. Administrative enforcement actions will be initiated for those businesses or facilities where re-inspections reveal uncorrected violations.

VIII. Re-inspections

A re-inspection is defined as any of the following:

1. A field inspection (and associated preparation) which is conducted by ACEHD at the expense of the affected facility to confirm that necessary action(s) have been completed so as to achieve compliance after one or more Class I or II violations or any other violation deemed significant or major has been documented.
2. A field inspection (and associated preparation) which is conducted by ACEHD at the expense of the affected facility to confirm that necessary action(s) have been completed so as to achieve compliance after numerous minor violations or violations that have been determined to not pose a serious threat to human health and the environment have been documented and no proof of corrective action or compliance has been submitted to ACEHD.
3. A field inspection (and associated preparation) which is conducted by ACEHD at the expense of the affected facility has been placed in a “monitor” status due to repeated significant violations and reasonable doubt that the facility will remain in compliance with applicable sections of environmental statutes, regulations, or local ordinances.

XI. Revocation, Modification, or Suspension of Permit

Any permit issued by the Amador County CUPA pursuant to California Health and Safety Code (H&SC), Chapter 6.11, §25404.1.1 may be revoked, modified or suspended during its term for obtaining the permit by misrepresentation or intentional failure to fully disclose all relevant facts, a change in condition that requires modification or termination of the operation in question, or violation of any permit condition. ACEHD may revoke, modify, or suspend a permit by issuing a written notice (Notice) stating the reasons therefore, and serving same together with a copy of the applicable laws and regulations and a Notice of Defense form upon the holder of the permit. The revocation, modification, or suspension shall become effective twenty (20) calendar days after service of the Notice, unless the holder of the permit enters into a settlement agreement with ACEHD or appeals the Notice. Delivery shall be deemed complete upon either personal delivery to the permit holder or through proof of service by certified mail.

X. Cease and Desist Orders

ACEHD may issue a Cease and Desist Order (Order) directing the respondent to discontinue any action that results in a violation of the requirements listed in Section I of the Enforcement Policy. The Order may also require the cleanup or remediation of the area or media affected by the violation. The Order shall state that the recipient has a right to appeal the matter as set forth in this policy and that the recipient or the owner or operator may be liable for all enforcement costs incurred by the County in correcting the violation. Delivery shall be deemed complete upon either personal delivery to the recipient or through proof of service by certified mail.

XI. Underground Storage Tank Red Tag Procedures

Upon discovery of a significant violation that poses an imminent and substantial threat to human health or safety or the environment, ACEHD EHS may immediately affix a red tag to the top of the fill pipe of the non-compliant underground storage tank system. Upon discovery of a significant violation that does not pose an imminent and substantial threat to human health or safety or the environment and that is not otherwise exempt pursuant to H&SC §2715.3, ACEHD may issue a notice of violation to the owner or operator. If the owner or operator fails to correct the violation within seven (7) calendar days from the receipt of the notice, ACEHD may affix a red tag to the top of the fill pipe of the non-compliant underground storage tank system.

Before affixing any red tag, the Environmental Specialist shall document the product level in the tank. No owner or operator of an underground storage tank system may deposit or allow for the deposit of any petroleum product into a tank, which has a red tag affixed. Upon notification by the owner or operator that the significant violation has been corrected, ACEHD shall inspect the underground storage tank system within five (5) calendar days to determine whether the system continues to be in violation. If it is determined that the system is no longer in significant violation, ACEHD shall

immediately remove the red tag. Upon removal of the red tag from an underground storage tank system, ACEHD shall document the product level in the tank.

XII. Administrative Hearing Process

Section 25404.1.1 of the H&SC allows the respondent to request a hearing on the Order within fifteen (15) calendar days after service of the Order or Notice. This time frame cannot be extended. A request for a hearing is referred to in Section 25404.1.1 as a "Notice of Defense (NOD)." The NOD must be filed with ACEHD within fifteen (15) calendar days of service of the Order or Notice. It is acceptable if the NOD is postmarked within that 15-day period. If the Respondent does not submit a NOD within the 15 days after service, the Order or Notice becomes final.

The respondent may specify in the NOD one of two hearing processes; an administrative law judge available through the state Office of Administrative hearings (OAH) local hearing authority appointed by the Board of Supervisors. In the event no hearing process is selected by respondent in the NOD, ACEHD may select the hearing process.

If ACEHD receives a timely NOD requesting a hearing before the OAH, it must immediately transmit the NOD to the Amador County Counsel, who will request a hearing pursuant to OAH procedures. Details on the use of the Office of Administrative Hearings are attached in Appendix 2. If ACEHD receives a timely NOD requesting a hearing before the local hearing authority it must immediately transmit the NOD to the Amador County Counsel, who will coordinate the scheduling of the hearing.

Once a hearing date is set, ACEHD shall notify respondent of the date scheduled for the hearing. The hearing shall be conducted in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and ACEHD shall have the authority granted to an agency by those provisions. The hearing must commence within 90 calendar days of receipt of the NOD. The 90 day deadline may be extended upon mutual agreement of respondent and ACEHD.

ACEHD will be represented by County Counsel or other counsel appointed to represent ACEHD during the hearing process. ACEHD will remain in contact with the respondent and provide an opportunity to settle the case prior to the hearing date.

ACEHD will be provided with a proposed decision from the administrative law judge or local hearing authority within thirty (30) calendar days following the conclusion of the hearing. The proposed decision shall be in writing and shall include a statement of the factual and legal basis for the decision. ACEHD can decide whether to adopt, modify, or reject the proposed decision as provided in Government Code Section 11517.

XIII. Decision and Order

After reviewing the proposed decision of the administrative law judge or local hearing authority the ACEHD will prepare a final Decision and Order within sixty (60) days of the conclusion of the hearing. ACEHD will provide the respondent with a letter, stating that it is adopting the proposed Decision and Order, and serve a copy of the Decision and Order to the respondent. Such Orders are effective and final upon issuance, and the respondent has 30 calendar days to make any stipulated payment. A copy of the Order must be served by personal service or by “proof of service” certified mail.

Within thirty (30) calendar days after service of a copy of a Decision and Order issued by ACEHD, the respondent may file with the Superior Court, a Petition for Writ of Mandate for Review of the Decision and Order. The filing of such Petition for Writ of Mandate does not stay any penalties assessed. Any respondent that fails to file the Petition within this thirty (30) calendar day period may not challenge the “Final” Unilateral Order [Government Code §11523].

XIV. Administrative Penalties

A. General Policy

The following will be considered when calculating the amount of an administrative penalty:

- a. The nature, circumstances, extent, and gravity of the violation.
- b. The violator’s efforts to prevent, abate, or clean up conditions posing a threat to public health or the environment.
- c. The violator’s ability to pay.
- d. The deterrent effect of the penalty

B. Steps in Determining Penalties

1. Initial Penalty. ACEHD will determine an initial penalty for each violation by considering the actual and potential harm and the extent of the deviation from hazardous waste management requirements.

- a. Assigning degrees of actual and potential harm.
 - (1) Major – the characteristics and/or amount of the substance involved present a major threat to human health or safety or the environment and the circumstances of the violation indicate a high potential for harm.
 - (2) Moderate – the characteristics and/or amount of the substance involved do not present a major threat and the likelihood of harm from noncompliance is not high.

(3) Minimal – the overall threat to human health or the environment is low.

b. A violation must involve the actual management of a hazardous substance for it to have a major potential for harm.

c. Assigning degrees of extent of the deviation.

(1) Major – the act deviates from the requirement to such an extent that the requirement is completely ignored or the function of the requirement is rendered ineffective due to the lack of compliance.

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

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

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

2. Adjusted Initial Penalty

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

Downward adjustment

100% - Violation was completely beyond the control of the violator.

0% to 50% - Violation occurred even though good faith efforts to comply with regulations were made.

No adjustment - Violation indicated neither good faith efforts nor intentional failure to comply.

Upward adjustment

50% to 100% Violation was the result of intentional failure to comply.

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

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

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

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

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

4. Multi-day Violations. On a case-by-case basis, for days following the first day of violation, the multi-day component of the penalty may be calculated by determining 2% of the adjusted initial penalty times the number of days after the initial day.

5. Base Penalty. The base penalty for a one day violation occurrence is the adjusted initial penalty. The base penalty for multi-day violations is the adjusted initial penalty for the first day of the violation plus the penalty for the additional days of the violation.

6. Total Base Penalty. The total base penalty is the sum of all base penalties for all violations incurred at a given facility.

7. Final Penalty Adjustments. Adjustments may be made to the total base penalty based on the following factors.

- a. Adjustment factors for cooperation.
 - 25 % downward adjustment - Violator exceeded minimum requirements in returning to compliance or returned to compliance faster than requested.
 - No adjustment - Violator demonstrated a cooperative effort.
 - 25 % upward adjustment - Violator failed to cooperate, delayed compliance, created unnecessary obstacles to achieving compliance, or the compliance submittal failed to meet requirements.
 - 50 % to 100 % upward adjustment - Violator intentionally failed to return to compliance with regulations or to allow cleanup operations to take place. This does not include refusal to allow inspection.
- b. Adjustment for compliance history. - The total base penalty may be adjusted upward or downward based on the facility's compliance history. Previous violations at the site should receive more weight than previous violations at another site owned or operated by the same person. Recent violations should receive more weight than older violations. The same or substantially similar previous violations should receive more weight than previous unrelated violations. Upward adjustments of up to 100% can be made if a facility has a consistent history of noncompliance over the past five (5) years.
- c. Ability to pay adjustments. No adjustments for ability to pay may be made if the penalty has been adjusted upward because of failure to

cooperate or because of the facility’s poor compliance history. Adjustments to the total base penalty may be made if immediate payment of the final penalty would cause financial hardship. In this case, consideration may be given to payments extended over a certain term. If extending the penalty over a period of time would cause extreme financial hardship, consideration may be given to reduce the total base penalty.

8. Final Penalty. The final penalty consists of the total base penalty with all adjustments made.

C. Initial Penalties

1. Hazardous Waste. For violations of H&SC Chapter 6.5, the violator shall be liable for penalties as provided in §25189.2 (a-c).

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

b. The following matrix will be used to determine initial penalty for a hazardous waste violation:

Initial Penalty Matrix – Hazardous Waste (per day of violation)

Violation of Chapter 6.5, Division 20 H&SC

Determination of Initial Penalty Matrix
(in dollars)

Extent of Deviation	Potential Harm		
	Major	Moderate	Minimal
Major	25,000	20,000	15,000
	(25,000)	(17,500)	(10,500)
	20,000	15,000	6,000
Moderate	Major	Moderate	Minimal
	20,000	15,000	6,000
	(17,500)	(10,500)	(4,000)
Minimal	15,000	6,000	2,000
	(10,500)	(4,000)	(1,000)
	6,000	2,000	0

2. Underground Storage Tanks. For violations of H&SC Chapter 6.7, the violator shall be liable for penalties as provided in §25299 (a-c).

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

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

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

Initial Penalty Matrix – Underground Storage Tanks (per day of violation)

Violation of Chapter 6.7, Division 20 H&SC

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Deviation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Moderate Deviation	\$3,000 to \$2,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Minimum Deviation	\$2,000 to \$1,000	\$1,000 to \$ 500	\$ 500 to \$ 0.00

3. Hazardous Materials Business Plan Program. For violations of H&SC §25515.2. Any business/facility that violates Article 1, Chapter 6.95, Division 20 of the H&SC is liable for an amount not greater than \$2,000 for each day in which the violation occurs, or greater than \$5,000 for each day in which the violation occurs for any business that knowingly violates after reasonable notice of the violation.

Initial Penalty Matrix – Hazardous Materials Business Plan (per day of violation)

Violation of Article 1, Chapter 6.95, Division 20 H&SC

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Deviation	\$2,000 to \$1,200	\$1,200 to \$800	\$800 to \$400
Moderate Deviation	\$1,200 to \$800	\$ 800 to \$400	\$400 to \$200
Minimum Deviation	\$ 800 to \$400	\$ 400 to \$200	\$200 to \$0.00

Knowing Violation of Article 1, Chapter 6.95, Division 20 H&SC after Reasonable Notice

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Deviation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Moderate Deviation	\$3,000 to \$2,000	\$2,000 to \$1,000	\$1,000 to \$ 500
Minimum Deviation	\$2,000 to \$1,000	\$1,000 to \$ 500	\$ 500 to \$ 0.00

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

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

b. Pursuant to §25514.5 of the H&SC, any business or facility that violates these requirements are civilly liable in an amount not to exceed \$2,000 per day for each violation, or greater than \$5,000 for each day in which the violation occurs for any business that knowingly violates after reasonable notice of the violation.

Initial Penalty Matrix – Unreported Spills or Releases (per day of violation)

Violation of §25514.5(a) H&SC

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Deviation	\$2,000 to \$1,200	\$1,200 to \$800	\$800 to \$400
Moderate Deviation	\$1,200 to \$ 800	\$ 800 to \$400	\$400 to \$200
Minimum Deviation	\$ 800 to \$ 400	\$ 400 to \$200	\$200 to \$0.00

Knowing Violation of §25514.5(b) H&SC after Reasonable Notice

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Deviation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Moderate Deviation	\$3,000 to \$2,000	\$2,000 to \$1,000	\$1,000 to \$ 500
Minimum Deviation	\$2,000 to \$1,000	\$1,000 to \$ 500	\$ 500 to \$ 0.00

5. California Accidental Release Prevention (Cal-ARP) Program.

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

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

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

Initial Penalty Matrix – Cal-ARP Program (per day of violation)

Violation of Chapter 6.95, Article 2, §25540(a) H&SC

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Deviation	\$2,000 to \$1,200	\$1,200 to \$800	\$800 to \$400
Moderate Deviation	\$1,200 to \$ 800	\$ 800 to \$400	\$400 to \$200
Minimum Deviation	\$ 800 to \$ 400	\$ 400 to \$200	\$200 to \$ 0.00

Knowing Violation of Chapter 6.95, Article 2, §25540(b) H&SC after Reasonable Notice

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Deviation	\$25,000 to \$15,000	\$15,000 to \$10,000	\$10,000 to \$5,000
Moderate Deviation	\$15,000 to \$10,000	\$10,000 to \$5,000	\$ 5,000 to \$2,500
Minimum Deviation	\$10,000 to \$5,000	\$ 5,000 to \$2,500	\$ 2,500 to \$ 0.00

6. Aboveground Petroleum Storage Program.

a. For violations of chapter 6.67, H&SC commencing with §25270, the violator shall be liable for a penalty of not more than \$5,000 for each day on which the violation continues.

b. If the violator commits a second or subsequent violation, a penalty of not more than \$10,000 for each day on which the violation continues may be imposed.

Initial Penalty Matrix – Aboveground Petroleum Storage (per day of violation)

Violation of Chapter 6.67, H&SC, commencing with §25270

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Deviation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Moderate Deviation	\$3,000 to \$2,000	\$2,000 to \$1,000	\$1,000 to \$500
Minimum Deviation	\$2,000 to \$1,000	\$1,000 to \$500	\$ 500 to \$ 0.00

Violation of Chapter 6.67, H&SC, commencing with §25270 (second or subsequent violations)

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Deviation	\$10,000 to \$6,000	\$6,000 to \$4,000	\$4,000 to \$2,000
Moderate Deviation	\$ 6,000 to \$4,000	\$4,000 to \$2,000	\$2,000 to \$1,000
Minimum Deviation	\$ 4,000 to \$2,000	\$2,000 to \$1,000	\$1,000 to \$ 0.00

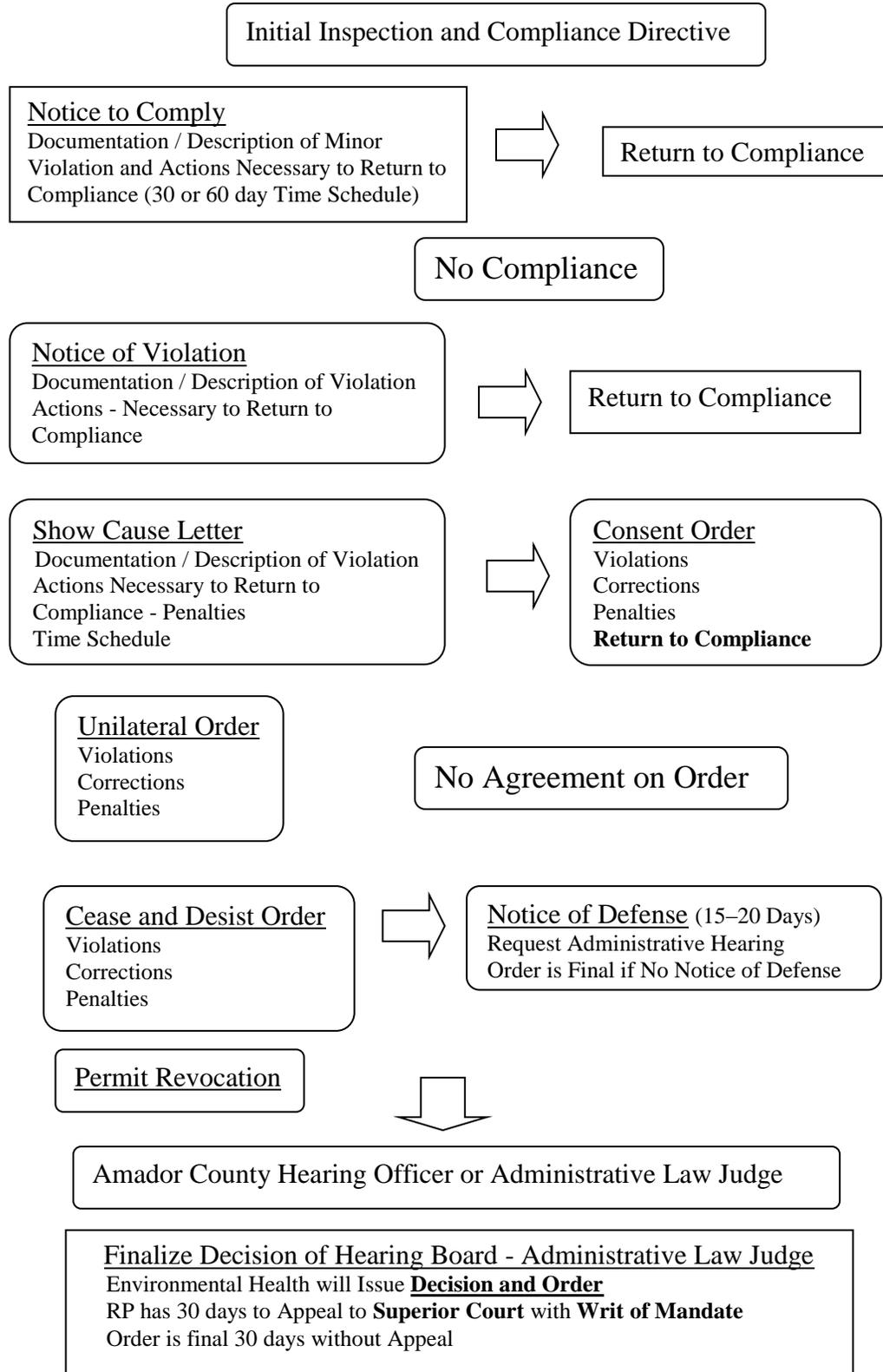
XV. Enforcement Revenue Offset Program

A. Background

State law (H&SC §25404.1.1(i)) requires that all administrative penalties collected from enforcement actions be applied to the benefit of the program of origin. With the exception of a relatively small amount set aside for preliminary investigation and cost recovery, ACEHD does not budget for any realized enforcement revenue. It is ACEHD’s position that enforcement revenue should not be formalized as a traditional revenue stream needed for the support of necessary and appropriate program activities.

Thus, core program activities such as staff costs relating to inspections, documentation, staff training, business education and outreach, and Department and County level overhead are built into the ACEHD fee structure. After recovering the cost of implementing enforcement actions, ACEHD utilizes remaining enforcement revenue and other accumulated savings to establish program specific rate stabilization reserves that are intended to meet unanticipated expenses or to offset or buffer the need for significant fee increases.

Appendix A - Administrative Enforcement Order Flow Chart



Appendix B - Permit Conditions and File Review Checklist

HMMP Permit Documents Date _____

(circle) Cat I Cat II Cat III APSA UST CAL-ARP CESQG SQG PBR CA CE

Current Unified Program Permit Application

_____ Business Activities

_____ Owner / Operator ID

Hazardous Materials Business Plan _____

Hazardous Materials Inventory - Chemical Description _____

EPA # _____

Site Map _____

Emergency Response / Contingency / Training Plan _____

Inspection

(Date) _____

Aboveground Petroleum Storage (SPC Plan) _____

Hazardous Waste Generator Registration _____

Hazardous Waste Treatment Registration _____

Appendix B - Permit Conditions and File Review Checklist

UST Permit Documents	Date _____
UST Facility	_____
UST Tanks	_____
UST Installation Certificate	_____
UST Monitoring Plan	_____
UST Spill Response Plans	_____
Site Map w/Leak Detection Monitoring	_____
Certification of Financial Responsibility	_____
Owner/Operator Agreement	_____
Designated Operator	_____
Annual Inspection / Monitor Equip Certification	_____
Secondary Containment Testing	_____
Cathodic Protection Testing	_____
UST / Line Integrity Testing	_____
Tank Lining Insp.	_____

Appendix C – Procedure for use of Office of Administrative Hearings

Cal-EPA has entered into a contract with the Department of General Services, Office of Administrative Hearings (OAH) to fund requested hearings on Administrative Enforcement Orders (AEO) issued by CUPA. OAH agrees to provide administrative law judges, clerical support, and hearing reporters as may be needed to conduct hearings.

OAH should be called ((916) 445-4926) to schedule a hearing. Inform the OAH Calendar Office that services are to be provided under Interagency Agreement Contract. The OAH Calendar Office will schedule the hearing at a place and time that is mutually agreeable to the OAH and ACEHD. The Office of Administrative Hearings must be provided with a copy of the AEO and the Notice of Defense (NOD) at

Office of Administrative Hearings
560 J Street
Suite 300
Sacramento, CA 95814

A copy of the notice of scheduled hearing shall also be mailed to:

Cal-EPA/Unified Program
1001 I Street
Sacramento, CA 95812

The OAH will provide ACEHD with a proposed decision containing the findings of fact, conclusions of law, and a final deposition regarding each issue contested. ACEHD can choose to adopt the OAH proposed decision; or adopt portions of the proposed decision while revising other portions; or reject the proposed decision. ACEHD will issue the final order to the respondent and provides copies by mail to OAH and Cal-EPA/Unified Program. Case files shall be retained by OAH for a period of six (6) months, at which time OAH will notify ACEHD to pick up the case files.