

CAL/EPA UNIFIED PROGRAM POLICY MEMORANDUM

SUBJECT:	NUMBER: UP-11-04
CAL/EPA UNIFIED PROGRAM POLICY FOR THE SINGLE FEE SYSTEM AND THE FEE ACCOUNTABILITY PROGRAM	DATE ISSUED: 06/01/11
REFERENCES: California Health & Safety Code, Chapter 6.11, Section 25404.5 California Health & Safety Code, Division 37, Section 57001 California Code of Regulations, Title 27, Sections 15210 and 15220	EXPIRES: UNTIL RESCINDED

CATEGORY:
Single Fee System & Fee Accountability Program

STATEMENT OF PURPOSE

To clarify the single fee system and fee accountability program requirements for Unified Program Agencies and State agencies with Unified Program responsibilities.

BACKGROUND

The California Environmental Protection Agency (Cal/EPA) Unified Hazardous Waste and Hazardous Materials Management Regulatory Program (a.k.a. Unified Program) was created in 1993 by Senate Bill 1082. The statutes are in Health and Safety Code (HSC), chapter 6.11, section 25404 et. Seq. The regulations are in the California Code of Regulations, Title 27, section 15100 et. Seq. The Secretary for Environmental Protection is responsible for the implementation and oversight of the Unified Program. The Unified Program consolidates, coordinates and makes consistent six environmental programs including hazardous waste generation, hazardous materials storage disclosure, chemical accidental release, underground storage tank (UST), aboveground petroleum storage act, and the California Fire Code hazardous materials inventory and management plan requirements.

The Unified Program requires Cal/EPA to certify local government agencies, known as Certified Unified Program Agencies (CUPAs) as able to implement all of the required environmental programs and able to consolidate, coordinate and make them consistent within their jurisdiction. Cal/EPA is required to review local programs on a three year or more often cycle to ensure the CUPAs capabilities and adherence to all program requirements.

The Unified Program requires identified state agencies with Unified Program responsibilities to adopt and interpret statewide standards and requirements imposed on businesses and CUPAs. These state agencies are: Cal/EPA, the State Water Resources Control Board, the California Emergency Management Agency, the Office of the State Fire Marshal, and the Department of Toxic Substances Control. CUPAs must issue consolidated permits, consolidate and make consistent the identified programs locally, consolidate business inspections, and institute a single fee system for businesses to pay any fees for the six identified programs.

The CUPAs activities are funded from fees charged to businesses, and the state's activities are funded from a surcharge fee charged to businesses. The fees are only allowed to cover Unified Program activities as defined in the statute and regulations.

Section 25404.5 of the California Health and Safety Code requires that CUPAs institute a single fee system to pay for the program. The governing body of the CUPA is required to establish the amount to be paid by each person regulated by the unified program under the single fee system at a level sufficient to pay the necessary and reasonable costs incurred by the CUPA and by any participating agency in the CUPA's program.

The fee system may also be designed to recover the necessary and reasonable costs incurred by the CUPA, or a participating agency in administering provisions other than the six program elements specified under the Unified Program, if the implementation and enforcement of those provisions has been incorporated as part of the unified program by the CUPA and if the single fee system replaces any fees levied as of January 1, 1994, to fund the implementation of those additional provisions.

The fee accountability program requirement is intended to assure the fees collected for the Unified Program are imposed for those necessary and reasonable costs incurred by the CUPA to implement the Unified Program. The fees may also cover the cost of program activities such as training, administration, investigations, inspections, audits and enforcement actions.

In addition, pursuant to section 57001 of the California Health and Safety Code, state agencies are required to maintain fee accountability programs by implementing a fee accountability system. This fee accountability system is designed to encourage more efficient and cost-effective operation of the programs for which the fees are assessed, and to ensure that the amount of each fee is not more than is reasonably necessary to fund the efficient operation of the activities or programs for which the fee is assessed.

ANALYSIS

Each CUPA has developed, and is implementing, a Single Fee System for the collection of fees from regulated businesses. The Single Fee System within each jurisdiction may only cover the CUPA's reasonable and necessary costs to administer and implement the Unified Program in their jurisdiction. Each CUPA, the identified state agencies, and Cal/EPA were also required to establish and maintain a fee accountability program, designed to encourage efficient and cost-effective operation of the program for which the single fee and surcharge are assessed.ⁱ The CUPAs must annually review and update their respective fee accountability programs. CUPAs are also required to conduct an annual self-audit as part of their program implementation and the fee accountability program is part of the process. Cal/EPA can require submittal of these annual self-audits as necessary to monitor the CUPAs. Additionally, at least once every three years, Cal/EPA is required to assess the CUPAs performance in implementing and enforcing the requirements of the Unified Program. These evaluations look at the CUPA's program to ensure adequate program implementation, which includes the financial aspects of the program.

ⁱ California Health and Safety Code, section 25404.5 defines the scope of program fees and defines the fee accountability requirements on CUPAs and the state. California Code of Regulations, Title 27, section 15210 through 15250, further identifies the scope of fees and the requirements of fee accountability.

Proposition 26 requires that all taxes be passed by not less than two-thirds of the elected body. The proposition defines taxes as any levy, charge or extract of any kind imposed on a business, but includes exemptions for fees in several categories. Two of those categories include charges imposed for a specific government service provided directly to the payer that is not provided to those not charged and charges imposed for reasonable regulatory costs incident to issuing licensing and permits and performing investigations, inspections and audits. The Cal/EPA's and state agencies' activities defined in statute and regulation, identified in the background, fit into these categories. Additionally, the CUPAs' fees also fit into these categories.

The Unified Program surcharge is also a fee that is not continuously set by a voting body. The original voting body, the State Legislature, set the administrative process for the fee into place with the enactment of the originating statute. This statute, Senate Bill 1082 (statutes of 1993), was driven by businesses and implemented a fee based program for the benefit of businesses statewide. It passed the Assembly by a 73 to 2 vote (6 abstentions) and the Senate by a 28 to 2 vote (7 abstentions), well above the two-thirds vote.

FINDING

Unified Program surcharge fee is not subject to a two thirds vote of the legislature. The Unified Program Single Fee fees set by the CUPAs are not subject to a two-thirds vote of the CUPA's governing body, unless that requirement already exists by local ordinance.

ACTION PLAN

The following are key areas for CUPAs and state agencies to focus on when implementing the single fee system and fee accountability program.

Single Fee System

- Each CUPA shall implement a single fee system within its jurisdiction. The single fee system consolidates all fees currently mandated in statute and regulation used for local implementation of the Unified Program.
- The single fee system may be used to charge fees for programs that are not listed as Unified Program elements in Health and Safety Code section 25404.5(c), if those programs are incorporated into the Unified Program.
- The single fee system may reflect variations in cost to implement and maintain programs for different regulated businesses.
- Fee schedules shall be based on factors associated with the cost of implementing and maintaining programs.
- Fees may differ from one jurisdiction to the next, based on the necessary and reasonable costs to implement the Unified Program.
- The fee schedule may be adjusted by the CUPA to reflect changes in reasonable and necessary costs.
- A CUPA, with its participating agencies, has the authority to determine the level of service it will provide and to set its fees to fund the necessary and reasonable costs of its program.

- Each billing statement shall itemize the fees by program element, if those fee elements are calculated separately.
- The governing body of the CUPA shall establish the fee schedule for businesses regulated under the Unified Program. The governing body of the CUPA shall utilize the fee schedules established by the PAs and authorize the collection of those fees.

Fee Accountability Program

Each CUPA shall, before the institution of the single fee system, implement a fee accountability program designed to encourage more efficient and cost-effective operation of the program for which the single fee and surcharge are assessed. The state must also implement a fee accountability to appropriately manage the surcharge fees that support the state's efforts in oversight.

The fee accountability programs shall include the following elements:

- Accounting for: the fee schedule, the actual amount billed, and the revenue collected.
- Discrete billable services, categorized as either site specific or general.
- Staff work hours required to implement the program.
- Direct program expenses including durable and disposable equipment.
- Indirect program expenses including overhead for facilities and administrative functions.
- The number of regulated businesses in each program element within the jurisdiction.
- Total number of regulated businesses in the jurisdiction.
- Quantity and range of services provided, including frequency of inspection.

The CUPA, in conjunction with participating agencies, may incorporate, as part of the unified program within its jurisdiction, the implementation and enforcement of laws which the Unified Program agencies are authorized to implement and enforce, other than those specified in subdivision of HSC Section 25404, if that incorporation will not impair the ability of the Unified Program agencies to fully implement the requirements of the program.

While it is acceptable to collect fees to cover positions that partially implement the Unified Program (along with other programs), care must be taken to ensure that Unified Program fees are only assessed for those activities that are directly related to the Unified Program.

The CUPA and participating agencies shall annually review and update the fee accountability program.

QUESTIONS

Please direct all questions regarding this policy to Jim Bohon, Unified Program Manager at (916) 327-5097 or email jbohon@calepa.ca.gov.