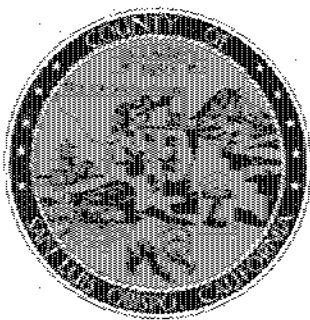




# SAN LUIS OBISPO COUNTY HEALTH AGENCY

## BEHAVIORAL HEALTH

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TO: Geoff O'Quest, Administrative Analyst  
FROM: Jeff Hamm, Health Agency Director  
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DATE: July 29, 2009

SUBJECT: Departmental Response to 2008-09 Grand Jury Report—"Polluters: To Fine or Not to Fine"

### Introduction

San Luis Obispo County administers State laws and regulations related to hazardous materials/waste under the title of the Certified Unified Program Agency (CUPA). The CUPA is organized in the Health Agency. The activities of the CUPA are overseen by the California Environmental Protection Agency (Cal/EPA). It is the purpose of the CUPA to gain compliance with State laws and regulations as they relate to facilities that store or generate hazardous materials/waste. The CUPA uses both informal and formal enforcement methods to obtain compliance. Informal enforcement methods include inspections and Notices of Violations (NOV's). Administrative Enforcement Orders (AEO's) and referrals to the District Attorney's Office are formal enforcement methods used for gaining compliance. Using the AEO, the CUPA may assess penalties for the purpose of gaining compliance and punishing violators. The position of the CUPA is that penalties should be set at the lowest level possible to ensure compliance.

The title of this report "Polluters: To Fine or Not to Fine" suggests that AEO's are issued primarily for violations that result in pollution of the environment. Actually, most AEO's are issued for violations of the California Health and Safety Code and the California Code of Regulations. It is on rare occasion the violations have resulted in a release of hazardous materials/waste to the environment causing pollution. When it has been determined that hazardous materials/wastes have been released to the environment, AEO's have been issued or if the violation is criminal in nature, the case has been referred to the District Attorney's Office for prosecution.

### Findings

1. All Class 1 violations are not treated the same by a local CUPA official because some violators are administered a formal AEO, while others are cited with an informal NOV.

**Response:** The respondent disagrees wholly with the finding.

SLO County CUPA consistently follows an Enforcement Policy. The Policy provides businesses subject to hazardous materials/wastes regulations the opportunity to comply without penalties. If compliance is not achieved through inspections, an NOV without penalties is issued. If the violation continues, an AEO with penalties is issued for non-compliance. Penalties of a particular egregious nature are also issued an AEO. Some violations that are criminal in nature are referred to the District Attorney's office.

2. The CUPA director does not administer the process for all Class 1 pollution violations consistent with Cal/EPA and the state Department of Toxic Substance Control policies.

**Response:** The respondent disagrees wholly with the finding.

The Cal/EPA and the SLO CUPA disagree on this issue. Per a representative of Cal/EPA, legal counsel for the State is currently reviewing this disputed issue. There is no requirement in State law or regulations to issue an AEO for all Class 1 violations. Issuing an AEO is at the discretion of the local CUPA. Health and Safety Code section 25404.1.1 states that the CUPA (CUPA) may issue an AEO requiring that violations be corrected.... The State Department of Toxic Substances Control policy on this issue is directed to State employees and is not binding on local CUPA's.

In a review of the Cal/EPA website comparing San Luis Obispo County with nine other CUPA's, 70% of the CUPA's did not issue an AEO for every facility with a Class 1 violation. Also an average 44% of the facilities with Class 1 violations had formal enforcement. In SLO County, 71% of the facilities with Class 1 violations had formal enforcement.

3. The result of current enforcement policies suggests the local CUPA program may soon need additional support from the county general fund to continue its enforcement efforts at the current level.

**Response:** The respondent disagrees wholly with the finding.

Changes in enforcement policy should not have a significant effect on revenues received. Revenue generated from AEO penalties is expected to vary from year to year. If regulated businesses come into compliance, as required by law, it is expected that revenues from penalties will decrease because of improved compliance; not because of changes in the enforcement policy. State law requires that the CUPA consider the deterrent effect the penalty has on the violator and regulated community. This is additional incentive for regulated businesses to come into compliance thereby reducing revenue from penalties.

It is Board of Supervisor's policy that fees recover the full cost of the CUPA where possible after all cost cutting measures have been considered. In the past, revenues from penalties have been used to keep fees down. Over time, as revenues from penalties decrease because of improved compliance, fees will increase to recover the cost of the CUPA.

## Recommendations

1. To be fair and ensure compliance with health and safety codes, local CUPA officials should address all Class 1 pollution violations through formal enforcement procedures consistent with Cal/EPA and DTSC policies.

**Response:** The recommendation will not be implemented because it is not reasonable. The current enforcement policy is fair and protects public health and the environment and ensures compliance. There is no basis in law or regulations to automatically issue an AEO for all Class 1 violations. Compliance is required for all Class 1 violations. Chronic non-compliance and particularly egregious violations will result in the use of formal methods of enforcement such as AEO's and referrals to the District Attorney's Office. All violations of a criminal nature will be referred to the District Attorney's Office.

2. The County Board of Supervisors should monitor the local CUPA program on an annual basis to assure the board the fines and permit fees are assessed at a level sufficient to assure that county general funds will not be required to sustain the program.

**Response:** The recommendation will not be implemented because it is not warranted. Existing Board of Supervisor policies and budget monitoring practices will ensure that revenue from fees are set at a level sufficient to assure the County General Fund will not be required to sustain the program. As required by law, the amount of penalties will take into consideration the nature, circumstances, extent and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to public health or safety or the environment, the violator's ability to pay and the deterrent effect of the penalty. Funding for the CUPA will not be a consideration when determining the amount of penalties. If compliance with State law and regulations is the goal of the CUPA, then it is expected that revenue from penalties will decline over time.

3. If total funds being collected are insufficient to assure that the program is self-supporting, the Board of Supervisors should consider convening a task force to study the appropriate mix of fines and permit fees to assure compliance with hazardous material health and safety regulations.

**Response:** The recommendation will not be implemented because it is not warranted. Revenue from penalties will continue to be used to subsidize fees. However, fees are now and will continue to be the primary source of funding for the CUPA.