

Questions and Answers CUPA to State Reporting Annual Summary Reports 1-4

These questions have been asked regarding the Summary Reports over the last several years. Many of the questions asked by CUPAs have been integrated into the instructions for the Summary Reports during the December 2007 review of them and may not be reflected in this document. If you have additional questions, please contact the Unified Program Section for clarification. If a question seems appropriate for inclusion into this document, please let the Unified Program Section know. These questions and answers are separated in three sections: Fees, Reporting, and Inspection and Enforcement. If a question fits in two sections, it may be repeated.

Fees:

1. **Question: How should CUPAs report non-collectible fees?**

Answer: Report 2 reflects uncollected fees for the reporting fiscal year. If collection efforts fail, the CUPA is not required to report those uncollected fees again.

2. **Question: Should CUPAs send late fees and penalties paid by businesses at the same time the surcharge is sent?**

Answer: The State does not have the authority to collect late fees and penalties for the surcharge. The CUPA should retain any late fees and penalties collected for late payment of the surcharge.

3. **Question: How are fees reported for billed businesses found to be inactive at the time of reporting, but later were discovered to be out of business?**

Answer: Report 2 reflects the fees that were collected during the reporting fiscal year. There is no requirement to track and report uncollected fees; however the collection of all fees is expected to be pursued with the same diligence.

4. **Question: If a CUPA has a Tiered Permitting site with several different units (PBR, CA, CE) are fees charged for only the highest tier?**

Answer: The CUPA is responsible for establishing the single fee system at a level sufficient to pay necessary and reasonable costs of implementing the Unified Program.

5. **Question: Should each stationary source in a jurisdiction be charged a surcharge?**

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Answer: The regulations currently state in section 15240 (c) (3) (A) that “A component assessed on regulated businesses under the Health and Safety Code section 25531 et seq., the CalARP program. This CalARP surcharge component is assessed on a single company or business within a CUPA’s jurisdiction, regardless of the business’s number of stationary sources.”

6. Question: Can each stationary source within a jurisdiction be charged the CUPA fees?

Answer: This is a business decision by each CUPA. Since the CUPA is to develop the local fees based upon necessary and reasonable costs, this must be a choice the CUPA makes when adopting local fees.

7. Question: Should fees for one-time permits, i.e. tank installation permits, for a completely new business that was never in the Unified Program be included in the Single Fee Summary row?

Answer: Yes, CCR 15210(a) states in pertinent part, "... all fees currently mandated in statute and regulation used for local implementation of the Unified Program “and “..... any other fees levied by a local agency specifically to fund their implementation of the programs specified in Health and Safety Code section 25404(c)”

8. Question: Should fees for one-time permits, i.e. tank installation permits, for an existing business that, as an example is adding or removing a tank, be included in the Single Fee Summary row?

Answer: Yes, CCR 15210(a) states in pertinent part, "... all fees currently mandated in statute and regulation used for local implementation of the Unified Program” and “..... any other fees levied by a local agency specifically to fund their implementation of the programs specified in Health and Safety Code section 25404(c)”

9. Question: Should penalties and/or late fees assessed on the CUPA's single fee amount(s) be included in the Single Fee Summary row?

Answer: Yes, CCR 15210(a) states in pertinent part, "... all fees currently mandated in statute and regulation used for local implementation of the Unified Program” and “..... any other fees levied by a local agency specifically to fund their implementation of the programs specified in Health and Safety Code section 25404(c)”

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10. **Question: Permits for borings and wells are part of our Local Oversight Program, but the fees come to the CUPA. Do we include these in the single fee reporting?**

Answer: No. The instructions for the Annual Single Fee Summary Report identify the single fee amounts as those related to the CUPA's fees for implementing and enforcing the Unified Program, the Participating Agencies fees, and the state surcharge. However, if your local unified program included additional programs when it was originally certified, and these additional programs have fees, then those fees are part of the CUPA's Single Fee System and would be reported.

11. **Question: Do we report our portion of a multi-CUPA settlement on the Annual Single Fee Summary Report when another CUPA initiated the case?**

Answer: No. The intent of the Annual Single Fee Summary Report is to provide information about the fees billed, waived and collected to the Cal/EPA. Information about penalty fees is reported on Annual Enforcement Summary Report. However, as currently defined, the Total Fines/Penalties Collected column of this summary report does not include settlement monies collected from statewide settlements, unless the reporting CUPA also reported enforcement actions taken on the summary report. This would occur when the reporting CUPA was involved with the initiating enforcement case.

12. **We routinely collect cost recovery on spill response and compliance assistance. Is cost recovery included in single fee reporting?**

Answer: No. The intent of the Annual Single Fee Summary Report is to provide information about the CUPA's fees that are billed, waived, and collected within a fiscal year. This provides Cal/EPA with information about the relative size of a CUPA's program. Including cost recovery would skew the picture of a CUPA's program significantly.

13. **Are administrative penalties, which include cost recovery, included in the single fee reporting?**

Answer: No. Administrative penalties are reported on the Annual Enforcement Summary Report.

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Reporting:

1. Question: If a CUPA bills in one fiscal year and collects monies in a different fiscal year, how should the money be reported?

Answer: Summary Report 1 contains the information on the quarterly surcharge collections for each CUPA. If collections are being reported for a fiscal year that is not directly related to the current billing, identify this information on Summary Report 1.

Summary report 2 contains the information on the annual single fee collections for each CUPA. Any collected single fee for a previous fiscal year should be included in the current fiscal year's report 2. The CUPA should reference any single fee reported for a previous fiscal year in a footnote at the bottom of Report 2.

2. Question: Are regulated businesses that have not been inspected during the fiscal year counted as part of the "Total Regulated Businesses?"

Answer: Yes. Even though not all businesses were inspected within the fiscal year they are all subject to the Unified Program statutes and regulations and are counted as regulated businesses and need to be included as part of the "Total Regulated Businesses." This information is used for identifying how many businesses the CUPAs regulate statewide, for setting state surcharge amounts, and for evaluating each CUPA's implementation of the Unified Program.

3. Question: What facilities are counted under "Total Regulated Businesses?"

Answer: All active regulated businesses and temporarily closed UST sites for the reporting year should be counted. Permanently closed regulated businesses are not counted under "Total Regulated Businesses". Closed or abandoned UST sites should not be counted, even though they may continue to be held in the database.

4. Question: How should homeowner storage tanks used for heating oils be reported?

Answer: These tanks are not regulated under the Unified Program and should not be reported on any of the Summary Reports.

5. Question: Does a new regulated business that is constructed in one reporting year but does not begin operation until a subsequent reporting year get counted as a "Regulated Business" in the construction year even though it will not be charged the CUPA Oversight surcharge until the year it is in operation?

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Answer: There is no specific language in the implementing statutes or regulations that cover this question. However, in general, you should count a business when it is authorized to operate, store, produce, etc. Therefore a business that is authorized to store hazardous materials in fiscal year 2004/05 but does not begin sales operation until fiscal year 2005/06 would be counted in fiscal year 2004/05.

Inspection and Enforcement:

1. **Question:** How are formal enforcement actions that result in something other than monetary penalties reported?

Answer: Sometimes settlements include cost recovery, supplemental environmental projects and other penalties, in addition to or in place of fines or monetary penalties. The CUPA is to determine what the total value of the settlement is and report that amount.

2. **Question:** Can an inspection be counted in multiple columns (Number of Routine Inspections and Number of Other Inspections)?

Answer: No, an inspection may not be counted under multiple columns. For example, if a facility has one routine inspection and three follow up or complaint (anything other than routine) inspections done in the reporting fiscal year, it should be counted as one under Number of Routine Inspections column and three under Number of Other Inspections.

3. **Question:** Can a facility be counted twice in No. of Regulated Businesses Inspected in each Program Element if it has more than one inspection done in a reporting fiscal year?

Answer: No. A facility may be counted only once since the column is asking the number of facilities that have been inspected NOT the number of inspections in a reporting fiscal year. For example, if a facility has three inspections done in a reporting fiscal year the correct number to put under No. of Regulated Businesses Inspected in each Program Element column would be one.

4. **Question:** What businesses are counted as "Total Regulated Business"?

Answer: Any business subject to the requirements of the Unified Program is counted as a regulated business. A business subject only to local requirements would not be counted as a regulated business for purposes of the summary report(s).

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5. **Question:** How does a CUPA count multiple informal actions for one violation?

Answer: Currently, the reporting of enforcement action(s) may only be counted once per business. Escalating informal actions instituted to gain compliance may be used to document the non-compliance for further action, but may not be counted.