



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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Unified Program Guidance Letter 12-01 Amended

FEDERAL FACILITY PAYMENT DISPUTES OF GENERAL OVERSIGHT CHARGES

To: Unified Program Agencies

STATEMENT OF PURPOSE

This policy memorandum addresses the issue of surcharge collections from federal facilities by Certified Unified Program Agencies (CUPAs) and CalEPA's periodic evaluation of the CUPAs. Unified Program Bulletin 0910-01, titled "Federal Facility Payment Disputes of General Oversight Surcharge" is hereby rescinded and replaced by this policy memorandum.

BACKGROUND

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, Aboveground Petroleum Storage Act (APSA) and Accidental Release Prevention (CalARP) programs, it is undisputed that Congress has clearly waived sovereign immunity and has directed agencies of the federal government to pay applicable fees. For the Fire Code and Business Plan programs, some federal agencies have asserted there is no clear waiver in federal law and payment of these fees by federal facilities has, in some cases, has been disputed.

ANALYSIS

Surcharge Payment Issue

CalEPA has defined four surcharges within the Unified Program: general Oversight, UST, APSA and CalARP. The UST, APSA 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. Because a portion of this surcharge goes to support state oversight of the Fire Code and Business Plan programs, some federal facilities have refused to pay all or a portion of the General Oversight surcharge. In taking a different position than those federal facilities disputing the fees and surcharge, CalEPA has relied on the sovereign immunity waiver in the

federal Resource Conservation and Recovery Act (RCRA), as well as on federal case law holding that federal agencies are subject to assessments if they can be properly characterized as state fees rather than state taxes. Representatives of the federal government and California EPA have met and discussed these issues, but at this time have not come to resolution.

CUPA Evaluation Issue

CalEPA is required to periodically evaluate each CUPA's ability to implement and manage all aspects of the programs under the Unified Program. During this evaluation process, some CUPAs have been found deficient for failing to take enforcement action to collect state surcharge fees owned by the federal government.

RESOLUTION

CalEPA has examined the amount of the General Oversight surcharge that supports each of the programs covered. The General Oversight surcharge was set at \$49.00 per regulated business per year effective July 1, 2017. Of that amount, a total of \$8.82 supports the Fire Code and Business Plan programs.

In consideration of all of the relevant circumstances, including the small amount of the state surcharge in dispute and the high costs to CUPAs of litigation, while this policy is in effect CalEPA 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. However, to aid CalEPA in determining the extent of the dispute, federal refusal to pay must be reported to the CalEPA Unified Program by the CUPAs pursuant to UP Bulletin 0809-1, titled "Department of Defense Facility Fee Payment Guide."

This is not a waiver of the right to enforce the surcharge. CalEPA is not discouraging any CUPA from taking appropriate action to enforce collection of the General Oversight surcharge should it choose to do so. CUPAs must continue to enforce all programs under the Unified Program at federal facilities and to take appropriate action to collect surcharge in the non-disputed programs (UST, APSA, Hazardous Waste Management and CalARP).

STATUTORY AND REGULATORY REFERENCES

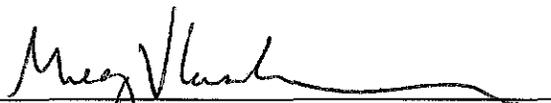
California Health & Safety Code, Chapter 6.11, Section 25404.5

California Health & Safety Code, Division 37, Section 57001

California Code of Regulations, Title 27, Sections 15210 and 15220

Questions

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



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