

May 18, 2023

Mr. Jonathan Crick  
Deputy Fire Marshal  
Gilroy City Fire Department  
7351 Rosanna Street  
Gilroy, California 95020-6141

Dear Mr. Crick:

During June 2022 through March 2023, CalEPA and the state program agencies conducted a performance evaluation of the Gilroy City Fire Department Certified Unified Program Agency (CUPA). The CUPA evaluation included a remote assessment of administrative documentation, review of regulated facility file documentation, and California Environmental Reporting System information.

Upon completion of the evaluation, a preliminary Summary of Findings report was developed to identify various findings: program deficiencies with corrective actions, incidental findings with resolutions and program observations and recommendations. The report also includes acknowledgement of accomplishments and challenges, as well as examples of outstanding Unified Program implementation. Enclosed, please find the final Summary of Findings report.

Based upon review and completion of the performance evaluation, CalEPA has rated the CUPA's overall implementation of the Unified Program as satisfactory with improvement needed.

To demonstrate progress towards the correction of program deficiencies and incidental findings identified in the final Summary of Findings, the CUPA must submit an Evaluation Progress Report within 60 days from the date of this letter (July 31, 2023), and every 90 days thereafter. Evaluation Progress Reports are required to be submitted to CalEPA until all deficiencies and incidental findings identified have been acknowledged as corrected or resolved. Each Evaluation Progress Report must be submitted to the CalEPA Team Lead, Kaeleigh Pontif, at [Kaeleigh.Pontif@calepa.ca.gov](mailto:Kaeleigh.Pontif@calepa.ca.gov).

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

To ensure the CUPA Performance Evaluation process is as effective and efficient as intended, I kindly request the included evaluation survey to be completed and returned to Melinda Blum within 30 days. If you would like to have specific comments remain anonymous, please indicate so on the survey.

Mr. Jonathan Crick  
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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).

Sincerely,



Jason Boetzer, REHS  
Assistant Secretary  
Local Program Coordination and Emergency Response

Enclosures

cc sent via email:

Mr. Isaias Lona  
Hazardous Materials Inspector II  
Gilroy City Fire Department  
7351 Rosanna Street  
Gilroy, California 95020-6141

Ms. Cheryl Prowell  
Supervising Water Resource Control Engineer  
State Water Resources Control Board  
P.O. Box 2231  
Sacramento, California 95812-2231

Mr. Tom Henderson  
Engineering Geologist, UST Unit Coordinator  
State Water Resources Control Board  
P.O. Box 2231  
Sacramento, California 95812-2231

Ms. Julie Pettijohn  
Environmental Program Manager  
CUPA Enforcement Branch  
Department of Toxic Substances Control  
700 Heinz Avenue  
Berkeley, California 94710-2721

Ryan Miya, Ph.D.  
Senior Environmental Scientist, Supervisor  
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cc sent via email:

Ms. Jennifer Lorenzo  
Senior Environmental Scientist, Supervisor  
CAL FIRE - Office of the State Fire Marshal  
P.O. Box 944246  
Sacramento, California 94244-2460

Ms. Kaitlin Cottrell  
Environmental Scientist  
State Water Resources Control Board  
P.O. Box 2231  
Sacramento, California 95812-2231

Mr. Brennan Ko-Madden  
Senior Environmental Scientist  
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Ms. Denise Villanueva  
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Mr. John Paine  
Unified Program Manager  
California Environmental Protection Agency

Mr. John Elkins  
Environmental Program Manager  
California Environmental Protection Agency

Ms. Melinda Blum  
Senior Environmental Scientist, Supervisor  
California Environmental Protection Agency

Ms. Elizabeth Brega  
Senior Environmental Scientist, Supervisor  
California Environmental Protection Agency

Ms. Esme Hassell-Thean  
Environmental Scientist  
California Environmental Protection Agency

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Cc sent via email:

Ms. Kaeleigh Pontif  
Environmental Scientist  
California Environmental Protection Agency

Ms. Jessica Snow  
Environmental Scientist  
California Environmental Protection Agency

## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

### CUPA: Gilroy City Fire Department

**Evaluation Period:** June 2022 through March 2023

#### Evaluation Team Members:

- **CalEPA Team Lead:** Kaeleigh Pontif, Samuel Porras
- **CalEPA:** Esme Hassell-Thean
- **DTSC:** Brennan Ko-Madden, Kevin Abriol
- **State Water Board:** Kaitlin Cottrell
- **CAL FIRE-OSFM:** Denise Villanueva

This Final Summary of Findings includes:

- Accomplishments, Examples of Outstanding Implementation, and Challenges
- 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:

**Kaeleigh Pontif**  
CalEPA Unified Program  
Phone: (916) 803-0623  
E-mail: [Kaeleigh.pontif@calepa.ca.gov](mailto:Kaeleigh.pontif@calepa.ca.gov)

The CUPA is required to submit an Evaluation Progress Report 60/90 days from the receipt of this Final Summary of Findings Report, and every 90 days thereafter, until all deficiencies and incidental findings have been acknowledged as corrected or resolved.

Each Evaluation Progress Report must be submitted to the CalEPA Team Lead and must include a narrative stating the status of correcting each deficiency and resolving each incidental finding identified in this Final Summary of Findings Report.

The first Evaluation Progress Report submittal date is: **July 31, 2023**

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

**UNIFIED PROGRAM PERFORMANCE EVALUATION  
FINAL SUMMARY OF FINDINGS REPORT**

**ACCOMPLISHMENTS, EXAMPLES OF OUTSTANDING IMPLEMENTATION, AND CHALLENGES**

Various accomplishments, outstanding efforts, and challenges that impact and/or enhance the overall ability of the CUPA to implement the Unified Program. Recognition of aspects such as response to local emergency declarations and statewide recovery efforts, which illustrate the accomplishments and challenges the CUPA manages in the efforts to continue implementation of the Unified Program.

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**1. ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM:**

Since the 2019 CUPA Performance Evaluation, the CUPA has met the mandated triennial inspection frequency for APSA tank facilities with 10,000 gallons or more of petroleum. The CUPA has also met the triennial inspection frequency for APSA tank facilities storing less than 10,000 gallons of petroleum in accordance with the Inspection and Enforcement (I&E) Plan. The CUPA ensured APSA tank facilities annually submitted a tank facility statement or a Hazardous Materials Business Plan (HMBP), when an HMBP was provided in lieu of a tank facility statement to the California Environmental Reporting System (CERS).

These efforts are considered above and beyond the standard expectations of the implementation of the APSA Program during the statewide challenges and limitations caused by the Coronavirus (COVID-19).

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**DEFICIENCIES REQUIRING CORRECTION**

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

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**1. DEFICIENCY:**

The CUPA is not ensuring all regulated businesses subject to the Business Plan reporting requirements annually submit an HMBP or a no-change certification to CERS.

Review of HMBPs submitted to CERS between July 24, 2021, and August 24, 2022, by regulated businesses subject to Business Plan reporting requirements finds:

- 64 of 229 (28%) facilities have not submitted a chemical inventory (including site map) or a no-change certification within the last 12 months.
- 64 of 229 (28%) facilities have not submitted emergency response and employee training plans or a no-change certification within the last 12 months.

**CITATION:**

California Health and Safety Code (HSC), Chapter 6.95, Sections 25505(a) and 25508(a) [CalEPA]

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will develop, implement, and provide CalEPA with an action plan to ensure that all regulated businesses subject to Business Plan reporting requirements have annually submitted an HMBP or a no-change certification to CERS.

By the 2<sup>nd</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with a sortable spreadsheet obtained from the CUPA's data management system or CERS, that includes at minimum the following information for each regulated business subject to Business Plan reporting requirements that has not submitted an HMBP containing all required elements or a no-change certification within the last 12 months:

- Facility name;
- CERS ID;
- Follow-up actions including:
  - Recent review, acceptance, and rejection of HMBPs or no-change certifications, and
  - enforcement applied by the CUPA to ensure a complete HMBP or no-change certification is annually submitted to CERS

By the 4<sup>th</sup> Progress Report, the CUPA will follow-up with each Business Plan facility identified in the sortable spreadsheet provided with the 2<sup>nd</sup> Progress Report, to ensure an HMBP or a no-change certification has been submitted to CERS, or the CUPA will have applied enforcement.

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**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

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**DEFICIENCIES REQUIRING CORRECTION**

**2. DEFICIENCY:**

The CUPA is not inspecting each facility subject to HMBP Program requirements at least once every three years.

Review of inspection, violation, and enforcement information, also known as compliance, monitoring and enforcement (CME) information from CERS between July 1, 2019, and June 30, 2022, finds:

- 95 of 229 (41%) HMBP facilities were not inspected within the last three years.

**CITATION:**

HSC, Chapter 6.95, Sections 25503(e) and 25511(b)  
[CalEPA]

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will develop, implement, and provide CalEPA with an action plan to ensure each facility subject to HMBP requirements is inspected at least once every three years. The action plan will include, at minimum:

- An analysis and explanation as to why the triennial compliance inspection requirement is not being met for HMBP facilities. Factors to consider include existing inspection staff resources and the number of facilities scheduled to be inspected each year, response to declared emergencies such as wildfire response and recovery efforts and impacts of COVID-19.
- A sortable spreadsheet exported from the CUPA's data management system or CERS, identifying each HMBP facility that has not been inspected within the last three years. For each HMBP facility listed, the spreadsheet will include, at minimum:
  - Facility name;
  - CERS ID; and
  - Date of the last routine inspection.
- A schedule to inspect those HMBP facilities, prioritizing the most delinquent inspections to be completed prior to any other HMBP inspections based on risk.
- Future steps to ensure that all HMBP facilities will be inspected at least once every three years.

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 sortable spreadsheet and a brief narrative of how the CUPA is continuing to ensure that all HMBP facilities will be inspected at least once every three years.

By the 5<sup>th</sup> Progress Report, the CUPA will have inspected each facility subject to HMBP requirements at least once in the last three years.

UNIFIED PROGRAM PERFORMANCE EVALUATION  
FINAL SUMMARY OF FINDINGS REPORT

**DEFICIENCIES REQUIRING CORRECTION**

**3. DEFICIENCY:**

The CUPA is not ensuring submitted HMBPs are thoroughly reviewed and contain all required elements before being accepted in CERS.

Review of HMBPs submitted to CERS by regulated businesses subject to Business Plan reporting requirements finds the following HMBP submittals were accepted with missing or incomplete elements:

- CERS ID 10073854
  - Missing required site map elements such as emergency response equipment.
- CERS ID 10124014
  - Missing required site map elements such as loading areas, adjacent streets, and evacuation staging areas.
    - Note: Subsequent submittals provided in September 2022, October 2022, and November 2022, include the elements identified as missing.
- CERS ID 10445020
  - Missing required site map elements such as loading areas, adjacent streets, access and exit points, and evacuation staging areas.
- CERS ID 10638685
  - Missing required site map elements such as loading areas, and emergency response equipment.
- CERS ID 10419004
  - Missing required site map elements such as loading areas, internal roads, storm and sewer drains, access and exit points, emergency shutoffs, evacuation staging areas, hazardous material handling and storage areas, and emergency response equipment.
  - Missing required emergency response plan provisions such as evacuation plans and procedures.
- CERS ID 10778203
  - Missing required site map elements such as north orientation, storm and sewer drains, access and exit points, emergency shutoffs, evacuation staging areas, emergency response equipment.
- CERS ID 10074094
  - Missing required emergency response plan provisions such as immediate notification contacts to the unified program agency.
- CERS ID 10440664
  - Missing required emergency response plan provisions such as evacuation plans and procedures.
- CERS ID 10750162
  - Missing required emergency response plan provisions such as immediate notification contacts to the unified program agency and evacuation plans and procedures.

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**DEFICIENCIES REQUIRING CORRECTION**

**CITATION:**

HSC, Chapter 6.95, Sections 25505(a) and 25508(a)  
[CalEPA]

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will develop, implement, and provide CalEPA with an action plan to ensure that each HMBP is thoroughly reviewed and contains all required elements before being accepted in CERS. The action plan will include steps to follow up with rejected HMBP submittals that are not complete.

By the 2<sup>nd</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with a sortable spreadsheet obtained from the CUPA's data management system or CERS, that includes at minimum the following information for each regulated business subject to Business Plan reporting requirements that has not submitted an HMBP containing all required elements within the last 12 months:

- Facility name;
- CERS ID; and
- Follow-up actions including:
  - Recent review, acceptance, and rejection of HMBPs; and
  - enforcement applied by the CUPA to ensure a complete HMBP is annually submitted to CERS.

By the 4<sup>th</sup> Progress Report, the CUPA will follow-up with each Business Plan facility identified in the spreadsheet provided with the 2<sup>nd</sup> Progress Report, to ensure each regulated business subject to Business Plan reporting requirements submits a complete HMBP to CERS, or the CUPA will have applied appropriate enforcement.

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**4. DEFICIENCY:**

The annual California Accidental Release Prevention (CalARP) performance audit report for Fiscal Years (FYs) 2018/2019, 2019/2020, and 2020/2021 have missing required elements.

The following elements are missing:

- A listing of stationary sources which have been audited.
- A listing of stationary sources which have received public comments on the RMP.
  - This element is not missing in the CalARP performance audit report for FY 2019/2020.
- A list of new or modified stationary sources.
  - This element is not missing in the CalARP performance audit reports for FYs 2018/2019 and 2019/2020.
- A summary of enforcement actions initiated by the UPA identifying each stationary source.
- A summary of the personnel and personnel years necessary to directly implement, administer, and operate the CalARP program.

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**DEFICIENCIES REQUIRING CORRECTION**

- A list of those stationary sources determined by the CUPA to be exempt from the chapter pursuant to HSC, Section 25534(b)(2).

**CITATION:**

California Code of Regulations (CCR), Title 19, Section 2780.5(b)  
[CalEPA]

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will provide CalEPA with the most recent annual CalARP performance audit report, which will include all required elements.

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**5. DEFICIENCY:**

The CUPA is not inspecting each Hazardous Waste Generator (HWG) facility once every three years, per the inspection frequency established in the I&E Plan, including Resource Conservation and Recovery Act (RCRA) Large Quantity Generator (LQG) facilities, and Household Hazardous Waste (HHW) facilities.

Review of CERS CME information for FYs 2015/2016, 2016/2017 and 2017/2018 finds:

- 36 of 197 (19%) HWG facilities were not inspected once every three years.

Review of facility files and CERS CME information between July 1, 2019, and June 30, 2022, and additional information provided by the CUPA finds:

- 82 of 203 (40%) HWG facilities (including RCRA LQG facilities and HHW facilities) were not inspected once every three years.

Note: The inspection frequency for HWG Tiered Permit (TP) facilities was met during the current evaluation period as 2 of 2 (100%) TP facilities were inspected once every three years.

Note: This deficiency was identified in the 2019 CUPA Performance Evaluation specific to not meeting the inspecting frequency of once every three years for HWG facilities, as established in the I&E Plan and was partially corrected during the Evaluation Progress Report process. Though the CUPA did not provide all components of the action plan, the CUPA did provide a list of HWG facilities to be inspected, and did indicate that in the future, the CUPA's data management system (Tyler Technologies, Digital Health Department software) will notify inspectors by email when an HWG facility is due for a three-year inspection.

**CITATION:**

CCR, Title 27, Section 15200(a)(3)(A)  
HSC, Chapter 6.5, Section 25201.4(b)(2)  
[DTSC]

# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

### DEFICIENCIES REQUIRING CORRECTION

#### **CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will develop, implement, and provide CalEPA with an action plan to ensure each HWG facility, RCRA LQG facility and HHW facility are inspected once every three years, per the inspection frequency established in the I&E Plan. The action plan will include, at minimum:

- An analysis and explanation as to why the inspection frequency for the HWG, RCRA LQG and HHW facilities is not being met. Factors to consider include existing inspection staff resources and the number of facilities scheduled to be inspected each year, response to declared emergencies such as wildfire response and recovery efforts and impacts of COVID-19.
- A sortable spreadsheet exported from the CUPA's data management system or CERS, identifying each HWG, RCRA LQG and HHW facility that has not been inspected once every three years, per the inspection frequency established in the I&E Plan. For each HWG, RCRA LQG and HHW facility listed, the spreadsheet will include, at minimum:
  - Facility name,
  - CERS ID, and
  - Date of the last routine inspection.
- A schedule to inspect each HWG, RCRA LQG, and HHW facility identified as having not been inspected once every three years, per the inspection frequency established in the I&E Plan. Inspections will be prioritized, conducting the most delinquent inspections prior to any other HWG, RCRA LQG, or HHW facility inspection.

By the 2<sup>nd</sup> Progress Report, the CUPA will, if necessary, revise the action plan based on feedback from DTSC. The CUPA will provide the revised action plan to CalEPA.

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 sortable spreadsheet and a brief narrative of how the CUPA is continuing to ensure that all HWG, RCRA LQG and HHW facilities will be inspected at least once every three years, per the inspection frequency established in the I&E Plan.

By the 5<sup>th</sup> Progress Report, the CUPA will have inspected each HWG, RCRA LQG, and HHW facility identified in the sortable spreadsheet provided as part of the action plan with the 1<sup>st</sup> Progress Report.

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#### **6. DEFICIENCY:**

The CUPA is not regulating all facilities subject to the HWG Program.

The CUPA has not identified all HWGs operating within the jurisdiction of the CUPA.

- The CUPA reports 197 regulated HWGs.
- Review of the Hazardous Waste Tracking System (HWTS) identifies 259 HWG facilities with active U.S. Environmental Protection Agency (EPA) Identification (ID) numbers.
- Review of CERS indicates 230 facilities reporting as HWGs.

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**DEFICIENCIES REQUIRING CORRECTION**

Note: This deficiency was identified in the 2019 CUPA Performance Evaluation and was partially corrected. During the Evaluation Progress Report process for the 2019 CUPA Performance Evaluation, the CUPA compared a report from the HWTS identifying all facilities that shipped hazardous waste in 2021, with facilities reporting as HWGs in the CUPA's data management system (Tyler Technologies, Digital Health Department software, which electronically transfers CME information to CERS) and with the city of Gilroy business licensing database and concluded the following:

- 23 facilities were not permitted by the CUPA nor in CERS. The CUPA will inspect the identified facilities.
- 33 facilities have a temporary EPA ID number.
- 14 facilities have a Gilroy address however, the facilities are not located within the city limits of Gilroy and are regulated by the County of Santa Clara CUPA.
- To continually identify all regulated facilities subject to the HWG Program within the jurisdiction of the CUPA, as part of the annual CUPA self-assessment, the CUPA will annually compare the facilities identified in the HWTS as shipping hazardous waste (having an active EPA ID) within the last year, with facilities reporting as HWGs in CERS.

**CITATION:**

HSC, Chapter 6.5, Section 25101(d)

HSC, Chapter 6.11, Section 25404.2(a)(1)(A)

CCR, Title 22, Sections 67450.2(b)(4) and 67450.3(c)

CCR, Title 27, Sections 15100 (b)(3) and 15200(a)(3)(A)

[DTSC]

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will have begun to follow-up with and inspect the 23 facilities identified as not being permitted by the CUPA and not in CERS. Based on the Progress Report provided by the CUPA for the 2019 CUPA Performance Evaluation, no additional follow-up for the 33 facilities identified as having a temporary EPA ID number is needed.

By the 1<sup>st</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with an update as to the actions taken to identify, follow up with and inspect all HWG facilities operating within the jurisdiction of the CUPA, including efforts made to ensure the 23 facilities identified as not permitted and not in CERS are reporting to CERS, if applicable.

By the 4<sup>th</sup> Progress Report, the CUPA will have followed up with and inspected all newly identified HWG facilities identified as not being permitted by the CUPA and not in CERS.

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**7. DEFICIENCY:**

The "Permit to Operate," issued as the Unified Program Facility Permit (UPFP), and the Underground Storage Tank (UST) operating permit, issued under the "Permit to Operate," as the

## CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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#### DEFICIENCIES REQUIRING CORRECTION

UPFP, are inconsistent with UST Regulations, HSC requirements, and the CUPA's Local Ordinance Part VII.13.

Review of the "Permit to Operate," and UST operating permits finds the following:

- The "Permit to Operate" states, "THIS PERMIT IS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THE CALIFORNIA FIRE CODE (CFC), CALIFORNIA HEALTH AND SAFETY CODE (CH&SC), THE CALIFORNIA CODE OF REGULATIONS (CCR), AND IS SUBJECT TO SUSPENSION OR REVOCATION AS PROVIDED THEREIN."
  - The CUPA does not have authority to suspend a UST operating permit, per HSC, Section 25285.1.
- The "Permit to Operate" states, "THIS PERMIT IS NOT TRANSFERABLE."
  - This is more stringent than CCR, Title 23, Section 2712(d) and HSC, Section 25284(b), which allows for the transfer of permits.
  - This is more stringent than the CUPA's Local Ordinance Part VII.13, which allows for the transfer of permits.
- The UST operating permit references HSC, Chapter 6.75 and CCR, Chapter 18.
  - The CUPA does not have authority to implement cleanup of USTs as a Local Oversight Program (LOP) agency, and therefore cannot cite HSC, Chapter 6.75 or CCR, Chapter 18. The correct citations are:
    - CCR, Chapter 16, Sections 2610 through 2717.7
    - HSC, Chapter 6.7, Sections 25280 through 25296 and 25298 through 25299.6

Note: A deficiency was identified in the 2019 CUPA Performance Evaluation for not consolidating the UST operating permit and permit conditions under the UPFP and was partially corrected during the Evaluation Progress Report process. In November 2021, the CUPA began to issue the "Permit to Operate" using a template available through the Tyler Technologies Digital Health Department (DHD) local data management system. While the "Permit to Operate" now includes the UST operating permit and permit conditions, the UST operating permit and permit conditions are inconsistent with UST Regulations, HSC, and the CUPA's Local Ordinance.

#### CITATION:

HSC, Chapter 6.7, Sections 25284 (b) and 25285.1

HSC, Chapter 6.11, Sections 25404(a)(6) and 25404.2(a)(1)(A)

CCR, Title 23, Section 2712(d)

CCR, Title 27, Section 15190(h)

[CalEPA, State Water Board]

#### CORRECTIVE ACTION:

By the 1<sup>st</sup> Progress Report, the CUPA will revise the "Permit to Operate" template, and the UST operating permit and permit conditions template to be consistent with HSC and UST Regulations. The CUPA will contact the State Water Board for assistance in revising the UST operating permit and permit conditions template as needed. The CUPA will provide the revised "Permit to Operate" template, and the revised UST operating permit and permit conditions template to CalEPA.

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FINAL SUMMARY OF FINDINGS REPORT**

**DEFICIENCIES REQUIRING CORRECTION**

By the 2<sup>nd</sup> Progress Report, the CUPA will, if necessary, amend the revised “Permit to Operate” template, and the UST operating permit and permit conditions template, based on feedback from CalEPA and the State Water Board. The CUPA will provide the amended “Permit to Operate” template and the UST operating permit and permit conditions template to CalEPA. If no amendments are necessary, the CUPA will begin to issue the revised “Permit to Operate” template and UST operating permit and permit conditions template and will provide CalEPA with five UST operating permits issued to UST facilities using the revised “Permit to Operate” template and revised UST operating permit and permit conditions template.

By the 3<sup>rd</sup> Progress Report, if amendments to the revised “Permit to Operate” template and UST operating permit and permit conditions template were necessary, the CUPA will begin to issue the amended “Permit to Operate” template and amended UST operating permit and permit conditions template and will provide CalEPA with five UST operating permits issued to UST facilities using the amended “Permit to Operate” template and amended UST operating permit and permit conditions template.

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**8. DEFICIENCY:**

The CUPA is not consistently documenting in sufficient detail whether the UST owner or operator has demonstrated, to the satisfaction of the CUPA, that UST permanent closure and soil and/or groundwater sampling complies with CCR, Title 23, Division 3, Chapter 16, Sections 2670 and 2672(d) (UST Regulations) and HSC, Division 20, Chapter 6.7, Section 25298(c).

Review of the UST facility file for the following CERS ID finds no closure letter has been issued:

- CERS ID 10074328

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

Note: State Water Board UST Program Leak Prevention Frequently Asked Question 15 ([https://www.waterboards.ca.gov/ust/leak\\_prevention/faq15.shtml](https://www.waterboards.ca.gov/ust/leak_prevention/faq15.shtml)) may be referenced.

**CITATION:**

HSC, Chapter 6.7, Section 25298(c)  
CCR, Title 23, Sections 2670 and 2672(d)  
[State Water Board]

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will revise the UST closure procedure or other applicable procedure, to ensure the establishment of a process, which will include at minimum, how the CUPA will:

- Provide UST closure documentation to the UST owner or operator which demonstrates to the satisfaction of the CUPA that UST permanent closure and soil and/or groundwater sampling complies with UST Regulations and HSC.

## CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

### UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

#### DEFICIENCIES REQUIRING CORRECTION

Additionally, the CUPA will develop a UST closure letter template for sites with and without contamination, if separate letters are issued for those scenarios, to include the following:

- Site address
- CERS tank ID(s)
- Date(s) of removal or permanent closure
- Confirmation that UST(s) have been permanently closed in accordance with UST Regulations and HSC. The following language is an example: “The City of Gilroy Fire Department has reviewed the UST closure documentation and finds the UST closure as properly completed in accordance with CCR, Title 23, Division 3, Chapter 16, Sections 2670 and 2672 and HSC, Chapter 6.7, Section 25298(c).”

The CUPA will provide the revised UST closure procedure, or other applicable procedure, and the developed UST closure letter template(s) to CalEPA.

By the 2<sup>nd</sup> Progress report, if revisions to the revised UST closure procedure or other applicable procedure and/or revisions to the developed UST closure letter template(s) are necessary, based on feedback from the State Water Board, the CUPA will provide CalEPA with the revised UST closure procedure or other applicable procedure and/or revised UST closure letter template(s). If no revisions to the revised UST closure procedure or other applicable procedure and/or no revisions to the developed UST closure letter template(s) are necessary, the CUPA will train UST inspection staff on the revised UST closure procedure or other applicable procedure and/or the developed UST closure letter template(s). The CUPA will provide training documentation to CalEPA, which, at minimum, will include the date the training was conducted, an outline of training conducted and a list of UST inspection staff in attendance. Once training is complete the CUPA will implement the revised UST closure procedure or other applicable procedure and the developed UST closure letter template(s).

By the 3<sup>rd</sup> Progress Report, if revisions to the revised UST closure procedure or other applicable procedure and/or revisions to the developed UST closure letter template(s) were necessary, the CUPA will train UST inspection staff on the revised UST closure procedure or other applicable procedure and/or the revised UST closure letter template(s). The CUPA will provide training documentation to CalEPA, which at minimum, will include the date the training was conducted, an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the revised UST closure procedure or other applicable procedure and/or the revised UST closure letter template(s).

With respect to facilities which have not been provided adequate UST closure documentation, the CUPA will use the UST closure letter template(s) determined acceptable by the State Water Board and will provide the updated closure documentation upon request.

For the next two UST closures, and until considered corrected, the CUPA will provide CalEPA with the UST closure documentation demonstrating, including sampling results, that demonstrate to the satisfaction of the CUPA that UST permanent closure and soil and/or groundwater sampling complies with UST Regulations and HSC. If no UST closures have occurred by the 4<sup>th</sup> Progress Report, the State Water Board will consider this deficiency closed but not corrected

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upon completion of training, and implementation of the UST closure procedure or other applicable procedure and the UST closure letter template(s) determined acceptable by the State Water Board. The State Water Board will verify proper sampling and analysis of soil and/or groundwater occurred during or immediately after UST closure activities with the next CUPA performance evaluation.

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**9. DEFICIENCY:**

The CUPA is not consistently conducting complete annual UST compliance inspections and is not correctly reporting UST violations, including technical compliance rate (TCR) criteria, in CERS, when UST violations are cited during the annual UST compliance inspection.

The CUPA is not correctly citing UST violations identified during the annual UST compliance inspection in inspection reports and is not correctly reporting UST violations to CERS when UST violations are cited, including TCR criteria.

Review of annual UST compliance inspection reports, associated testing documentation, and CERS CME information finds non-compliance is cited in the inspection report, and is not reported to CERS for the following:

- CERS ID 10404640
  - UST Compliance Inspection Report dated September 30, 2019, identifies “Lid to 5-gallon diesel bucket is cracked, needs to be replaced. Premium sump lid is cracked, needs to be replaced.”
  - Unified Program Inspection Summary Report dated June 26, 2020, identifies “SB989 - UDC 3-4, 5-6 failed hydro test, UDC 7-8 not tested due to broken electrical conduit.”
- CERS ID 10404757:
  - UST Compliance Inspection Report dated August 18, 2020, identifies “Diesel float and chains had to be adjusted.”
  - UST Compliance Inspection Report dated September 15, 2021, identifies “Pump 5-6 float and chain – did not pass test. 5 was disabled, not to be used until repaired.”
- CERS ID 10450321:
  - UST Compliance Inspection Report dated January 20, 2021, identifies “shear valve UDC 10 did not stop flow of diesel.”

Review of annual UST compliance inspection reports, associated testing and leak detection documents, and CERS CME information finds non-compliance was not observed, and a violation was not issued in CERS for the following:

- CERS ID 10075180:
  - Overfill Prevention Inspection not conducted by the October 13, 2018, deadline. The January 13, 2019, annual compliance inspection report cites a violation. No violation was reported in CERS, therefore, U.S. EPA TCR 9b reporting is inaccurate.

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- CERS ID 10073833:
  - Overfill Prevention Inspection dated April 3, 2019, was conducted beyond the October 13, 2018, deadline. No violation was reported in CERS, therefore, U.S. EPA TCR 9b reporting is inaccurate.
  - Overfill Prevention Testing, dated April 5, 2021, identifies “91 Failure, Drop tube needs to be replaced.”
- CERS ID 10146307:
  - Overfill Prevention Inspection dated April 3, 2019, was conducted beyond the October 13, 2018, deadline. No violation was reported in CERS, therefore, U.S. EPA TCR 9b reporting is inaccurate.
- CERS ID 10074280:
  - Overfill Prevention Testing, dated May 25, 2021, identifies “...site fails as Veeder-Root does not alarm for simultaneous overfill events. Install and replace T1-4 OPV.”
  - Annual Monitoring Certification, dated March 12, 2020, identifies “Diesel Annular Space Sensor ... will not clear, installed new one – retested and passed.”

The CUPA’s TCR indicates not all UST violations are being cited as the TCR reported by the CUPA is significantly higher in comparison to the average TCR for California and the Nation.

- The TCR is a measurement of how a UST facility complies with performance measures as determined by the U.S. Environmental Protection Agency (EPA).
  - A low TCR indicates a low rate of compliance.
  - A high TCR indicates a high rate of compliance.
- When a CUPA’s TCR is significantly higher than the California and National TCR average, it is indicative that the CUPA is not citing UST violations at the same frequency as other CUPAs and States comprising the National average.

The CUPA’s TCR in comparison with the average TCR for California during the specified reporting periods identifies the following trend:

- July – December 2020:
  - Gilroy City Fire Department: 7/15 (47%)
  - California average: 61%
- January – June 2021:
  - Gilroy City Fire Department: 9/12 (75%)
  - California average: (59%)
- July – December 2021:
  - Gilroy City Fire Department: 7/15 (47%)
  - California average: (59%)
- January – June 2022:
  - Gilroy City Fire Department: 11/11 (100%)
  - California average: (60%)

In comparison with the California TCR average, the high TCR of the CUPA is indicative of the CUPA not consistently observing non-compliance during the annual UST compliance inspection,

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not consistently citing and documenting violations in annual UST compliance inspection reports and/or in CERS, which provides inaccurate U.S. EPA TCR reporting, impacting the assessment of national compliance with UST Program requirements.

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

Note: The following may be referenced:

- Local Guidance (LG) letter 159 “Annual Underground Storage Tank Compliance Inspection”
- LG letter 164-4, dated June 30, 2020
- State Water Board correspondence dated November 29, 2016, “When to Review Underground Storage Tank Records”

Note: This deficiency was identified during the 2019 CUPA Performance Evaluation relative to not consistently citing violations for failure to conduct an overflow prevention equipment inspection for CERS ID 10073833, CERS ID 10075180, and CERS ID 10146307. During the 2019 Evaluation Progress Report process, the CUPA partially corrected the deficiency by amending the I&E Plan, Section 5(A)(c), General Inspection Procedures, which specified the CUPA’s data management system (Tyler Technologies, DHD) would be utilized to ensure information is consistently and correctly transferred to CERS with the use of Electronic Data Transfer (EDT). However, further revision of the I&E Plan is necessary.

**CITATION:**

HSC, Chapter 6.7, Section 25288(b)  
CCR, Title 23, Sections 2637.2(a), 2665(b), and 2713(c)(4) and (d)  
CCR, Title 27, Section 15290(a)(3)  
[State Water Board]

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will review and revise the I&E Plan, or other applicable procedure, to ensure at minimum the establishment of a process for the following:

- directing UST inspection staff to conduct complete annual UST compliance inspections;
- reviewing and following up with testing and leak detection documents submitted by UST owners or operators as part of the annual UST compliance inspection;
- conducting annual UST compliance inspections when UST inspection staff are on-site to witness the monitoring system certification and visually inspect all UST required components;
- conducting annual UST compliance inspections when UST inspection staff are not on-site and cannot witness the monitoring system certification and visually confirm all UST requirements are met;

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- reviewing the annual UST compliance inspection checklist for thoroughness to capture citations in accordance with UST Regulations, HCS, and the Unified Program violation library in CERS; and
- Accurate U.S. EPA TCR reporting.

The CUPA will provide CalEPA with the revised I&E Plan, or other applicable procedure. The CUPA will contact the State Water Board for any assistance needed.

By the 2<sup>nd</sup> Progress Report, if amendments to the revised I&E Plan, or other applicable procedure, are necessary based on feedback from the State Water Board, the CUPA will provide CalEPA with the amended I&E Plan, or other applicable procedure. If no amendments are necessary, the CUPA will train UST inspection staff on the revised I&E Plan, or other applicable procedure. The CUPA will provide training documentation to CalEPA, which at a minimum, will include the date the training was conducted, an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, 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 revised 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. The CUPA will provide training documentation to CalEPA, which at a minimum, will include the date the training was conducted, an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the amended I&E Plan, or other applicable procedure.

By the 4<sup>th</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide UST facility records, for five UST facilities, as requested by the State Water Board, including, at minimum, annual UST compliance inspection reports and associated testing, and leak detection documents.

By the 5<sup>th</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the State Water Board will review TCR information in Report 6 and CERS for two consecutive Report 6 reporting periods to determine if the CUPA is consistently conducting complete UST compliance inspections.

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#### 10. DEFICIENCY:

The CUPA is not consistently ensuring return to compliance (RTC) for UST testing and leak detection violations is obtained within 60 days and documented in CERS.

Review of CERS CME information and testing and leak detection documents finds violations for UST facilities did not obtain RTC within 60 days for the following FYs:

- FY 2018/2019
  - 8 of 22 (36%)
- FY 2019/2020
  - 5 of 23 (21%)

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- FY 2020/2021
  - 5 of 23 (21%)
- FY 2021/2022
  - 6 of 14 (43%)

**CITATION:**

HSC, Chapter 6.7, Section 25288(d)  
[State Water Board]

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will review the I&E Plan, or other applicable procedure, and revise as necessary, to ensure a process has been established for UST inspection staff to document:

- follow-up actions taken by the CUPA to ensure RTC is achieved within 60 days by UST facilities cited with violations;
- RTC in CERS for facilities that obtain RTC within 60 days; and
- Any applied enforcement.

The CUPA will provide CalEPA with the revised I&E Plan, or other applicable procedure.

By the 1<sup>st</sup> Progress Report, and with each subsequent progress report until considered corrected, the CUPA will provide RTC documentation, or documentation of the applied enforcement for CERS ID 10073833 and CERS ID 10404724.

By the 2<sup>nd</sup> Progress Report, if amendments to the revised I&E Plan or other applicable procedure are necessary based on feedback from the State Water Board, the CUPA will provide CalEPA with the amended I&E Plan or other applicable procedure. If no amendments are necessary, the CUPA will train UST inspection staff on the revised I&E Plan or other applicable procedure. The CUPA will provide training documentation to CalEPA, which at minimum, will include the date the training was conducted, an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, 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 not necessary, the CUPA will train UST inspection staff on the amended I&E Plan or other applicable procedure. The CUPA will provide training documentation to CalEPA, which at minimum, will include the date the training was conducted, an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the amended I&E Plan or other applicable procedure.

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**11. DEFICIENCY:**

The CUPA has not established nor implemented all Unified Program administrative procedures.

Established Unified Program administrative procedures are incomplete.

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The following administrative procedures have not been established nor implemented:

- A procedure for providing Hazardous Materials Release Response Plan (HMRRP) information to emergency response personnel and other appropriate government entities in accordance with HSC, Section 25504(c).
- Financial Management Procedures that include:
  - Single Fee System and
  - Fee Accountability Program.

The following established administrative procedures have components that are incomplete:

- Public Participation Procedures to address provisions for notifying the public of the receipt of Risk Management Plans (RMPs).
  - The procedures do not include provisions to coordinate, consolidate, and make consistent public notices for activities related to any Unified Program element.
- Data Management Procedures do not address the retention time for training records as a minimum of five years.
- The “Surcharge Payment Policy” does not ensure fee disputes referred to the Secretary include a recommendation for resolution.
  - Note: The address identified for remitting the quarterly Surcharge Transmittal Report and remittance check to CalEPA in the “Surcharge Payment Policy” is incorrect. The correct P.O. Box number is 1436.

Note: This deficiency was identified in the 2019 CUPA Performance Evaluation specific to not establishing nor implementing an HMRRP Information Forwarding Procedure. The deficiency was partially corrected during the Evaluation Progress Report process for the 2019 CUPA Performance Evaluation as the CUPA provided an acceptable HMRRP Information Forwarding Procedure, however the training documentation to demonstrate CUPA personnel were trained on the established procedure was not provided.

#### **CITATION:**

CCR, Title 27, Sections 15180(e)(1), (e)(4), (e)(5), 15185(b), and 15210((k)(1)(A)  
[CalEPA]

#### **CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will train personnel on the previously accepted HMRRP Information Forwarding Procedure and will provide training documentation to CalEPA. Training documentation will include at minimum, the date the training was conducted, an outline of the training conducted and a list of CUPA personnel in attendance. Once training is complete, the CUPA will implement the HMRRP Information Forwarding Procedure.

By the 1<sup>st</sup> Progress Report, the CUPA will provide CalEPA with the established Financial Management Procedures and revised Public Participation Procedures, Data Management Procedures, and “Surcharge Payment Policy” ensuring all required components are adequately incorporated.

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By the 2<sup>nd</sup> Progress Report, if revisions to the established Unified Program administrative procedures and/or amendments to the revised Unified Program administrative procedures are necessary based on feedback from CalEPA, the CUPA will provide CalEPA with the revised and/or amended Unified Program administrative procedures. If no amendments and/or revisions are necessary, the CUPA will train CUPA personnel on the amended and/or revised Unified Program administrative procedures. The CUPA will provide training documentation to CalEPA, which at minimum will include the date the training was conducted, an outline of the training conducted and a list of CUPA personnel in attendance. Once training is complete, the CUPA will implement the amended and/or revised administrative procedures.

By the 3<sup>rd</sup> Progress Report, if amendments and/or revisions to the Unified Program administrative procedures were necessary, the CUPA will train CUPA personnel on the amended and/or revised Unified Program administrative procedures. The CUPA will provide training documentation to CalEPA, which at minimum will include the date the training was conducted, an outline of the training conducted and a list of CUPA personnel in attendance. Once training is complete, the CUPA will implement the amended and/or revised administrative procedures.

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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 indicated as required by regulation or statute.

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**1. INCIDENTAL FINDING:**

The CUPA is not consistently reviewing, processing, and authorizing each annual Onsite Hazardous Waste Treatment Notification for Permit-by-Rule (PBR) facilities with a Fixed Treatment Unit (FTU) within 45 calendar days of receiving it.

During the 45-day review process the CUPA must:

- Authorize operation of the FTU; or
- Deny authorization of the FTU in accordance with PBR laws and regulations; or
- Notify the owner/operator that the notification submittal is inaccurate or incomplete.

Review of CERS information between July 1, 2019, and June 30, 2022, finds:

- 1 of 2 (50%) PBR submittals were not reviewed within 45 days of receipt

Review of CERS information finds the following for CERS ID 10075192:

- A Tiered Permitting (TP) Onsite Hazardous Waste Treatment Notification was submitted on January 17, 2017, and was accepted on March 23, 2017. The Onsite Hazardous Waste Treatment Notification was not reviewed by the CUPA within 45 days of receipt.
- A TP submittal was accepted on June 19, 2018, and on November 19, 2021, showing cyanide and chrome treatment listed as one PBR. Cyanide and chrome treatment must be permitted as separate units. An accurate and complete review of the PBR notification was not conducted.

Note: This incidental finding was identified in the 2019 CUPA Performance Evaluation specific to the TP notification on January 17, 2017, and the accepted TP submittal on June 19, 2018, for CERS ID 10075192. The incidental finding was partially resolved during the Evaluation Progress Report process for the 2019 CUPA Performance Evaluation, as the CUPA provided training documentation to demonstrate CUPA inspectors reviewed PBR and TP requirements and completed related courses at the 2018 Annual Unified Program Training Conference as well as through other training providers, such as Yorke Engineering. An update was not provided specific to the TP notification on January 17, 2017, and the accepted TP submittal on June 19, 2018, for CERS ID 10075192.

**CITATION:**

CCR, Title 22, Sections 67450.2(b)(4) and 67450.3(c)(1)  
[DTSC]

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**RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will conduct a review of the most recent Onsite Hazardous Waste Treatment Notification for CERS ID 10075192 to ensure the waste treatment systems at the facility are accurate and correct (i.e., cyanide and chrome treatment listed as separate treatment units to be permitted under PBR).

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**2. INCIDENTAL FINDING:**

Required components of the I&E Plan are incomplete or missing.

The CUPA's procedural document, "Processing Permit Application and Collection of Fees" policy has inaccurate information.

Review of the I&E Plan finds the following component is incomplete:

- Provisions for ensuring the CUPA has sampling capability.
  - While provisions address having access to sampling equipment, it is not clear that CUPA staff have sampling capabilities (i.e. received training to take samples, or have continued training).
  - A description of how the CUPA maintains sampling capabilities is not included. Considerations for detailing sampling capabilities include training of staff, elements of a site-specific sampling plan, safety, sampling equipment, photographs, field notes, sample purpose, test methods and analyses, chain of custody, sample security, and sample preservation. Such elements can be incorporated into sampling provisions by reference to a guidance document or example sampling plan.

Review of the I&E Plan finds the following component is missing:

- Procedures for addressing complaints, including but not limited to, the receipt, investigation, enforcement, and closure of a complaint.

Review of the "Processing Permit Application and Collection of Fees" policy finds the following is inaccurate:

- Item 3 states UST permits shall not be issued or renewed unless the tank systems are in compliance with Chapter 6.7 of the California Health and Safety Code. However, effective January 1, 2019, a UST permit may be issued unless a red tag has been affixed or unless the facility is subject to an enforcement action seeking to impose administrative civil liability, or criminal liability.

Note: This incidental finding was identified as a deficiency during the 2019 CUPA Performance Evaluation and was partially corrected during the Evaluation Progress Report process regarding the I&E Plan as follows:

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- The UST Facilities section of Program Specific Enforcement Violations revised to reference appropriate citations;
- Incorporation of reference to the DTSC 2017 Enforcement Response Policy;
- Correction of hazardous waste penalty amounts listed;
- Correction of the inspection frequencies for the Permit-By-Rule, Conditionally Authorized, and Conditionally Exempt components of the HWG Program;
- Revision of sampling provisions to ensure the analysis of material shall be performed by a state certified laboratory pursuant to HSC, Chapter 6.5, Section 25198;
- Incorporation of an outline for performing a complete physical inspection of a UST facility in the event the inspector is not available to observe the annual monitoring system certification;
- Correction of issuance or renewal of the UST permit regarding a red tag being affixed or unless the facility is subject to an enforcement action seeking to impose administrative civil liability or criminal liability.

Note: This incidental finding was identified as a deficiency during the 2019 CUPA Performance Evaluation and was partially corrected during the Evaluation Progress Report process regarding the "Processing Permit Application and Collection of Fees" policy as follows:

- Notice of Violation revised to state a local agency shall not issue or renew a permit when a facility is not in compliance

#### **CITATION:**

HSC, Chapter 6.7, Section 25285(b)  
HSC, Chapter 6.11, Section 25404(e)(4)  
CCR, Title 27, Section 15200(a)  
[CalEPA, DTSC, State Water Board]

#### **RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will provide CalEPA with the revised I&E Plan that adequately incorporates and correctly addresses all required components. The CUPA will provide CalEPA with a revised Processing Permit Application and Collection of Fees Policy that correctly addresses issuance and renewal of UST Permits.

By the 2<sup>nd</sup> Progress Report, if amendments to the revised I&E Plan and/or Processing Permit Application and Collection of Fees Policy are necessary based on feedback from CalEPA, DTSC and/or the State Water Board, the CUPA will provide CalEPA with the amended I&E Plan and amended Processing Permit Application and Collection of Fees Policy. If no amendments are necessary, the CUPA will train CUPA personnel on the revised I&E Plan and revised Processing Permit Application and Collection of Fees Policy. Once training is complete, the CUPA will implement the revised I&E Plan.

By the 3<sup>rd</sup> Progress Report, if amendments to the revised I&E Plan and/or revised Processing Permit Application and Collection of Fees Policy were necessary, the CUPA will train CUPA personnel on the amended I&E Plan and amended Processing Permit Application and Collection

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of Fees Policy. Once training is complete, the CUPA will implement the amended I&E Plan and amended Processing Permit Application and Collection of Fees Policy.

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**3. INCIDENTAL FINDING:**

The CUPA is not consistently following up and documenting RTC information in CERS for facilities cited with violations relative to the HWG Program and the APSA Program.

Review of CERS CME information and the CUPA's data management system between July 1, 2019, and June 30, 2022, indicates there is no documented RTC for the following HWG Program violations:

- 64 of 163 (39%)
  - 28 of 51 (55%) Class II violations have no documented RTC
  - 36 of 112 (32%) Minor violations have no documented RTC
    - 88 of 112 (79%) Minor violations are not obtaining RTC within 35 days
    - 45 of 112 (40%) Minor violations are not obtaining RTC within 90 days
- 28 routine HWG inspections (including RCRA LQG and TP facilities) have open violations (no RTC).

Review of CERS CME information indicates there is no documented RTC for the following APSA Program violations during FY 2021/2022:

- 4 of 9 (44%)

**CITATION:**

HSC, Chapter 6.5, Sections 25110.8.5, 25117.6, and 25187.8(b) and (g)  
HSC Chapter 6.11, Section 25404.1.2(c)  
CCR, Title 27, Sections 15185(a) and (c) and 15200(a) and (e)  
[DTSC, OSFM]

**RESOLUTION:**

During the evaluation, a CERS CME report was generated on March 27, 2023, indicating RTC has been documented for all 9 APSA Program violations cited in FY 2021/2022. This incidental finding is considered resolved regarding the APSA Program. No further action is required.

By the 1<sup>st</sup> Progress Report, the CUPA will review, and revise as necessary, the I&E Plan, or other applicable procedure, to ensure establishment of a delineated process to:

- ensure facilities cited with violations RTC through applied enforcement,
- document follow-up actions by the CUPA to ensure RTC, and
- document RTC in CERS.

The CUPA will provide CalEPA with the revised I&E Plan or other applicable procedure.

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By the 1<sup>st</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with a sortable spreadsheet obtained from:

- the CUPA's data management system for each HWG facility with open violations (no RTC) cited between November 1, 2021, and June 30, 2022;
- CERS for each HWG facility with open violations (no RTC) cited between July 1, 2019, and October 31, 2021.

Each sortable spreadsheet will include at minimum, the following information for each facility listed:

- Facility name;
- CERS ID;
- Inspection and violation dates;
- Scheduled RTC date;
- Actual RTC date (when applicable);
- RTC qualifier; and
- In the absence of obtained RTC, a narrative of the enforcement applied by the CUPA to ensure RTC.

The CUPA will prioritize follow-up actions with each facility based on the level of hazard present to public health and the environment.

By the 2<sup>nd</sup> Progress Report, if amendments to the revised I&E Plan or other applicable procedure are necessary based on feedback from DTSC, the CUPA will provide CalEPA with the amended I&E Plan or other applicable procedure. If no amendments to the I&E Plan or other applicable procedure are necessary, the CUPA will train CUPA personnel on the revised I&E Plan or other applicable procedure. Once training is complete, 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 CUPA personnel on the amended I&E Plan, or other applicable procedure. Once training is complete, the CUPA will implement the amended I&E Plan or other applicable procedure.

By the 3<sup>rd</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with 3 HWG facility records, as requested by DTSC that include RTC documentation or a narrative of the enforcement applied by the CUPA in the absence of RTC.

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**4. INCIDENTAL FINDING:**

The CUPA is not consistently or correctly reporting CME information to CERS for the APSA Program.

Review of CERS CME information, inspection reports, and other information provided by the CUPA indicates the following:

- CERS ID 10074559: A routine inspection, dated May 16, 2019, cites 1 violation. CERS has no record of the violation.
- CERS ID 10408699: A reinspection report, dated December 12, 2019, shows a violation from a routine inspection on September 18, 2019, was corrected. CERS has no record of the reinspection.
- CERS ID 10728925: A reinspection report, dated September 24, 2021, shows a violation from a routine inspection on October 30, 2020, was corrected. CERS has no record of the reinspection.

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

**CITATION:**

HSC, Chapter 6.11, Section 25404(e)(4)  
CCR, Title 27, Sections 15187(c) and 15290(a)(3) and (b)  
[OSFM]

**RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will develop, implement, and provide CalEPA with an action plan for reporting APSA Program CME information consistently and correctly to CERS. The action plan will include, at minimum, the following:

- Identification and correction of the cause(s) of missing or incorrect APSA Program CME information reported to CERS, including any EDT from the CUPA's data management system to CERS;
- Review and revision of the CME reporting component of the Data Management Procedure, or other applicable procedure, to ensure APSA Program CME information is consistently and correctly reported to CERS;
- Identification of APSA Program CME information not previously reported to CERS, or reported to CERS incorrectly, between July 1, 2018, and June 30, 2022;
- A process for reporting APSA Program CME information identified as not being previously reported to CERS, or being previously reported incorrectly to CERS, including CME information for any revised inspection reports; and
- Future steps to ensure all APSA Program CME information is consistently and correctly reported to CERS. This may generate the need for a comparison of APSA Program CME information in the CUPA's data management system with CERS to identify CME information not being reported or being reported incorrectly to CERS.

# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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By the 2<sup>nd</sup> Progress Report, and with each subsequent Progress Report until considered resolved, the CUPA will provide CalEPA with three APSA tank facility records, as requested by OSFM, that include RTC documentation or an inspection report.

By the 3<sup>rd</sup> Progress Report, the CUPA will consistently and correctly report all current and previous APSA Program CME information to CERS. The CUPA will provide a statement confirming the complete entry of all prior APSA Program CME information to CERS that was not previously reported to CERS, or was previously reported incorrectly to CERS between July 1, 2018, and June 30, 2022.

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#### 5. INCIDENTAL FINDING:

The CUPA is not consistently ensuring UST related information in CERS is accurate and complete.

Review of CERS UST facility submittals and the UST Facility/Tank Data Download report obtained from CERS on May 15, 2019, finds the CUPA accepted the following inaccurate or incomplete UST related information:

- 9 USTs with continuous monitoring of pipe secondary containment where the piping secondary containment field is blank
- 5 USTs show no striker plate/bottom protectors
- 4 USTs identified with double-wall pressurized product pipe, incorrectly show having no mechanical or electronic line leak detector
- 3 USTs incorrectly show no spill container being installed
- 3 USTs identified as having no tank installation date
- 1 UST incorrectly shows not having to conduct annual spill container testing

Review of CERS UST facility submittals and the UST Facility/Tank Data Download report obtained from CERS on July 13, 2022, finds the CUPA accepted the following inaccurate or incomplete UST related information:

- 9 of 71 (13%) USTs with continuously monitored secondary containment for pipe are “blank” or “none.”
- 7 of 44 (16%) USTs with continuously monitored under dispenser containment (UDC) list the construction as “blank.”
- 4 of 11 (36%) USTs with continuously monitored vapor, pressure, or hydrostatic (VPH) systems list secondary containment as “Yes.”
- 6 of 63 (10%) double-walled USTs installed between January 1, 1984, and June 30, 2004, are listed without continuous interstitial monitoring.
- 6 of 63 (10%) double-walled piping installed between January 1, 1984, and June 30, 2004, are listed without continuous interstitial monitoring.

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### INCIDENTAL FINDINGS REQUIRING RESOLUTION

Review of the following UST facility file and CERS CME information for the following CERS IDs finds the following discrepancies:

- CERS ID 10404724: An inspection in CERS is dated October 23, 2019, while the Annual Monitor Certification and CUPA Annual Inspection Report are dated October 22, 2019.
- CERS ID 10073854: An inspection in CERS is dated April 15, 2020, while the Annual Monitor Certification and CUPA Annual Inspection Report are dated April 16, 2020.

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

Note: This incidental finding was identified as a deficiency during the 2016 CUPA Performance Evaluation and was corrected during the Evaluation Progress Report process. This incidental finding was identified during the 2019 CUPA Performance Evaluation and was not corrected during the Evaluation Progress Report process. Upon closing the 2019 CUPA Performance Evaluation, the CUPA requested the State Water Board to provide training or guidance for reviewing and accepting CERS UST submittals, including the various types of UST systems and how those systems and applicability correlate to CERS UST submittal information. The State Water Board agreed to contact the CUPA to provide the requested training.

#### **CITATION:**

HSC, Chapter 6.7, Sections 25286 and 25288(a)  
CCR, Title 23, Sections 2632(d)(1), 2634(d)(2), and 2641(g) and (h)  
[State Water Board]

#### **RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will review, and revise as necessary, the Data Management Procedure, or other applicable procedure, to ensure establishment of a process for UST inspection staff to review CERS UST submittal information regarding construction, monitoring and leak detection requirements for accuracy and completeness based on the UST installation date, which will at minimum include the following:

- When CERS UST submittal information is identified as incorrect, the CUPA will either:
  - accept CERS UST submittals with minor errors using a condition set in CERS requiring the submittal to be corrected and resubmitted within a certain timeframe, or
  - not accept CERS UST submittals and provide comments with the requirement to resubmit UST information within a specified time
- When CERS UST submittal information is not corrected and resubmitted within the time specified by the CUPA, the CUPA will apply enforcement per the I&E Plan.

The CUPA will provide the revised Data Management Procedure, or other applicable procedure to CalEPA. The CUPA will contact the State Water Board for any assistance needed.

By the 2<sup>nd</sup> Progress Report, if amendments to the revised Data Management Procedure or other applicable procedure are necessary based on feedback from the State Water Board, the CUPA will provide CalEPA with the amended Data Management Procedure or other applicable procedure. If no amendments are necessary, the CUPA will train UST personnel on the revised

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Data Management Procedure, or other applicable procedure. Once training is complete, the CUPA will implement the revised Data Management Procedure or other applicable procedure.

By the 3<sup>rd</sup> Progress Report, if amendments to the revised Data Management Procedure or other applicable procedure were necessary, the CUPA will train UST personnel on the amended Data Management Procedure or other applicable procedure. Once training is complete, the CUPA will implement the amended Data Management Procedure or other applicable procedure.

With respect to UST submittals already accepted in CERS, the CUPA will review UST related information and require accurate and complete UST Program submittals when the next submittal is made, but no later than the next annual UST facility compliance inspection.

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**6. INCIDENTAL FINDING: RESOLVED DURING EVALUATION**

The CUPA is not consistently and properly classifying HWG violations.

In the following examples, the CUPA cited HWG violations as minor violations that are Class I or Class II violations and, in at least one instance, cited a Class II violation that was a Class I violation:

- Violation for exceedance of authorized accumulation time incorrectly cited as a minor violation. Maximum accumulation time may not be exceeded without a hazardous waste storage permit or grant of authorization from the DTSC. An economic benefit is gained by not disposing of waste within the authorized time. This does not meet the definition of minor violation as defined in HSC, Section 25404(a)(3).
  - CERS ID 10450012: Inspection dated September 7, 2017.
  - CERS ID 10423252: Inspection dated August 24, 2016.
  - CERS ID 10590241: Inspection dated October 17, 2017.
  - CERS ID 10600327: Inspection dated June 16, 2017.
- Violation for failure to provide or conduct training for employees incorrectly cited as a minor violation. Since no training had been provided, employees are not familiar with hazardous waste issues and handling as well as how to respond to emergencies. There may have been an economic benefit to the facility by not providing training. This does not meet the definition of minor violation as defined in HSC, Section 25404 (a)(3).
  - CERS ID 10408699: Inspection dated May 1, 2017.

Note: This incidental finding was identified during the 2019 CUPA Performance Evaluation and was partially resolved during the Evaluation Progress Report process as the CUPA provided training documentation to demonstrate CUPA personnel were trained on the violation classification terms minor, Class I, and Class II. An inspection report citing at least one hazardous waste violation, for three HWG facilities was not provided.

**CITATION:**

HSC, Chapter 6.5, Sections 25110.8.5 and 25117.6

CCR, Title 22, Sections 66260.10 and 66262.34

[DTSC]

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### INCIDENTAL FINDINGS REQUIRING RESOLUTION

#### **RESOLUTION: COMPLETED**

During the evaluation, the CUPA provided HWG facility inspection reports for review, as requested by DTSC. The inspection reports provided correctly classified each cited hazardous waste violation. No further action is required.

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#### **7. INCIDENTAL FINDING: RESOLVED DURING EVALUATION**

The CUPA is not consistently including all observations, citations, factual basis, and corrective actions for each violation cited on HWG and TP inspection reports and Notices to Comply.

Review of HWG and TP inspection reports finds no documentation or inadequate documentation for cited violations for nearly all facilities. Examples include, but are not limited to:

- CERS ID 10074445: Inspection dated March 6, 2017.
- CERS ID 10408699: Inspection dated May 1, 2017.
- CERS ID 10074277: Inspection dated April 10, 2017.
- CERS ID 10075192: Inspections dated August 3, 2017, and May 15, 2018.
  - No violations are noted on the inspection reports; however, several violations are documented in CERS.
- CERS ID 10074526: Inspection dated September 5, 2017.
- CERS ID 10450012: Inspection dated September 7, 2017.
- CERS ID 10074628: Inspections dated October 10, 2017, and January 8, 2018.
- CERS ID 10074685: Inspection dated June 8, 2018.

Review of HWG inspection reports, before the CUPA's transition to DHD finds the following:

- Section 2. Pre-Transport Requirements contains incorrect citations for labeling of HW containers
  - Line 2(a) "HW Container Labeled" incorrectly references CCR, Title 22, Section 66262.31. The correct citation is Section 66262.34(f). \*
  - Line 2(b) "HW Label Properly Filled Out" incorrectly references CCR, Title 22, Section 66262.32. The correct citation is Section 66262.34(f). \*
  - Line 2(c) "HW Accumulation Period Not Exceeded" incorrectly references CCR, Title 22, Section 66262.34(c). The correct citation is Section 66262.34(a) for citing accumulation limit violations for LQGs. \*\*
- Section 5. Contingency/Business Plan contains incorrect citations
  - Lines 5(a) through 5(e) incorrectly reference CCR, Title 22, Sections 66264.53 - 66264.55. The correct citation is Sections 66265.53 – 66265.55
- Section 6. Preparedness and Prevention contains incorrect citations
  - Lines 6(a) through 5(d) incorrectly reference CCR, Title 22, Section 66264.32, .33, .14, and .35. The correct citation is Sections 66265.32, .33, etc.
  - Line 6(e) incorrectly references CCR, Title 22, Section 66234.37. The correct citation is 66265.37.

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Note: It is not necessary to revise the HWG inspection reports for the facilities identified as examples above. The examples provided above may not represent all instances of this incidental finding.

Note: This incidental finding was identified as a deficiency during the 2019 CUPA Performance Evaluation specific to HWG and TP inspection reports having no documentation or inadequate documentation for cited violations for nearly all facilities. The deficiency was partially resolved during the Evaluation Progress Report process of the 2019 CUPA Performance Evaluation as the CUPA provided training documentation to demonstrate CUPA personnel were trained on inspection report writing on August 12, 2022. An inspection report citing at least one hazardous waste violation, for six HWG facilities was not provided.

\*Note: HSC, Sections 66262.31 and .32 require HWGs to mark HW containers with the appropriate Department of Transportation (DOT) label prior to shipment, which is a separate requirement from hazardous waste labeling. Violations for DOT labeling should not be entered into CERS using the 66262.34(f) citation.

\*\*Note: The CUPA's HWG inspection checklist does not include a regulatory citation for Small Quantity Generators (SQGs) exceeding the HW accumulation limit. LQGs have 90-days to accumulate HW, whereas SQGs have 180/270 days. The correct citation for citing accumulation limit violations for SQGs is CCR, Title 22, Section 66262.34(d).

**CITATION:**

HSC, Chapter 6.5, Section 25185(c)(2)(A)  
[DTSC]

**RESOLUTION: COMPLETED**

As of November 2021, the CUPA transitioned from directly entering CME information into CERS to entering CME information into a local data management system. Information is transferred to CERS from the local data management system with the use of EDT through Tyler Technologies DHD. The transition to utilizing a local data management system also required revision of the HWG facility inspection checklist. The HWG inspection checklist now references the correct citations for violations, and citations are correctly entered in CERS through EDT. No further action is required.

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**INCIDENTAL FINDINGS REQUIRING RESOLUTION**

**8. INCIDENTAL FINDING:**

The CUPA is not correctly implementing proper construction requirements for UST systems.

Review of the CERS Facility/Tank Data Download information finds USTs at the following UST facilities have single-walled vent or tank risers, and do not meet the secondary containment exemption requirements of CCR, Title 23, Section 2636(a) for vent and riser pipe to have overfill prevention equipment meeting the requirements specified in CCR, Title 23, Section 2635(c)(1)(B) or (C).

- CERS ID 10073833
- CERS ID 10408795

Note: The State Water Board LG 150-3

([https://www.waterboards.ca.gov/water\\_issues/programs/ust/leak\\_prevention/lgs/docs/150-3.pdf](https://www.waterboards.ca.gov/water_issues/programs/ust/leak_prevention/lgs/docs/150-3.pdf)) may be referenced.

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

**CITATION:**

CCR, Title 23, Sections 2631(a), 2636(a), and 2635 (c)(1)  
[State Water Board]

**RESOLUTION:**

The CUPA must ensure UST systems are properly constructed meeting the secondary containment requirements of Article 3.

By the 1<sup>st</sup> Progress Report, the CUPA will identify and provide CalEPA with a list of UST facilities which are incorrectly utilizing the overfill prevention equipment exemption.

In addition, the CUPA will draft and provide to CalEPA written correspondence addressed to the UST facility owner(s) or operator(s) to inform the UST owner(s) or operator(s) of the requirement for installation of overfill prevention equipment, or to construct secondary containment for single-walled vent and tank risers. The written correspondence will include language stating that failure to comply with overfill prevention equipment requirements specified in CCR, Title 23, Section 2635(c)(1)(B) or (C), or secondary containment exemptions in CCR, Title 23, Section 2636(a) will lead to appropriate enforcement. The State Water Board will review the draft written correspondence before the CUPA distributes it to UST facility owner(s) or operator(s) identified as incorrectly utilizing the overfill prevention equipment exemption.

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 list, indicating the status of each UST facility listed in obtaining compliance with secondary containment exemption requirements of CCR, Title 23, Section 2636(a).

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By the 2<sup>nd</sup> Progress Report, if revisions are necessary based on feedback from the State Water Board, the CUPA will revise the written correspondence and will provide the revised written correspondence to CalEPA. If no revisions are necessary, the CUPA will finalize the draft written correspondence and distribute it to UST facility owner(s) or operator(s) identified as incorrectly utilizing the overfill prevention equipment exemption. The CUPA will include the State Water Board as a carbon copy recipient on the correspondence.

By the 3<sup>rd</sup> Progress Report, if revisions to the written correspondence were necessary, the CUPA will finalize the draft written correspondence and distribute it to UST facility owner(s) or operator(s) identified as incorrectly utilizing the overfill prevention equipment exemption. The CUPA will include the State Water Board as a carbon copy recipient on the correspondence. By the 3<sup>rd</sup> Progress Report, if appropriate steps have not been taken by the UST owner or operator(s) to remedy the construction violations, the CUPA will apply enforcement. The CUPA will provide CalEPA with documentation of any applied enforcement.

The State Water Board will consider this incidental finding closed but not resolved when the CUPA has applied administrative, or other enforcement or when the UST owner(s) or operator(s) have taken appropriate steps to remedy construction violations, such as installation of the correct overfill prevention equipment, or secondary containment of the vent and fill piping.

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**OBSERVATIONS AND RECOMMENDATIONS**

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 area plan contains information that may benefit from improvement.

- Page 2, Item 4.0: Remove “spill prevention control & countermeasures plan” on the list of Unified Program elements. In the second paragraph, reference to the “Aboveground Tank” should be replaced with “Aboveground Petroleum Storage Tank” or “Aboveground Petroleum Storage Act.”
- Pages 2 and 12: 2019 and 2016 editions of the California Fire Code (CFC) are referenced. Ensure the CFC edition is correct or consider removing the reference to any edition.
- Page 49, Item 18: Update the California State Fire Marshal phone number to (916) 568-3800 (administration) or (916) 323-7390 (24-hour Duty Chief). Remove ‘underground’ in item 18.a.

The following required elements were not identified in the area plan:

- Procedures, developed in consultation with the Local Health Officer, to ensure access to health care within 24 hours of an exposure resulting from a pesticide drift exposure incident and up to a week after the incident.
- Procedures to identify all languages known to be spoken in the administering agency's county or city, as the case may be, and ensure that any individual is able to access services in their native language as required by Section 11135 of the Government Code. The area plan will outline what these services are and how they will be provided in the languages identified.

Note: The CUPA shares an area plan with Santa Clara County, which was last updated on August 18, 2022. The next triennial revision should be completed by August 18, 2025.

**RECOMMENDATION:**

With the next review, revise the area plan to incorporate the information identified above.

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# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

### OBSERVATIONS AND RECOMMENDATIONS

#### 2. OBSERVATION:

The following is a summary of inspection and violation information based on review of facility files and CERS CME information for the HMBP and CalARP Programs:

##### HMBP Program:

- July 1, 2019, through June 30, 2020
  - The CUPA conducted 58 routine inspections, of which 40 (69%) had no violations cited and 18 (31%) had at least one violation cited.
  - A total of 20 violations were cited, consisting of:
    - 0 (0%) Class I violations
    - 1 (5%) Class II violations
    - 19 (95%) minor violations.
  - The CUPA has ensured RTC for 15 of 20 (75%) violations cited.
- July 1, 2020, through June 30, 2021
  - The CUPA conducted 43 routine inspections, of which 30 (70%) had no violations cited and 13 (30%) had at least one violation cited.
  - A total of 22 violations were cited, consisting of:
    - 0 (0%) Class I violations
    - 0 (0%) Class II violations
    - 22 (100%) minor violations.
  - The CUPA has ensured RTC for 9 of 22 (41%) violations cited.
- July 1, 2021, through June 30, 2022
  - The CUPA conducted 47 routine inspections, of which 29 (62%) had no violations cited and 18 (38%) had at least one violation cited.
  - A total of 28 violations were cited, consisting of:
    - 0 (0%) Class I violations
    - 4 (14%) Class II violations
    - 24 (86%) minor violations.
  - The CUPA has ensured RTC for 17 of 28 (61%) violations cited.

##### CalARP Program:

- July 1, 2019, through June 30, 2020
  - The CUPA conducted 1 routine inspection, which had at least one violation cited.
  - A total of 1 violation was cited, consisting of:
    - 0 (0%) Class I violations
    - 0 (0%) Class II violations
    - 1 (100%) minor violation.
  - The CUPA has ensured RTC for 1 of 1 (100%) violation cited.
- July 1, 2020, through June 30, 2021
  - The CUPA conducted 1 routine inspection.
  - 0 violations were cited.
- July 1, 2021, through June 30, 2022
  - The CUPA conducted 1 routine inspection.
  - 0 violations were cited.

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**OBSERVATIONS AND RECOMMENDATIONS**

**RECOMMENDATION:**

Maintain the three-year inspection frequency for all HMBP facilities and all CalARP facilities, as required by statute. Ensure complete and thorough inspections are conducted to identify all violations at facilities. Continue to generate detailed inspection reports that include all factual basis and proper citation for each identified violation. Follow up with facilities that have not obtained RTC by the scheduled RTC date and apply enforcement per the I&E Plan when facilities do not obtain RTC.

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**3. OBSERVATION:**

Review of overall implementation of the HWG Program, including policies and procedures, CERS CME information, facility file information, information provided by the CUPA and Self-Audit Reports between July 1, 2019, and June 30, 2022, is summarized below:

- There are 205 regulated HWG facilities, including 3 RCRA LQG facilities, and 2 TP facilities.
- The CUPA inspected 123 unique HWG facilities and conducted 143 HWG routine inspections and no HWG “Other” inspections. Conducting more HWG routine inspections than there are unique HWG facilities indicates the CUPA inspected some unique HWG facilities more often than the inspection frequency established in the I&E Plan.
  - 73 of 143 (51%) routine inspections had no violations cited.
  - 70 of 143 (49%) routine inspections had at least one violation cited.
    - 163 total violations were cited, consisting of:
      - 0 (0%) Class I violations
      - 51 (31%) Class II violations
      - 112 (69%) minor violations
    - CERS indicates the CUPA has ensured RTC for 99 of 163 (61%) violations cited.
- CERS reflects no formal enforcement actions for hazardous waste related violations were completed.
- Inspection reports do not always document whether consent to inspect was requested prior to beginning the inspection.

**RECOMMENDATION:**

Continue with the HWG inspection frequencies and applied enforcement efforts established per the I&E Plan. Ensure the detailed factual basis of each violation is included in inspection reports and in CME information electronically transferred to CERS to support any enforcement efforts. Evaluate current HWG facility inspection forms to determine if revision is needed to ensure inspectors have the tools to successfully write quality inspection reports.

Follow up with HWG facilities that have not obtained RTC by the scheduled RTC date and apply appropriate enforcement per the I&E Plan for those facilities that do not obtain RTC. Ensure inspectors follow the HWG Inspection Procedures found in the I&E Plan and document consent to inspect in each HWG inspection report prior to conducting the inspection.

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**OBSERVATIONS AND RECOMMENDATIONS**

The CUPA could further improve the documentation details of observations and factual bases when citing violations as well as the detail of associated corrective action language. Violations with detailed factual basis and associated corrective actions with clear instructive language are easier for facility owners/operators to understand and apply. CUPAs with a higher level of descriptive details in inspection reports and corrective actions have a higher rate of obtaining RTC.

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**4. OBSERVATION:**

The I&E Plan contains information that is inaccurate or may benefit from improvement.

- Page 19: In addition to the citation for the HWG Program, include the citation for HSC, Chapter 6.11 to the Notice to Comply.
- Page 28: Matrix of Enforcement Options: Notice to comply applies to all Unified Program elements, including APSA, not just the HWG Program.
- Page 28: The outdated Uniform Fire Code is referenced. Replace “Uniform” with California.
- Page 34, Section F: Remove the reference to Section 25270.3. Replace the statement with:
  - HSC Chapter 6.67, Section 25270.2(c) gives the GILROY FIRE PREVENTION PROGRAM authority to implement and enforce the requirements of APSA on a tank facility.
  - For violations of HSC Chapter 6.67 (commencing with Section 25270), the violator shall be liable for a penalty of not more than \$5,000 for each day on which the violation continues, per HSC Sections 25270.12 and 25270.12.1.
  - Per HSC Chapter 6.67, Section 25270.12.5, a person who knowingly violates Section 25270.4.5, 25270.6, or 25270.8 after reasonable notice of the violation is, upon conviction, guilty of a misdemeanor. This section does not preempt any other applicable criminal or civil penalties.
- Page 42: Include APSA in the list of acronyms.

**RECOMMENDATION:**

Update the I&E Plan.

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**5. OBSERVATION:**

The CUPA’s various webpages contain information that may benefit from improvement.

The Forms webpage (<https://www.cityofgilroy.org/221/Forms>)

- Facility Site Plan Storage Map instructions ask for the location of each utility emergency shutoff point; however, statute does not explicitly require only utility shutoffs. Reference should be to general emergency shutoff locations, for example, “location of emergency shutoff, including but not limited to utilities (such as gas, water, and electric) and fuel tank systems, as applicable.”

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**OBSERVATIONS AND RECOMMENDATIONS**

“What is a CUPA?” webpage (<https://www.cityofgilroy.org/170/What-is-a-CUPA>)

- Replace “Above Ground Tanks” with Aboveground Petroleum Storage Act or Aboveground Petroleum Storage Tanks.

The Codes & Regulations webpage (<https://www.cityofgilroy.org/220/Codes-Regulations>)

- Under the Fire Code section, the 2015 International Fire Code and 2016 California Fire Code are referenced; update the fire code editions with the current editions or remove the references.
- Under the CUPA Program Laws & Regulations section, “The aboveground Storage Tank Program Spill Prevention Control and Countermeasures Plan” should be changed to the Aboveground Petroleum Storage Act. APSA is a state program that is separate from the Federal Spill Prevention, Control, and Countermeasure (SPCC) rule requirements in the Code of Federal Regulations, Title 40, Part 112. Not all APSA tank facilities are required to prepare an SPCC Plan. Remove reference to HSC, Section 25270.5.
- Remove reference to HSC, Section 80113 for the fire code Hazardous Materials Management Plans and Hazardous Materials Inventory Statements; and replace with reference to HSC, Sections 5001.5.1 and 5001.5.2.

**RECOMMENDATION:**

Update the webpages as indicated above.

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**6. OBSERVATION:**

SPCC Plans were submitted to CERS by APSA tank facilities as part of the APSA CERS submittal.

SPCC Plans are not required as part of an APSA CERS submittal; therefore, SPCC Plans should not be uploaded to CERS.

The APSA documentation upload section in CERS is for providing an annual tank facility statement, unless an HMBP is already provided, or for providing other local reporting requirement documents.

**RECOMMENDATION:**

Utilize the regulator comments field in CERS to provide feedback and advise APSA tank facilities that SPCC Plans should not be included in future CERS submittals.

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**7. OBSERVATION:**

Some APSA tank facilities submitted an HMBP to CERS in lieu of a tank facility statement using the 2011 or older emergency response and training plans template, which contains obsolete information.

UNIFIED PROGRAM PERFORMANCE EVALUATION  
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OBSERVATIONS AND RECOMMENDATIONS

**RECOMMENDATION:**

Encourage each APSA tank facility to use the current 2022 version of the consolidated emergency response and training plans template, when an HMBP is provided in lieu of a tank facility statement. The current 2022 version of the template is available in CERS.

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**8. OBSERVATION:**

CERS review finds the following UST system has single-walled components which requires permanent closure by December 31, 2025, in accordance with HSC Chapter 6.7, Section 25292.05.

- CERS ID: 10074151

**RECOMMENDATION:**

Continue to provide verbal and written reminders to all applicable UST owners/operators regarding the December 31, 2025, deadline for permanent closure of single-walled USTs.

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**9. OBSERVATION:**

The information provided below is a comparison of the total number of regulated facilities within each Unified Program element upon certification of the CUPA with present-day circumstance and the degree to which the number of regulated facilities has increased or decreased. The information is sourced from the following:

- Information provided by Gilroy City Fire Department 1996 Application for Certification
- CERS "Summary Regulated Facilities by Unified Program Element Report" generated on October 28, 2022
- CERS "UST Inspection Summary Report (Report 6)," generated on October 28, 2022
- Total Number of Regulated Businesses and Facilities:
  - In 1996: **118**
  - Currently: **286**
  - An increase of **168** facilities
- Total Number of Hazardous Materials Release Response Plan and Inventory (Business Plan) Regulated Businesses and Facilities:
  - In 1996: **118**
  - Currently: **226**
  - An increase of **108** facilities
- Total Number of Regulated Underground Storage Tank (UST) Facilities:
  - In 1996: **23**
  - Currently: **27**
  - An increase of **4** facilities

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## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

### OBSERVATIONS AND RECOMMENDATIONS

- Total Number of Regulated Underground Storage Tanks (USTs):
  - In 1996: **65**
  - Currently: **78**
  - An increase of **13** Underground Storage Tanks
  
- Total Number of Regulated Hazardous Waste Generator (HWGs) Facilities:
  - In 1996: **56**
  - Currently: **203**
  - An increase of **147** facilities
  
- Total Number of Regulated Household Hazardous Waste (HHW) Facilities:
  - In 1996: None specified
  - Currently: **0**
  - Comments: HHW Facilities were regulated under the Unified Program upon certification, though no count was provided in the application for certification. The difference between the current and historic number of facilities cannot be determined at this time.
  
- Total Number of Regulated Tiered Permitting Facilities (Permit By Rule, Conditionally Authorized, Conditionally Exempt):
  - In 1996: **9**
  - Currently: **2**
  - A decrease of **7** facilities
  
- Total Number of Regulated Resource Conservation and Recovery Act (RCRA) Large Quantity Generator (LQG) Facilities:
  - In 1996: none specified
  - Currently: **3**
  - Comments: RCRA LQG Facilities were regulated under the Unified Program upon certification, though no count was provided in the application for certification. The difference between the current and historic number of facilities cannot be determined at this time.
  
- Total Number of Regulated Risk Management Prevention Plan (RMPP) or California Accidental Release Prevention (CalARP) Program Facilities:
  - In 1996: none specified
  - Currently: **3**
  - Comments: CalARP Facilities were regulated under the Unified Program upon certification, though no count was provided in the application for certification. The difference between the current and historic number of facilities cannot be determined at this time.

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#### OBSERVATIONS AND RECOMMENDATIONS

- Total Number of Regulated Aboveground Petroleum Storage Act (APSA) Tank Facilities:
  - In 1996: **2**
  - Currently: **22**
  - An increase of **20** facilities

Since the CUPA applied for certification in 1996, there has been substantial increases in the number of facilities regulated within the Business Plan, HWG, and APSA Programs. Between 2022 and 1996, there has been a 92% increase in the number of facilities regulated within the Business Plan Program, a 263% increase in the number of facilities regulated within the HWG Program, and a 1,000% increase in the number of facilities regulated within the APSA Program. The total number of regulated facilities within the Unified Program has overall increased by 1,224 regulated businesses and facilities (142%).

Additionally, an expansion of responsibilities in the HMBP, HWG, and CalARP programs has occurred since the CUPA applied for certification, increasing the workload undertaken by the CUPA to further implement regulatory oversight of each of these programs. Additionally, the management of compliance, monitoring, inspection, and enforcement information transitioned from the use of Unified Program Consolidated Forms to the implementation of electronic data reporting through local data management systems and CERS.

The information below is a comparison of the overall full-time equivalent (FTE) of CUPA personnel allocated to the implementation of the Unified Program upon certification of the CUPA with present-day circumstance and the degree to which allocated inspection and supervisory/management staff has increased. The information is sourced from the Gilroy City Fire Department 1996 CUPA Application and recent information provided by the CUPA.

#### CUPA Personnel:

- Inspection and other Staff
  - Upon Certification in 1996:
    - 3 Staff, each at Full-Time = 3.0 FTE
      - CUPA personnel are supported by one Clerk Typist II.
  - Currently:
    - 3 Staff, each at Full-Time = 3.0 FTE
      - Currently, the CUPA has one Hazardous Materials Inspector that has been on an extended leave since August 2021.
- Supervisory and Management Staff
  - Upon Certification in 1996:
    - 1 Staff, at Full-Time = 1.0 FTE
  - Currently:
    - 1 Staff, at Full-Time = 1.0 FTE

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The comparison of the implementation of the program upon certification with present-day circumstance reveals there may be a few issues impeding the CUPAs ability to adequately implement the Unified Program within its jurisdiction due to constraints beyond its control. In 2019, after the Gilroy Garlic Festival shooting incident, the Emergency Operations Center (EOC) was activated for approximately three months. CUPA program personnel helped cover some of the EOC duties thus reducing available staff hours for the implementation of CUPA programs. An inspector departed the CUPA program in February 2020 and the position remained vacant through August 2020. After onboarding, one year later, in August 2021, the inspector hired in August 2020 went on leave and has remained on extended leave since. In April 2020, the Fire Marshal/CUPA Program Manager retired, and a permanent appointment has yet to be made. In the interim, a CUPA inspector has been fulfilling the CUPA Manager role. In July and August 2020, many support staff were laid off due to the economic downturn from COVID-19. During the shelter-in-place statewide orders, only priority inspections at essential facilities were conducted.

Between rapid growth within the city limits and the expansion of the Unified Program elements since its inception, the number of regulated facilities for this CUPA have more than doubled since the CUPA was first certified. The CUPA has maintained the same number of CUPA personnel FTEs as when the agency was first certified.

The City of Gilroy conducts fee studies approximately every five years, which assess the finances of the CUPA and other city departments. The CUPA's fee schedule is adjusted at the start of each fiscal year with each fee study that is conducted. The CUPA recovers nearly all implementation expenditures through the single fee assessment and subsidizes any remaining costs, if any, with the use of the city's general fund.

#### **RECOMMENDATION:**

Continue to conduct the annual review and update of the fee accountability program to determine the current necessary and reasonable costs to implement all aspects of the Unified Program with the existing regulated businesses and facilities within each program element. Upon completion of the upcoming City of Gilroy fee permit study, adapt the fee accountability program and single fee system as necessary to incorporate identified necessary adjustments. Reevaluate the current budget and expenditures, single fee assessment for each entity, and funding allocation for program services so that, if applicable, the CUPA is able to justify the need to increase fees, staff levels, and other resources as necessary and reasonable to ensure adequate implementation of each program element.

Aside from emergency response and recovery efforts, as well as EOC obligations, examine how current CUPA resources are being used to ensure that required program elements are implemented as a priority and as efficiently as possible before supplemental efforts that may not be specifically required. Conducting a workload analysis to determine the precise amount of time allocated for all activities relative to the implementation of the Unified Program for each staff position.

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The ability to apply each aspect of inspection, compliance, monitoring, and enforcement for all Unified Program activities is not only vital to the success of the program, but it further ensures the protection of health and safety of the community and environment at large. The transition to and utilization of the DHD data management system is already attributing to the accuracy of CERS CME information and is projected to further improve data quality in the future. Once the CUPA is able to obtain and maintain an adequate staff, in the areas of inspection personnel and management, it is likely the issues causing the identified and recurring deficiencies, such as falling short of meeting the mandated inspection frequency for certain program elements will be addressed.

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**10. OBSERVATION:**

A clerical error upon completing the annual single fee summary report resulted in significant discrepancies regarding the total amount of single fees billed, waived, and collected between FY 2018/2019 and FYs 2019/2020 and 2020/2021:

FY 2018/2019:

- Total Single Fee Billed: \$189,446
- Total Single Fee Waived: \$9,055
- Total Single Fee Collected: \$160,612

FY 2019/2020:

- Total Single Fee Billed: \$16,746
- Total Single Fee Waived: \$481
- Total Single Fee Collected: \$16,265

FY 2020/2021:

- Total Single Fee Billed: \$16,354
- Total Single Fee Waived: \$1,121
- Total Single Fee Collected: \$15,475

**RECOMMENDATION:**

Ensure the Annual Single Fee Summary Reports include all applicable information, and all elements are completed accurately before being provided to CalEPA.

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**11. OBSERVATION:**

DTSC evaluators accompanied two different CUPA lead inspectors while each conducted inspections on January 30 and 31, 2022, at Small Quantity Generator (SQG) facilities (CERS IDs: 10075168, 10404778, and 10074097). In general, the CUPA designates inspectors as being responsible for conducting inspections in certain regions within the city of Gilroy.

Prior to the inspections, DTSC evaluators asked the inspectors to explain how they prepared to conduct inspections. Both inspectors demonstrated good pre-inspection preparation, including using both CERS and HWTS to gather information on hazardous waste management activities and hazardous waste shipments. Inspectors also reviewed information from past inspections,

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including past violations. The inspectors demonstrated good knowledge about what information they could find before the inspection and the resources, such as HWTS, that is available to them. Overall, the pre-inspection preparation was detailed and appropriate for the nature of the facilities.

During the inspections, the inspectors asked for and gained consent to perform the inspections. All three inspections began with the inspectors explaining the purpose of the inspection and asking about facility operations. All inspections started with a walkthrough, followed by review of documents and an inspection close out meeting with the facility operators. During the walkthrough portion of the inspections the inspectors visited all pertinent areas and demonstrated knowledge of SQG requirements. In addition, the inspectors displayed knowledge of hazardous waste classification. The inspectors reviewed all of the appropriate documents and reviewed violations with the facility operators at the conclusion of the inspection. Overall, the inspections were handled professionally and were conducted in a timely manner.

The inspection reports note the violations cited during the inspection, the violation classification, and corrective actions. The inspection software and inspection checklist correctly populate the correct violation citations. The corrective actions drafted by the inspectors varied in specificity and clarity.

#### **RECOMMENDATION:**

Continue to conduct the current pre-inspection and inspection procedures as noted above. Continue to take notes during inspections to aid in writing comprehensive corrective actions. When drafting corrective actions, be as specific and clear as possible. For example, when citing violations for accumulating hazardous waste beyond 90 or 180-days do not write, "Hazardous waste should be picked up every 6 months." Instead, inspectors should write a corrective action that describes how the facility can obtain RTC and how documentation of RTC can be provided to demonstrate correction of the violation (ex: Within 30 days, submit copies of manifests or consolidated receipts showing X containers of hazardous waste have been removed. Copies shall be sent to [Name of inspector] at [inspector email address]). Comprehensive corrective action language tends to generate higher rates of RTC for the HWG Program.