



Gavin Newsom  
Governor

Jared Blumenfeld  
Secretary for Environmental Protection

July 13, 2021

Mr. Jeffrey Marshal  
Director, Environmental Health  
Kern County Health Services Department  
2700 M Street, Suite 300  
Bakersfield, California 93301-2370

Dear Mr. Marshal:

During October 2018 through March 2019, CalEPA and the Unified Program state agencies conducted a performance evaluation of the Kern County Health Services Department Certified Unified Program Agency (Kern County CUPA). The Kern County CUPA 2018 performance evaluation included a remote assessment of administrative documentation, review of regulated facility file documentation, California Environmental Reporting System data, and oversight inspections.

Due to extraordinary circumstances and at no fault of the Kern County CUPA, CalEPA has been unable to issue the enclosed Final Summary of Findings (FSOF) report for the 2018 performance evaluation until now. The Kern County CUPA remains responsible for adhering to the standards established in state law for the implementation of each of the six Unified Program elements, including addressing the deficiencies and incidental findings identified in the Preliminary Summary of Findings report issued to the Kern County CUPA during the Exit Briefing meeting on March 5, 2019. Based upon review and completion of the 2018 performance evaluation, CalEPA has rated the Kern County CUPA's overall implementation of the Unified Program as satisfactory with improvement needed.

As a result of the delayed issuance of the FSOF report for the 2018 performance evaluation, CalEPA recognizes there is insufficient time before the onset of the subsequent performance evaluation for the Kern County CUPA to fully utilize the quarterly Evaluation Progress Report process to demonstrate correction of identified deficiencies and resolution of incidental findings. However, CalEPA is requesting the Kern County CUPA to provide one Evaluation Progress Report, utilizing the enclosed template, to summarize the corrective actions and resolutions completed since the conclusion of the 2018 performance evaluation. While the timeframe for completion of corrective actions and resolutions outlined in the FSOF report may extend beyond the submittal of one Evaluation Progress Report, the CUPA is strongly encouraged to include as much detail as possible regarding the progress made through present day, not limiting responses to what is requested with the first progress report.

The Evaluation Progress Report shall be provided to CalEPA no later than October 13, 2021, via email to: [Timothy.Brandt@calepa.ca.gov](mailto:Timothy.Brandt@calepa.ca.gov). Any deficiencies that remain uncorrected and any incidental findings that remain unresolved will be carried forward to the 2021 performance evaluation, which is scheduled to begin August 30, 2021.

Consequently, there is an overlap in the time period which the CUPA will be preparing and submitting the Evaluation Progress Report for the 2018 performance evaluation and preparing information for and participating in the evaluation kick-off meeting for the 2021 performance evaluation. Below is a timeline which outlines the significant dates and associated objectives to fully close out the 2018 performance evaluation and begin the 2021 performance evaluation:

- July 13, 2021: CalEPA provides the FSOF report for the 2018 performance evaluation to the Kern County CUPA and requests the Kern County CUPA to provide one Evaluation Progress Report for the 2018 performance evaluation
- August 30, 2021: CalEPA provides the 2021 evaluation notification to the Kern County CUPA
- Between August 30, 2021 and November 1, 2021, the following 2021 performance evaluation activities will take place:
  - the performance evaluation workplan will be established
  - the Kern County CUPA will complete a Supplemental Questionnaire
  - the evaluation kick-off meeting will be held
- October 13, 2021: the Kern County CUPA provides one Evaluation Progress Report to CalEPA
- October 13, 2021 through October 27, 2021: CalEPA and the Unified Program state agencies review the Evaluation Progress Report provided by the Kern County CUPA and determine if any deficiencies or incidental findings will be carried forward to the 2021 performance evaluation
- November 1, 2021: Kern County CUPA provides information requested in the 2021 performance evaluation notification to CalEPA
- November 8, 2021: CalEPA provides responses to the Evaluation Progress Report and a final closing letter to the Kern County CUPA for the 2018 performance evaluation

Thank you for your continued commitment to the protection of public health and the environment through the implementation of the Unified Program.

Mr. Jeffrey Marshal  
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If you have any questions or need further assistance, please contact Melinda Blum at [Melinda.Blum@calepa.ca.gov](mailto:Melinda.Blum@calepa.ca.gov) or John Paine, Unified Program Manager, at [John.Paine@calepa.ca.gov](mailto:John.Paine@calepa.ca.gov).

Sincerely,



Jason Boetzer  
Assistant Secretary  
Local Program Coordination and Emergency Response

Enclosures

cc sent via email:

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Ms. Melinda Blum  
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California Environmental Protection Agency

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cc sent via email:

Mr. Timothy Brandt  
Environmental Scientist  
California Environmental Protection Agency

## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

**CUPA: Kern County Environmental Health Services Department**

**Evaluation Period: October 2018 – March 2019**

### **Evaluation Team Members:**

- **CalEPA Team Lead:** Timothy Brandt, Marc Lorentzen
- **DTSC:** Kevin Abriol
- **Cal OES:** Fred Mehr
- **State Water Board:** Jessica Botsford
- **CAL FIRE-OSFM:** Glenn Warner

This Final Summary of Findings (FSOF) report includes:

- Deficiencies requiring correction
- Incidental findings requiring resolution
- Observations and recommendations

The findings contained within this evaluation report are considered final.

Based upon review and completion of the evaluation, the Unified Program implementation and performance of the CUPA is considered satisfactory with improvement needed.

Questions or comments regarding this evaluation should be directed to the CalEPA Team Lead:

**Tim Brandt**

CalEPA Unified Program

Phone: (916) 323-2204

E-mail: [timothy.brandt@calepa.ca.gov](mailto:timothy.brandt@calepa.ca.gov)

Due to the delayed issuance of this FSOF report for the 2018 performance evaluation, CalEPA recognizes there is insufficient time before the onset of the subsequent performance evaluation for the Kern County CUPA to fully utilize the quarterly Evaluation Progress Report process to demonstrate correction of identified deficiencies and resolution of incidental findings.

However, CalEPA is requesting the Kern County CUPA to provide one Evaluation Progress Report to summarize the corrective actions and resolutions completed since the conclusion of the 2018 performance evaluation. While the timeframe for completion of corrective actions and resolutions outlined in this FSOF report may extend beyond the submittal of one Evaluation Progress Report, the CUPA is strongly encouraged to include as much detail as possible regarding the progress made through present day, not limiting responses to what is requested with the first progress report.

The Evaluation Progress Report shall be provided to CalEPA no later than October 13, 2021, via email to: [Timothy.Brandt@calepa.ca.gov](mailto:Timothy.Brandt@calepa.ca.gov).

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

UNIFIED PROGRAM PERFORMANCE EVALUATION  
FINAL SUMMARY OF FINDINGS REPORT

DEFICIENCIES REQUIRING CORRECTION

Program deficiencies identify specific aspects regarding inadequate implementation of the Unified Program. The CUPA must complete the corrective action(s) indicated to demonstrate sufficient implementation of the Unified Program as required by regulation or statute.

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**1. DEFICIENCY:**

The CUPA has not made a preliminary determination whether there is a significant likelihood that the use of a Table 3 regulated substance by a stationary source may pose a regulated substance accident risk.

The CUPA cannot issue a blanket exemption based on a single Table 3 regulated substance.

**CITATION:**

Health and Safety Code (HSC), Chapter 6.95, Section 25534  
[Cal OES]

**CORRECTIVE ACTION:**

By the 4<sup>th</sup> Progress Report, the CUPA will make a preliminary determination for each stationary source using a regulated substance that may pose accidental risk.

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**2. DEFICIENCY:**

The CUPA is not ensuring all businesses annually submit a complete hazardous materials business plan (HMBP) to the California Environmental Reporting System (CERS).

Review of HMBP submittals in CERS finds 30% of HMBP facilities did not submit a complete HMBP on an annual basis.

**CITATION:**

HSC, Chapter 6.95, Sections 25505 and Section 25508(a)  
[Cal OES]

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will develop and provide CalEPA with a list of all HMBP regulated businesses that have not annually submitted a complete HMBP.

By the 4<sup>th</sup> Progress Report, the CUPA will follow-up with each HMBP regulated business identified on the list to ensure a complete HMBP is submitted and for those HMBP regulated businesses that have not submitted a complete HMBP within 30 days, the CUPA will apply appropriate enforcement. With each subsequent Progress Report until considered corrected, the CUPA will update and provide the list with the status of HMBP regulated business compliance and provide it to CalEPA.

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**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

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**DEFICIENCIES REQUIRING CORRECTION**

**3. DEFICIENCY:**

The CUPA is not consistently following-up and documenting return to compliance (RTC) information in CERS for Aboveground Petroleum Storage Act (APSA) tank facilities cited with violations.

Review of inspection, monitoring and enforcement information, also known as compliance, monitoring and enforcement (CME) information, in CERS indicates:

- Fiscal Year (FY) 2017/2018
  - 44 of 137 (32%) violations have no documented RTC

Review of CERS indicates no RTC for the following APSA tank facilities issued a violation for not having a Spill Prevention, Control, and Countermeasure (SPCC) Plan.

- FY 2017/2018
  - 6 facilities
- FY 2016/2017
  - 2 facilities
- FY 2015/2016
  - 1 facility

**CITATION:**

HSC, Chapter 6.11, Section 25404.1.2(c)

HSC, Chapter 6.67, Section 25270.4.5(a)

California Code of Regulations (CCR), Title 27, Sections 15185(a) and (c) and 15200(a) and (e)

**[CalEPA, OSFM]**

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will provide CalEPA with a spreadsheet of all APSA tank facilities that have open violations (no RTC). The CUPA will follow-up with each facility listed in the spreadsheet and prioritize follow-up actions based on the level of hazard. At a minimum, the spreadsheet will include:

- Facility name;
- CERS ID;
- Inspection and violation dates;
- Scheduled RTC date;
- Actual RTC date;
- RTC qualifier; and
- Follow-up actions.

By the 2<sup>nd</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with an updated spreadsheet.



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**DEFICIENCIES REQUIRING CORRECTION**

By the 3<sup>rd</sup> Progress Report and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with RTC documentation for five APSA tank facilities as requested by OSFM.

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**4. DEFICIENCY:**

The CUPA is not consistently ensuring that all APSA tank facilities annually submit an HMBP, when an HMBP is provided in lieu of a tank facility statement to CERS.

Review of HMBPs provided in lieu of a tank facility statement to CERS indicates:

- 255 of 1,002 (25%) APSA tank facilities have not submitted a chemical inventory and site map within the past 12 months.
- 312 of 1,001 (31%) APSA tank facilities have not submitted emergency response and employee training plans within the past 12 months.

**CITATION:**

HSC, Chapter 6.67, Section 25270.6(a)

**[OSFM]**

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report and with each subsequent progress report until considered corrected, the CUPA will develop and provide a list to CalEPA of all APSA tank facilities that have not annually submitted an HMBP, when an HMBP is provided in lieu of a tank facility statement, to CERS.

By the 2<sup>nd</sup> Progress Report, the CUPA will follow-up with each APSA tank facility identified on the list to ensure an HMBP is submitted annually, when an HMBP is provided in lieu of a tank facility statement, or the CUPA will take appropriate enforcement.

By the 4<sup>th</sup> Progress Report, the CUPA will have ensured that each APSA tank facility has annually submitted an HMBP, when an HMBP is provided in lieu of a tank facility statement, or the CUPA will have applied appropriate enforcement.

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**5. DEFICIENCY:**

The CUPA is not consistently ensuring Underground Storage Tank (UST) facilities submit UST testing and leak detection documents, and is not citing the corresponding violation during the annual UST compliance inspection.

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**DEFICIENCIES REQUIRING CORRECTION**

Review of UST facility files and CERS information finds the following examples where UST testing and leak detection documents were not found:

- CERS ID 10443121
  - 2018 annual monitoring certification documentation is missing
  - 2 most recent secondary containment testing documentation is missing
  - There is no corresponding violation cited during the annual UST compliance inspection
- CERS ID 10132192
  - 2018 annual monitoring certification documentation is missing
  - There is no corresponding violation cited during the annual UST compliance inspection
- CERS ID 10234387
  - 2017 annual monitoring certification documentation is missing
  - There is no corresponding violation cited during the annual UST compliance inspection

Note: This deficiency was cited during the 2016 CUPA Performance Evaluation and was considered corrected during the Progress Report process.

Note: The examples provided above may not represent all instances of this deficiency.

**CITATION:**

HSC, Chapter 6.7, Section 25288(a) & (b)

CCR, Title 23, Sections 2637(e), 2638(d), 2643(g), and 2644.1(a)(5)

CCR Title 27, Section 15290(a)(3)

**[State Water Board]**

**CORRECTIVE ACTION:**

In accordance with UST Regulations and HSC, the CUPA will ensure UST owners and/or operators submit appropriate UST testing and leak detection documents within 30 days of testing, and when UST owners and/or operators fail to do so, the CUPA must cite the proper violation during the next annual UST compliance inspection.

By the 1<sup>st</sup> Progress Report, the CUPA will revise and provide CalEPA the I&E Plan, or other applicable procedure, to include, at a minimum, a description of the following activities performed by the CUPA:

- Ensuring UST owners and/or operators submit UST testing and leak detection documents within the prescribed time frame;
- Enforcement options for failure to submit UST testing and leak detection documents; and
- Ensuring UST inspection staff review UST facility files prior to conducting the annual UST compliance inspections to identify issued violations for missing testing and leak detection documentation.

By the 2<sup>nd</sup> Progress Report, the CUPA will, if necessary, amend the I&E Plan, or other applicable procedure, based on feedback from the State Water Board and will provide the amended I&E Plan or other applicable procedure to CalEPA. If no amendments are necessary, the CUPA will train UST inspection staff on the revised I&E Plan or other applicable procedure and will provide

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training documentation to CalEPA. Training documentation will include, at a minimum, an outline of the training conducted and a list of UST inspection staff in attendance. Once training is conducted, the CUPA will implement the revised I&E Plan or other applicable procedure.

By the 3<sup>rd</sup> Progress Report, if amendments to the I&E Plan or other applicable procedure were necessary, the CUPA will train UST inspection staff on the amended I&E Plan or other applicable procedure and will provide training documentation to CalEPA. Training documentation will include, at a minimum, an outline of the training conducted and a list of UST inspection staff in attendance. Once training is conducted, the CUPA will implement the amended I&E Plan or other applicable procedure.

By the 4<sup>th</sup> Progress Report, the CUPA will develop outreach program materials and provide to CalEPA. The CUPA will develop and provide CalEPA with an outline of how and when the outreach program materials will be provided to the regulated community (both UST owners and/or operators and testers). The outreach materials must explain the requirement to submit the appropriate UST testing and leak detection documents in the timeframe required by UST Regulations and HSC.

By the 5<sup>th</sup> Progress Report, the CUPA will if necessary, amend the outreach material based on feedback from the State Water Board and provide the amended outreach material to CalEPA. If no amendments are necessary, the CUPA will have completed the distribution of the outreach materials so that the regulated community is notified of the requirements to submit appropriate UST testing and leak detection documents. The CUPA will send CalEPA a final copy of the outreach materials and a list of businesses that were provided with the outreach materials.

By the 5<sup>th</sup> Progress Report and with each subsequent Progress Report until considered corrected, the CUPA will provide five UST facility records, if not available in CERS, selected by the State Water Board. The selected records will include, at a minimum, monitoring certification results, secondary containment test results, spill bucket test results, and any other testing or leak detection documents showing the date the testing and leak detection documents were received by the CUPA, subsequent to completion and distribution of outreach materials.

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**6. DEFICIENCY:**

The CUPA is not consistently following up with RTC for the UST Program.

Review of CERS CME information finds the following UST testing and leak detection violations have no documented RTC:

- FY 2018/2019
  - 20 of 34 (59%)
- FY 2017/2018
  - 80 of 255 (31%)
- FY 2016/2017
  - 35 of 273 (13%)

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**DEFICIENCIES REQUIRING CORRECTION**

Note: The examples provided above may not represent all instances of this deficiency.

Note: State Water Board correspondence dated November 29, 2016, "When to Review Underground Storage Tank Records." may be referenced.

**CITATION:**

HSC, Chapter 6.7, Section 25288(d)

**[State Water Board]**

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will identify and provide CalEPA with a list of UST facilities cited for testing or leak detection failures that have not returned to compliance. The CUPA will apply appropriate enforcement as necessary to obtain compliance.

By the 2<sup>nd</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide an updated list to CalEPA.

By the 3<sup>rd</sup> Progress Report and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with RTC documentation for five UST facilities selected by the State Water Board.

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**7. DEFICIENCY:**

The CUPA is not consistently requiring UST facilities with single-walled component(s) to implement a program of enhanced leak detection (ELD) testing once every three years, due to proximity to public drinking water wells. Additionally, the CUPA is not consistently citing the corresponding violation during the annual compliance inspection.

Review of UST facility files finds the following UST facilities with single-walled component(s), proximity to a public drinking water well, and required to perform ELD testing at least once every 36 months, are not doing so:

- CERS ID 10175631: ELD completed 2002. No indication of ELD subsequent. Based on initial testing date, the facility should have performed ELD testing in 2005, 2008, 2011, 2014, and 2017. No corresponding violation cited during the annual compliance inspection.
- CERS ID 10234741: Facility notification in 2006. No indication of ELD testing completed. Based on initial notification, the facility should have performed ELD testing in 2009, 2012, 2015, and 2018. No corresponding violation cited during the annual compliance inspection.
- CERS ID 10443121: ELD completed 2012 and 2015. Based on initial testing date, the facility should have performed ELD testing in 2018. No corresponding violation cited during the annual compliance inspection.

Note: The examples provided above may not represent all instances of this deficiency.

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**DEFICIENCIES REQUIRING CORRECTION**

**CITATION:**

HSC, Chapter 6.7, Section 25292.4  
CCR, Title 23, Sections 2640(e) and 2644.1  
**[State Water Board]**

**CORRECTIVE ACTION:**

As part of the annual UST compliance inspection the CUPA will review all appropriate documentation to determine if a UST facility is in compliance with ELD testing requirements as outlined in HSC, Sections 25292.4 and 25292.5.

By the 1<sup>st</sup> Progress Report, the CUPA will identify and provide CalEPA with a list of UST facilities that are not current with implementing a program of ELD testing at least once every 36 months.

By the 1<sup>st</sup> Progress Report, the CUPA will revise and provide CalEPA the I&E Plan or other applicable procedure to include, at a minimum, language for ensuring UST facilities implement a program of three-year periodic ELD testing. If no amendments to the I&E Plan or other applicable procedure are necessary, the CUPA will train UST inspection staff on the revised I&E Plan or other applicable procedure to ensure all UST inspection staff review testing documentation during the annual UST compliance inspection. The CUPA will provide training documentation to CalEPA, which will include, at a minimum, an outline of the training conducted and a list of UST inspection staff in attendance. Once training is conducted, the CUPA will implement the revised I&E Plan or other applicable procedure.

By the 2<sup>nd</sup> Progress Report, the CUPA will provide written notification to UST facility owners and/or operators of the requirement to implement a program of ELD testing at least once every 36 months. The written notification will require ELD testing within 30 days, and will include language stating noncompliance may lead to administrative or other formal enforcement measures, including, at a minimum, permit revocation. The CUPA will provide CalEPA with a copy of the written notification and a list of UST owners and/or operators the written notification was provided.

By the 3<sup>rd</sup> Progress Report, if ELD testing has not been implemented at the UST facility by the required date, the CUPA will apply appropriate enforcement.

Once ELD testing has occurred, the CUPA will provide CalEPA with each UST facility's test results.

By the 3<sup>rd</sup> Progress Report, if amendments to the I&E Plan or other applicable procedure were necessary, the CUPA will train UST inspection staff on the amended I&E Plan or other applicable procedure to ensure all UST inspection staff review testing documentation during the annual UST compliance inspection. The CUPA will provide training documentation to CalEPA, which will include, at a minimum, an outline of the training conducted and a list of UST inspection staff in attendance. Once training is conducted, the CUPA will implement the amended I&E Plan or other applicable procedure.

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**DEFICIENCIES REQUIRING CORRECTION**

Note: The proposed timeline for the CUPA to identify facilities that have not conducted a program of ELD testing at least once every 36 months, make notifications, and receive test results should not be construed as an extension or approval for owners and/or operators to not immediately comply with the required program of ELD testing.

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**INCIDENTAL FINDINGS REQUIRING RESOLUTION**

Incidental findings identify specific incidents or activities regarding implementation of the Unified Program. Though incidental findings do not rise to the level of program deficiencies or inadequate implementation of the Unified Program, the CUPA must complete the resolution(s) indicated as required by regulation or statute.

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**1. INCIDENTAL FINDING:**

The I&E Plan has missing and inaccurate information.

The following information is missing:

- Provisions for ensuring the CUPA has sampling capability and ensuring the analysis of any material shall be performed by a state certified laboratory pursuant to HSC, Chapter 6.5, Section 25198.

The following information is inaccurate:

- Page 3: Inspection frequency for Onsite Waste Treatment facilities is inaccurately stated as “Triennially.” The mandated inspection frequency for Onsite Waste Treatment facilities is “initial inspection within two years of notification and every three years thereafter.”

**CITATION:**

HSC, Chapter 6.5, Section 25201.4(b), and  
CCR, Title 27, Section 15200(a)  
[CalEPA, DTSC]

**RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will review, revise, and provide CalEPA with the corrected I&E Plan addressing revisions to the missing and inaccurate information identified.

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**2. INCIDENTAL FINDING:**

The CUPA is not properly classifying APSA violations.

Review of CERS CME information indicates not having, or failure to prepare, an SPCC Plan was cited as a minor violation as follows:

- FY 2015/2016 - FY 2017/2018
  - 8 of 121 (7%)

Not having, or failure to prepare, an SPCC Plan is not considered a minor violation as defined in HSC, Section 25404(a)(3). In addition, classifying a violation for not having, or failure to prepare, an SPCC Plan as minor is inconsistent with and less stringent than the U.S. Environmental Protection Agency. Based on the definition of a “minor violation,” a minor violation does not include the following: (1) a violation that presents a significant threat to human health or the environment; or (2) a violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.”

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**INCIDENTAL FINDINGS REQUIRING RESOLUTION**

**CITATION:**

HSC, Chapter 6.67, Sections 25270.4.1(c), 25270.4.5(a)  
HSC, Chapter 6.11, Sections 25404(a)(3), 25404.2(a)(3)-(4)  
CCR, Title 27, Section 15200(a) and (e)  
[OSFM]

**RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will train its inspectors on the definition of minor violation as defined in HSC, Chapter 6.11, Section 25404(a)(3) and how to properly classify violations during compliance inspections as minor, Class II, and Class I.

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**3. INCIDENTAL FINDING:**

Review of temporary closure documentation finds the CUPA is not consistently implementing temporary closure requirements.

- CERS ID 10234531:
  - Tanks placed in temporary closure beyond 12 months without conducting a site assessment as outlined in CCR, Title 23, Section 2670(b) and in accordance with CCR, Title 23, Section 2672(d); CUPA has issued temporary closure permit for which no authority exists, and conflicts with issued permit conditions.
  - Failure of the UST owner and/or operator to conduct an inspection at least once every three months during temporary closure.

**CITATION:**

HSC, Chapter 6.7, Section 25293  
CCR, Title 23, Sections 2670(b), 2671(c) and 2672(d)  
[State Water Board]

**RESOLUTION:**

The CUPA must revoke the temporary closure permit for CERS ID 10234531.

By the 1<sup>st</sup> Progress Report, the CUPA will revise and provide CalEPA with the I&E Plan, or other applicable procedure, to delineate the CUPA's process for issuing temporary closure permits, which includes, at a minimum:

- Issuing temporary closure permits not to extend 12 months;
- Conducting a site assessment outlined in CCR, Title 23, Section 2670(b) and in accordance with CCR, Title 23, Section 2672(d);
- Requiring documentation from the UST owner and/or operator to show inspections were conducted at least once every three months while the UST(s) are in temporary closure; and
- Review of quarterly inspections during the annual UST compliance inspection to ensure the UST owner and/or operator is complying with the temporary closure permit.

By the 2<sup>nd</sup> Progress Report, the CUPA will, if necessary, amend the I&E Plan or other applicable procedure, based on feedback from State Water Board, and will provide the revisions to CalEPA.



UNIFIED PROGRAM PERFORMANCE EVALUATION  
FINAL SUMMARY OF FINDINGS REPORT

INCIDENTAL FINDINGS REQUIRING RESOLUTION

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**4. INCIDENTAL FINDING:**

Review of UST inspection reports finds a limited number of instances where a UST inspector who was beyond the 180 days of hire into the UST Program and not yet certified by the International Code Council (ICC) conducted, signed, and issued inspection reports.

**CITATION:**

CCR, Title 23, Section 2715(g)(1)  
**[State Water Board]**

**RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will amend and provide a revised I&E Plan or other applicable procedure to reflect an ICC Certification is required to conduct and sign off on annual UST compliance inspection report and will provide the revisions to CalEPA.

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**5. INCIDENTAL FINDING:**

Review of UST facility files and CERS finds CERS ID 10195624 is not constructed or monitored in accordance with UST Regulations and HSC as follows:

- Missing spill containment; and
- Monitoring equipment is not certified by an independent third-party testing laboratory.

**CITATION:**

CCR Title 23. Sections 2635(b) and 2643(f)  
**[State Water Board]**

**RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will conduct a thorough review of UST facility construction and monitoring for compliance and implement corrective action to bring the UST facility into compliance.

By the 1<sup>st</sup> Progress Report, the CUPA shall consult with State Water Board staff to identify areas of improper construction and monitoring.

By the 2<sup>nd</sup> Progress Report, the CUPA shall provide CalEPA with a plan and timeline, identified by the CUPA for bringing the UST facility into compliance.

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Observations and recommendations identify areas of Unified Program implementation that could be improved and provide suggestions for improvement. Though the CUPA is not required by regulation or statute to apply the recommendations provided, the CUPA would benefit in applying the recommendations provided to improve the overall implementation of the Unified Program.

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**1. OBSERVATION:**

The I&E Plan contains APSA program information that may benefit from improvement.

- Page 2: In the Inspection Performance Standard document under the Required Frequency of Inspection table, the triennial statutory inspection frequency applies to APSA facilities storing 10,000 gallons or more of petroleum. It is most accurate to cite HSC 25270.5(a) when referencing these APSA mandated inspections.
- Page 2: In the Scheduled Frequency of Inspection table, if the CUPA implements an alternative inspection plan (for example, inspecting all APSA facilities including those storing less than 10,000 gallons of petroleum triennially), then it is appropriate to also reference HSC 25270.5(b).

**RECOMMENDATION:**

Update the APSA program information in the I&E Plan.

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**2. OBSERVATION:**

APSA CERS submittals including an SPCC Plan were accepted for CERS IDs 10231312, 10234279 and 10231987. SPCC Plans are not required as part of an APSA CERS submittal; therefore, SPCC Plans should not be uploaded to CERS.

The APSA documentation section in CERS is for providing annual tank facility statement submittals, unless the facility indicates an HMBP is already submitted, or for providing other local reporting requirements.

**RECOMMENDATION:**

The CUPA should provide feedback (using the regulator comments field) advising the facility to not include SPCC Plans in future CERS submittals.

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**3. OBSERVATION:**

The CUPA utilizes a single APSA checklist for compliance inspections at Tier I or Tier II qualified facility, professional engineer (PE)-certified SPCC Plan facilities, and Conditionally Exempt facilities that does not appear to reflect all current violations in the violation library.

The CUPA has been provided the 2017 APSA Technical Advisory Group inspection checklists, consisting of four types for use at Conditionally Exempt facilities, Tier I qualified facilities, Tier II qualified facilities and full SPCC plan facilities.

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**RECOMMENDATION:**

Utilize the most recent comprehensive APSA inspection checklists and ensure that the inspection checklist used is applicable to the APSA tank facility being inspected.

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**4. OBSERVATION:**

The Site Map requirements list located in the CERS portion of the CUPA's Permitting and Compliance/HMBP webpage (<https://kernpublichealth.com/hazardous-materials-business-plan-california-environmental-reporting-system-cers/>) is missing the emergency response equipment element.

On the same webpage, the Business Activities guidance for APSA is inconsistent with the CERS instructions for the APSA documentation section.

Guidance for the APSA document in CERS should be to upload the Tank Facility Statement. However, if a facility submits an HMBP to meet the tank facility statement reporting requirement, then the facility should select the option 'Provided Elsewhere in CERS', and select 'Hazardous Materials Inventory'.

Guidance related to other options including 'Stored at Facility' and 'Exempt' should be avoided.

Portions of the APSA program descriptions located on the CUPA's Permitting and Compliance/APSA webpage (<https://kernpublichealth.com/aboveground-petroleum-storage-tanks/>) are incorrect. APSA does not distinguish between qualified facilities and PE-certified SPCC Plan facilities. The term 'qualified facility' is a Federal SPCC rule term. The Tier I qualified facility, Tier II qualified facility and PE-certified SPCC Plan facility volume references apply to all Federal SPCC regulated oils, and are not exclusive to APSA petroleum.

Searching the website for 'APSA program' provided access to a Hazardous Materials UPA page with a date of September 14, 2018. The APSA link provided from the Hazardous Materials Program webpage (<https://kernpublichealth.com/hazardous-materials-program-upa/>) contains duplicative and some outdated information:

- The linked OSFM website link leads to an outdated version of the OSFM APSA website.
- The Tier II Qualified Facility SPCC Plan template link leads to an outdated version (CUPA Forum Board circa 2010).
- The linked APSA containment guidance for Tier I qualified facilities leads to a County of Santa Clara webpage.
- The linked AST vs UST 2012 Water Board document is outdated.
- The linked APSA FAQ document dated 10/14/2011 is outdated, has been retracted by OSFM, and should be removed.

**RECOMMENDATION:**

Update APSA program and CERS information on the CUPA's website. Consider adding a link to the new OSFM webpage at <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/> for information on the APSA

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program, and a link to the U.S. Environmental Protection Agency website at <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations> for information on SPCC requirements.

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**5. OBSERVATION:**

The CUPA regulates some farms. Effective January 1, 2016, Senate Bill (SB) 612 aligned the applicability threshold for farms with that of the Federal SPCC rule, which has increased to 2,500 gallons of oil or 6,000 gallons of oil (with no reportable discharge history) per the Federal Water Resources Reform and Development Act (WRRDA) of 2014.

More information on farms under APSA may be found on the OSFM website at <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/farms/>.

More information on farms under the Federal SPCC rule may be found on the U.S. Environmental Protection Agency website at <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spill-prevention-control-and-countermeasure-spcc>.

**RECOMMENDATION:**

Review the list of conditionally exempt tank facilities at farms, verify if the total oil storage capacity meets the WRRDA thresholds, and determine if the facilities are still regulated as conditionally exempt tank facilities under APSA.

Farms that are no longer regulated under APSA due to SB 612 oil applicability thresholds should be identified in CERS as APSA Not Applicable. The CUPA is encouraged to change the CERS APSA facility reporting requirement from Applicable to Not Applicable for such farms.

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**6. OBSERVATION:**

The CUPA is not consistently ensuring that APSA tank facilities comply with the tank facility statement reporting requirements.

Most APSA tank facilities submit an HMBP in lieu of the tank facility statement to CERS. However, the CUPA is not consistently ensuring that these submittals include site maps that contain all applicable required elements.

A review of CERS HMBP submittals, in lieu of tank facility statement submittals, indicate 5 of 24 (21%) APSA tank facilities were missing various required elements in recently accepted site map submittals. For example:

- CERS ID 10230889 was missing the locations of emergency shutoffs, evacuation staging areas and adjacent streets on the site map.
- CERS IDs 10231219, 10232056, and 10234279 were missing the locations of emergency shutoffs, evacuation staging areas, and emergency response equipment locations on the site map.

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- CERS ID 10232980 was missing the locations of emergency shutoffs, internal roads, adjacent streets and emergency response equipment locations on the site map.

Note: Review of CERS comments associated with some rejected HMBP site map submittals demonstrated that the CUPA has rejected site maps with missing required elements, and notified APSA tank facilities of the missing elements appropriately.

**RECOMMENDATION:**

Develop and implement an action plan to ensure that future HMBP submittals in lieu of tank facility statement submittals are thoroughly reviewed to ensure site maps contain all required elements. The action plan should include steps to follow-up with rejected or incomplete site map submittals

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**7. OBSERVATION:**

Review of CERS finds there are one, or more, UST systems in the CUPA's jurisdiction which may need to be permanently closed by December 31, 2025, in accordance with HSC, Chapter 6.7, Section 25292.05.

The following UST facilities may require permanent closure:

- CERS ID 10232668
- CERS ID 10175639
- CERS ID 10155631
- CERS ID 10230679

Note: The examples provided above may not reflect all UST systems which may need to be permanently closed by December 31, 2025, in accordance with HSC, Chapter 6.7, Section 25292.05.

**RECOMMENDATION:**

Continue to provide verbal reminders to UST facility owner/operators and consider providing written notification of the December 31, 2025, requirements for permanent closure of single-walled USTs. The notification should inform the facility owner/operators that, to stay in compliance with the law and avoid fines, owner/operators must replace or remove single-walled USTs by December 31, 2025. Additional information about the single-walled UST closure requirements may be found at

[http://waterboards.ca.gov/water\\_issues/programs/ust/single\\_walled/](http://waterboards.ca.gov/water_issues/programs/ust/single_walled/).

The facility owner/operator should be notified that Replacing, Removing, or Upgrading Underground Storage Tanks (RUST) Program grants and loans are available to assist eligible small businesses with the costs necessary to remove, replace, or upgrade project tanks. For more information on funding sources, visit the link below:

[http://www.waterboards.ca.gov/water\\_issues/programs/ustcf/rust.shtml](http://www.waterboards.ca.gov/water_issues/programs/ustcf/rust.shtml)

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**8. OBSERVATION:**

The CUPA is not consistently reporting annual UST compliance inspection information.

Review of CUPA Self-Audit Reports, Report 6 and CERS CME information finds the CUPA is not consistently reporting annual UST compliance inspection information as follows:

- FY 2017/2018
  - CUPA Self-Audit Report: 281 Inspections of 278 Facilities
  - Report 6: 279 Inspections of 274 Facilities
  - CERS: 274 Inspection of 281 Facilities
- FY 2016/2017
  - CUPA Self-Audit Report: 276 Inspections of 277 Facilities
  - Report 6: 274 Inspections of 274 Facilities
  - CERS: 269 Inspections of 278 Facilities
- FY 2015/2016
  - CUPA Self-Audit Report: 283 Inspections of 273 Facilities
  - Report 6: 283 Inspections of 272 Facilities
  - CERS: 273 Inspections of 283 Facilities

**RECOMMENDATION:**

Report annual compliance inspections consistently among CUPA Self-Audit Reports, Report 6 and CERS CME information.

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**9. OBSERVATION:**

On January 23 and 24, 2019, DTSC observed two HWG oversight inspections.

The first inspection occurred at CERS ID 10231204. The inspector was well-prepared for the inspection and obtained consent in writing at the start of the inspection. The inspector requested to inspect only areas that had hazardous waste. DTSC noted that the Universal Waste – Lamps and Universal Waste – Batteries in containers labeled “Non-Regulated Waste” and facility records were missing TSDf copies of manifests, however the inspector did not immediately observe these violations.

The second inspection occurred at CERS ID 10235059. The inspector was well-prepared for the inspection, toured the entire site, took photographs of violations, and requested all required documentation. Consent was obtained in writing at the start of the inspection and noted all violations in the inspection report.

**RECOMMENDATION:**

Conduct process based inspections, review universal waste regulations including HSC, Section 66273.34(f), and review recordkeeping regulations including HSC, Section 66262.40(a).

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