



Gavin Newsom  
Governor

Yana Garcia  
Secretary for Environmental Protection

July 10, 2023

Mr. Curtis Jacobson  
Fire Chief  
Fremont City Fire Department  
3300 Capital Avenue, Building A  
Fremont, California 95438-5006

Dear Mr. Jacobson:

On May 18, 2023, CalEPA issued a Final Summary of Findings Report to the Fremont City Fire Department Certified Unified Program Agency (CUPA) for the performance evaluation conducted July 2022 through May 2023.

After issuance of the Final Summary of Findings Report, it came to the attention of CalEPA that an identified deficiency within the report should have been indicated as being corrected during the evaluation. To clarify, the identified deficiency regarding the annual California Accidental Release Prevention (CalARP) Performance Audit Report missing required elements for several Fiscal Years was corrected during the evaluation as the CUPA provided a CalARP Performance Audit Report, containing all required elements, for Fiscal Year 2021/2022.

Enclosed, please find the revised Final Summary of Findings Report. The rating of the CUPA's overall implementation of the Unified Program will remain as satisfactory with improvement needed.

As previously indicated, to demonstrate progress towards the correction of remaining program deficiencies and each incidental finding identified in the Final Summary of Findings Report, the CUPA must submit an Evaluation Progress Report within 60 days of receiving the Final Summary of Findings Report, and every 90 days thereafter. The due date for the 1<sup>st</sup> Evaluation Progress Report will remain as July 24, 2023. 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. Curtis Jacobson  
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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. Paul Ferriera  
CUPA Manager  
Fremont City Fire Department  
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Ms. Cheryl Prowell  
Supervising Water Resource Control Engineer  
State Water Resources Control Board  
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Mr. Tom Henderson  
Engineering Geologist, UST Unit Coordinator  
State Water Resources Control Board  
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Ms. Julie Pettijohn  
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CUPA Enforcement Branch  
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Ryan Miya, Ph.D.  
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Mr. Curtis Jacobson  
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cc sent via email:

Ms. Jennifer Lorenzo  
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CAL FIRE - Office of the State Fire Marshal  
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Ms. Jenna Hartman, REHS  
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State Water Resources Control Board  
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Mr. Matt McCarron  
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Mr. John Paine  
Unified Program Manager  
California Environmental Protection Agency

Mr. John Elkins  
Environmental Program Manager  
California Environmental Protection Agency

Mr. Curtis Jacobson  
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cc sent via email:

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

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

Mr. Garrett Chan  
Environmental Scientist  
California Environmental Protection Agency

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: Fremont City Fire Department**

**Evaluation Period:** July 2022 through May 2023

**Evaluation Team Members:**

- **CalEPA Team Lead:** Kaeleigh Pontif
- **CalEPA:** Garrett Chan
- **DTSC:** Matt McCarron
- **State Water Board:** Jenna Hartman
- **CAL FIRE-OSFM:** Glenn Warner, Mary Wren-Wilson

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 days from the receipt of the 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 the Final Summary of Findings Report.

The first Evaluation Progress Report submittal date is: **July 24, 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 IMPLEMENTATION:**

Since the 2019 CUPA Performance Evaluation, the CUPA has met the mandated triennial inspection frequency for APSA tank facilities storing 10,000 gallons or more of petroleum.

Additionally, the CUPA has ensured APSA tank facilities have annually submitted the tank facility statement or a complete Hazardous Materials Business Plan (HMBP) in lieu of a tank facility statement to the California Environmental Reporting System (CERS).

These efforts are above and beyond the standard expectations of the implementation of the APSA Program during the statewide restrictions resulting from the Coronavirus (COVID-19).

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**2. FORMAL ENFORCEMENT ACTIONS:**

The CUPA completed numerous formal enforcement actions during each Fiscal Year (FY) since the 2019 CUPA Performance Evaluation, resulting in cumulative penalties totaling \$118,870.

- FY 2018/2019
    - Cumulative penalty amount = \$35,570.00
  - FY 2019/2020
    - Cumulative penalty amount = \$51,300.00
  - FY 2020/2021
    - Cumulative penalty amount = \$32,000.00
-

# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

### DEFICIENCIES REQUIRING CORRECTION

Program deficiencies identify specific aspects regarding inadequate implementation of the Unified Program. The CUPA must complete the corrective action 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 inspecting each facility subject to:

- HMBP requirements at least once every three years;
- Hazardous Waste Generator (HWG) requirements at least once every three years, per the inspection frequency established in the Inspection and Enforcement (I&E) Plan; and
- Tiered Permitting (TP) component requirements of the HWG Program once every three years after the initial inspection, as required by Health and Safety Code (HSC).

Review of facility files, inspection, violation, and enforcement information, also known as compliance, monitoring, and enforcement (CME) information from CERS between July 1, 2019, and June 30, 2022, and additional information provided by the CUPA finds:

- 311 of 1,036 (30%) facilities subject to HMBP requirements were not inspected within the last three years.
- 196 of 759 (26%) HWG facilities were not inspected once every three years.
- 12 of 35 (34%) TP facilities were not inspected every three years after the initial inspection, as required by HSC.

Note: The ability of the CUPA to conduct inspections at HMBP, HWG and TP facilities was impacted by COVID-19 limitations between March 2020 and June 2020, due to the March 19, 2020 stay at home order issued by Alameda County.

#### CITATION:

California Code of Regulations (CCR), Title 27, Section 15200(a)(3)(A)  
HSC, Chapter 6.5, Section 25201.4(b)(2)  
HSC, Chapter 6.95, Sections 25503(e) and 25511(b)  
[CalEPA, DTSC]

#### 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 and HWG requirements is inspected at least once every three years, and to ensure each TP facility is inspected every three years after the initial inspection, as established by HSC. The action plan will include, at minimum:

- An analysis and explanation as to why the triennial inspection frequency for each HMBP and HWG facility is not being met, and why each TP facility is not being inspected every three years after the initial inspection. 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.

# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

### DEFICIENCIES REQUIRING CORRECTION

- A sortable spreadsheet exported from the CUPA's data management system or CERS, identifying each HMBP and HWG facility that has not been inspected within the last three years and each TP facility that has not been inspected every three years after the initial inspection. For each HMBP, HWG, and TP facility listed, the sortable spreadsheet will include, at minimum:
  - Facility name;
  - CERS ID; and
  - Date of the last routine inspection
- A schedule to inspect those HMBP, HWG and TP facilities, prioritizing the most delinquent inspections to be completed prior to any other HMBP, HWG or TP inspection based on risk.
- Future steps to ensure that all HMBP and HWG facilities will be inspected at least once every three years and each TP facility will be inspected at least once every three years after the initial inspection; for example, the generation of a list of all HMBP, HWG and TP facilities with the anniversary date of the next routine inspection in accordance with the respective inspection frequency.

By the 2<sup>nd</sup> Progress Report, the CUPA will, if necessary, revise the action plan based on feedback from CalEPA and/or 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 spreadsheet.

By the 5<sup>th</sup> Progress Report, the CUPA will have inspected each facility subject to HMBP and HWG requirements at least once in the last three years. The CUPA will have inspected each TP facility at least once in the last three years after the initial inspection. Additionally, the CUPA will have inspected each HWG facility, and each TP facility identified in the sortable spreadsheet provided with the 1<sup>st</sup> Progress Report in accordance with the respective inspection frequency.

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#### 2. DEFICIENCY:

The CUPA has not established CalARP Dispute Resolution procedures.

#### CITATION:

CCR, Title 19, Section 2780.1  
[CalEPA]

#### CORRECTIVE ACTION:

By the 1<sup>st</sup> Progress Report, the CUPA will develop and provide CalEPA with procedures to implement the CalARP Dispute Resolution process.

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#### 3. DEFICIENCY:

The Underground Storage Tank (UST) operating permit conditions, issued under the "Permit," as the Unified Program Facility Permit (UPFP), are inconsistent with CCR, Title 23, Division 3, Chapter 16 (UST Regulations) and HSC, Division 20, Chapter 6.7 requirements.

## CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

#### DEFICIENCIES REQUIRING CORRECTION

Review of UST operating permit conditions finds the following inconsistencies with UST Regulations and HSC:

- Permit conditions reference HSC, Chapter 6.75 and CCR, Title 23, Chapter 18; however, the CUPA does not have authority to enforce all sections of HSC, Chapter 6.75 and CCR, Title 23, Chapter 18. The correct permit condition citations are as follows:
  - CCR, Chapter 16, Sections 2610 through 2717.7, and
  - HSC, Chapter 6.7, Sections 25280 through 25296 and 25298 through 25299.6
  - Alternatively, the UST Program citations referenced could identify the sections of UST Regulations and HSC that are excluded.
- Permit condition 3 states, “The permittee must notify the CUPA or PA within thirty (30) days after any changes in the usage of any UST including a) The storage of new hazardous substances...”
  - This is inconsistent with UST Regulations, Section 2711(c), which states the owner or operator shall notify the local agency at least 30 days before changing the substance.
- Permit condition 4 states, “The permittee must have a qualified person perform yearly maintenance testing on all leak detection equipment...”
  - This is inconsistent with UST Regulations, Section 2638(a).

#### CITATION:

HSC, Chapter 6.7, Section 25283(b)(1)(B)  
CCR, Title 23, Chapter 16, Sections 2638(a), and 2711(c)  
[State Water Board]

#### CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will revise the UST operating permit conditions template to be consistent with UST Regulations and HSC. The CUPA will provide the revised UST operating permit conditions template to CalEPA.

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

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

# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

### DEFICIENCIES REQUIRING CORRECTION

#### 4. DEFICIENCY: CORRECTED DURING EVALUATION

The annual California Accidental Release Prevention (CalARP) Performance Audit Report is missing required elements.

The following elements are missing from the annual CalARP Performance Audit Report for the following Fiscal Years (FYs):

- FY 2018/2019
  - An executive summary and a brief description of how the Unified Program Agency (UPA) is meeting the requirements of the program as listed in Section 2780.3
  - A listing of stationary sources which have been audited
  - A listing of stationary sources which have received public comments on the Risk Management Plan (RMP)
  - A summary of the personnel and personnel years necessary to directly implement, administer, and operate the CalARP program
  - A list of those stationary sources determined by the UPA to be exempt from the chapter pursuant to Section 25534(b)(2)
- FY 2019/2020
  - An executive summary and a brief description of how the UPA is meeting the requirements of the program as listed in Section 2780.3
  - A listing of stationary sources which have been requested to develop RMPs
  - A listing of stationary sources which have received public comments on the RMP
  - A summary of the personnel and personnel years necessary to directly implement, administer, and operate the CalARP program
  - A list of those stationary sources determined by the UPA to be exempt from the chapter pursuant to Section 25534(b)(2)
- FY 2020/2021
  - An executive summary and a brief description of how the UPA is meeting the requirements of the program as listed in Section 2780.3
  - A listing of stationary sources which have been audited
  - A listing of stationary sources which have been requested to develop RMPs
  - A listing of stationary sources which have received public comments on the RMP
  - A summary of the personnel and personnel years necessary to directly implement, administer, and operate the CalARP program
  - A list of those stationary sources determined by the UPA to be exempt from the chapter pursuant to Section 25534(b)(2)

#### CITATION:

CCR, Title 19, Section 2780.5(b)  
[CalEPA]

#### CORRECTIVE ACTION: COMPLETED

During the evaluation, the CUPA provided CalEPA with an updated CalARP performance audit report for FY 2021/2022 that contained all required elements. This deficiency is considered corrected. No further action is required.

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

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

**INCIDENTAL FINDINGS REQUIRING RESOLUTION**

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

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**1. INCIDENTAL FINDING:**

The 2019 area plan is missing a required element.

Review of the 2019 area plan finds the following element is missing:

- Pesticide drift protocols

**CITATION:**

HSC, Chapter 6.95, Section 25503(d)(2)  
CCR, Title 19, Sections 2640 and 2642 through 2648  
[CalEPA]

**RESOLUTION:**

By the 1st Progress Report, the CUPA will certify to CalEPA that a complete review of the area plan has been conducted and any necessary revisions have been made. Upon review of the area plan, the CUPA will ensure all required elements are present, and that emergency contact information is current. The CUPA will provide CalEPA with the reviewed and revised area plan.

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**2. INCIDENTAL FINDING:**

The CUPA is not properly 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 finds that 21 of 74 (28%) PBR Onsite Hazardous Waste Treatment Notifications submitted between July 1, 2019, and June 30, 2022, were not reviewed, processed or authorized by the CUPA within 45 days of receipt. Examples include:

- CERS ID 10169345
  - PBR notification submitted April 12, 2021
  - Not accepted on June 8, 2021
- CERS ID 10169299
  - PBR notification submitted August 29, 2020
  - Not accepted on August 9, 2021

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

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

**INCIDENTAL FINDINGS REQUIRING RESOLUTION**

- CERS ID 10169299
  - PBR notification submitted March 2, 2021
  - Not accepted on August 9, 2021
- CERS ID 10734358
  - PBR notification submitted February 15, 2021
  - Accepted on August 13, 2021
- CERS ID 10734358
  - PBR notification submitted March 1, 2020
  - Accepted on October 1, 2020
- CERS ID 10168909
  - PBR notification submitted January 25, 2022
  - Accepted on August 25, 2022
- CERS ID 10168909
  - PBR notification submitted February 23, 2021
  - Not accepted on July 19, 2021

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

Note: This deficiency was identified as an Incidental Finding in the 2019 CUPA Performance Evaluation and was considered resolved during the Evaluation Progress Report process as CUPA personnel reviewed the CUPA's Data Management Policy on October 2, 2019.

**CITATION:**

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

**RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will train personnel on the TP component of the HWG Program to accurately review, process and authorize Onsite Hazardous Waste Treatment Notifications within the 45-day review process by either:

- Authorizing operation of the FTY; or
- Denying authorization of the FTU in accordance with PBR laws and regulations; or
- Notifying the owner/operator that the notification submittal is inaccurate or incomplete.

The CUPA will provide CalEPA with training documentation, 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.

Note: TP training videos are available on the California CUPA Forum Board website at: <https://www.youtube.com/user/orangetreeweb/videos>. Additional TP training assistance may be requested from DTSC.

By the 2<sup>nd</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will review all PBR notifications for each Onsite Hazardous Waste

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

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

**INCIDENTAL FINDINGS REQUIRING RESOLUTION**

Treatment Notification with an FTU within 45 calendar days of receipt. The CUPA will review each Onsite Hazardous Waste Treatment Notification to ensure submittals are correct and accurately represent the actual waste streams and treatment systems identified at the facility. The CUPA will provide a narrative update to CalEPA on the status of the progress made toward reviewing PBR submittals.

By the 3<sup>rd</sup> Progress Report, the CUPA will follow-up with the facilities identified by the CUPA as requiring a resubmission of the Onsite Hazardous Waste Treatment Notification to correct any errors, if necessary. The CUPA will provide CalEPA with a narrative update on the facilities that required follow-up.

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**3. INCIDENTAL FINDING:**

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

Review of the CERS Facility/Tank Data Download information and UST facility files finds the following UST facilities have single-walled vent or tank risers, and do not meet the secondary containment exemption requirements in 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 10167583, Tank ID -004
- CERS ID 10167587, Tank ID -004

Note: The State Water Board Local Guidance (LG) letter 150-3 may be referenced:  
[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).

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

**CITATION:**

CCR, Title 23, Chapter 16, Sections 2631(a), 2635(c)(1) and 2636(a)  
[State Water Board]

**RESOLUTION:**

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

By the 1st 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 applied enforcement. The CUPA will include the State Water Board on the correspondence.

# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

### INCIDENTAL FINDINGS REQUIRING RESOLUTION

By the 2nd Progress Report, if appropriate steps have not been taken by the UST owner(s) 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 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 overflow prevention equipment, or secondary containment of the vent and fill piping.

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#### 4. INCIDENTAL FINDING:

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

Review of HMBPs submitted to CERS by regulated businesses subject to Business Plan reporting requirements finds:

- 145 of 1,036 (14%) regulated Business Plan facilities have not submitted a chemical inventory (including site map) or a no-change certification within the last 12 months.
- 147 of 1,036 (14%) regulated Business Plan facilities have not submitted emergency response and employee training plans or a no-change certification within the last 12 months.

#### CITATION:

HSC, Chapter 6.95, Sections 25505(a), 25508(a), and 25508.2  
[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 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 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 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
  - applied enforcement taken by the CUPA to ensure regulated businesses annually submit an HMBP or a no-change certification to CERS.

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

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

**INCIDENTAL FINDINGS REQUIRING RESOLUTION**

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 1<sup>st</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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**5. INCIDENTAL FINDING: RESOLVED DURING EVALUATION**

A required component of the I&E Plan is missing.

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

- A description of how the CUPA minimizes or eliminates duplication, inconsistencies, and lack of coordination within the inspection and enforcement program.

**CITATION:**

CCR, Title 27, Section 15200(a)  
[CalEPA]

**RESOLUTION: COMPLETED**

During the evaluation, the CUPA provided CalEPA with a revised I&E Plan that adequately incorporates and correctly addresses all required components. This finding is considered resolved. No further action is required.

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

The CUPA is not ensuring each APSA tank facility that is not conditionally exempt prepares a Spill Prevention, Control, and Countermeasure (SPCC) Plan.

Review of CERS CME information indicates the following facility was cited with a violation for not having, or failure to prepare, an SPCC Plan, and there is no documented return to compliance (RTC):

- FY 2021/2022: CERS ID 10155457

**CITATION:**

HSC, Chapter 6.67, Section 25270.4.5(a)  
[OSFM]

**RESOLUTION: COMPLETED**

During the evaluation, the CUPA confirmed the District Attorney will be applying formal enforcement. This finding is considered resolved. No further action is required.

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# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

### 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 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 routine inspections at 183 facilities, of which 108 (59%) had no violations cited and 75 (41%) had at least one violation cited.
    - A total of 173 violations were cited, consisting of:
      - 25 (21%) minor violations
      - 142 (74%) Class II violations
      - 6 (6%) Class I violations
    - The CUPA has ensured RTC for 165 of 173 (95%) violations cited.
  - July 1, 2020, through June 30, 2021
    - The CUPA conducted routine inspections at 270 facilities, of which 146 (54%) had no violations cited and 124 (46%) had at least one violation cited.
    - A total of 258 violations were cited, consisting of:
      - 65 (25%) minor violations
      - 172 (67%) Class II violations
      - 21 (8%) Class I violations
    - The CUPA has ensured RTC for 249 of 258 (97%) violations cited.
  - July 1, 2021, through June 30, 2022
    - The CUPA conducted routine inspections at 272 facilities, of which 148 (54%) had no violations cited and 124 (46%) had at least one violation cited.
    - A total of 343 total violations were cited, consisting of:
      - 70 (20%) minor violations
      - 255 (74%) Class II violations
      - 18 (5%) Class I violations
    - The CUPA has ensured RTC for 305 of 343 (89%) violations cited.
- CalARP Program:
  - July 1, 2019, through June 30, 2020
    - The CUPA conducted a routine inspection at 1 facility, of which 0 (0%) had no violations cited and 1 (100%) had at least one violation cited.
    - A total of 4 violations were cited, consisting of:
      - 4 (100%) Class II violations
    - The CUPA has ensured RTC for 4 of 4 (100%) violations cited.

# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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### OBSERVATIONS AND RECOMMENDATIONS

- July 1, 2020, through June 30, 2021
  - The CUPA conducted routine inspections at 2 facilities, of which 0 (0%) had no violations cited and 2 (100%) had at least one violation cited.
  - A total of 5 violations were cited, consisting of:
    - 5 (100%) Class II violations
  - The CUPA has ensured RTC for 5 of 5 (100%) violations cited.
- July 1, 2021, through June 30, 2022
  - The CUPA conducted routine inspections at 6 facilities, of which 3 (50%) had no violations cited and 3 (50%) had at least one violation cited.
  - A total of 20 violations were cited, consisting of:
    - 16 (75%) Class II violations
    - 4 (25%) Minor violations
  - The CUPA has ensured RTC for 6 of 20 (30%) violations cited.

#### **RECOMMENDATION:**

Maintain the three-year inspection frequency for all facilities regulated under Business Plan requirements and the CalARP Program, as required by statute. Ensure complete and thorough inspections are conducted to identify all violations at facilities. Maintain detailed inspection reports that include all factual basis of the violation and properly cite noted violations. Follow up with facilities that have not obtained RTC by the scheduled RTC date and apply appropriate enforcement for facilities that do not RTC, per the I&E Plan.

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#### **2. OBSERVATION:**

The following information in the I&E Plan is inaccurate or may benefit from improvement:

- Page vi, Table 9: Replace “AST” with “APSA”
- Page 8: "H&SC § 25508(a)(2)" should be "H&SC § 25508(a)(3)" to align the context of the statement with statute.
- Page 13, Enforcement Statutory Authority section: Section 25270.5 is incorrectly referenced as APSA Program violations. Replace Section 25270.5 with “commencing with Section 25270.”
- Page 29, Procedures to Access Administrative Law Judge, Section 1: Section 25270.5 is incorrectly referenced as APSA Program violations. Replace Section 25270.5 with “Chapter 6.67 (commencing with Section 25270).”
- Pages 37-38: The code section and penalty amount is outdated, per HSC, Section 25540(a).
- Page 39, APSA penalties, Section a.: HSC Section 25270.12.1(a) is incorrectly referenced as APSA violations. Revise the statement to the following, “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.”

#### **RECOMMENDATION:**

Update the I&E Plan as indicated above.

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OBSERVATIONS AND RECOMMENDATIONS

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**3. OBSERVATION:**

The area plan contains the following information that is inaccurate or may benefit from improvement:

- Page 6, Unified Program elements list:
  - Replace “Aboveground storage tanks (spill prevention control and countermeasure plan only)” with “Aboveground Petroleum Storage Act (APSA).”
  - Replace “Uniform Fire Code hazardous materials management plans and inventories” with “California Fire Code Hazardous Materials Management Plan and Hazardous Materials Inventory Statement” or “Hazardous Materials Management Plan and Hazardous Materials Inventory Statement.”
- Page 20, item 19.a.: Remove reference to ‘underground.’ Update statement to the following, “CSFM enforces State and Federal hazardous liquid pipeline standards, investigates pipeline failures, and is the lead State agency for intrastate hazardous liquid pipeline incidents.”
- Page 32: The correct reference in place of “H&SC 25507.10” is “H&SC 25510.3.”
- Attachment 3C, Hazardous Materials Resource Phone List: Update the OSFM phone number with the current 24-hour duty chief line, (916) 323-7390.

**RECOMMENDATION:**

Update the area plan as indicated above.

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**4. OBSERVATION:**

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

**RECOMMENDATION:**

Encourage each APSA tank facility that utilizes the consolidated emergency response and training plans template as part of the HMBP submittal, in lieu of the tank facility statement, to use the current 2022 template. The current 2022 template is available in CERS.

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**5. OBSERVATION:**

The CERS reporting requirement is currently set as “APSA Applicable” for 84 tank facilities.

The CUPA’s data management system identifies 76 APSA tank facilities.

- 76 APSA tank facilities are identified in both CERS and the CUPA’s data management system.
- 8 tank facilities are reported as “APSA Applicable” in CERS but are not identified as APSA tank facilities in the CUPA’s data management system.
  - Some of these facilities are APSA regulated, and the CUPA should update the data management system appropriately.

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**OBSERVATIONS AND RECOMMENDATIONS**

**RECOMMENDATION:**

Complete the reconciliation of the APSA Program information in the CUPA's data management system with CERS to ensure all APSA tank facilities are included in both systems.

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**6. OBSERVATION:**

An SPCC Plan was uploaded to CERS by an APSA tank facility (CERS ID 10169335) as part of the HMBP (Emergency Response Plan) and APSA CERS submittals.

SPCC Plans are not required as part of any 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 a complete HMBP is provided in lieu of a tank facility statement, or for providing other local reporting requirement documents.

**RECOMMENDATION:**

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

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**7. OBSERVATION:**

The Fremont Fire Prevention Bureau webpage (<https://www.fremont.gov/government/departments/fire/fire-prevention-bureau>) lists inspections conducted by the CUPA (Hazardous Materials Division), but does not include any reference to APSA inspections.

**RECOMMENDATION:**

Update the webpage to include APSA inspections.

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**8. OBSERVATION:**

Review of CERS CME information and APSA tank facility inspection reports provided by the CUPA indicates the following:

- CERS ID 10167665
  - An inspection report dated January 14, 2020, cites 4 violations.
  - Inspection reports dated February 20, 2020, and March 9, 2020, indicate RTC for all 4 violations.
  - CERS has no record of the obtained RTC.

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**OBSERVATIONS AND RECOMMENDATIONS**

- CERS ID 10167917
  - An inspection report dated January 25, 2019, cites 5 violations, including a violation for not having management or a Professional-Engineer (PE) certify the SPCC Plan, and for not complying with certification requirements of a qualified facility SPCC Plan. However, the facility does not meet the qualified SPCC Plan facility criteria.
  - CERS reflects RTC for all 5 violations.

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

**RECOMMENDATION:**

Identify and correct the cause(s) of discrepancy between CME information in inspection reports and CERS regarding inspection dates, dates of violation and documentation of RTC. Review and revise, if necessary, the CME reporting component of the Data Management Procedure, or other applicable procedure. Train APSA inspection staff on the Data Management Procedure, or other applicable procedure. Ensure a quality assurance and quality control process is in place for consistently and correctly reporting all CME information to CERS for the APSA Program.

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**9. OBSERVATION:**

The information below is a summary of the overall implementation of the HWG Program and CUPA's hazardous waste related activities based upon review of policies and procedures, CERS CME information, facility file information, information, information provided by the CUPA and Self-Audit Reports between July 1, 2019, and June 30, 2022:

- CERS indicates 759 facilities self-identified as HWGs, 42 Resource Conservation and Recovery Act (RCRA) Large Quantity Generators (LQGs), and 37 Tiered Permitted (TP) facilities.
- The three-year inspection frequency for all HWG facilities is currently not being met.
- The CUPA conducted 1,346 total HWG inspections including:
  - 620 "routine" inspections, of which 253 (41%) had no violations cited and 367 (59%) had at least one violation cited.
  - 726 "other" inspections, of which 658 (91%) had no violations cited and 68 (9%) had at least one violation cited.
- A total of 1,412 violations were cited during the 367 "routine" inspections and the 68 "other" inspections citing at least one violation, consisting of:
  - 49 Class I violation (at 13 facilities)
  - 1,093 Class II violations, and
  - 270 minor violations.
- The CUPA has ensured RTC for 1,332 of 1,411 (94%) violations.
- The CUPA completed separate formal enforcement actions for 4 different facilities with hazardous waste related violations resulting in a cumulative total penalty amount of \$56,655.00. One of the four settlements was in the amount of \$51,300.00.
- Inspection reports contain detailed comments that note the factual basis of cited violations and consent to inspect the facility.

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- Search results for CUPA information only provide a generic page for program. The Fremont Fire Bureau webpage (<https://www.fremont.gov/government/departments/fire/fire-prevention-bureau>) identifies that there is a CUPA program, however there is minimal compliance assistance for regulated facilities linked to the webpage.

DTSC was unable to conduct oversight inspections due to COVID-19 restrictions.

**RECOMMENDATION:**

Continue with the three-year HWG inspection frequency and applied enforcement efforts in addition to generating quality inspection reports with the detailed description of the factual basis of violations and the associated corrective actions.

Consider updating the Fremont Fire Bureau web page (<https://www.fremont.gov/government/departments/fire/fire-prevention-bureau>) with specific information to assist regulated HWG facilities with compliance and on-site treatment requirements, or include link(s) to the various locations on state agency websites for each Unified Program element.

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**10. OBSERVATION:**

Several HWG inspections cited a violation for failure to prevent a release using the “general” Unified Program violation library CERS violation type number for the violation of hazardous waste.

Several HWG inspections cited violations and used the correct Unified Program violation library CERS violation type number for the cited violation.

Violation comment detail in CERS was sufficient to qualify the reasoning for the Unified Program violation library CERS violation type number utilized.

The following are existing Unified Program violation library CERS violation type numbers to utilize for failure to prevent a release for hazardous waste related activities:

- CERS violation type number 3030030 – applicable to Small Quantity Generators
- CERS violation type number 3030031 – applicable to LQGs
- CERS violation type number 3040004 – applicable to Universal Waste management

Use of the correct applicable Unified Program violation library CERS violation type number will ensure CME information is reported more accurately in CERS and will enable proper and accurate monthly electronic data transfer of CME information from CERS to the U.S. Environmental Protection Agency regulatory system, Resource Conservation and Recovery Act (RCRA) Info.

**RECOMMENDATION:**

Ensure use of the correct Unified Program violation library CERS violation type numbers for reporting hazardous waste CME information to CERS. Utilize the “general” Unified Program

UNIFIED PROGRAM PERFORMANCE EVALUATION  
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violation library CERS violation type number only when a more appropriate Unified Program violation library CERS violation type number does not exist.

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**11. OBSERVATION:**

Review of CERS finds the following facility has four UST systems with single-walled components which require permanent closure by December 31, 2025, in accordance with HSC, Chapter 6.7, Section 25292.05:

- CERS ID 10168711, -UST systems --001, -002, -003, and -004

**RECOMMENDATION:**

Continue to provide verbal and written reminders to all applicable UST facility owners or operators regarding the December 31, 2025, requirement for permanent closure of single-walled USTs and UST systems. Consider providing written notification of the requirement to all applicable UST facility owners or operators. The written notification should inform facility owners or operators that in order to remain in compliance, owners or operators must replace or remove single-walled USTs by December 31, 2025. Additional information regarding single-walled UST closure requirements may be found at: [https://www.waterboards.ca.gov/ust/single\\_walled.html](https://www.waterboards.ca.gov/ust/single_walled.html).

Notify facility owners or operators that Replacing, Removing, or Upgrading Underground Storage Tanks (RUST) Program grants and loans are available to assist eligible small businesses with the costs necessary to remove, replace, or upgrade project USTs. More information on funding sources may be found at:

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

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**12. OBSERVATION:**

Review of HWG Program facility files finds CME information is not in CERS for the following facility, as of September 30, 2022:

- CERS ID 10888681
  - An inspection report dated January 20, 2020, cites 5 violations. CERS has no record of the violation.
  - A re-inspection report dated February 20, 2020, documents RTC. CERS has no record of RTC.

**RECOMMENDATION:**

Compare HWG Program CME information in the CUPA's data management system and inspection reports with the CME information in CES to identify CME information not reported or reported incorrectly to CERS. Establish a quality assurance and quality control process is in place to confirm all CME information is correctly and consistently reported to CERS. Ensure inspectors review CERS CME information from the previous inspection during the RTC process or when preparing or conducting the next inspection.

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**13. OBSERVATION:**

The information provided below summarizes a comparison of the regulated community and the necessary and reasonable resources for implementation of the Unified Program upon certification with the current regulated community and the current resources available to the CUPA for implementation.

**Number of regulated facilities for each program element:**

- *Original Certification Source: Fremont City Fire Department 1995 CUPA Application*
- *Current CUPA Evaluation Sources: CERS “Summary Regulated Facilities by Unified Program Element Report” and CERS “UST Inspection Summary Report (Report 6)”, both generated on September 22, 2022.*

- Total Number of Regulated Businesses and Facilities:
  - Upon Certification in 1995: **707**
  - Current CUPA Evaluation: **1139**
  - An additional **432** facilities
- Total Number of Hazardous Materials Release Response Plan and Inventory (Business Plan) Regulated Businesses and Facilities:
  - Upon Certification in 1995: **707**
  - Current CUPA Evaluation: **1035**
  - An additional **328** facilities
- Total Number of Regulated Underground Storage Tank (UST) Facilities:
  - Upon Certification in 1995: **94**
  - Current CUPA Evaluation: **60**
  - A decrease of **34** facilities
- Total Number of Regulated Underground Storage Tanks (USTs):
  - Upon Certification in 1995: **250**
  - Current CUPA Evaluation: **151**
  - A decrease of **99** Underground Storage Tanks
- Total Number of Regulated Hazardous Waste Generator (HWGs) Facilities:
  - Upon Certification in 1995: **300**
  - Current CUPA Evaluation: **759**
  - An additional **459** facilities
- Total Number of Regulated Household Hazardous Waste (HHW) Facilities:
  - Household Hazardous Waste Facilities were not regulated under the Unified Program upon certification in 1995
  - Current CUPA Evaluation: **1**

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- Total Number of Regulated Tiered Permitting Facilities (Permit By Rule, Conditionally Authorized, Conditionally Exempt):
  - Upon Certification in 1995: **40**
  - Current CUPA Evaluation: **37**
  - A decrease of **3** facilities
- Total Number of Regulated Resource Conservation and Recovery Act (RCRA) Large Quantity Generator (LQG) Facilities:
  - RCRA LQG Facilities were not regulated under the Unified Program upon certification in 1995
  - Current CUPA Evaluation: **42**
- Total Number of Regulated Risk Management Prevention Plan (RMPP) or California Accidental Release Prevention (CalARP) Program Facilities:
  - Upon Certification in 1995: **12**
  - Current CUPA Evaluation: **9**
  - A decrease of **3** facilities
- Total Number of Regulated Aboveground Petroleum Storage Act (APSA) Tank Facilities:
  - Upon Certification in 1995: **9** (noted as SPCC Plan facilities)
  - Current CUPA Evaluation: **84**
  - An additional **75** facilities

Since the original application for certification was submitted in 1995, the CUPA has experienced significant changes in the number of regulated facilities for nearly all Unified Program elements. In particular, the total number of regulated HMBP facilities increased by 61%, and the total number of HWG facilities increased by 153%. The number of UST facilities and total number of USTs decreased by 36% and 40%, respectively. An expansion of responsibilities in the Aboveground Petroleum Storage Act and Hazardous Waste Generator programs has also occurred, increasing the total regulated facility count and attributing to an increased workload undertaken by the CUPA to further implement regulatory oversight of each of these programs. Additionally, since the CUPA was certified, 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 or decreased. The information is sourced from the Fremont City Fire Department 1995 CUPA Application and recent information provided by the CUPA.

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### OBSERVATIONS AND RECOMMENDATIONS

#### CUPA Personnel:

- Inspection and other Staff
  - Upon Certification in 1995:
    - 4 FTE positions
      - 3 Hazardous Materials Technician positions, each at 100% FTE
      - 1 Hazardous Materials Coordinator position at 100% FTE
  - Currently:
    - 5.5 FTE positions
      - 1 Sr. Hazardous Materials Inspector position at 100% FTE
      - 4 Hazardous Materials Inspector positions, each at 100% FTE
      - 1 Public Service Assistant position at 50% FTE
- Supervisory and Management Staff
  - Upon Certification in 1995:
    - 1 FTE
      - 1 position at 100% FTE
  - Currently:
    - 2 FTEs
      - 2 positions, each at 100% FTE

#### RECOMMENDATION:

Continue to conduct the annual review of the fee accountability program to determine current necessary and reasonable costs to implement all aspects of the Unified Program with the existing regulated businesses and facilities within each program element. 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.