



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



1001 I STREET, SACRAMENTO, CALIFORNIA 95814 • P.O. BOX 2815, SACRAMENTO, CALIFORNIA 95812-2815
(916) 323-2514 • (916) 324-0908 FAX • WWW.CALEPA.CA.GOV

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

EDMUND G. BROWN JR.
GOVERNOR

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Unified Program Guidance Letter 13-04 Regulatory Exemptions for Agricultural Handlers under the Unified Program

To: Unified Program Agencies

This Guidance Letter clarifies the statutory and regulatory exemptions that apply to agricultural businesses under the Unified Hazardous Waste and Hazardous Materials Regulatory Management Program (Unified Program). The California Environmental Protection Agency (Cal/EPA) recommends that Certified Unified Program Agencies incorporate this information into their communication with agricultural businesses and the local county Agricultural Commissioners.

Cal/EPA oversees the administration of the Unified Program, a legislatively created consolidation of six hazardous waste and materials programs administered by state and local agencies. The intent of the program is to improve consistency and uniformity in permitting, inspection and enforcement. Businesses operating as farms, or agricultural handlers, are subject to the same level of regulation as other businesses that handle hazardous materials and generate hazardous wastes. However, exemptions from regulation for agricultural handlers are provided in five Unified Program elements: the Hazardous Materials Release Response Plans and Inventories (Business Plan), the California Accidental Release Prevention, the Hazardous Waste Generator, the Underground Storage Tank and the Aboveground Petroleum Storage Act programs. The California Fire Code also includes exemptions that may apply to agricultural handlers. These exemptions are only provided for those businesses regulated under the specified Unified Program element. An exemption for an agricultural handler provided in one program element does not exempt that business from compliance with the requirements of any of the other Unified Program elements.

Hazardous Materials Release Response Plans and Inventories (HMRRP)

1. The California Health and Safety Code (HSC) Chapter 6.95 clearly identifies agricultural handlers as a "business" and "handler" subject to the requirements of the Business Plan Program. These include the requirement to prepare and submit a Business Plan to the local Certified Unified Program Agency (CUPA).
2. Alternative Business Plan submittal requirements are outlined in HSC Section 25505 (e). These provide that a CUPA may allow a business that has established a complete Business Plan to submit only the chemical inventory, a site map, a list of emergency contacts, and a certification of compliance to the CUPA, with concurrence of the local fire chief.

3. HSC, Chapter 6.95 specifically identifies an exemption from annual Business Plan submission for farms in HSC, Section 25503.5 (c)(5). Farms must still establish and implement a complete Business Plan, including the emergency response plan and procedures and an appropriate training program for employees (HSC Section 25504 (e)). Farms are exempted from filing the emergency response plans and procedures and training program if specific conditions are met.
4. CUPAs have the authority to grant exemptions for farms or any other handlers under specific conditions (HSC Section 25503.5 (c)(2), (3), and (4)).
5. CUPAs can allow the County Agricultural Commissioner to distribute forms and conduct compliance inspections at agricultural entities (HSC Section 25404.3 (d)(1)(E)). However, the CUPA retains responsibility for the program and must ensure that all program requirements are met. Additionally, statute requires a written agreement between any Unified Program Agency and any other agency that implements any part of the CUPA program in the jurisdiction (HSC Section 25508 (b)).

Hazardous Waste Generator (HWG)

There are no exemptions for farming or agricultural activities that generate hazardous waste. A "generator" is any person whose act or process produces hazardous waste or whose act causes a hazardous waste to become subject to regulation. There are two hazardous waste provisions that may impact agricultural handlers:

1. Empty pesticide containers (or inner liners) are exempted from hazardous waste requirements if managed in accordance with the requirements found.
2. Banned, unregistered or outdated agricultural pesticides may be hazardous waste and, if so, must be regulated as such.

Underground Storage Tanks (UST)

The UST law exempts from regulation those USTs with a capacity of 1,100 gallons or less, located on a farm, and used to store motor vehicle fuel primarily for agricultural purposes and not for resale. It also exempts from regulation USTs with a capacity of 1,100 gallons or less, located on a farm, and used to store home heating fuel for consumptive use on the premises where stored. The UST law authorizes a local agency to regulate tanks that are not subject to regulation under state or federal law.

California Accidental Release Prevention Program (CalARP)

The CalARP Program provides an exemption for ammonia when held by farmers for use as an agricultural nutrient. There is no other farm or agricultural specific exemptions (California Code of Regulations, Title 19, Section 2770.4). Additionally, if a pesticide is used on a farm or nursery and is determined by the CUPA to pose a regulated substances accident risk the CUPA must first consult with the County Agricultural Commissioner or the Department of Food and Agriculture to evaluate whether the existing Risk Management Plan is adequate in relation to the regulated substances accident risk.

Hazardous Materials Management Plans and Inventory Statements (HMMP/HMIS)

There are no exemptions specifically for agricultural handlers under the California Fire Code. However, there are two provisions that may impact agricultural handlers.

1. The application and release of pesticide products and materials intended for use in weed abatement, erosion control, soil amendment, or similar applications, when applied in accordance with the manufacturer's instructions and label directions, are exempted from regulation under the Fire Code.
2. The local fire authority is not constrained by the threshold quantity reporting requirements of Health and Safety Code, Chapter 6.95, and may require additional inventory information for hazardous materials as an addendum to the Business Plan.

Aboveground Petroleum Storage Tanks

The Aboveground Petroleum Storage Act (APSA) provides for an exemption for farms under specific conditions (HSC Section 25270.4.5 (b)). Tank facilities located on a farm are not required to prepare and implement a Spill Prevention Control and Countermeasure (SPCC) plan if no storage tank at the farm exceeds 20,000 gallons and the cumulative storage capacity of the tank facility does not exceed 100,000 gallons. The farm is still regulated by APSA and must also take the following actions:

1. Conduct a daily visual inspection of any storage tank storing petroleum.
2. Allow the CUPA to conduct a periodic inspection of the tank facility.
3. If the CUPA determines installation of secondary containment is necessary for the protection of the waters of the state, install a secondary means of containment for each tank or group of tanks.

Questions

Please direct questions regarding this policy to John Paine, at (916) 327-5092 or email at john.paine@calepa.ca.gov.



Jim Bohon, Assistant Secretary
California Environmental Protection Agency

