

CERTIFIED UNIFIED PROGRAM AGENCY

POLICIES AND PROCEDURES

Title: INSPECTION AND ENFORCEMENT

PURPOSE:

The purpose of this policy is to gain compliance and correct violations at regulated facilities and in the community within the jurisdiction of the San Luis Obispo County Certified Unified Program Agency.

AUTHORITY:

Health and Safety Code, Section 25404 (c) and any regulations adopted pursuant to those requirements

CCR Title 22 Division 4.5, Chapter 21, Article 3, Section 66272.60-69

Health and Safety Code, Section 25404.1.1 (a)

Effective Date: January 10, 2018

POLICY STATEMENT

It is the policy of the San Luis Obispo County Certified Unified Program Agency (CUPA) to conduct inspections at the frequency required by law with a goal of exceeding the minimum frequency of annual Underground Storage Tank (UST) facilities, every three years for each other CUPA program facility and will complete an initial inspection of new Tiered Permit facilities within two years and every three years thereafter. The CUPA consists of San Luis Obispo County Environmental Health Services and a Participating Agency (PA) the City of San Luis Obispo Fire Department. CUPA inspectors will utilize the CUPA Hazardous Materials Inspection Form for all inspections. CUPA inspectors include County of San Luis Obispo Environmental Health Specialists I, II, III, and City of San Luis Obispo Hazardous Materials Coordinator. Inspectors will document violations and compliance with applicable laws and regulations using the form. Inspectors will perform inspections at subject facilities and will investigate complaints of alleged violations within the CUPA's jurisdiction according to this policy and the agency's complaint's procedure. Complaints are received and provided to inspectors, who then record results and require corrective action if regulatory authority allows County of San Luis Obispo Supervising Environmental Health Specialist or the City of San Luis Obispo Fire Marshal will review inspection forms. The CUPA and the City of San Luis Obispo Fire Department meet once a month to ensure laws and regulations are consistently implemented. The purpose of the meetings is to discuss: code implementation, technical issues, inspection report revision, code and definitions, uniform application of enforcement, efficiency and minimizing or eliminating duplication and inconsistencies.

The CUPA and PA coordinate enforcement efforts with other local, state and Federal Agencies through the San Luis Obispo Environmental Enforcement Group (SLOEEG). These Agencies include but are not necessarily limited to: San Luis Obispo (SLO) County District Attorney's Office, County Planning Department, County Air Pollution Control District, California Regional Water Quality Control Board, California Department of Fish and Wildlife, California Department of Motor Vehicles, California Department of Toxic Substances Control and the US Fish and Wildlife Service. The CUPA and PA participate in monthly SLOEEG meetings and joint inspections as needed.

The County of San Luis Obispo CUPA and the PA will annually review this policy and adopt revisions as necessary.

Where applicable, the CUPA will utilize informal enforcement as the first step toward gaining regulatory compliance from regulated Respondents. Formal enforcement will be utilized if informal enforcement does not gain compliance. Informal enforcement may include:

1. Verbal and written directions
2. Inspection Reports
3. Compliance letters
4. Consultations
5. Post inspection meetings
6. Reinspections
7. Notice of Minor Violation Letters
8. Notice of Violation letters
9. Notice of Violation Hearings
10. Show Cause Letters

Formal enforcement may include:

1. Red Tags
2. Permit revocation
3. Administrative Enforcement Orders (AEO).
4. Referral to the District Attorney for prosecution (DA Referral).
5. Referral to State Attorney General for prosecution
6. Referral to a State or Federal Agency that has authority to enforce applicable requirements, if approved by each Agency.

It is the policy of the CUPA to obtain timely compliance to protect public and environmental health and encourage Respondents to comply with regulations prior to the use of formal enforcement actions. If informal enforcement fails to attain regulatory compliance then formal enforcement action may be initiated for the purpose of gaining regulatory compliance. If the violations present a significant existing or imminent threat to human health or safety or the environment, then formal enforcement action may be initiated immediately. Health and Safety Code

section 25404.1.1 (a) states “If the unified program agency 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 CUPA is authorized to enforce or implement pursuant to this chapter, the CUPA may issue an administrative enforcement order requiring that the violation be corrected and imposing an administrative penalty,

Attachment I, Inspection and Enforcement Flowchart, is included to provide a summary of the policy for CUPA personnel in gaining compliance.

PROCEDURE

Informal Enforcement of Minor Violations

The following procedure identifies the informal enforcement procedure for minor violations. "Minor violation" as used in this policy and procedure is defined in Health and Safety Code section 25404(a)(3)

The CUPA inspection form has a section for documenting compliance and non-compliance. The inspection form provides the code sections for each observation and constitutes the official notice to comply requiring compliance within the time frames specified in this policy. A copy of the written inspection form will be provided to the Respondent at the conclusion of the inspection or within five business days of the inspection.

Pursuant to Health and Safety Code section 25404.1.2 (c) (1) “A person who receives a notice to comply detailing a minor violation shall have not more than 30 days from the date of the notice to comply in which to correct any violations cited in the notice to comply.” If after 30 days a reinspection determines that there has been no progress towards compliance with the minor violations, the Respondent will be provided with a Notice of Violation (NOV). If there has been partial compliance or satisfactory progress towards compliance, the Respondent may be provided with additional time to complete the correction of the violations. If additional time is allowed to achieve compliance, a second reinspection will be scheduled (An hourly fee will be charged beginning with the second reinspection and continue until compliance has been reached according to the current Agency Fee Schedule.) The time frame between the first reinspection and the second reinspection should not exceed 15 days. However, more time may be granted by the inspector if the situation justifies the extension and if there is no existing or imminent threat to public health or the environment.

If compliance is not achieved at the time of the second reinspection, the inspector will prepare a NOV within 15 days following the inspection detailing the violations, supporting code sections, and warning of potential penalties. The NOV will be mailed via overnight delivery with signature required to the Respondent with a scheduled NOV hearing date. At the discretion of the CUPA, the NOV hearing may be rescheduled and postponed up to two weeks. The supervisor, the inspector,

and the Respondent will attend the NOV hearing. Depending upon the severity or urgency of the matter, the Director of Environmental Health Services (EHS) may also attend. Depending upon the circumstances and legal issues involved, Deputy County Counsel may also be invited. Respondents may also include legal counsel. The purpose of the NOV hearing is to clarify any remaining compliance issues and if necessary, issue a "Show Cause" letter, to the Respondent, notifying him/her that the CUPA may initiate formal enforcement action. An inspection should be conducted to verify current status of compliance with the cited violations immediately before the NOV hearing date. If the Respondent has corrected the violations and can provide satisfactory evidence of compliance on or before the NOV hearing, then at the sole discretion of the CUPA, some or all of the penalties may not be assessed. The Agency may cancel the NOV hearing if compliance is achieved before the hearing date.

If the Respondent has not corrected the violations before the NOV hearing, a Show Cause letter will be issued, notifying the Respondent that formal enforcement will be initiated and that a Show Cause hearing date will be scheduled to discuss further enforcement such as the issuance of an AEO. The CUPA may cancel a Show Cause hearing if compliance is achieved. The goal of the discussions with the Respondent at the Show Cause hearing is to reach an agreement on compliance; determine timelines and possible penalties; and formalize the agreement in a Consent Order. Prior to the hearing, the inspector will prepare proposed penalties, using the appropriate penalty matrix. The inspector should be prepared to present the proposed penalties to the Respondent during the discussions.

Informal Enforcement of Major Violations

The following procedure identifies the informal enforcement procedure for major violations.

A major violation means the failure of a person to comply with a requirement or condition of an applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the CUPA is authorized to implement or enforce, and that includes any one of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing, willful, or intentional violation.

(C) A violation that is a chronic violation or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the CUPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation as provided in Health and Safety Code Section 25117.6.

(G) A class II violation committed by a chronic or a recalcitrant violator, as provided in Health and Safety Code Section 25117.6.

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

(I) Significant and or imminent violations relating to underground storage tanks as defined in 23 CCR Section 2717.

When a major violation is present the inspector may choose to begin formal enforcement at the time of the initial inspection or the first reinspection. A Red Tag may be used to prohibit use of an Underground Storage Tank (UST) System for violations defined in California Code of Regulations (CCR) Title 23 Section 2717.

The CUPA inspection form has a section for documenting compliance and non-compliance. The inspection form provides the code sections for each observation and constitutes the official notice to comply requiring compliance within the time frames specified in this policy. A copy of the written inspection form will be provided to the Respondent at the conclusion of the inspection or within five business days of the inspection.

Respondents shall return major violations to compliance within the following time periods:

1) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment or a violation that results in an emergency response from a public safety agency shall be returned to compliance immediately upon notification by the CUPA.

2) All other major violations shall be returned to compliance within 15 days of notification.

If compliance is not achieved by the above indicated deadlines, the inspector will prepare a NOV detailing the violations, supporting code sections, and warning of potential penalties. The NOV will be mailed via overnight delivery with signature required to the Respondent with a scheduled NOV hearing date. At the discretion of the CUPA, the NOV hearing may be rescheduled and postponed up to two weeks. The supervisor, the inspector, and the Respondent will attend the NOV hearing. Depending upon the severity or urgency of the matter, the Director of Environmental Health Services (EHS) may also attend. Depending upon the circumstances and legal issues involved, Deputy County Counsel may also be invited. Respondents may also include legal counsel. The purpose of the NOV

hearing is to clarify any remaining compliance issues and if necessary, issue a "Show Cause" letter, to the Respondent, notifying him/her that the CUPA may initiate formal enforcement action. An inspection should be conducted to verify current status of compliance with the cited violations immediately before the NOV hearing date. If the Respondent has corrected the violations and can provide satisfactory evidence of compliance on or before the NOV hearing, then at the sole discretion of the CUPA, some or all of the penalties may not be assessed. The Agency may cancel the NOV hearing if compliance is achieved before the hearing date.

If the Respondent has not corrected the violations before the NOV hearing, a Show Cause letter will be issued, notifying the Respondent that formal enforcement will be initiated and that a Show Cause hearing date will be scheduled to discuss further enforcement such as the issuance of an AEO. The CUPA may cancel a Show Cause hearing if compliance is achieved. The goal of the discussions with the Respondent at the Show Cause hearing is to reach an agreement on compliance; determine timelines and possible penalties; and formalize the agreement in a Consent Order. Prior to the hearing, the inspector will prepare proposed penalties, using the appropriate penalty matrix. The inspector should be prepared to present the proposed penalties to the Respondent during the discussions.

Formal Enforcement

The following identifies the formal enforcement procedure for minor and major violations. If a settlement agreement regarding penalties is reached during the Show Cause hearing, the CUPA will complete and mail the Consent Order to the Respondent, then collect penalties and assure that compliance is completed. The Director of EHS makes final determination of penalties per criteria discussed below. The terms of the Consent Order will be discussed with and agreed to by the Director of EHS and/or the San Luis Obispo City Fire Chief (if the case is in the jurisdiction of the Participating Agency) prior to issuance.

If the Respondent is unwilling to agree to a Consent Order and/or does not respond to the "Show Cause" letter, the case will be referred to the Technical Review Committee. The CUPA Technical Review Committee (TRC) consists of the CUPA staff from the Environmental Health Services Division and the City of San Luis Obispo Fire Department. Cases are referred to the Technical Review Committee by the CUPA supervisor or Fire Marshal after review of the facts with the inspector. A meeting of the CUPA Technical Review Committee will be scheduled within two weeks after the CUPA supervisor or Fire Marshal has reviewed the case. The CUPA Technical Review Committee will review the facts of each case and make a recommendation for dismissal, additional investigation, administrative enforcement, or referral to the District Attorney. The supervisor will assign tracking system numbers using Envision Connect. If the case is approved by the TRC a draft AEO and/or a CUPA Enforcement Case District Attorney Referral Form (for criminal cases) will be completed (Attachment II).

The EHS Director and the Fire Chief (for cases in the PA jurisdiction) will review the AEO and/or case referral form with the CUPA supervisor and the inspector who initiated the draft unilateral AEO. Proposed administrative penalties will be calculated by the inspector and his or her supervisor as described in the section titled Criteria for Determining Penalties. Cases for District Attorney referral shall be forwarded to the CUPA Enforcement Committee for review, prior to being sent to the District Attorney.

Orders will be sent to the Respondent via overnight mail, signature required, or via personal service. The EHS Director will review the Respondent ability to pay information, if necessary. The Respondent will be offered an opportunity for another settlement hearing with the EHS Director, Deputy County Counsel and CUPA staff. If the CUPA and the Respondent can agree on a schedule for compliance and a penalty, the AEO will be finalized and the penalty will be collected. If the Respondent fails to correct the violations and/or cannot agree on a penalty, the case will be forwarded to the CUPA Enforcement Committee (comprised of the Health Officer and SLO City Fire Chief) for review. The CUPA Enforcement Committee will set the final penalty and/or refer the case to the District Attorney for criminal prosecution if appropriate. If the Respondent files a timely Notice of Defense (NOD) and requests a hearing on the AEO, the supervisor will forward the NOD to the Office of Administrative Hearings (OAH). The hearing will be conducted by an administrative law judge of the OAH. Deputy County Counsel will represent the CUPA at the hearing. The CUPA will serve the Respondent with the final decision of the administrative law judge. The decision is effective and final upon service to the Respondent. Enforcement tracking data will be entered into Envision by the inspector and reviewed by his or her supervisor.

If the Respondent has agreed to a Consent Order and fails to meet all of the stipulations of the order, the unilateral AEO included with the Consent Order will go into effect or the case will be referred to the appropriate prosecutorial agency. The CUPA supervisor or PA representative (if in the jurisdiction of the PA) will alert the Deputy County Counsel of the breached Consent Order and the unilateral AEO will be sent to the CUPA Enforcement Committee for review before forwarding the order to the Deputy County Counsel for filing with the civil court. The AEO may be accepted "as is" or amended by the CUPA Enforcement Committee. If the order is amended, the revised order will be sent to the Respondent.

CRITERIA FOR INITIATION OF AN ADMINISTRATIVE ENFORCEMENT ORDER (AEO)

An AEO can be initiated without a re-inspection. An AEO shall be considered if a case meets any of the following criteria:

- A. Actions that result in significant environmental degradation (soil and/or groundwater contamination) as determined by the inspector in conjunction with their supervisor and the EHS Director.
- B. Actions that result in injury to the public or pose a significant existing or imminent threat to public health as determined by the inspector in conjunction with their supervisor and the EHS Director.
- C. Continued non-compliance and/or repeated violations at permitted facilities.
- D. Disabling of or tampering with the underground storage tank leak monitoring system;
- E. Knowing discharge or dumping of hazardous waste/materials.
- F. Violations that have or may potentially lead to a release of hazardous waste/materials.
- G. Significant violations of the Cal-ARP Program:
 - i. Operating a new facility without a Risk Management Plan (RMP) submitted to the CUPA.
 - ii. A willful violation that may lead or has led to a release of a regulated substance.
 - iii. Not following emergency response procedures as specified in an approved RMP during a release of a regulated substance.
 - iv. Operating a Cal-ARP facility after a covered process modification without submitting a required updated RMP to the CUPA.

TIMELINES FOR AEOs

The goal is to issue a final AEO within 180 days of the initial inspection. If this is not possible, the inspector will notify the Director of EHS with the reasons for the delay and propose a new timeline.

CONFIDENTIAL INFORMATION

Cases under review for enforcement action by either AEO or the DA are not subject to Public Records Act and are not available for public review.

AGENCY COSTS

Agency costs including technical staff, supervision and attorney costs should be included in the Administrative Enforcement Order.

PENALTY COLLECTION

Penalties will be invoiced through Envision Connect's accounts receivable program. Penalties are due and payable in 15 days with a signed AEO in compliance with the pay rate of the Enforcement of Judgments Law (California Code of Civil Proceedings Title 9). For late payments, a security lien may be filed

on real property with the County of San Luis Obispo Clerk Recorder and on lienable personal property with the Secretary of State.

Penalties for PAs will be invoiced and collected by the CUPA. County overhead costs for support of Deputy County Counsel will be deducted from the total penalty due PAs and the remainder will be sent to the PA within 30 days.

SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPs)

The County of San Luis Obispo Certified Unified Program Agency (CUPA) finds that it is beneficial to the CUPA, the regulated Respondents, public health, and the environment to offer SEP's to offset a facility's first Administrative Enforcement Order (AEO) fines levied by the CUPA. The CUPA may offer to reduce Consent Order (AEO) total penalties by up to one hundred percent (100%) if a SEP is completed within 180 days of acceptance of the AEO. SEP proposals must be provided with a minimum of three work proposals from licensed contractors. Proposals provided by responsible parties (RP) can be evaluated providing an RP is qualified and authorized to complete proposal and provides 3 cost estimates for supplies.

SEPs may be proposed in the form of:

- Solar and/or wind power generation. Other proposals that reduce energy usage or increase energy efficiency may be considered.
- Upgrade of Underground Storage Tank System components to benefit leak detection and/or containment not currently required of a subject system.
- Upgrade of a hazardous material or hazardous waste storage facility by installing an engineering controls to prevent the discharge of hazardous materials or waste, which is not currently required by law or regulation.
- A permanent removal of an environmental threat at the subject site.
- A project, to assist a facility, the community or the CUPA protect public health and the environment from a potential or actual threat of a release of hazardous materials or hazardous wastes, or aid in the detection of a release.
- A training project to enhance understanding of hazardous materials threats and or regulations the Agency oversees for all or some of the following groups: regulated facilities, regulators, emergency responders and/or the community.

In implementing the SEP, the Respondent must agree to:

1. Correct all violations identified in the Consent Order (AEO).
2. Pay the reduced assessed penalty, if applicable upon acceptance of the Consent Order.
3. Submit to the CUPA within 15 to 30 days of acceptance of the Consent Order a copy of the accepted proposal for the agreed upon supplemental environmental project.
4. Provide evidence of approved project completion to the CUPA within 180 days of acceptance of the Consent Order.

DISTRICT ATTORNEY REFERRALS

The CUPA Supervisor will provide case referral forms approved by the Technical Review Committee to the Environmental Health Director for review and signature. The Environmental Health Director will provide approved referrals to the CUPA Enforcement Committee for review. Following their review of the case, the CUPA Enforcement Committee may direct staff to consult with the District Attorney's office regarding the proper disposition of the case if the Enforcement Committee believes it is appropriate. Based on the DA's recommendation, the case may be referred to them for civil or criminal prosecution, an injunction or sent back to the inspector for further investigation.

PENALTY CALCULATION

Procedures for calculating maximum penalties in the hazardous waste program are described in CCR Title 22, Division 4.5, Chapter 22, Article 3, Sections 66272.60-69. No corresponding regulatory procedure exists for other hazardous materials programs. However, the statutory factors that must be considered in assessing hazardous waste penalties and any penalty under Health and Safety Code 25404.1.1 authority are essentially the same. The rationale and process also provide guidance for consistent calculations of penalties under other hazardous materials programs. Calculated penalties cannot exceed the statutory maximum for that program. Only the underground storage tank program specifies a minimum daily penalty of no less than \$500 per day. The attached document, "Guidance for Administrative Enforcement Order and Hearing Procedures," dated February 1, 2007 section II Penalties provides references for the maximum penalties contained in statute and regulations. Use the Penalty Calculating Worksheet (Attachment III) when calculating penalties.

The criteria for determining a penalty associated with an AEO uses the following methodology:

- (A) Determine the initial penalty

(B) Apply appropriate adjustments to the initial penalty

(1) Multiple violations

(2) Multi-day violations

- Follow the Underground Storage Tank Secondary Containment Repair Policy to determine Agency timelines for repair and determination of the violation date.

(C) Calculate the base penalty

(D) Apply appropriate adjustment to the base penalty

Repeated Administrative Enforcement Orders

(E) Calculate the final penalty

Ability to Pay

INITIAL PENALTY

When determining an initial penalty for each violation, the CUPA shall consider potential harm of the violation and the extent of deviation from hazardous materials requirements. The CUPA shall use the appropriate program specific matrix set described below to determine the initial penalty for each violation.

(A) Potential Harm of the Violation

(1) The Enforcement Agency shall consider potential harm to public health and safety and the environment when using the matrix.

(2) The categories for degree of potential harm are defined as follows:

(a) Major - The characteristics, concentration 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;

(b) Moderate - The characteristics, concentration and/or amount of the substance involved do not present a major threat to human health or safety or the environment, and the circumstances of the violation do not indicate a high potential for harm;

(c) Minimal - The threat presented by the characteristics, concentration and/or the amount of the substance or by the circumstances of the violation is low.

(3) In determining the degree of potential harm, the CUPA shall consider the following factors:

- (a) The characteristics of the substance involved,
- (b) The amount of the substance involved,
- (c) The extent to which human life or health is threatened,
- (d) The extent to which animal life is threatened,
- (e) The extent to which the environment is threatened, and
- (f) The extent to which potable water supplies are threatened.

(B) Extent of Deviation of the Violation

(1) The CUPA shall consider the extent of deviation from hazardous materials requirements when using the matrices below.

(2) The categories for extent of deviation from requirements are defined as follows:

(a) Major - The violation deviates from the requirement to such an extent that the requirement is completely ignored and none of its provisions are complied with:

(b) Moderate - The violation deviates from the requirement, but it functions to some extent although not all of its important provisions are complied with:

(c) Minimal - The violation deviates somewhat from the requirement. The requirement functions nearly as intended, but not as well as if all provisions had been met.

(3) For requirements with more than one part, the CUPA shall consider the extent of violation in terms of the most significant requirement.

(C) Initial Penalty Matrices (in dollars)

The matrices below shall be used to determine the initial penalty for a violation. The CUPA shall select the appropriate program then a penalty amount from the range provided in the matrix cell that corresponds to the appropriate extent of deviation and the potential harm categories.

Underground Storage Tank Program (for each tank) (H&SC 25299 (a-c))

Extent of Deviation	Potential Harm		
	Major	Moderate	Minimal
Major	2500	1800	1100
Moderate	2200	1500	800
Minimal	1900	1200	500

Above Ground Storage Tank (H&SC 25404.1.1 (a) (5))

Extent of Deviation	Potential Harm		
	Major	Moderate	Minimal
Major	2500	1695	890
Moderate	2155	1350	545
Minimal	1810	1005	200
			0

Hazardous Materials Release Response Plan Program (H&SC 25515.2 (a))

Extent of Deviation	Potential Harm		
	Major	Moderate	Minimal
Major	1000	720	440
Moderate	880	600	320
Minimal	760	480	200

			0

Hazardous Materials Release Response Plan Program (H&SC 25515.2(b))

Extent of Deviation	Potential Harm		
	Major	Moderate	Minimal
Major	2500	1695	890
Moderate	2155	1350	545
Minimal	1810	1005	200
			0

California Accidental Release Prevention Program (H&SC 25540 (a))

Extent of Deviation	Potential Harm		
	Major	Moderate	Minimal
Major	1000	720	440
Moderate	880	600	320
Minimal	760	480	200
			0

California Accidental Release Prevention Program (H&SC 25540 (b))

Extent of Deviation	Potential Harm		
	Major	Moderate	Minimal
Major	12500	8195	3890
Moderate	10655	6350	2045
Minimal	8810	4505	200
			0

California Accidental Release Prevention Program (H&SC 25540.5)

Extent of Deviation	Potential Harm		
	Major	Moderate	Minimal
	5000	3320	1640
Major			
	4280	2600	920
Moderate			
	3560	1880	200
Minimal			0

ADJUSTMENTS TO INITIAL PENALTY VIOLATIONS

(A) Repeated Occurrence of Violations

For repeated occurrence of violations, the adjusted initial penalty may be increased by multiplying the initial penalty by 10 percent to 25 percent for the second occurrence and 50 percent to 100 percent for the third or more occurrences.

(B) Economic Benefit

The initial penalty may be increased by the amount of any documented and/or substantiated economic benefit gained or documented/substantiated cost of compliance avoided by the regulated facility as a result of noncompliance up to the statutory maximum for each violation. Economic benefit includes, but is not limited to, avoided costs, increased profits, having the use of capital from delayed or avoided costs, and avoided interest.

(C) Multiple Violations

At the discretion of the CUPA, a single initial penalty may be assessed for multiple violations. Multiple violations subject to this section are multiple instances of the same violation, where each instance is a violation in itself.

(1) The assessment of a single initial penalty may be appropriate for multiple violations in the following cases:

(a) The facility has violated the same requirement at one or more locations (e.g. units) within the facility at a single location.

(b) When violations are not independent or are not substantially distinguishable, the CUPA shall consider the

extent of deviation and potential harm in terms of the most significant violation.

(2) Where it is necessary to deprive the regulated facility of the economic benefit of multiple violations, the CUPA shall cite such violations separately and assess an initial penalty for each violation.

(D) Multi-day Violations

Each day a violation continues is a separate and distinct violation. For multi-day violations, penalties begin to accrue when the violation was first identified. The penalty for a continuing violation shall be determined according to this section.

(1) The initial penalty for the first day of violation shall be determined as indicated above;

(2) For days following the first day of violation, the multi-day component of the penalty shall be calculated by determining 2 percent of the initial penalty (exception is underground storage tanks see below) and multiplying that value by the number of days the violation occurred after the initial day:

(3) For repeated occurrences of violations, the multi-day component of the penalty may be increased by multiplying the multi-day component of the penalty by 10 percent to 25 percent for the second occurrence and 50 percent to 100 percent for the third or more occurrences.

(4) For underground storage tanks, the multi-day component of the penalty shall be calculated by multiplying: the number of tanks involved with the violation by \$500 by the number of days the violation occurred after the initial day.

BASE PENALTY

The base penalty for an enforcement action is the sum of all adjusted initial penalties.

ADJUSTMENTS TO BASE PENALTY

The CUPA shall adjust the base penalty considering the following adjustment factor:

(A) Repeated Administrative Enforcement Orders: The base penalty may be increased by up to 50 percent for a second AEO issued to the same facility and by up to 100 percent for a third or more AEO's issued to the same facility.

FINAL PENALTY

(A) The final penalty consists of the base penalty, with any adjustments made pursuant to the adjustment factors.

(B) Ability to Pay: If the regulated facility has provided the CUPA with the financial information necessary to assess the regulated facility's ability to pay, the payment of the final penalty may be extended over a period of time if immediate, full payment would cause, in the judgment of the CUPA, extreme financial hardship. If extending the penalty payment over a period of time would cause, in the judgment of the CUPA, extreme financial hardship, the final penalty may be reduced.

(C) The final penalty shall not exceed the statutory maximum.

(D) A memorandum shall be completed for the EHS Director that documents any amendments to the initial penalty.

PENALTY EXCEPTIONS

Violations of a particularly egregious or serious nature may be assessed the maximum penalty amounts.

The CUPA encourages settlement discussions with Respondents subject to an AEO or Show Cause letter whenever possible. Maximum calculated penalties may be reduced by the EHS Director. When considering a reduction to the calculated maximum penalty amount, the CUPA will take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to public health or safety or the environment, the violator's ability to pay the penalty, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

Questions to consider when evaluating the nature, circumstances, extent, and gravity of the violation include but are not limited to the following:

- Did the violation threaten environmental degradation? To what extent?
- Was there an unauthorized release to the groundwater, soil or air? To what extent?
- Did the violation threaten public health or the employees? To what extent?
- Is this a repeated violation?

- Was the Respondent cooperative?
- Was the violation beyond the control of the Respondent?
- Did the Respondent fail to respond to the CUPA's efforts to gain compliance?

Questions to consider when evaluating the violator's past and present efforts to prevent, abate, or cleanup conditions posing a threat to the public health, or safety or the environment include but are not limited to the following:

- What did the Respondent do to prevent the violation?
- Did the Respondent take immediate and appropriate steps to abate or cleanup any release?
- Did the Respondent immediately notify the proper agencies when a release occurred?
- Did the Respondent train their employees on proper procedures for handling hazardous materials/waste?
- Did the Respondent train their employees on proper procedures for responding to an emergency release?
- Did the Respondent intentionally dispose of hazardous waste illegally?

Questions to consider when evaluating the violator's ability to pay the penalty include but are not limited to the following:

- Will the penalty amount threaten the financial stability of the Respondent?
- Is the penalty amount fair for the Respondent?

Questions to consider when evaluating the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community include but are not limited to the following:

- Will the penalty amount be sufficiently high to deter the Respondent from continuing to violate regulations?
- Does the penalty encourage future voluntary compliance?
- Is the penalty amount sufficiently high to reduce the monetary incentive for non-compliance?
- Does the penalty amount send a message to the regulated community that there are negative financial consequences for non-compliance?