



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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Unified Program Newsletter April 2010

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Cal/EPA Draft Fuels Guidance Document

The Draft Fuels Guidance Document is available for comment through Wednesday, April 21, 2010. To submit a comment, go to the following link: <http://www.arb.ca.gov/lispub/comm/bclist.php>

This document is a multi-agency effort of the Air Resources Board, Division of Measurements and Standards, Office of the State Fire Marshall, and the State water Resources Control Board. The purpose of the document is to help potential fuel users and producers to find answers about the regulation affecting their fuel of choice.

This document is separated into three main parts. In Chapter II there is a fuels matrix which identifies the major current and future fuels likely to enter the California market, and the technical or regulatory requirements of each agency participating in this document. In Chapter III the fuels are defined, for those not familiar with them, and the technical or regulatory requirements are described in detail. Chapter IV lists each fuel and the specific technical or regulatory requirements for each fuel that remain to be completed before that fuel will be ready for introduction into commerce.

To view the document in its entirety, go to: <http://www.calepa.ca.gov/biofuels/>

For information contact: Alexander Mitchell at amitchel@arb.ca.gov

Electronic Reporting Grant Update

All regulated businesses and local governments will be required to submit their regulatory reports electronically by 2013. To assist local agencies, Cal/EPA will make grants available to UPAs through a grant application process. The Electronic Reporting Grant and Transition Plan application package will be available April 2010.

For information contact: Brittani Donnachie @ bdonnachie@calepa.ca.gov or (916) 445-6800.

UP Bulletin 0910-01 - Federal Facility Payment Disputes of General Oversight Surcharges

Bulletin 0607-01 is hereby rescinded. This bulletin addresses the issue of disputed state surcharge assessments of federal Department of Defense 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 and increase of the General Oversight surcharge of up to \$35.00 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. 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.

In consideration of all relevant circumstances, including the small amount of the state surcharge in dispute and the high costs to CUPAs of litigation, while this bulletin is 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

Bulletin 0910-01 can be viewed in its entirety at http://www.calepa.ca.gov/cupa/Bulletins/2010/0910_01.pdf

UP Bulletin 0910-02 – Formal Enforcement Action Guidance for Environmental Violations

The purpose of this bulletin is to clarify the Unified Program's standards regarding how to determine whether a Certified Unified Program Agency (CUPA) is taking appropriate enforcement actions where severe violations are identified.

In the course of conducting CUPA evaluations, Cal/EPA has noted recurring deficiencies exist for lack of appropriate enforcement in findings for Class I or Priority violations across all of the program elements. It has, however, been noted by several CUPAs that there is no law to compel them to do formal enforcement for Class I violations, more so within the RCRA hazardous waste programs. At issue is the clarification of California regulations and policy that provide for consistent and similar determinations of violation classifications and acceptable enforcement responses that are similar between one and all CUPAs throughout the state. Some CUPAs dispute the Cal/EPA Unified Program's requirement that formal enforcement for major/priority violations is required because of the absence of federal or state law dictating so within the program elements of the Unified Program.

In order to comply with the requirements of both federal and state program mandates, Cal/EPA shall require that CUPAs implement a consistent enforcement response that is in compliance with the individual program requirements and Cal/EPA regulations.

The standards for determining appropriate enforcement responses, while accommodating differing standards of implementation shall, at a minimum, include the implementation of a graduated series of enforcements based on the severity of the violation as prescribed with the individual CUPAs Inspection and Enforcement Plan. The requirement to fully implement the Inspection and Enforcement Plan as mandated in Title 27, in addition to enforcement standards for individual program areas as defined by either federal or state law, will be verified by the CUPA evaluation process and annual report submittals as prescribed in state law.

Failure to initiate either formal enforcement action or to follow a graduated series of enforcement as prescribed within the CUPA's Inspection and Enforcement Plan is a contradiction of state law and shall be identified during the CUPA evaluation process as a deficiency of the CUPA's enforcement program.

UP Bulletin 0910-02 can be viewed in its entirety at http://www.calepa.ca.gov/cupa/Bulletins/2010/0910_02.pdf

State Water Resources Control Board

Draft LG – 159; UST Compliance Inspections

A draft copy of Local Guidance (LG) Letter 159 regarding the requirements of UST Compliance Inspections was sent to the UST Issue Coordinators on March 4, 2010. The SWRCB is seeking input from the CUPAs on this guidance, and therefore requested the Issue Coordinators distribute for comment within their jurisdictions. We request that CUPA's submit their comments to their Issue Coordinator and make suggested changes by using "track changes" or "strikeout and underline format" (as conceptual descriptions are subject to various interpretations and are therefore difficult to incorporate). Comments are due to your UST Issue Coordinator before April 16, 2010.

UST Program Contact: Laura Fisher lfisher@waterboards.ca.gov (916)-341-5870

City of Long Beach Judgment

The State Water Board has reached a settlement valued at \$6.2 million with the City of Long Beach for pervasive violations by the city of regulations concerning the storage of petroleum and waste oil in underground storage tanks. This enforcement action is the first of its kind against a public agency by the State Water Board.

Under the terms of the settlement, the city will pay \$1.5 million in cash within 30 days, in addition to \$200,000 in reimbursement for the State Water Board's costs of enforcement. The city is also required to provide \$2.5 million in financial assurance which will become due and payable to the State Water Board if the city violates the underground storage tank laws again during the next five years. The city did not deny responsibility for the violations.

The city will be credited \$2 million against additional penalties for actions it took after the initiation of enforcement to enhance compliance at its tank facilities above existing requirements, including the development of a comprehensive Compliance Management Program designed to prevent future noncompliance through careful oversight and tracking of environmental obligations.

The State Water Board was represented by the Attorney General's Office in this enforcement case and a copy of the complete settlement, which was filed with the Los Angeles County Superior Court, can be found on the State Water Board's website at: http://www.waterboards.ca.gov/water_issues/programs/ust/enforcement/index.shtml

UST Enforcement Contact: Kim Sellards ksellards@waterboards.ca.gov (916) 341-5869

E2C Remediation, Inc., Judgment

Judgment of \$1.2 million has been entered against E2C Remediation, Inc. (E2C), an environmental engineering and consulting firm headquartered in Bakersfield, to settle allegations of submitting fraudulent reimbursement requests to the Underground Storage Tank Cleanup Fund (Fund) between 2005 and 2008. Specifically, the State Water Board alleged that E2C submitted inflated invoices while performing investigation and remediation consulting services at gas stations related to employee time, equipment costs, water disposal, and markup on affiliated companies. The enforcement action is the first of its kind by the State Water Board. The State Water Board was represented by the California Attorney General's Office.

Under the terms of the judgment, the Fund will retain just over \$465,000, which was withheld from E2C during the Water Board's investigation, and E2C will pay the Fund \$450,000 through withholdings from future reimbursement requests. In addition, E2C will pay \$50,000 in penalties for engaging in unfair business practices. The settlement suspends an additional \$250,000 in penalties for three years, which will become due if E2C violates specifically enumerated water quality protection laws, or submits any further fraudulent claims to the Fund.

A copy of the complete judgment, which was entered by the Sacramento County Superior Court, can be found on the State Water Board's website at:

http://www.waterboards.ca.gov/water_issues/programs/ust/enforcement/index.shtml

UST Enforcement Contact: Kim Sellards ksellards@waterboards.ca.gov (916)341-5869

California Emergency Management Agency

CalARP

The Secretary of Cal EMA has reached a decision on the CalARP dispute appeal in the case of ACCU Chem and DTSC (Imperial County CUPA). The Secretary has upheld the finding of DTSC hearing officer that the stationary source is indeed subject to the CalARP Program. The final decision can be viewed at <http://www.calema.ca.gov/WebPage/oeswebsite.nsf/Content/4F93B6C0A374069A882575DA000751C0?OpenDocument>

Office of State Fire Marshal

California Fire Code: HMMP/HMIS

The laws and regulations for the California Fire Code Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS) are now available on OSFM's Web site at <http://osfm.fire.ca.gov/cupa/pdf/lawsandregshmmphmis.pdf>.