



Linda S. Adams
Secretary for
Environmental Protection

California Environmental Protection Agency

Unified Program Bulletin
0910-01

DATE: March 29, 2010

TO: All Certified Unified Program Agencies

SUBJECT: Federal Facility Payment Disputes of General Oversight Surcharges

Introduction

Bulletin 0607-01 is hereby rescinded. This bulletin addresses the issue of disputed state surcharge assessments on federal Department of Defense (DoD) facilities, which also includes the increase to the General Oversight surcharge authorized by Assembly Bill 2286 (Feuer) signed into law by the Governor on September 29, 2008.

The General Oversight surcharge is currently set at \$24.00 per regulated business. Passage of Assembly Bill 2286, which establishes a statewide information management system and mandatory electronic reporting for regulated businesses and for all local Unified Program regulatory agencies, allows an increase of the General Oversight surcharge of up to \$25.00 per regulated business for three years. The General Surcharge has been increased to \$49.00 effective July 1, 2009. The bill also states that a federal facility that is owned or operated by the federal government and is subject to the Unified Program shall pay the surcharge required by the legislation to the extent authorized by federal law.

Certified Unified Program Agencies (CUPAs) are required to assess and collect the Unified Program Single Fee, encompassing several environmental charges from regulated facilities including those owned by the federal government. For the Underground Storage Tank (UST), Hazardous Waste Management and Accidental Release Prevention (Cal/ARP) programs, it is undisputed that Congress has clearly waived sovereign immunity for these programs and agencies of the federal government are required to pay the applicable fees. For the Fire Code and Business Plan programs, DoD has asserted there is no clear waiver of sovereign immunity in federal law and payment of these fees by federal facilities has in many cases been disputed.

Surcharge Payment Issue

Cal/EPA has defined three surcharges within the Unified Program: General Oversight, UST, and CalARP. The UST and CalARP surcharges are specific to their programs and therefore fall under the respective waivers of sovereign immunity. The General Oversight surcharge is not specific to a program and supports the Hazardous Waste Management, Fire Code and Business Plan programs. Some federal facilities have

refused to pay all or a portion of the General Oversight surcharge. Representatives of the federal government and Cal/EPA have not been able to resolve this dispute.

CUPA Evaluation Issue

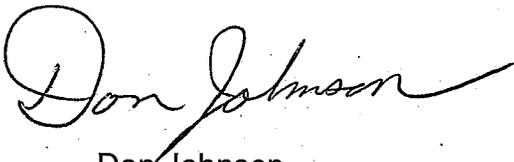
Cal/EPA is required to periodically evaluate each CUPA's ability to implement and manage all aspects of the programs under the Unified Program. During past CUPA program evaluations, some agencies had been found deficient for failing to take enforcement action to collect state surcharge fees for facilities owned by the federal government that have refused to pay these General Oversight surcharges.

Resolution

Cal/EPA has determined that \$4.32 of the \$24.00 portion of the General Oversight surcharge supports state oversight of the Fire Code and Business Plan programs. The General Oversight surcharge increase under Assembly Bill 2286 will support electronic reporting across the entire Unified Program. The program elements of Business Plan, Underground Storage Tank and Hazardous Waste Management will be the focus of information collection. No additional information will be reported by the Cal/ARP, Fire Code or Aboveground Storage Tank program elements. Therefore, one-third of the additional \$25.00 in General Oversight surcharge will be used to support the development of Business Plan reporting, or \$8.33. This, together with the previously determined \$4.32 adds to a total of \$12.65.

In consideration of all the relevant circumstances, including the small amount of the state surcharge in dispute and the high costs to CUPAs of litigation, while this bulletin is in effect Cal/EPA will not find a CUPA deficient in program implementation for failure to collect the portion of the General Oversight surcharge from federal facilities for the disputed program areas of Fire Code and Business Plan programs

Approved by:



Don Johnson
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Local Programs and Emergency Response