

DTSC Official Policy Cover Page

**COLLECTING OVERDUE
ADMINISTRATIVE PENALTIES**

DTSC-OP-0032

Subject/Title of Policy

Official Policy Number

EO-02-005-PP

January 30, 2009

Supersedes Number(s)

Date Issued/Effective Date

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

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I. PURPOSE

This document sets forth the procedure to follow for expediting the collection of overdue administrative penalties assessed for violations of the Health and Safety Code¹, Division 20, Chapter 6.5, or its implementing regulations.

II. BACKGROUND

This policy supersedes EO-02-005-PP.

III. STATUTORY AUTHORITY

DTSC has the authority to pursue legal action pursuant to sections 25184.1, 25186(c) and 25189.3 against a Respondent that fails to keep current on the payment of administrative penalties.

IV. POLICY STATEMENT

It is the policy of DTSC to consistently and expeditiously pursue collection of all overdue assessed penalties.

V. PROCEDURES AND GUIDELINES

DTSC's Administrative Services-Financial Services Unit (FSU) generates a monthly "Fines and Penalties Collection Report" that identifies Respondents with accounts that are 30 days past due (i.e., delinquent accounts). A certified letter, with return receipt requested, will be sent by FSU to all Respondents identified with delinquent accounts (Attachment A). The letter shall request payment within 30 days of the date of the letter and inform the Respondent that DTSC may use the procedures set forth in section 25184.1 to convert the administrative order to a civil judgment. The letter shall, for permitted facilities, advise the Respondent that if the payment of assessed penalties is not made as required, DTSC may deny, revoke or suspend the facility's permit to operate in accordance with section 25189.3 (c)(1) for nonpayment of assessed penalties. If the Respondent holds a variance, on-site treatment authorization, or is a transporter, the letter shall advise the Respondent that DTSC may suspend, deny or revoke any permit, registration, or certificate pursuant to section 25186.

Correspondence from DTSC to the Respondent shall include Office of Legal

¹ All further statutory references are to the Health and Safety Code unless otherwise indicated.

Affairs (OLA), regional Enforcement and Emergency Response Program (EERP), and (where appropriate) Permitting Teams, Chief Engineer, and Generator Information Services Section (GISS) in the distribution list. If payment is not received within 30 days, a referral by FSU to OLA should be completed with a notice to the Permitting Teams, regional EERP and GISS.

The referral (Form DTSC 1463) from FSU to OLA shall indicate that payment has not been received and shall include a request and all supporting documentation that the order be filed with the appropriate court. The Permitting Teams, regional EERP, and GISS shall be copied to assure they are notified so that suspension or denial of a facility permit to operate and/or transporter registration is initiated and inspection of a facility/transporter with a suspended/denied permit/transporter registration is conducted. If OLA determines that conversion to a civil judgment is appropriate, OLA will refer the administrative order to the Office of the Attorney General (AG) for conversion to a civil judgment pursuant to section 25184.1. The referral to the AG will occur within 30 days of OLA's determination that all the necessary materials have been submitted for filing of the order with the appropriate court. Once the court clerk has entered the judgment the judgment may be enforced as any other judgment of the court. OLA will provide a copy of the court judgment to FSU. A second certified letter (Attachment B) shall be sent by FSU notifying the Respondent that the administrative order has been converted to a civil judgment and that failure to pay the assessed penalties could result in the Respondent being held in contempt of court. Once a civil judgment has been issued it may be recorded and will constitute a lien against the Respondent's real property in each county where it is recorded. The lien exists for 10 years and may be re-issued for an additional 10 years.

A Notice of Intent to Deny Permit will be sent by the appropriate Permitting Team; a Notice of Suspension or Revocation of the Permit will be sent by the appropriate Regional EERP; and /or a Notice of Suspension or Revocation or a Notice of Intent to Deny Transporter Registration will be sent by GISS, as appropriate.

On a case-by-case basis, DTSC may decide to cease collection efforts where further action may not be successful or cost-effective. In order to document instances in which DTSC makes the determination that further action should not be pursued, a "No Further Collection Action (NFCA) Memorandum" will be prepared (Attachment C). The recommendation to not pursue further collection of assessed penalties and to prepare the NFCA memo may be initiated by OLA, FSU, the Permitting Teams, regional EERP, and/or GISS as appropriate. Review and approval of the NFCA recommendation shall be routed for signature and approval by OLA, FSU,

the EERP Deputy Director and, as appropriate, the Chief Engineer and GISS. Upon approval of the NFCA recommendation, the Respondent's name will be moved to the "Cases with Balances Canceled" section of the monthly "Fines and Penalties Collection Report." In addition, FSU, OLA, the EERP Deputy Director and EERP Performance Manager(s), Permitting Team leader and GISS, as appropriate, will participate in an annual meeting held during the third fiscal quarter to identify Respondents with overdue accounts where further collection is not cost effective or possible. NFCA memos should be brief and identify the basis for the "no further collection action" recommendation. At a minimum, the memo shall identify the number of attempts at collecting assessed penalties, costs incurred in pursuing payment of assessed penalties (the number of hours spent by FSU staff times their hourly rate), when and under what circumstances the case was referred to OLA for filing with the appropriate court, and, if appropriate any financial statements and/or records that demonstrate the facility's inability to pay the assessed penalty.

VI. ROLES AND RESPONSIBILITIES

A. Administrative Services - Financial Services Unit

- Compile, maintain, and distribute the monthly "Fines and Penalties Collection Report" that identifies Respondents with accounts overdue in payment of assessed penalties.
- Obtain the permit status of Respondents with delinquent accounts from the Facility Data Management Unit or EnviroStor.
- Obtain the transporter registration status of Respondents with delinquent accounts from Hazardous Waste Tracking System.
- Send a certified letter (Attachment A), with return receipt requested, to Respondents with delinquent accounts within 30 days after knowledge of an overdue assessed penalty, with copies to OLA, and the Permitting Teams, Chief Engineer, HQ and regional EERP, and GISS as appropriate.
- The letter shall inform the Respondent of 1) the delinquency, 2) if applicable, the potential of permit denial, suspension, or revocation pursuant to section 25189.3, and 3) the authority DTSC has to pursue legal action against a Respondent who fails to pay penalties.

- Refer case to OLA if payment is not received within 30 days of receipt of the letter, and provide a copy of the referral to the Permitting Teams, regional EERP, and GISS as appropriate.
- Send a certified letter (Attachment B), with return receipt requested, to Respondent within 10 days after receipt of court judgment converting the Administrative Order to a civil judgment.
- As necessary, prepare NFCA memo in coordination with OLA, the Permitting Teams, regional EERP, and/or GISS as appropriate for review and approval. Delete a Respondent's name from the monthly "Fines and Penalties Collection Report" once an NFCA is final and approved. Schedule and participate in the annual meeting held during the third fiscal quarter to identify Respondents with overdue accounts where further collection is not cost-effective or possible.

B. Facility Data Management Unit

- Provide permit status of Respondents with delinquent accounts to FSU.
- Compile, maintain, and distribute the list of Respondents with denied and/or suspended facility permits to FSU, the Permitting Teams and HQ and regional EERP.

C. Headquarters EERP (Deputy Director)

- Participate in annual meeting held during the third fiscal quarter to identify Respondents with overdue accounts where further collection is not cost effective or possible.
- Approve NFCA memo.

D. Regional EERP

- Coordinate with FSU and issue Notice of Suspension/Revocation of Permit when appropriate.
- Participate in annual meeting held during the third fiscal quarter to identify Respondents with overdue accounts where further collection is not cost effective or possible.

- As necessary, prepare NFCA memo in coordination with FSU, OLA, GISS, and the Permitting Teams for review and approval, as appropriate.

E. Permitting Teams

- Coordinate with FSU and issue Notice of Intent to Deny Permit when appropriate.
- Participate in annual meeting held during the third fiscal quarter to identify Respondents with overdue accounts where further collection is not cost effective or possible.
- As necessary, prepare NFCA memo in coordination with FSU, OLA, and regional EERP for review and approval, as appropriate.

F. Generator Information Services Section

- Coordinate with FSU and issue Notice of Intent to Deny, Suspend, or Revoke Transporter Registration when appropriate.
- Participate in annual meeting held during the third fiscal quarter to identify Respondents with overdue accounts where further collection is not cost effective or possible.
- As necessary, prepare NFCA memo in coordination with FSU, OLA, and regional EERP for review and approval, as appropriate.

G. Office of Legal Affairs

- Provide legal support in evaluating claims of inability to pay penalties, and if appropriate, refer case to the AG.
- Provide periodic status reports to FSU on cases referred to the AG and any subsequent determinations.
- Participate in annual meeting held during the third fiscal quarter to identify Respondents with overdue accounts where further collection is not cost effective or possible.
- As necessary, prepare NFCA memo in coordination with FSU, the Permitting Teams, regional EERP, and GISS for review and approval.

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
Sample Language of First Letter**

XXXXXXX
XXXXXXX
XXXXXX, XX XXXX

OVERDUE PENALTY

Dear Sirs:

An administrative order or decision docket # (number of docket) became final on (date order was signed). The order requires payment of the penalty by (provide a specific date that the penalty became overdue or discuss the payment arrangements that were agreed to). Payment of the penalty in the sum of (\$XXX amount) shall be received within 30 days of the date of this letter to avoid additional penalties being assessed as authorized by Health and Safety Code, section 25188 and/or referral to the appropriate court as authorized under Health and Safety Code, section 25184.1.

Health and Safety Code, section 25188, provides for a civil penalty of up to \$25,000 per day for each day of noncompliance by a person who fails to comply with a schedule of compliance issued pursuant to Health and Safety Code, section 25187. Health and Safety Code, section 25184.1, authorizes the Department of Toxic Substances Control (DTSC) to apply to the clerk of the appropriate court for a judgment to collect administrative penalties. *Facility Data Management Unit will provide permit status; FSU will obtain transporter registration status from HWTS (include if applicable).*

Please note that Health and Safety Code section 25189.3 (c) (1), mandates that DTSC suspend, deny, or revoke a hazardous waste facilities permit or standardized permit to operate for nonpayment of assessed penalties. *(Use for cases where the Respondent is a permitted facility).* Please note that Health and Safety Code, section 25186 (c), provides for the suspension, revocation, or denial of any permit, registration, or certificate for violation of, or noncompliance with, any order issued by DTSC. *(Use for cases where the Respondent has a variance, is authorized under any on-site treatment tier, or is a transporter.)* If payment is not received as required above, this matter shall be forwarded to DTSC's Office of Legal Affairs for further action.

If payment has been made, please provide a copy of the canceled check, both front and back. If you have any questions please feel free to contact Mr./Ms. _____ of my staff at (916)xxx-xxxx.

Sincerely,
XXXX XXXX
Financial Services Unit

cc. Office of Legal Affairs
Permitting Team leaders *(If a permitted facility)*
Chief Engineer *(If a permitted facility)*
Regional EERP
GISS *(If a transporter)*

**Attachment B
Sample Language of Second Letter**

XXXXXXX
XXXXXXX
XXXXXX, XX XXXXXX

NOTICE OF CIVIL JUDGMENT

Dear Sirs:

This to inform you that *Administrative Order or decision Docket #* was filed with the appropriate court and converted to a civil judgment on (*date*). A copy is attached.

The judgment entered may be enforced in the same manner as any other judgment of the court in which it is entered. DTSC may record this judgment in any county in which you hold real property; such recordation shall constitute a lien against that real property.

If payment has been made, please provide a copy of the canceled check, both front and back. If you have any questions please feel free to contact Mr./ Ms. _____ of my staff at (916)xxx-xxxx.

Sincerely,

XXXX XXXX
Financial Services Unit

cc. Office of Legal Affairs
Permitting Team leaders (*If a permitted facility*)
Chief Engineer (*If a permitted facility*)
Regional EERP
GISS (*If a transporter*)

**Attachment C
No Further Collection Action Memorandum**

Site Name:

Site Code:

Case Background:

Description of the facility and violations identified. Discuss the number of attempts at collecting assessed penalties, costs incurred in pursuing payment of assessed penalties, when and under what circumstances the case was referred to OLA for filing with the appropriate court, and final ruling by the court.

Amount of Penalties that will not be pursued:

Recommended Decision: The recommendation to cease further collection attempts should include a brief discussion of the facility's financial status, the amount incurred by DTSC in pursuing collection of overdue penalties (the outstanding balance should be weighed against additional expenses in pursuing collection) and statutes of limitation. Documentation supporting the decision should be attached.

Prepared by **Date**

Include signature blocks as appropriate

Office of Legal Affairs **Date**

Financial Services **Date**

EERP **Date**

Permitting Teams **Date**

Generator Information Services Section **Date**

COLLECTING OVERDUE ADMINISTRATIVE PENALTIES
DTSC-OP-0031

1/30/09