

DTSC Official Policy Cover Page

HAZARDOUS WASTE ADMINISTRATIVE COMPLAINTS POLICY **DTSC-OP-0003**

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EO-02-007-PP January 30, 2009

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All Staff Enforcement and Emergency Response Program

Target Audience Issuing Unit

Gale Filter, Deputy Director

Name and Title of Approving Authority

Original Signed by Gale Filter

January 30, 2009

Signature

Date Signed

Health and Safety Code, Division 20, Chapter 6.5 and its implementing regulations

Statutory Reference

TABLE OF CONTENTS

	Page
I. PURPOSE	1
II. BACKGROUND	1
III. STATUTORY AUTHORITY	1
IV. COMPLAINT PROCESS –RECEIVING THE COMPLAINT.....	1
A. Types of Complaints	1
B. Complaint Intake Form	3
C. Application for Reward Form	5
V. OCI REFERRAL PROCESS	5
VI. TRIAGE PROCESS	6
VII COMPLAINT ASSIGNMENTS	7
VIII. COMPLAINT INSPECTION PROCESS	7
A. Preparation/Background Information	7
B. Supervisor and/or Performance Manager.	9
C. Site Visits/Interviews/Evidence Collection.	10
D. Report/Findings	14
E. Enforcement Decision	16
IX. FILING OF COMPLETED INSPECTION REPORTS	16
X. FOLLOW-UP ON REWARD APPLICATIONS.	17
XI. ROLES AND RESPONSIBILITIES	18

ATTACHMENTS

Attachment A: Interview Techniques	21
Attachment B: Complaint Intake Form	26
(also includes Complaint Intake Form Codes, Receipt of Notification and Application for Reward, and Fact Sheet on Payment of Rewards)	
Attachment C: Proposition 65 Reporting Requirements For Designated Employees	30
Attachment D: Complaint Report Summary	32
Attachment E: Complaint Inspection Report	33

I. PURPOSE

This policy provides a uniform method by which the Department of Toxic Substances Control (DTSC) documents and responds to complaints alleging violations of the Health and Safety Code section 25100, *et seq.*, and its associated regulations regarding treatment, storage, and disposal of hazardous wastes. This document is not intended to establish policy for the Office of Criminal Inspections.

II. BACKGROUND

This policy supersedes EO-02-007-PP.

III. STATUTORY AUTHORITY

Health and Safety Code, section 25197.1(b)(5) requires DTSC to establish and maintain a toll-free telephone number ((800) 698-6942 or (800)-69-TOXIC) for reporting violations of Health and Safety Code, Division 20, Chapter 6.5. This section also requires DTSC to screen calls for violations and refer information concerning potential violations within three working days to the appropriate office to handle the complaint.

Health and Safety Code section 25191.7 requires DTSC to establish a program to pay a reward to anyone providing information that materially contributes to the imposition of a civil penalty or criminal fine against any person for violation of Health and Safety Code, Division 20, Chapter 6.5. (California Code of Regulations, title 22, sections 66272.20 and 66272.30 contain provisions regarding rewards for informants and payment of reward claims.)

IV. COMPLAINT PROCESS --- RECEIVING THE COMPLAINT

Attachment A provides some interviewing techniques to use in conducting a telephone interview.

All complaints including complaints received through non-Hotline phone calls, Hotline phone calls, emails, facsimile documents, letters reporting a complaint, the Cal/EPA on-line complaint system, and drop-in visitors reporting a complaint should be routed to the Complaint Duty Officer.

All complaint information received by DTSC will be entered into the on-line Complaint Intake Form (an example is provided in Attachment B). The following discussion of complaint types focuses on telephone calls because telephone call complaints are the most common form of complaint received, telephone calls represent the most significant potential source of timely information, and telephone calls are most often associated with emergency or urgent situations that require more immediate response. However, complaints from all sources should be approached using the same considerations.

A. Types of Complaints

Emergency

If the Complaint Duty Officer receiving the complaint determines the circumstances warrant an emergency response or if the caller identifies circumstances that appear to be an emergency and, in either case, the call does not have aspects of a complaint that should be investigated

by DTSC, the caller should be referred to either 911 or the Office of Emergency Services (OES) at 800-852-7550. If the call appears to be an emergency and the circumstances being reported have aspects of a complaint that should be investigated by DTSC, the Complaint Duty Officer should ask the complainant for his or her name and phone number. The Complaint Duty Officer should then ask the complainant to call either 911 or OES at 800-852-7550, and to call the Hotline back after that call is completed. If the complainant does not call back within an appropriate period of time, the Complaint Duty Officer should contact the complainant at the phone number provided by the complainant. The Complaint Duty Officer should then gather the necessary information to complete the Complaint Intake Form after the caller has communicated the emergency information to the 911 dispatcher or OES. The Complaint Coordinator should handle the complaint in the same manner as all other complaints.

Urgent

Complaints that indicate an illegal act is occurring at the time the complainant is calling should be referred immediately to the appropriate agency or DTSC division or office (e.g., OCI) to handle the urgent response necessary to gather evidence and stop the illegal act. The appropriate referral agency may be the local CUPA, local police, Department of Fish and Game, California Highway Patrol (CHP), or other agency. The Complaint Duty Officer will have to assess the situation and use professional judgment and knowledge to determine the proper agency to which an urgent complaint should be referred.

Complaints

Normally, complaints will be taken by the Complaint Duty Officer who will complete the on-line Complaint Intake Form. Complaint calls received by other persons should be transferred to the Complaint Duty Officer. Other inspectors should accept the complaint information only if the party refuses to be transferred to the Complaint Duty Officer. If the caller refuses to be transferred, complete the complaint intake part of the Complaint Intake Form which is located on-line in the data system. Obtain as much information as possible, including the caller's name, phone number, and the names of any other witnesses. Ask the caller to describe the "who, what, when, where, why, and how" of the reported violation. Notify the Complaint Duty Officer of the complaint that has been entered into the data system. If the complaint was not taken by entering the data into the on-line form, provide the Complaint Duty Officer with an electronic copy of the data that was collected by creating and attaching a Word document to an e-mail addressed to the Complaint Duty Officer. Call the Complaint Duty Officer to confirm receipt of the complaint.

Non-complaints

Complaints that do not involve hazardous waste should be referred to the appropriate local, state, or federal agency. It is recommended that the Complaint Duty Officer transfer the caller to the appropriate agency. The Complaint Duty Officer should use his or her background and knowledge to properly handle these calls. **Complaints involving de minimis amounts of potentially hazardous waste can be referred directly to a CUPA or other local agency, such as the local air pollution control district, if, in the experience of the Complaint Duty Officer, this is an appropriate referral.** Depending on the nature of the complaint, the Complaint Duty Officer should remain on

the line to assist the caller and while the allegations are discussed with the local, state, or federal agency. By having the Complaint Duty Officer remain on the line, additional information may come to light which might identify potential hazardous waste issues that were not mentioned by the caller during the initial discussion.

B. Complaint Intake Form

When the Complaint Duty Officer receives a complaint, the duty officer is responsible for completing the on-line Complaint Intake Form. The Complaint Intake Form should be filled out at the time that the complaint is received or immediately after from notes taken by the Complaint Duty Officer. Any relevant documents received should be forwarded to the Complaint Duty Officer for distribution to the inspector and the supervisor. The information on this form includes the name, address, city, zip code, and phone number of the complainant and the business or individual against whom the complaint is being made. The following discussion of the Complaint Intake Form is intended to clarify what data are to be collected on the form and to address some general issues associated with taking a complaint.

When a call is received where the complainant requests confidentiality, the request should be noted on the Complaint Intake Form along with any reason given such as fear for his or her personal safety or fear of losing his or her job. The complainant should be encouraged to provide his or her name and address and to be available to provide additional information to allow staff to adequately follow up on the complaint. Any complainant requesting confidentiality should be informed that DTSC will attempt to protect the complainant's identity to the best of its ability as allowed by law and will challenge any attempt to require DTSC to disclose the name or address of any complainant. However, the complainant should be informed that disclosure of the complainant's identity may be compelled by a court should the case go to trial and the complainant's attendance as a witness may be necessary. The complainant should also be told that his or her identity may need to be disclosed to other enforcement or prosecutorial agencies in order to facilitate the inspection of the complaint or to obtain search or inspection warrants. Because DTSC cannot guarantee the permanent non-disclosure of a complainant's identity, if the complainant is adamant that his or her identity never be known by anyone, the complainant should remain anonymous. In such cases, the on-line Complaint Intake Form should have the anonymous indicator selected. The complaint should then be handled as an anonymous complaint.

All complaint inspections are confidential until the inspection and any subsequent enforcement is complete. Any hard copy complaint files should be maintained in each office as a discrete set of files and all complaint information should be handled as confidential during the course of the inspection. The original Complaint Intake Form will remain confidential. A copy of the redacted version of the Complaint Intake Form will be included in the Complaint Inspection Report.

Log Number

Each complaint will receive a log number when it is entered into on-line data system. This number is system generated.

Source of Complaint

- prior existing complaint
- referred from another agency, including Cal/EPA
- direct public contact by phone, mail, facsimile, email, walk-in
- referred by DTSC staff

Allegations

- Unauthorized transportation
- Unauthorized disposal
- Unauthorized storage
- Unauthorized treatment
- Other

Response

- no further action
This designation is used by the Complaint Coordinator during the triage process or by a supervisor when a complaint has been assigned to that supervisor, if the Complaint Coordinator or supervisor determines that the complaint does not require further action.
- assigned for response by EERP staff other than OCI.
- referred for response outside EERP. (Those handled by OCI are also considered 'referred.')

Agency or Other DTSC Program Referred To

This field is for those complaints referred to other agencies or to other DTSC programs outside EERP for response. Those handled by OCI are also considered 'referred.'

If a complaint is received by a Complaint Duty Officer but the location of the alleged illegal activity occurs in an area served by a Complaint Coordinator in which he or she does not directly work, the Complaint Duty Officer should notify the appropriate Complaint Coordinator regarding the new complaint by phone and by e-mail. The appropriate Complaint Coordinator notifies the originating office that the complaint has been received. The appropriate Complaint Coordinator is responsible for forwarding the complaint to OCI and will then triage that complaint if OCI does not keep it.

Proposition 65 Notification

Proposition 65 notification should be completed by the DTSC staff inspector working on the violation or complaint, as appropriate, depending on the inspection findings. This notification should occur when the inspection has revealed enough information to establish that there is a reason to make the notification. If at any time during the receipt or processing of a complaint, a designated governmental employee (pursuant to Government Code, section 82019) believes that he or she has obtained sufficient information of the elements of a potential violation that require notification (pursuant to Health & Safety Code, section 25180.7), the employee should

make the appropriate Proposition 65 Notification (see Attachment C).

C. Application for Reward Form

This form is generated by the data system based on the data entered into the system. The reward form (an example is provided in Attachment B) serves two purposes: to acknowledge the receipt of the complaint allegations and to inform the complainant of the existence of the reward process.

1. The application for reward and the fact sheet are generated from the data system by Support Staff and shall be mailed to the informant at the time the initial information is entered into the complaints database. When a completed form is received, the inspector should shall provide the information to the Support Staff (Data Manager) for entry into the data system, review it to determine if the informant added additional information regarding the allegations. The Complaint Coordinator should be notified immediately of receipt of the form and if any new information has been provided.
2. When the completed application form is received from the complainant it should be scanned and entered into the complaint data system as an attached pdf file.
3. When a complaint is referred to a CUPA, other local agency, another state agency, a federal agency, or OCI, for inspection, and the complainant has applied for a reward, a copy of the reward application may, with the concurrence of the complainant, be sent to the investigating agency, and the information sent to the informant with the application should advise them of the referral in writing (see Attachment F).

V. OCI AND COMPLAINT REVIEW REFERRAL PROCESS

Complaint Duty Officers shall forward all complaints to the appropriate OCI supervisor by e-mail for review for criminal inspection. The subject line for the e-mail shall include the complaint number and the county where the violation is alleged to have occurred. A copy of that e-mail shall also be sent to the Complaint Coordinator at the same time. This process should occur after the complaint has been logged-in (on the same day the complaint is received and within four hours of receipt whenever possible). The OCI supervisors shall review the complaints received and determine if OCI will investigate the complaints. If the OCI supervisor requires additional data regarding a particular complaint, they should contact the Complaint Duty Officer who received the complaint or the complainant regarding that information. OCI will notify the Northern or Southern EERP Complaint Coordinator as soon as possible, and no later than 48 hours from the time OCI receives the complaint, of its intentions to investigate the complaint or not.

If the OCI supervisor elects to investigate, then the complaint is considered referred. The Complaint Coordinator will enter on the Complaint Intake Form: the fact the complaint has been referred; the "Referred Date" ; a statement that the complaint has been referred to OCI in the comments field notes; and the "Case Closed" date. A copy of the closed complaint form will be printed and the Support Staff will file the closed complaint in the confidential file. OCI has a

separate data system for tracking their inspections.

VI. TRIAGE PROCESS

A northern and southern California field office shall have a Complaint Coordinator assigned to receive, review and triage complaints, refer complaints to appropriate agencies such as OCI , CUPAs, other local agencies, or other State agencies, and send those complaints to be investigated by EERP to appropriate supervisors based on the location or nature of the complaint. All complaints should be entered into the data system by the Complaint Duty Officer within four hours of receipt of the complaint whenever possible. The Complaint Coordinator shall review the complaint within 48 hours of receipt or as soon as reasonably possible. If the Complaint Coordinator is temporarily unavailable, a designated backup, identified for each office, shall review the complaints. Any triage decision made by a staff backup (other than a Senior Hazardous Substances Scientist or supervisor) should be reviewed and signed off by a supervisor. Health and Safety Code section 25197.1(b)(5) states, "The department shall screen calls for violations and shall refer information concerning potential violations within three working days to the regional office of the department, the office of the city attorney, the district attorney, or the Attorney General, as appropriate." Therefore, for Hotline calls, at least, DTSC has three working days to triage and refer all complaints.

A decision to investigate a complaint by EERP should be made if the conduct identified in the complaint: (1) poses a significant threat to public health or the environment; (2) is an act that reflects continuing noncompliance; or (3) is an act that reflects serious noncompliance involving multiple agency jurisdictions. EERP staff should also investigate a complaint if the complaint is regarding a permitted facility, a commercial off-site facility operating without a permit, or a registered or unregistered transporter. As part of the triage process, the Complaint Coordinator should review the current facility and transporter information in the data system to ensure that complaints regarding permitted facilities and registered transporters are not referred to another agency. Referrals should generally be made to the CUPA or local agency in matters of routine generator or tiered permitting noncompliance, nuisance abatement, or local public health issues.

When the decision is made to refer a complaint, the referral, the name of the agency that receives the referral, and the date of the referral, should be recorded in the data system by the Complaint Coordinator. The complaint should be referred by email with the Complaint Intake Form as an attachment to the email. Any additional documentation that is received regarding the complaint should be converted to a pdf, attached to the complaint in the data system, and forwarded to the agency designated to receive the referral as soon as reasonably possible, but no later than one working day after receipt of the additional information.

If the Complaint Coordinator elects to close out the complaint without a formal response, a "No further action" response will be selected in the "Response" field, with the date of decision recorded in the "Response Date" field. This decision may be based on any or all of the following factors:

- The Complaint Coordinator's knowledge of activities at the site;
- Insufficient information; or
- Lack of credible information.

The decision to close the complaint should be documented on the Complaint Intake Form in the “Other comments” field. The decision should identify the rationale for closing the complaint in the Complaint Coordinator’s area of the form. The designation “No further action” is to be used only by the Complaint Coordinator or supervisor reviewing the complaint.

VII. COMPLAINT ASSIGNMENTS

When the decision is made by EERP to investigate the complaint, the complaint should be entered into the “Assigned for Inspection” field on the Complaint Intake Form. The date the decision is made to investigate is recorded in the “Response Date” field on the Complaint Intake Form by the Complaint Coordinator.

When complaints are to be assigned to EERP staff, the Complaint Coordinator should discuss the allegations with the supervisor. Based on the allegations, complexity, and specifics of the case, the supervisor will select and assign EERP staff to the inspection. The supervisor is responsible for making sure staff accurately complete all data tracking forms in a timely manner. If a complaint is not going to be immediately assigned to an inspector, the complaint will be considered to be backlogged.

When a complaint is assigned, the name of the inspector assigned to the complaint should be noted on the Complaint Intake Form in the “Inspector” field by the supervisor. The date the assignment is made is recorded in the “Data Assigned” field by the supervisor.

VIII. COMPLAINT INSPECTION PROCESS

Once a complaint has been assigned to an inspector, the inspection should begin as soon as reasonably possible. The date that the inspection begins should be recorded in the data system when the data system is modified to allow this record. Upon initiating the inspection, the assigned inspector investigating the complaint should obtain a site code from Fiscal Systems.

The inspection is to be documented in an inspection report, in a chronological format, that clearly answers who, what, where, why, when, and how for each step in the inspection.

The complaint inspection process can be broken into four parts:

- Preparation/Background Information
- Site Visit(s)/Interview(s)/Evidence Collection
- Report/Findings
- Enforcement Decision

A. Preparation/Background Information

EERP inspectors have a variety of tools available to them to gather background information on the company, person, and/or location of the alleged act(s) of noncompliance which may clarify or change the direction of the inspection. **Generally and depending on the nature and urgency of the complaint, no site visit should begin until all relevant background information is**

obtained in order to better assess and prepare the appropriate inspection strategy.

Listed below are the recommended key initial search locations for information.¹

Recommended Background Searches

Contact the Complainant: The purpose of the contact is to identify that an inspection has begun on the allegations, to provide the complainant with the name and phone number of the inspector who is lead on the inspection and to interview the complainant to gather additional information. This additional information may include, but is not limited to, the names of others who may have information, times and dates of activities, and more information about the processes and persons involved.

The inspector may need to schedule a meeting with the complainant to obtain maps, photos, or any other documentation the complainant may have to assist in the inspection.

Hazardous Waste Tracking System (HWTS): A database search will reveal any manifest activity the person or company has performed and may identify types of wastes shipped offsite, identification number, address, mailing address, container types, transporter information, disposal site information, and frequency of waste shipments. Violations of hazardous waste laws and regulations may not be proven solely based on HWTS data, but the system will identify what manifests staff may need to look at to make a case. Copies of manifests may be needed to substantiate a possible hazardous waste violation. Depending on the allegations, a review of the transporter quarterly reports shall also be evaluated. **Read the limitations notice on HWTS.**¹

Department Files: “Department files” collectively refers to field office files, headquarters files (research/development information, treatability study notifications, standardized permit files, technology certification files, etc.), and various data bases. This review may identify previous DTSC involvement, provide permitting information, identify past compliance inspections or complaint inspections, and identify past or current site mitigation activities. It is also recommended that Site Mitigation data on EnviroStor be reviewed to further define past or current cleanup information. In addition to Site Mitigation data, a check of the current data system may identify past enforcement actions against the company. This search may also identify a DTSC inspector having knowledge of the site. Consultation with that individual may provide valuable information that can clarify or change the direction of the inspection. OCI should be re-contacted to determine if it has a separate case being developed.

Contact the Local Agency such as the CUPA, the County Health Department, or Fire District: The local agency should be contacted to determine what information may exist in its files regarding the company, person, or location of the complaint and, if ever inspected, when the last generator, tiered permitting, or other inspection occurred. The appropriate local agency should also have a copy of the company’s Hazardous Materials Business plan and the most current tiered permitting application, if applicable. It may be necessary to make an appointment with the local agency to review its files. During this contact, the inspector will also be able to establish if the local agency has an ongoing inspection against

¹ Depending on the urgency of the complaint response, the evaluations may not all be completed before initiating a field activity.

the company/person/location or if the local agency has received recent complaints involving entities named in the current complaint. When contacting outside agencies regarding a pending complaint inspection, the inspector should proceed cautiously to avoid divulging too

much information to minimize the outside agency from initiating its own independent inspection or discussing the allegations with the company or person in question.

Contact the local sewer agency and air quality management district:

Depending on the nature of the allegation(s), the local sewer agency may be able to provide information regarding permit and compliance history, permit applications, including company diagrams, and information regarding discharge points, emission sources, and the processes operated. Depending on the allegation(s) set forth in the complaint, the inspector may need to establish whether the agency or district has received similar complaints and the status of the resulting inspection(s).

Contact Miscellaneous Local Agencies: Depending on the nature of the allegation(s), the inspector may also need to contact the local county assessor's office, planning department, recorder's office, agricultural commissioner's office, public works department, or other local governmental agencies.

Contact other state or federal Agencies: Depending on the nature of the allegation(s), the inspector may also contact the Regional Water Quality Control Board, Department of Fish and Game, Occupational Safety and Health Administration, Integrated Waste Management Board, other State agencies, U.S. EPA, or other federal agencies.

Internet Use: There are a variety of Internet sources available for researching activities, chemicals, or companies. In addition, numerous federal and State agencies have different enforcement databases that can be accessed through computers. Finally, search for the company (e.g., Google) on the Internet. They may have their own web site with lots of information.

B. Supervisor and/or Performance Manager Briefing

If necessary, the inspector should contact his or her supervisor to discuss issues or problems and to keep the supervisor apprised of information gathered at each phase of the inspection and to discuss strategies, such as the possible need to:

- conduct sewer monitoring;
- conduct surveillance;
- coordinate site visit(s) and interview(s);
- plan and coordinate large sampling events;
- request criminal investigator assistance from OCI;
- discuss CUPA participation;
- coordinate with the local environmental crimes task force through OCI
- discuss legal issues (such as consent, inspection warrants, regulatory interpretations)

- with Office of Legal Affairs (OLA) attorney;
- coordinate with the local District Attorney, Office of Attorney General, or U.S. Attorney;
- coordinate with the CHP regarding transporter issues;
- coordinate with U.S. EPA;
- brief DTSC management; or
- discuss a proper rationale for close-out of the inspection based exclusively on information gathered during the background phase of the inspection.

C. Site Visit(s)/Interview(s)/Evidence Collection

Pre-site Visit Planning

The number of staff assigned to a complaint inspection will depend on the circumstances involved and the discretion of the supervisor or Performance Manager. If sampling is anticipated, all health and safety policies shall be followed. In addition to the routine equipment brought to the field when conducting a complaint inspection, it is recommended that all staff going into the field have appropriate communication equipment. The purpose of having a cell phone is to maintain contact with the field office and management and Support Staff, as needed. Other agency contacts made before conducting a site visit as part of a complaint inspection may include:

- The CUPA or other agency should be contacted to inform them of the impending site visit. However, this may be done just prior to actually going onto the site. California Code of Regulations, title 27, section 15 210(e)(1) requires DTSC to “notify the appropriate CUPA of any inspection DTSC will conduct of hazardous waste generators” or onsite treatment facilities.
- The CUPA or other agency contact may have valuable information regarding the site. The inspector should obtain, from these other sources, as much information as possible before making a site visit. It is helpful to know if other agencies have been denied consent for inspection in the past. **If a denial has occurred in the past, the inspector should discuss with their supervisor and OLA the need for an inspection warrant.**
- The inspector should, in his or her contact with the other agencies, make it clear that DTSC is the lead agency on the inspection and shall establish clear ground rules for the inspection. Recommended ground rules include the following:
 1. All complaint site visits are **UNANNOUNCED**. The **participating agency should not contact the facility or person to be investigated prior to the visit.**
 2. **DTSC staff will designate a pre-arranged location for meeting with the other agency contacts and then all will enter the site together.**
 3. DTSC obtains consent and directs the inspection. If consent is denied the inspector shall leave the facility and consult with his/her supervisor and OLA.
 4. All questions regarding the inspection should be directed to DTSC.

5. If the other agencies wish to conduct their routine inspections, those activities shall be conducted after DTSC has completed its site visit tasks.
- Consult with Industrial hygiene staff: Before completing the HARP form, the inspector should consult with the industrial hygiene staff regarding special concerns such as temperature, possible contaminants, sampling, specialized personal protective equipment, and monitoring needs.
 - Consult with Environmental Chemistry Laboratory (ECL): The Authorization Request Form (ARF) (T:\FORMS\ECL) is the first step, where discussion begins with ECL regarding methodologies, blanks, preservations, etc. Prior to completing the Sample Analysis Request form (T:\FORMS\ECL), it is prudent to discuss with ECL the circumstances of the complaint related to potential sampling activities, special sampling needs, sample volumes, and possible test methods.

Interviews

This is an on-going activity throughout the inspection process. Each interview should be documented in detail, making sure that during the process, the interviewer focuses on “who, what, when, where, why and how”, and the degree of knowledge/intent possessed by the violator.

The purpose of the interview is to confirm existing information and to gather new information. It is also to identify other people who may have firsthand knowledge of the allegations or who were directly involved, or to identify other evidence that will corroborate the witness' information. Information obtained from interviews may be used to establish probable cause for a search warrant or to establish elements of a violation.

Consent

Consent shall be obtained prior to initiating the site visit, a search of records at the site, or any other activity at a site when you are collecting information on or at the property which is the subject of a complaint, unless you have a warrant. **The inspector needs to gain access to a site, documents, or employees without divulging information regarding the allegations set forth in the complaint or the identity of the complainant.** It is recommended that when asking for consent, the inspector be positive, non-threatening, and not imply any wrong-doing.

The inspector shall explain to the operator that consent to conduct an inspection covers inspecting hazardous waste handling areas, taking photographs, conducting sampling activities, interviewing staff, and reviewing and copying documents. The inspector shall request, obtain, and document consent to conduct the inspection from the operator before beginning the inspection.

If consent to conduct an inspection is granted, the inspector shall specifically note this fact in the Complaint Inspection Report. The notation shall include the date and time at which consent was granted, and name and

title or position of the person consenting to the inspection. The inspector shall obtain consent each day and each time he/she returns to the site (e.g., after lunch).

If consent is denied or withdrawn at any time, the inspector shall leave the facility, notify his or her supervisor, and obtain an inspection warrant. The inspector should not make any remarks about getting a warrant, or try to intimidate the facility representative, but should calmly leave the site. The inspector may opt to tell the facility of our intent to obtain an inspection warrant but in doing so should not attempt to intimidate the facility representative. If consent to conduct an inspection is denied or withdrawn, the inspector shall specifically note this fact in the inspection report. The notation shall include the date and time at which consent was denied or withdrawn, and name and title or position of the person denying or withdrawing consent to conduct the inspection and any reasons given for denying or withdrawing consent.

If consent is denied, or withdrawn, the inspector should discuss obtaining an inspection or search warrant with his or her supervisor and OLA.

There are specific procedures and criteria that shall be followed to obtain an inspection warrant (T:\FORMS\ENF). The OLA or the District Attorney's Office will assist as necessary with the preparation of warrants. If the inspector expects consent to be refused, he or she may make advance preparations for obtaining an inspection warrant.

An inspection warrant requires 24 hours notice to the operator, unless the notice period is waived by a court.

Scope of Site Visit Inspection

The focus of the site visit should be to investigate the allegations of the complaint and other areas of concern found during the preparation/background phase of the inspection. Nevertheless, the inspector may observe other violations and should be alert for unexpected violations that may be found during a site visit or an interview. The inspector should be looking beyond the obvious and be flexible to adjust to whatever circumstances come up and adjust the inspection accordingly.

It is generally not appropriate to initiate a routine Compliance Evaluation Inspection as a result of a complaint. The scope of the inspection may be expanded beyond the allegations set forth in the complaint when:

- significant violations other than those alleged in the complaint are found;
- treatment, storage, disposal, or transportation issues are found through an HWTS report; or
- other significant issues are noted during the preparation/background phase, site visit, or interviews.

If necessary, the inspector should contact his or her supervisor to discuss issues or problems. The inspector is only entitled

to copies of documents and should be aware that original documents cannot be seized unless an inspection is conducted under a search warrant.

Sampling Issues

Samples should be collected, if possible and appropriate, to support all violations.² Samples should be collected whenever possible to support potentially criminal or Class I violations. Field replicate samples shall be offered.

Violation Documentation

All violations observed should be documented in the inspection report.

The inspector should obtain sufficient evidence to prove each element of the violation before a violation can be cited. All violations shall be supported by evidence such as samples, photographs, documents, or statements.

Summary of Observations (SOO) (T:\FORMS\EERP Documents): If no violations were observed during the site visit and the inspector anticipates that no additional actions will be taken the inspector may leave an SOO indicating that no violations were observed.

Summary of Violations (SOV) (T:\FORMS\EERP Documents): If the inspector observes violations then an SOV/NTC should be issued. For each violation, the inspector shall cite the statute, regulation, permit section, variance section, or enforcement order section that was violated and describe the violation by referencing language from the provision cited. In a separate paragraph, the inspector shall state the actions necessary to correct each violation. The inspector shall discuss the SOV with the operator.

Notice of Violation (NOV) (T:\FORMS\EERP Documents): A Notice of Violation shall be issued in the field prior to leaving the site when situations are encountered that pose a serious threat to the health and safety of the public or to the environment.

If the inspector observes situations that pose a serious threat to the health and safety of the public or to the environment the inspector shall immediately consult with his/her supervisor. Those situations could include, but are not limited to, leaking tanks or containers, storage of incompatible hazardous wastes, unauthorized treatment activities that could cause a release, or unauthorized disposal to a drain or to the ground.

The supervisor and inspector shall determine if an SOV or NOV shall be issued based on the conditions at the site.

The NOV shall identify the specific conditions and/or circumstances observed and the regulation or statute that was violated; the remedy to correct the conditions(s); and specify a time by which the violation shall be corrected. The inspector may also conduct a timely follow-up visit to determine if the conditions identified in the NOV have ceased.

² Sampling should not occur if the health and safety of the staff could be jeopardized.

It may also be necessary to notify the local emergency response personnel, district attorney, or other law enforcement personnel if the situation poses a serious, imminent threat.

Site Departure Discussions

No violations observed: The site departure discussions should consist of thanking the owner/operator for their cooperation prior to leaving the site.

Violations observed: The site departure discussions between the inspector and the owner/operator should be substantially the same as what is traditionally discussed during an exit interview for an inspection.

The inspector should not respond to questions regarding findings because the site visit is a portion of an inspection and does not comprise the entire inspection.

The inspector should:

- Thank the company representative(s) for their time, patience, and cooperation;
- Indicate there may be a need for additional contacts to clarify information obtained or to ask additional questions;
- Indicate the site visit is part of an on-going inspection; and
- Not discuss what might happen next because an evaluation of all of the information must be completed.

Violations Documented in the Data System

The inspector shall enter all information regarding violations that are determined as a result of a complaint inspection onto the data entry forms. The supervisor will review this data and all other data provided by the inspector for entry into the data system.

D. Report/Findings

Debriefing Discussions

If the inspector has any concerns or questions regarding the site visit or the potential violations observed, he or she should discuss those concerns, as well as the preliminary findings from the site visit with his or her supervisor (and Performance Manager, depending on the circumstances). Those discussions should cover:

- Conditions observed;
- Any opinion on preliminary findings;
- Possible re-direction of the inspection;
- Any technical issues; and
- Health and safety issues.

For large inspections, the lead inspector should have an internal debriefing session which should include all DTSC staff involved in the inspection. This debriefing should include the above items plus discussions regarding:

- Adequacy of pre-planning protocol;
- Problems encountered (sampling, health and safety);
- Were roles adequately defined;
- Who else should have been involved;
- Report writing roles;
- How the planning could be done better for future inspections; and
- Future activities/responsibilities.

For large inspections involving outside agencies, an external debriefing session should be held. External debriefings should include all agencies involved in the inspection and could include discussions regarding:

- Issues as discussed in the internal DTSC debriefing;
- Violations that have been found to date;
- Schedules for completion of reports; and
- Additional follow-up activities/responsibilities

Complaint Inspection Report

The inspector shall use the Complaint Report Summary and Complaint Inspection Report forms (Attachments D and E) (T:\FORMS\EERP Documents).

The inspection report should consist of two sections: a Complaint Report Summary and a Complaint Inspection Report.

The Complaint Report Summary is the cover page of the full report and serves as a summary of the findings and the disposition of the inspection. This document should be completed once the report is signed off and the inspection is closed. The Complaint Report Summary should also serve to identify if the attached report is a supplemental report documenting follow-up activities or other additional information relevant to the initial inspection.

The Complaint Inspection Report portion is the narrative that describes the details of the inspection and specifies the violations detected.

The drafting of the narrative portion of the inspection report should begin when the inspection commences and should document each activity (including, but not limited to, phone calls, file reviews, computer searches, interviews, and site visits that are relevant and significant to the inspection). The inspection should be chronologically documented and shall be written in a concise manner, reporting only the observations and facts of the inspection. It should not contain the opinions or assumptions of the inspector.

The inspector should draft the document using the same thought process utilized in the inspection, specifically articulating the who, what, where, when, why, and how of the inspection.

The inspector shall document in the report that consent was requested, the name and title or position of the individual who granted consent, and the date and time consent was granted.

The violation portion of the report shall document all violations found during the inspection. The specific statute(s) or regulation(s) violated shall be identified along with the circumstances found during the inspection. Evidence and facts shall support each element of the violation cited. The evidence obtained to support the violations cited shall be identified with each violation. The evidence obtained to support the violation should also be included as attachments to the report. A copy of the original Complaint Intake Form shall not be included as an attachment since the facility could then determine who filed the complaint, but, the form should be submitted with the draft report for the supervisor or per reviewer to look at during the review process. A copy of the redacted Complaint Intake Form shall be included as an attachment with the final report. Reference to the complaint number and allegations can be written into the report. The inspection report should be completed within 60 days from the **date that the inspection is deemed completed by the inspector.**

The supervisor or peer reviewer shall review and concur as appropriate with the contents and recommendations contained in the report. It is recommended that the review of the report be completed within ten working days of receipt. The supervisor or peer reviewer should sign and date the Complaint Report Summary. This indicates the inspection is completed and closed.

E. Enforcement Decision

Upon completing the inspection, an enforcement recommendation should be made based on the findings of the inspection and in conjunction with DTSC's "Enforcement Response Policy" (DTSC-OP-0006).

When the inspector and the supervisor have determined that the appropriate enforcement action is to issue an administrative enforcement order or to refer the case to the Office of the Attorney General, a copy of the inspection report should be mailed to the alleged violator within 65 days of the conclusion of the inspection, unless the conditions specified in Health & Safety Code, section 25185 (c)(2) apply.

For enforcement actions, including informal actions, it is the responsibility of the inspector to complete and submit the data entry forms. It is the responsibility of the supervisor to review this and all other data provided by the inspector for entry into the data system.

IX. FILING OF COMPLETED INSPECTION REPORTS

After an inspection and enforcement action are completed, the following is recommended for handling the inspection files:

- The inspector shall review the entire complaint file and create a confidential file and a public record file.
- The confidential file shall include the complaint form and any information that might identify the complainant.

The inspector shall make a notation in the confidential file folder that the report has been reviewed for confidential information and that, if appropriate, a copy of the redacted version of the narrative portion of the report exists in the public files. Confidential attachments and why those attachments are confidential should be noted. The notation shall be signed and dated by either the inspector or his or her supervisor.

- The public record file shall contain a copy of the redacted version of the complaint inspection report, including attachments. The information that shall be redacted includes, but is not limited to, a confidential complainant's name and address and other identifying information, and trade secret information³. If a company requests trade secret status for a document they shall explain why before the status is granted by DTSC. A copy of the original report should be made and the sensitive information redacted on the copy. The redacted pages should be re-copied and the copies should be placed in the public files. Any issues involving confidentiality should be discussed with OLA.
- Completed enforcement documents such as the filed civil or criminal complaint, administrative orders, and settlement documents shall be placed in the public record file.
- If the inspection was referred to a CUPA for follow-up, the referral document (may be an e-mail) shall also be placed in the public record file.

If a Public Records Act request is received to review the file for a site formerly subject to an inspection, the public would then have access to a redacted version of the Complaint Report Summary, a redacted version of the Complaint Inspection Report and all finalized enforcement documents. If the public file does not contain a copy of the redacted report and a request is made to review the inspection report, the supervisor shall be notified. The supervisor shall contact OLA. If, upon review of the inspection file, a determination is made that a review of the entire inspection report can occur, the entire report shall then be released.

X. FOLLOW-UP ON REWARD APPLICATIONS:

When a case where a reward application has been filed is adjudicated or settled and a penalty or fine has been collected and deposited, the complainant may be eligible for a reward. The reward process is established in Health and Safety Code section 25191.7. California Code of Regulations, title 22, sections 66272.20 and 66272.30, establish the process for applying for a reward and the factors that DTSC or a county shall consider in determining whether a reward will be granted.

Reward applications for cases that have been prosecuted by a county shall be forwarded to and handled by the prosecuting office of the county. Reward applications for cases that have been prosecuted by DTSC or the Office of the Attorney General representing DTSC shall be handled by DTSC.

³ The review of the completed report for potentially confidential information should occur as soon as the inspection is complete because of the potential for staff changes and an eventual lack of familiarity with the case and the report.

For cases handled by EERP where the case has resulted in the collection of a fine or penalty and a reward application has been received, the inspector shall alert his or her supervisor regarding the application. The supervisor and the inspector shall consult with OLA and the Deputy Attorney General, as appropriate, to make a determination whether the applicant supplied information that materially contributed to settlement with or a judgment against a person or persons for violations of the Health and Safety Code, as provided in Health and Safety Code section 25191.7.

After a determination has been made, the inspector shall prepare a letter notifying the complainant of DTSC's determination. When the determination is made to grant a reward, a memorandum shall be prepared for the supervisor's signature directing Accounting to prepare and release a check for the amount of the reward to the applicant. That letter shall be reviewed by the OLA attorney involved in the case and forwarded to Accounting for payment of the reward.

XI. ROLES AND RESPONSIBILITIES

A. Complaint Duty Officer

1. Receives complaint from Complaint Hotline calls, non-Hotline telephone calls, letters, e-mails, facsimile information, and walk-in reports.,
2. Collects complaint information from complainant. Determines initial response based on urgency of complaint (emergency, urgent, normal complaint, non-complaint).
3. Completes online Complaint Intake Form.
4. Sends complaint to OCI and Complaint Coordinator via e-mail for their review.
5. With the concurrence of the Complaint Coordinator, may refer routine complaints.

B. OCI Supervisor

1. Reviews complaint within 48 hours to determine if OCI will investigate the Complaint.
2. Notifies the referring Complaint Coordinator via e-mail of OCI's decision to return or investigate the complaint, within the 48 hour timeframe.

C. Complaint Coordinator

1. Receives complaints from the Cal/EPA On-Line Complaint System. If hazardous waste complaint forwards to Complaint Duty Officer. If not hazardous waste complaint determines appropriate agency and forwards complaint to them.
2. Triages all complaints received that are not kept by OCI.
3. Determines distribution of complaints for inspection. Refers complaints that EERP has decided not to investigate to the CUPA, or to another State or local agency as appropriate.
4. Designates his or her back-up as necessary.
5. Sends complaints by e-mail or fax and confers with EERP supervisors to determine which supervisor should be assigned to respond to the complaint.
6. Prepares monthly reports of complaints referred to CUPAs.
7. Directs Support Staff to mail out reward form. Forwards completed reward form to supervisor.

8. Refers complaints by e-mail or fax to the appropriate agency..

D. EERP Supervisor

1. Ensures that inspectors receive required training and equipment prior to conducting inspections, and are current on HAZWOPER, medical monitoring, respirator fit testing, and CPR/AED/First Aid training, as appropriate.
2. Confers with Complaint Coordinator to determine whether to respond to the complaint
3. Assigns staff to conduct complaint inspection.
4. Reviews and approves a HARP form prior to each complaint inspection, and reviews a Post-HARP after each inspection.
5. Follows up on complaint inspections by assuring timely inspection, data entry, and appropriate enforcement response(s). Coordinate with inspector as appropriate.
6. Review complaint inspection reports as appropriate.
7. Makes decision on enforcement option recommendation.
8. Directs Accounting to pay a reward for cases where the reward applicant is determined to be deserving of such.

E. EERP Performance Manager

1. Follows-up on complaint inspections by staff by reviewing data entry reports and reports from supervisors.
2. Is responsible for the data quality for the complaints responded to by the branch.
3. Is responsible for providing a list of all complaints referred to the CUPAs upon request.

F. EERP Inspector

1. Completes and submits a Hazard Appraisal Recognition Plan (HARP) Pre-Site Visit Form to supervisor and DTSC's industrial hygiene staff in the Technical Workforce Development Branch for approval prior to each inspection, pursuant to the HARP policy. Completes and submits HARP Daily Site Visit Document (Post-HARP) to supervisor and industrial hygiene staff.
2. Prepares for complaint inspections.
3. Investigates complaint allegations.
4. Completes the Summary of Violations (SOV) if violations are observed, or the Summary of Observations (SOO), if no violations are observed, completes the Notice of Violation (NOV) if the applicable conditions exist.
5. Completes inspection report, inspection report transmittal letters, any correspondence with the facility as deemed appropriate by the supervisor..
6. Recommends enforcement option for violations detected.
7. Completes all data entry forms.
8. Prepares confidential and public complaint files for completed inspections.
9. Initiates follow-up on reward applications.
10. Conducts peer review of other inspectors' Complaint Inspection Reports.

G. Support Staff: typically a Staff Services Analyst (Data Manager), Office Technicians, or Management Services Technicians.

1. Mails out reward application to complainant.
2. Reviews returned reward applications and forwards applications with additional information to responsible inspector/ for proper handling.
3. Makes copies of complaint forms and information submitted and distributes those copies to supervisors, Complaint Coordinator, and the inspector who investigates the complaint.
4. Enters information from various data entry forms into the data system; generates reports; performs quality assurance and quality control review of the data (Data Manager).
5. Sends complaint referrals to the agency to which the complaint is referred.
6. Maintains original Complaint Intake Forms and Complaint Log Binder(s).
7. May assist Complaint Coordinator in sending complaint referrals to the agency to which the complaint is referred.

H. OLA

1. Consult with EERP inspector if an inspection warrant is required.
2. Assist in file reviews responding to Public Records Act requests.
3. Reviews memo to Accounting directing payment of reward.

CONTACT:

Department of Toxic Substances Control
Enforcement and Emergency Response Program
1001 "I" Street, 11th Floor
P.O. Box 806
Sacramento, California 95812-0806
(916) 323-3577

This policy is intended to provide guidance only. The policy does not replace or supersede relevant statutes and regulations. The information contained in this policy is based upon the statutes and regulations in effect as of the date the policy was signed. Interested parties are advised to keep apprised of subsequent changes to relevant statutes and regulations.

This policy expires five years from the date of signature.

Attachment A

INTERVIEW TECHNIQUES

TAKING COMPLAINTS OVER THE PHONE

- A. Procedure for taking complaints over the phone
1. General Information.
 - a. Clearly identify the Department of Toxic Substances Control and the Complaint Hotline. This lets the complainant know that he or she has dialed the correct number.
 - b. The Complaint Duty Officer should give his or her first name. Giving one's first name makes the complainant feel comfortable and sets the tone for a more friendly conversation.
 - c. Ask the complainant if he or she wants to lodge a complaint. This is another assurance that the complainant has called the right number.
 2. Obtaining information regarding the complainant.
 - a. Try to obtain complainant's name, address, and telephone number. Some complainants may choose to remain anonymous. Explain to the complainant the importance of disclosing his or her identity. Any complainant requesting confidentiality should be informed that DTSC will attempt to protect his or her identity to the best of its ability as allowed by law. However, disclosure of the complainant's identity may be compelled by a court should the case go to trial and the complainant's attendance as a witness may be necessary. Explain the Receipt of Notification and Application for Reward form (see Attachment B, page 3). This form could be an incentive to provide the name and the address from the complainant.
 - b. If the complainant hesitates to give personal information, explain to him or her that there might be a need for a follow up call to gather more information. Arrange a time for the complainant to call the inspector. Offer the complainant the option to call the inspector collect.
 - c. Tell the complainant that an alias can be used if the complainant does not want to give his or her real name. He or she can leave a phone number, not necessarily his or her own, where messages can be left for the complainant, so that the inspector can get hold of the complainant.
 3. Confidentiality.
 - a. Inform the complainant that DTSC treats all complaints as confidential information; however, we cannot promise that confidentiality of the complainant's identity can be maintained. Complaints can lead to enforcement or even criminal cases. The testimony of the complainant might be needed to help put the case together and he or she shall be identified at that time.

- b. Tell the complainant that during the inspection his or her identity will not be revealed to the party against whom he or she is complaining.
4. Obtain information about the who and where of the complaint.
- a. Ask the complainant who the complaint is against. Make sure that this information is accurate. Ask the complainant to spell the names, if possible.
 - b. Ask the complainant the exact location of the alleged violation. If possible, get an exact address. This could be the address of the company or individual against whom the complaint is being made. Sometimes complaints regard a concern at a certain location, not necessarily a company or an individual. Try to pin point locations using landmarks (an empty lot next to McArthur Park, behind the ABC gas station, a block away from the County General Hospital), cross streets (on Main Street between 2nd and 3rd, in the middle of the block between Spring and Hope) and precise descriptions of location (an abandoned building on the 1200 block of West Avenue, an abandoned tanker truck on Maple Drive). Remember to include the city when asking for an address or location. Bear in mind that some streets go through different cities. Explain to the complainant that it would be impossible for DTSC to follow up a complaint unless the location of the activity is known.
 - c. Try to obtain a telephone number for the company or individual against whom the complaint is being filed.
5. Details regarding the complaint. **ASK FOR AS MUCH DETAIL AS POSSIBLE. NOTE EVERYTHING THE COMPLAINANT SAYS. WHAT MIGHT SEEM LIKE AN INSIGNIFICANT BIT OF INFORMATION AT THE TIME MIGHT BE HELPFUL WHEN THE CASE IS BEING DEVELOPED.**
- a. Suggested questions to consider regarding the “act”:
 - 1. What activity was being observed?
 - 2. What type of containers were observed? Are there any markings on the containers? Can the complainant give an exact number or estimate of the number of containers involved?
 - 3. Can the complainant tell if any chemicals/substances are involved? Does the complainant know what substances are involved? How does the complainant know what the substances are?
 - 4. Are there visible signs of a release that the complainant observed, e.g., a spill on the ground, gassing, vapor clouds, unusual smell? How did the complainant come by this information? Does the complainant know what was spilled, when it was spilled, how it was spilled, how much was spilled, and who spilled it?
 - 5. Did the complainant observe any vehicle involved in the activity? Can the complainant give a description of the vehicle—type (truck, pick up, a car, a sport utility vehicle), color, make of the vehicle, license plate number, possible age of the vehicle?
 - 6. Did the complainant notice the driver of the vehicle? Get a description of the driver and any

- other individuals in the vehicle.
 - 7. Does the complainant know whether the same activity is going on at other locations?
 - b. Suggested questions about how the complainant knows about the activity.
 - 1. How did the complainant know about the activity?
 - 2. When was the activity observed for the first time? Is this a one time occurrence or is it ongoing? Who was the first person to observe the activity?
 - 3. Did the complainant observe an individual or individuals engaging in the activity? Does the complainant know the individual(s) involved in the activity? How does the complainant know the individual(s) involved?
 - 4. Does the complainant know if any other individual or individuals are involved in the activity? Will the complainant provide the names of the other individual(s) involved? Does he or she think the other individual(s) would be willing to talk to DTSC?
 - 5. If this is an ongoing activity, what time and day does it usually occur? Does this activity occur regularly or sporadically?
- 6. Potential emergency telephone call.
 - a. If at any point during the conversation, the Complaint Duty Officer determines that the complainant is reporting an emergency situation, tell the complainant that his or her call is going to be transferred to the Office of Emergency Services (OES).
 - b. The Complaint Duty Officer calls OES while the complainant is on the line allowing the complainant to report the emergency situation. The Complaint Duty Officer, while listening to the complainant's report to OES, can obtain pertinent information regarding the emergency situation from the complainant. This information could be useful for potential follow-up on the complaint.
 - c. If the Complaint Duty Officer concludes that the emergency situation should be reported to the appropriate local agency for response, the same procedure described above should be taken with the local emergency response agency.
 - d. If at any point during the conversation, the Complaint Duty Officer determines that the complainant is reporting a situation that another agency shall be made aware of immediately, the Complaint Duty Officer should call the complaints section of that agency while the complainant is on the line. The same procedure prescribed for an "emergency call" should be followed. The Complaint Duty Officer shall obtain pertinent information regarding the complaint for possible follow-up later.
- 7. Potential nonhazardous waste complaint call.
 - a. If the Complaint Duty Officer determines that the complainant is reporting a situation that is clearly not a violation of the hazardous waste laws or a threat to public health or the

environment, refer him or her to the correct party (e.g., other program-related questions could be referred to other appropriate entities within DTSC, and non-complaint environmental concerns can be referred to other State or local agencies).

- b. The Complaint Duty Officer should give the complainant the correct telephone number of the party the complainant needs to call and then should forward the call to that party, remaining on the line the entire time. The Complaint Duty Officer should explain to the complainant why the call is being transferred and to whom the call is being transferred or referred.
 - c. Informing the complainant that you will remain on the line with him or her accomplishes several tasks.
 1. It allows you to hear the complaint again. The complainant may change the complaint or add information to the complaint which could bring the complaint back into the hazardous waste arena.
 2. Having a State official remain on the line helps open doors that may occasionally not be open to the general public.
 3. It may relieve some of the complainant's frustration if the complainant has been transferred around a lot.
8. Wrapping up the conversation.
- a. Make sure that all information has been noted. Take the time to go over what was written with the complainant to assure that nothing has been missed. Remember, this might be the only contact with the complainant.
 - b. Ask the complainant if he or she has referred this complaint to another agency. Make a note of the agency or agencies with which the complainant has talked. This information could help in the triage process.
 - c. Thank the complainant. Ask his or her permission for a call back should there be more questions. Ask the complainant when it would be most convenient for the Complaint Duty Officer to call back.

General tips on taking complaints over the phone.

1. Be tactful and courteous at all times.
2. Ask open-ended questions to gather more information.
3. Try to sound relaxed. Do not make the complainant feel that you are in a hurry. This might discourage the complainant from giving you more information.
4. Do not be afraid to ask the complainant to repeat what he or she said.
5. Communicate to the complainant the need to gather as much information as possible. Tell the complainant that he or she can help address concerns in the complaint if he or she provides all the information that he or she has.
6. Tell the complainant that the information is being written down. If possible read back to the complainant the information taken down. This assures that Complaint Duty Officer has taken down the information correctly. Hearing what he or she said might help the complainant recall more details.
7. Keep in mind the **Who, What, Where, When, Why, and How** when interviewing the

- complainant and make sure that accurate information to answer the **Who, What, Where, When, Why, and How** is gathered.
8. Develop good listening techniques. Keep quiet while the complainant is talking. Do not interrupt.
 9. Avoid talking down to a complainant. If the complainant does not understand the laws, try to explain them to him or her. Sometimes, a complainant might think that what he or she observed was illegal. If the Complaint Duty Officer knows otherwise, try to explain this to the complainant without making the complainant feel embarrassed.
 10. Sometimes, it is necessary to allow the complainant to vent his or her anger first, before he or she can rationally give details on a complaint. Be sensitive to the complainant's anger, frustration or even fear. Sometimes, the complainant may be frustrated with DTSC because he or she has called several times before and felt that he or she was being given the run-around. Try to be sympathetic to the complainant.
 11. When in doubt as to whether the complainant is giving a valid complaint or not, take down the information he or she is providing. Make every complainant feel that his or her call is important. Delay the decision regarding validity of complaint to the triage process.
 12. Avoid arguing with the complainant. The complainant has the information. Nothing is to be gained by trying to prove the complainant wrong.
 13. Threatening calls should be documented and never be taken lightly. Report threatening calls to the proper authority.
 14. Be sincere.

Attachment B

COMPLAINT INTAKE FORM

Log Number:

COMPLAINANT		SUBJECT OF INSPECTION	
Name:		<i>Name:</i>	
Address:		<i>Business Name:</i>	
City:	Zip:	Address:	
Phone: ()		City:	Zip:
		Phone: ()	
		County:	
COMPLAINT DATA			
Is this an emergency? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, call the Office of Emergency Services (OES) at 1-800-852-7550.			
RCRA State <input type="checkbox"/> <input type="checkbox"/>	<i>Date Received:</i>	Time:	Received by:
Notification Made Regarding Proposition 65	Yes <input type="checkbox"/> No <input type="checkbox"/>	Local Agency Notified:	Who notified at local agency:
Date of Incident:	Allegation Code:	Quantity Involved:	Source of Complaint Code:
Other Comments:			
COMPLAINT COORDINATORS ONLY			
Response Code:	<i>Agency Referred To:</i>		
Response Date:	<i>Assigned Inspector:</i>	Date Assigned:	

DTSC 1017 (12/01)

COMPLAINT INTAKE FORM CODES

Code Number	County Name	Code Number	County Name	Code Number	County Name
1	Alameda	30	Orange	41	San Mateo
2	Alpine	31	Placer	42	Santa Barbara
3	Amador	21	Marin	43	Santa Clara
4	Butte	22	Mariposa	44	Santa Cruz
5	Calaveras	23	Mendocino	45	Shasta
6	Colusa	24	Merced	46	Sierra
7	Contra Costa	25	Modoc	47	Siskiyou
8	Del Norte	26	Mono	48	Solano
9	El Dorado	27	Monterey	49	Sonoma
10	Fresno	28	Napa	50	Stanislaus
11	Glenn	29	Nevada	51	Sutter
12	Humboldt	32	Plumas	52	Tehama
13	Imperial	33	Riverside	53	Trinity
14	Inyo	34	Sacramento	54	Tulare
15	Kern	35	San Benito	55	Tuolumne
16	Kings	36	San Bernardino	56	Ventura
17	Lake	37	San Diego	57	Yolo
18	Lassen	38	San Francisco	58	Yuba
19	Los Angeles	39	San Joaquin		
20	Madera	40	San Luis Obispo		

ALLEGATION CODES

- D Unauthorized Disposal
- S Unauthorized Storage
- T Unauthorized Treatment
- X Unauthorized Transportation
- O Other

RESPONSE CODES

- I Investigated
- R Referred
- N No further action

SOURCE OF COMPLAINT

- D Direct public contact (phone, walk-in, mail, e-mail, facsimile)
- A Referred from another agency
- O Referred from DTSC staff

DTSC 1017 (12/01)
 (Formerly DHS 8231 and DHS 8073)

RECEIPT OF NOTIFICATION AND APPLICATION FOR REWARD

COMPLAINANT		SUBJECT OF INVESTIGATION	
Name:		<i>Name:</i>	
Address:		<i>Business Name:</i>	
City:	Zip:	Address:	
Phone: ()		City:	Zip:
		Phone: ()	
		County:	

RECEIPT OF NOTIFICATION

The Department of Toxic Substances Control has received your complaint regarding mismanagement of hazardous waste. This is to inform you of the Informant Reward Program. Please note, this is a voluntary program. Your report may result in the collection of civil or criminal fines or penalties; you may be eligible to receive a reward. To participate in this program an Application For Reward must be filled out and sent back to this office. Whether you participate in the Informant Reward Program or not, the information you reported will be investigated. Thank you for your interest and cooperation in helping to monitor mismanagement of hazardous waste in California.

Thank you for bringing this issue to our attention. If you wish to follow up on your complaint in the future, please refer to the Log Number above when you contact the Department.

 Complaint Coordinator
 Department of Toxic Substances Control

APPLICATION FOR REWARD

Log Number: _____

To the applicant: Please complete the information requested below. See page 4 for notification information. Your name and address will not be disclosed in conjunction with your notification or reward application unless it otherwise becomes publicly known in conjunction with a court proceeding or otherwise.

Applicant's Name (Please print):		Social Security No.	
Address (Number and street):	City:	State:	Zip Code:
Person or Office Notified:			Date of Notification:
Brief summary of the information given. (This is for application processing only and is not a substitute for actual notification.)			

CERTIFICATION

I hereby submit application for a reward pursuant to Section 25191.7 of the Health and Safety Code. I understand that all claims must be reviewed for eligibility as set forth in Title 22, Division 4.5, Chapter 22 of the California Code of Regulations.

 Signature of Applicant
 DTSC 1017 (10/91)

 Date Signed

Note: Information to be transferred to complaint log is highlighted in bold italic print. Attach addendum if necessary. DTSC 1017 (12/01) (Formerly DHS 8231 and DHS 8073)

FACTSHEET ON PAYMENT OF REWARDS

(TO BE SENT WITH APPLICATION FOR REWARD)

California Health and Safety Code Section 25191.7 requires that a reward be paid when any person provides information that “materially contributes” to the imposition of a fine or penalty assessed against a person for violation of the state’s hazardous waste control laws.

The amount to be paid is up to ten percent of the total fine or penalty collected and deposited, or a maximum of \$5,000 for each case reported.

When do I receive my reward?

Within thirty days after the fine or penalty is collected and deposited into the county or State account.

How do I know I am an “eligible informant?”

The application shall be submitted to either the Department of Toxic Substances Control (DTSC) or the local prosecuting office within sixty days after the judgment is entered.

Where do I file my application?

DTSC staff will work with you to make sure your application is filed with the correct office. All civil case applications are handled by DTSC’s Sacramento or Chatsworth office. All criminal case applications are processed by office that prosecuted the case: the local city attorney, district attorney, or the Office of the Attorney General.

DTSC’s various offices statewide can assist you in determining where to send your application. Call the office nearest you. DTSC’s offices include the following:

Sacramento Office
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826
(916) 255-3545

Chatsworth Office
Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, CA 91311
(818) 717-6500

Berkeley Office
Department of Toxic Substances Control
700 Heinz Ave., Suite 200
Berkeley, CA 94710
(510) 540-2122

Cypress Office
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, CA 90630
(714) 484-5300

Clovis Office
Department of Toxic Substances Control
1515 Tollhouse Road
Clovis, CA 93611
(559) 297-3901

San Diego Office
Department of Toxic Substances Control
2878 Camino Del Rio South, Suite 402
San Diego, CA 92108
(619) 278-3734

DTSC 1017 (12/01)

Attachment C

PROPOSITION 65 REPORTING REQUIREMENTS FOR DESIGNATED EMPLOYEES

Health and Safety Code

25180.7. (a) Within the meaning of this section, a “**designated government employee**” is any person defined as a “**designated employee**” by **Government Code Section 82019, as amended**.

(b) Any designated government employee who obtains information in the course of his official duties revealing the illegal discharge or threatened illegal discharge of a hazardous waste within the geographical area of his jurisdiction and who knows that such discharge or threatened discharge is likely to cause substantial injury to the public health or safety must, within seventy-two hours, disclose such information to the local Board of Supervisors and to the local health officer. No disclosure of information is required under this subdivision when otherwise prohibited by law, or when law enforcement personnel have determined that such disclosure would adversely affect an ongoing criminal inspection, or when the information is already general public knowledge within the locality affected by the discharge or threatened discharge.

(c) Any designated government employee who knowingly and intentionally fails to disclose information required to be disclosed under subdivision (b) shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in state prison for not more than three years. The court may also impose upon the person a fine of not less than five thousand dollars (\$5000) or more than twenty-five thousand dollars (\$25,000). The felony conviction for violation of this section shall require forfeiture of government employment within thirty days of conviction.

(d) Any local health officer who receives information pursuant to subdivision (b) shall take appropriate action to notify local news media and shall make such information available to the public without delay.

(Added November 4, 1986, by initiative Proposition 65, Sec. 4. Operative January 1, 1987, pursuant to Sec. 8 of Prop. 65. Note: Prop. 65 allows the Legislature to directly amend its provisions by 2/3 vote.)

(Emphasis Added)

Government Code

82019. “**Designated employee**” means any officer, employee, member, or consultant of any agency whose position with the agency:

(a) Is exempt from the state civil service system by virtue of subdivision (a), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the Constitution, unless the position is elective or solely secretarial, clerical, or manual.

(b) Is elective, other than an elective state office.

(c) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.

□ (d) Is involved as a state employee at other than a clerical or ministerial level in the functions of negotiating or signing any contract awarded through competitive bidding, in making decisions in conjunction with the competitive bidding process, or in negotiating, signing, or making decisions on contracts executed pursuant to Section 10122 of the Public Contract Code.

“Designated employee” does not include an elected state officer, any unsalaried member of any board or commission which serves a solely advisory function, any public official specified in Section 87200, and also does not include any unsalaried member of a non-regulatory committee, section, commission, or other such entity of the State Bar of California.

(Emphasis Added)

(From the Legislative Counsel’s web site at www.leginfo.ca.gov on August 8, 2001)



Linda S. Adams
Secretary for
Environmental Protection



Department of Toxic Substances Control

Maureen F. Gorsen, Director
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806



Arnold Schwarzenegger
Governor

Attachment D COMPLAINT REPORT SUMMARY

Complaint Log Number: _____
Date Received: _____
Date of Report: _____

Subject: _____

Doing Business As: _____

Address: _____

Allegation: _____

Findings/Disposition: _____

Recommendations: _____

Inspection Closed: _____ Supplemental: _____ Other _____

Inspection report Sent to: City Attorney: _____ D.A.: _____ A.G.: _____ Other _____

SUMMARY: _____

COMPLAINANT: _____

Hazardous Substances Scientist's Signature: _____

Hazardous Substances Scientist's Printed Name: _____

Supervisor Signature: _____

Printed Supervisor's Name: _____

Format for Inspection Reports

ATTACHMENT E

COMPLAINT INSPECTION REPORT

LOG NUMBER: _____

SUBJECT OF INSPECTION: _____

(Name of individual or company subject to the inspection)

ADDRESS: _____

(Street address, city, State and zip code of individual or company or location of complaint)

TELEPHONE NUMBER: () _____

(If available)

LOCATION OF ACTIVITY: _____

(Street address, city, State, and zip code of inspection location, if different from above)

MAILING ADDRESS: _____

(If different from above)

ID NUMBER: _____

DATE INSPECTION STARTED: _____

DATE OF REPORT: _____

NARRATIVE OF FINDINGS

The narrative should document all areas of inspection and be written chronologically as the inspection proceeds. Each step of the inspection should focus on answering the questions of who, what, where, when, why, and how.

A. STATEMENT OF THE ALLEGATIONS

1. Provide the details of the allegations lodged. State when the allegations were first observed. Also note if this is an ongoing activity and when the activity is likely to occur.
 - a. *Who* Specify who is the subject of the inspection.
 - b. *What* Specify what the allegations are. The allegations should be a potential violation of the hazardous waste law.
 - c. *Where* Specify where the alleged activities are taking place. Clearly identify the location using either a street address or landmarks. If the activities are alleged to be occurring at several locations, note all locations.
 - d. *When* Specify when the complaint was received and when the allegations are or were allegedly occurring.
 - e. *Why* Specify, if known, why the activity is occurring.
 - f. *How* Specify how the activity is done, using what chemicals, what equipment, etc.

B. CHRONOLOGICAL NARRATIVE OF THE FINDINGS

1. This section should provide all the details necessary to substantiate or disprove the allegations. You only need to include detail for the relevant information. You do not need to go into depth for those areas of the inspection that did not generate critical information to prove or disprove an allegation. As previously stated, each area of inspection (interviews, file searches, site visits, etc.) should be clearly articulated to answer the questions of who, what, where, when, why, and how. For example, each entry into the narrative of the findings should include:
 - a. *Who* Identify all the person(s) interviewed during the inspection, including when and where the interview(s) occurred. Each interview should be documented separately in the narrative unless the interview occurred on the same day, at the same location. Document all staff from DTSC and other agencies who participated in that phase of the inspection and what role or assistance they provided. The persons interviewed during an inspection may include:
 - i. The subject of the inspection or representatives of the company subject to the inspection. Make sure to include titles, such as production manager, owner or operator, with the correctly spelled names. Document how the company normally handles its wastes and review all documents that support or refute the company's claims.
 - ii. The complainant may also be interviewed to gather more information regarding the complaint. Identify the complainant and document where and when the interview occurred. Note whether the complainant is or was an employee of the subject of the complaint. Document how the complainant knew of the allegations in the complaint. Document why the activity occurred if the complainant knows this. Determine if the complainant possesses any documents, photographs, or maps which support the allegations made and then request copies of said documents. Have the complainant initial copies provided. Document who told the complainant to perform certain activities or who provided certain information to the complainant.
 - iii. Staff from DTSC and/or other agencies may also be included among the interviewees.
 - iv. Witnesses to the alleged violation, if there are any known, should be interviewed. The witnesses should be identified, and their involvement in the allegations or alleged activity should be documented.
 - v. During a site visit, document who gave consent. Include the person's title.
 - vi. Document phone or personal interviews conducted. Identify the person(s) interviewed. If someone was interviewed more than once, note all the dates and times the person was interviewed.
 - b. *What* This refers to all the pieces of evidence collected during the inspection. The evidence includes, but is not limited to, all observations made during a site visit relevant to the allegations lodged and other activities observed regarding potential violations, all the relevant documents reviewed and what was found during the review, all photographs taken, all samples collected, all statements made and who made them.
 - i. Statements made by the subject of the complaint or its representatives, the complainant

ATTACHMENT E

and other witnesses must be accurately documented. This includes the introductory discussions, discussions during the walk-through, and the close-out discussions.

- ii. Document all the evidence gathered to support the violations that were discovered during the inspection.
- iii. Document any written notification left at the facility for violations that present a substantial threat to human health and safety and the environment.
- iv. Document what sampling was conducted and where the sampling was conducted. Consult sampling protocol to document the type of sampling that was conducted. Include a copy of the sampling plan, if one was prepared.
- c. *Where* Document where all investigative activities, including site visits, interviews, and sampling locations, were conducted.
- d. *When* This refers to the dates when activities alleged in the complaint occurred, when investigative activities were conducted (i.e. interviews occurred, when site visits took place, when samples were collected, when the complainant worked at the location, etc.).
- e. *Why* Document why activities occurred, if known.
- f. *How* Document throughout the narrative portion how the complainant knows what he or she knows, how waste is handled, how it is transported, and how it was sampled.

C. VIOLATIONS

1. Inspections where allegations were not substantiated and no other violations were found.
 - a. In cases where the allegations were not substantiated, explain fully why the allegations in the complaint were not substantiated. This documentation must support the determination that no further action should be taken regarding this complaint.
2. Inspections where allegations were substantiated and/or other violations were found.
 - a. Cite all violations and the corresponding supporting evidence for each violation.
 - b. Identify all witnesses to the violation.

D. ATTACHMENTS

1. All documents contributing to the inspection should be listed here and attached to the report including, but not limited to, a copy of the Complaint Report Form, photographs, sampling analysis results, documents received, and maps.

E. RECOMMENDATIONS

1. Inspections where allegations were not substantiated and no violations were detected. The recommendation should be no further action required.
2. Inspections where all allegations substantiated are less than Class I Violations. Depending on the specifics of the case, the recommendation can be that the issue be

ATTACHMENT E

referred to a CUPA or that an administrative enforcement action be taken consistent with the Enforcement Response Policy.
Generally, Class II and Minor Violations may be referred to the CUPA for follow-up if the violator is regulated by a CUPA.

3. Inspections where allegations were substantiated and at least one of those allegations is a Class I violation. The recommendation should be to proceed with enforcement pursuant to DTSC's Enforcement Response Policy.

F. WITNESSES:

1. List all witnesses who can testify to the activities described in the inspection report.

Name and Signature of Hazardous Substances Scientist date

Supervisor Signature date