

Guidance for Inspection and Enforcement Plans

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**Prepared by the Unified Program Administration and Advisory Group Inspection
and Enforcement Steering Committee**

Air Resources Board • Department of Pesticide Regulation • Department of Resources Recycling and Recovery • Department of
Toxic Substances Control • Office of Environmental Health Hazard Assessment • State Water Resources Control Board • Regional
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I. INTRODUCTION

As required by the Legislature, the California Environmental Protection Agency (CalEPA) established a “unified hazardous waste and hazardous materials management regulatory program,” which is known as the “Unified Program.” (Health and Safety Code section 25404(b).) The Unified Program protects Californians from hazardous waste and hazardous materials by ensuring coordinated and consistent implementation and enforcement of environmental and emergency management for the following program elements:

- Hazardous Materials Business Plan (HMBP) Program,
- California Accidental Release Prevention (CalARP) Program,
- Aboveground Petroleum Storage Act (APSA) Program,
- Hazardous Waste Generator (HWG) and Onsite Hazardous Waste Treatment (tiered permitting, or TP) Program,
- Underground Storage Tank (UST) Program, and
- Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS) (California Fire Code).

Under the oversight of CalEPA, enforcement of standards that regulated businesses are required to follow for each program element are carried out by local agencies, which are generally city or county environmental health departments or fire departments. (The term “Regulated Business” is a defined term in California Code of Regulations, title 27, section 15110(k) and is used throughout this document.) These local agencies are certified by CalEPA and are known as “Certified Program Agencies (CUPAs).” Each CUPA may enter a formal agreement with a state or local agency, referred to as a “Participating Agency (PA),” to carry out one or more program elements. Collectively, CUPAs and PAs are known as “Unified Program Agencies (UPAs).”

To “ensure coordinated, efficient, and effective enforcement” of the six programs, each UPA is required to develop and implement a single unified inspection and enforcement program that meets statutory and regulatory requirements. (Health and Safety Code section 25404.2(a)(3).) As required by California Code of Regulations, title 27, section 15200(a), “[t]he CUPA, in cooperation with its PA(s), if applicable, shall develop and implement a written Inspection and Enforcement Plan [(I&E Plan)]. California Code of Regulations, title 27, section 15200 outlines what must be included in an I&E Plan. This guidance document discusses the requirements established by California Code of Regulations, title 27, section 15200 and provides additional guidance.

This document is intended to serve as only guidance. It does not establish, supersede, supplement, or revise, any applicable statute, regulation, standard, or rule.

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II. I&E PLAN REQUIREMENTS: INSPECTIONS

As noted in the Introduction, each CUPA is required to develop and implement an I&E Plan. (California Code of Regulations, title 27, section 15200(a).) California Code of Regulations, title 27, section 15200(a)(1)-(11) identifies what must be included in the CUPA's I&E Plan. Each of the I&E Plan requirements for inspections are discussed below. Recommendations come from a variety of CUPAs and may not be applicable to all circumstances.

A. Inspection Process

Requirement: The I&E Plan shall include “[a]n inspection process for each program element that includes pre-inspection, on-site and off-site inspections, post-inspection procedures, and re-inspections.” (California Code of Regulations, title 27, section 15200(a)(1).)

1. Pre-inspection

The CUPA is required to address pre-inspection as part of its inspection process in the I&E Plan. This may include how inspections are scheduled and prioritized, review of regulated business's files, past inspections, compliance history, California Environmental Reporting System (CERS) submittals, and any other applicable items as follows:

- Review of assigned facilities. Factors to be considered when prioritizing inspections may include, but are not limited to:
 - Facilities with a history of noncompliance;
 - Oldest date of last completed inspection;
 - Facilities for which a complaint has been received;
 - Other environmental or public health risk factors, e.g., proximity of the facility to environmental and public receptors; and
 - CalEnviroScreen Score – a mapping tool used to identify communities that are affected by sources of pollution taking into consideration population characteristics; for more information about CalEnviroScreen see <https://oehha.ca.gov/calenviroscreen>.
- Coordination of inspections with other agencies.
- Review of available information for the regulated business that includes, but are not limited to, the following:

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- The regulated business's existing and archived electronic and/or hard copy files to become familiar with current and past facility operations and inspection history.
- If the most recent inspection was conducted by another inspector, contact the inspector (if possible and as necessary) to become familiar with the facility and to note any unique issues.
- Past inspection reports, inspection notes, compliance history, and any past or ongoing enforcement actions (including multi-jurisdictional enforcement actions). It is recommended that inspectors take note of any uncorrected violations and/or any patterns of recalcitrance.
- California Environmental Reporting System (CERS) to ensure the facility has submitted any required documents (e.g., a hazardous materials business plan).
- For Hazardous Waste Facilities – the Environmental Protection Agency (EPA) ID number status and manifests in the Department of Toxic Substances Control (DTSC) Hazardous Waste Tracking System (HWTS) and/or the Transporter Quarterly Report (TQR), USEPA RCRAInfo system for the e-manifest system, Biennial Reports, and RCRA SQG/LQG generator renotifications.
- Any appropriate industry and/or regulatory background information needed to perform the inspection (i.e., to become familiar with process(es) or equipment that may be present at the facility).
- Verify internal UPA database information, including permit status, any unpaid fees, contact information, etc.
- For UST facilities – previously submitted paperwork, including any applicable test results.
- For CalARP facilities – the Risk Management Plan (RMP).
- For APSA tank facilities – the facility Spill Prevention, Control, and Countermeasure (SPCC) Plan, if available.
- Any documented safety concerns for a given regulated business (e.g., access issues, owner/operator issues, guard dogs, etc.).

2. On-site Inspection

The CUPA is required to address on-site inspection as part of its inspection process in the I&E Plan. This may include protocols for how inspections are conducted including, but not limited to, the items outlined below.

In general, upon arriving at the facility, inspectors often complete the inspection performing the following tasks:

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- Complete a visual inspection of the exterior of the facility prior to entering to identify any immediate hazards that may exist (e.g., improper discharge to a storm drain, unsafe storage, etc.).
- Present proper photograph identification and provide a business card to the facility representative.
- State the reason for the visit and obtain consent to conduct the inspection. It is recommended that the inspector explain the scope of the inspection and inform the operator that they will inspect the facility and may take photographs, collect samples, inspect and copy records, and conduct employee interviews.
- Request that a facility representative (e.g., owner, emergency coordinator, etc.) accompany the inspector during the inspection.
- Perform a facility walk-through.
- Review required site-specific environmental permits or documents (e.g., industrial waste discharge permit, SPCC Plan, etc.).
- Record inspection observations on UPA inspection report. (Note: Throughout the document, the term “inspection report” is inclusive of all Summary of Violations (SOVs), Notice of Violations (NOVs), and Notice to Comply (NTC) documents generated by UPA inspectors during inspections of regulated businesses.) Document any violations that were observed and any evidence that was collected.
- Review the inspection report with the facility representative and discuss any questions or observations they may have regarding the inspection.
- Request that the facility representative sign the inspection report and leave a copy of the inspection report identifying violations and applicable return to compliance (RTC) date(s).
- Provide the facility representative with any guidance/educational materials as appropriate.

3. Post-Inspection Procedures

The CUPA is required to address post-inspection procedures as part of its inspection process in the I&E Plan. This often include, but are not limited to, items outlined below.

Upon returning to the office after completing the on-site inspection, the inspector often performs the following tasks per a UPA’s policy or procedure:

- Update internal database information, including fee status, contact information, etc.
- Compile and annotate photographs taken during the inspection for inclusion in the final inspection report.
- Track facility’s RTC to ensure violation(s) are addressed in a timely manner.

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- If non-minor violations were identified during the inspection and noted on the inspection report, it is recommended that the inspector consult with their supervisor about any potential enforcement action.
- Review RTC documentation submitted by the regulated business for completeness and adequacy. Document all appropriate violations as corrected in the CUPA's local data management system and/or CERS upon approval of RTC.
- [It is recommended that UPAs develop written procedures to address situations when a regulated business submits a written notice of disagreement along with the returned signed NTC. (See HSC section 25404.1.2(e).) The procedures to address the regulated business's concerns often includes, but is not limited to, evaluating the disagreement, meeting with the regulated business representative to discuss the disagreement, and rescinding, modifying, or making no changes to the violation that was cited.]
 - Follow the UPA's written procedures if the regulated business submits a written notice of disagreement along with the returned signed NTC, as applicable.
- If applicable, the UPA determines whether the corrective action(s) documented or proposed to be taken by the regulated business are adequate. If the regulated business's response is inadequate, the UPA submits a written copy of that determination to the regulated business.
- Reinspection of a regulated business may be necessary to verify compliance.
- The UPA may need to initiate progressive enforcement to compel compliance.

4. Re-Inspection

The CUPA is required to address re-inspection as part of its inspection process in the I&E Plan. This often includes conditions under which the reinspection of a facility might occur including, but are not limited to:

- Any violations that do not have RTC.
- Violations that require visual confirmation.
- Failure by the regulated business to communicate with the UPA regarding violation(s) from an inspection.
- Verification of violation(s) prior to initiating formal enforcement.
- If a facility has a history of noncompliance.

B. Inspection Frequencies

Requirement: The I&E Plan shall include “[a] schedule of the inspection frequencies to be conducted that shall, at a minimum, meet the following inspection frequencies as mandated in the following statutes:

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- (A) Hazardous Waste Generator Program -- No mandated frequency.
- (B) Onsite Hazardous Waste Treatment Activities (PBR, CA, and CE) -- Initial inspection within two years of notification and every three years thereafter (HSC Section 25201.4(b)).
- (C) UST Program -- At least once every year (HSC Section 25288(a)).
- (D) HMRRP and Inventories Program -- At least once every three years (HSC Section 25511(b)).
- (E) CalARP Program -- At least once every three years (HSC Section 25537).
- (F) APSA Program -- At least once every three years for tank facilities with 10,000 gallons or more of petroleum (HSC Section 25270.5(a)).”

(California Code of Regulations, title 27, section 15200(a)(2).)

If deemed necessary, UPAs may implement inspection frequencies that decrease the length of time between inspections and inspect regulated businesses more frequently than what is mandated; however, inspection frequencies must at least meet the minimum inspection frequencies mandated by California Code of Regulations, title 27, section 15200(a)(2).

C. Inspection Frequencies for Program Elements with No Mandated Inspection Frequency

Requirement: “If there is no mandated inspection frequency, the CUPA shall establish an inspection frequency considering the following: local zoning requirements, population density, local groundwater conditions, identified hazards of a type of business, quantity and type of hazardous materials and hazardous waste, emergency response capability, compliance history, and any other pertinent local issues.” (California Code of Regulations, title 27, section 15200(e).)

When an UPA is determining the inspection frequencies for different program elements within its jurisdiction, the UPA must also take into account those types of facilities with no mandated inspection frequency. This requirement applies mainly to the hazardous waste generator (HWG) program, APSA facilities storing less than 10,000 gallons of petroleum, and any non-mandatory program element that a CUPA incorporates into its I&E program.

For more information on establishing inspection frequencies for facilities in the HWG program, please refer to the October 2021 DTSC letter regarding conditionally exempt

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small quantity generator (CESQG) facilities, which is available at: https://dtsc.ca.gov/wp-content/uploads/sites/31/2021/11/CESQG_October_2021.pdf.

APSA does not mandate a minimum inspection frequency for facilities storing less than 10,000 gallons of petroleum (Health and Safety Code section 25270.5); however, the UPA is still required to determine if a given facility is meeting all the requirements of the APSA program. For example, the I&E Plan may simply state: “all APSA facilities storing less than 10,000 gallons of petroleum are inspected every 3 years concurrently with other programs,” or alternatively, the I&E Plan may state, “the UPA does not intend to conduct APSA inspections of facilities storing less than 10,000 gallons of petroleum. Compliance at these facilities will be determined during routine inspections for other program elements.”

D. Inspection Coordination Between CUPAs and its PAs

Requirement: The I&E Plan shall include “[a] description of inspection coordination efforts between the CUPA and its PAs, if applicable.” (California Code of Regulations, title 27, section 15200(a)(3).)

Factors that may be considered when drafting this part of the I&E Plan include, but are not limited to:

- How communication is managed between the CUPA and the PA(s) regarding inspections and enforcement actions (e.g., regularly scheduled meetings, data exchange, referral systems, etc.).
- Distribution of inspection and enforcement responsibilities as outlined in any existing, established CUPA/PA agreement(s).
 - It is recommended that the I&E Plan specifically discuss the distribution of responsibilities between the CUPA and any PA(s) responsible for program implementation.
 - It is recommended that the I&E Plan be a standalone document. Incorporating another CUPA I&E Plan by reference is not recommended.
- How disputes between a CUPA and PA regarding inspections or enforcement actions are resolved.

E. Inspection Standards

Requirement: “Inspections shall be conducted according to the standards contained in statutes and regulations identified below:

- (1) Hazardous waste generator inspections [refer to HSC Sections 25150, 25159; 22 CCR, Division 4.5, Chapter 12].

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- (2) Inspection of Onsite Hazardous Waste Treatment activities under the CE, CA, and PBR tiers of Tiered Permitting [refer to HSC Sections 25200.3 and 25201.5; 22 CCR, Division 4.5, Chapter 45].
- (3) UST Program inspections [refer to HSC Section 25288; 23 CCR, Division 3, Chapter 16, section 2712 et seq.].
- (4) HMRRP Program inspections [refer to HSC Section 25500 et seq.].
- (5) CalARP Program inspections [refer to HSC Section 25533 et seq.].
- (6) APSA Program inspections [refer to HSC Section 25270.5 et seq.].
- (7) Other inspections that may be consolidated pursuant to HSC Section 25404.2(a)(4)."

(California Code of Regulations, title 27, section 15200(c).)

CUPAs may include statutory and regulatory citations, identified above, either directly or by reference when developing their I&E Plan.

F. Consolidation of Unified Program Inspections

Requirement: "Consolidation of Unified Program inspections should be considered when feasible." (California Code of Regulations, title 27, section 15200(d).)

It is recommended that UPAs seek opportunities to conduct a single inspection that combines different programs when feasible. The I&E Plan may discuss how the UPA intends to meet this requirement. This may require policies or consideration of how often the UPA collects permit fees. For example, the I&E Plan may state an annual UST inspection will include a hazardous materials business plan (HMBP) and other program elements if they are due at that time.

Consolidating program inspections does not necessarily mean one inspector must conduct an inspection of all programs at a particular facility. An UPA may have two or more inspectors conduct a single inspection splitting up the programs at the facility in an effort to meet the intent of consolidating inspections.

III. OPTIONAL INSPECTION COMPONENT SECTIONS

CUPAs may want to consider including additional topics in their I&E Plan as further discussed below. None of the additional topics identified below are required by statute or

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regulation to be included in an I&E Plan; however, CUPAs may benefit from including some or all of these additional components.

A. Optional Section – Goals of an Inspection

The CUPA may want to state the goals of an inspection and any related enforcement in its I&E Plan, which may include, but is not limited to:

- Protect public health, safety, and the environment.
- Enforce statutory and regulatory requirements.
- Assess and document compliance by the regulated community with applicable laws and regulations.
- Ensure a regulated business returns to compliance in a timely manner.

B. Optional Section – Consent

The CUPA may want to include information in the I&E Plan about the need and process for inspectors to obtain consent for conducting inspections. It is important that inspectors request and obtain consent to conduct an inspection from the authorized agent of the facility prior to beginning the inspection. This may include obtaining consent to take photographs, conducting sampling activities, and reviewing and copying documents. It is recommended that inspectors request authorization to conduct any possible activities at the beginning of the inspection even though the inspection may not require all these activities, as this removes the need to obtain additional consent later in the inspection.

Although inspectors have authority to inspect facilities, for a variety of legal and safety reasons, it is important that inspectors always obtain and document consent to enter a facility. It is recommended that all inspectors have training on entry, access, and warrants. Potential training options include: CalEPA's Basic Inspector Academy and other UPA and CalEPA trainings available at <https://calepa.ca.gov/cupa/training/>.

If consent is denied, a second attempt at obtaining consent with the regulated business is encouraged. If access is refused again, it is recommended that the inspector consider obtaining an administrative inspection warrant. It is recommended that I&E Plan include information on protocols for obtaining administrative inspection warrants.

If consent is denied or withdrawn at any time, it is important for the inspector to leave the facility, following the UPA's procedures. It is recommended that the UPA's procedure include notifying the inspector's supervisor and explaining how the inspector should document the denial or withdrawal in the inspection report. It is recommended that the notation on the inspection report include the time at which consent was denied or

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withdrawn, and name and title or position of the person denying or withdrawing consent to conduct the inspection.

If the inspector anticipates that consent may be refused, it is recommended that the inspector have a plan in place for obtaining an administrative inspection warrant.

C. Optional Section – Site Safety

It is recommended that the CUPA identify any inspector training requirements in the I&E Plan including any training requirements required by law (e.g., general site safety and hazardous waste operations training). UPA inspectors are required to comply with the California Occupational Safety and Health Administration (CalOSHA) regulations. CalOSHA regulations incorporate sound industrial hygiene principles and safety procedures that help field inspectors minimize the risks in performing their duties. The following California Code of Regulations, title 8 provisions are relevant to UPA inspectors:

- Injury and illness prevention programs, section 3203;
- Standard guardrails, section 3209;
- Guardrails at elevated locations, section 3210;
- Portable ladders, section 3276;
- Personal fall protection, section 3299;
- Personal protection devices and safeguard (i.e., personal protective equipment or “PPE”), sections 3380 through 3385;
- Control of Noise Exposure, sections 5095 through 5100;
- Respiratory protection, section 5144;
- Permit-required confined spaces, section 5157;
- Hazard communication, section 5194;
- Regulated carcinogens, section 5200 through 5220; and
- Flammable liquids, gases, and vapors, sections 5415 through 5420.

Specialized health and safety training is required for personnel involved in activities at hazardous waste sites, performing emergency response to a hazardous materials release, and specialized toxics inspections like asbestos, lead, and beryllium.

California Code of Regulations, title 8, section 5192 requires employees who are potentially exposed to hazardous substances and health hazards receive 40 hours of training including, but not limited to, the hazards present, use of PPE, safe work practices, use of engineering controls, and medical surveillance requirements. Employees who perform specific limited tasks are required to receive 24 hours of instruction. (California Code of Regulations, title 8, section 5192.)

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If required, the UPA should provide the inspector with safety equipment as outlined in their Injury and Illness Prevention Plan. Information about CalOSHA standards is available at: <http://www.dir.ca.gov/dosh/EmployerInformation.htm>.

It is important for inspectors to know how and when to wear appropriate PPE for the type of facility being inspected, always have possession of their PPE, and ensure all PPE is kept in good working order. It is recommended that the inspector ask if the facility that is being inspected has any areas that require specialized PPE prior to entering the area of the facility that is being inspected. It is recommended that the inspector conduct the inspection with a facility representative and follow all required safety protocols at the facility. A fact sheet on inspector safety is available at: <http://www.calepa.ca.gov/CUPA/Resources/>.

D. Optional Section – General Inspection Protocols

The CUPA may want to consider including general inspection protocols in its I&E Plan. General inspection protocols that UPA inspectors may want to consider prior to and during the inspection of a facility include, but are not limited to the following:

- Unannounced inspections are preferred to announced inspections. However, there may be instances where announced inspections are necessary (e.g., access to equipment, security, contacts, UST inspections, etc.).
- Inspections of facilities should generally be conducted during the facility's normal hours of operation.
- It is important for inspectors to maintain a professional, courteous, and respectful demeanor.
- Safety must be a primary consideration when involved in any fieldwork. It is recommended that UPAs follow any internal department safety guidelines prior to conducting an inspection.
- When in the field, it is important for inspectors to wear appropriate clothing and safety equipment (e.g., steel-toed safety boots, safety glasses, hardhats, ear protection, etc.).
- It is important for inspectors to always be aware of their surroundings. It is recommended that inspectors never enter an area where unknown hazards are likely without taking the proper precautions.
- If safety issues arise, it is recommended that an inspector advise the facility operator to mitigate the safety issues and/or discontinue the inspection, document the situation and confer with their supervisor.
- It is recommended that inspectors display agency identification upon arriving on site for inspection.
- During an inspection, UPAs may want to consider stating the nature of the visit (e.g., complaint response, routine inspection, incident response, etc.). Inspectors are not required to do this and in some cases this may not be advisable.

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E. Optional Section – Role of the Inspector

The role of the UPA inspector is often to assess the regulated business's compliance with applicable laws and regulations and take appropriate action to ensure compliance by all "regulated businesses" as that term is defined in California Code of Regulations, title 27, section 15110(k).

The following code sections give UPAs the authority to inspect:

- Unified Program general authority – Health and Safety Code section 25404.2(b);
- Hazardous Waste – Health and Safety Code section 25185(a);
- CalARP – Health and Safety Code section 25537(a);
- Hazardous Materials Release Response Plan (HMRRP) – Health and Safety Code section 25511(a) and (b);
- UST – Health and Safety Code section 25289; and
- APSA – Health and Safety Code sections 25270.5(a) and (b) and 25270.4.5(b)(2).

Inspectors are encouraged to use a variety of educational tools to educate regulated facilities about compliance standards, which may include, but is not limited to: providing the regulated facilities with newsletters, informational brochures, on-line resources, information on available training workshops and seminars as well as technical assistance, compliance manuals, and checklists.

F. Optional Section – Inspections: Things to Avoid

The CUPA may want to highlight in the I&E Plan things the inspector should avoid doing when conducting an inspection. This may include, but is not limited to:

- Providing recommendations regarding specific equipment types or modifications required;
- Recommending any specific service provider;
- Opening drums or containers – instead, it is safer to ask the facility representative to have someone open the drums and/or containers;
- Touching any monitoring panels and equipment; and
- Becoming the facility's consultant.

G. Optional Section – Interviewing Techniques for Inspectors

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It is recommended that the CUPA include information about inspector interviewing techniques in the I&E Plan. The purpose of an interview is to gather information to verify compliance with applicable statutory and regulatory requirements. Critical information is often obtained when interviewing people. It is important for inspectors to properly prepare for and conduct and document an interview. For example, it is recommended that an inspector confirm the interviewee's name, title, and position and establish a good working relationship (rapport) with the person that is being interviewed.

Training on conducting interviews is offered by various entities. For example, Western States Project (see <http://www.regionalassociations.org/>) offers this training as well as the California CUPA Forum Board during the Annual California Unified Program Conference (see <https://www.calcupa.org/conference/index.html>).

H. Optional Section – Report Writing Procedures

It is recommended that the CUPA address report writing procedures in the I&E Plan. Inspection reports guidance is available at: <http://www.calepa.ca.gov/CUPA/Resources/>.

I. Optional Section – Proposition 65

The CUPA may want to include information about Proposition 65 obligations in the I&E Plan. Proposition 65 is the Safe Drinking Water and Toxic Enforcement Act of 1986 and is intended to protect California citizens and the state's drinking water from chemicals known to cause cancer, birth defects, or other reproductive harm. Health and Safety Code section 25180.7 requires a "designated government employee" (including any employee who files a form 700 with the Fair Political Practices Commission) who obtains information in the course of his or her official duties (i.e., on the job) of an illegal discharge or threatened discharge of a hazardous waste that is likely to cause substantial injury to public health or safety, must within 72 hours disclose such information to the Board of Supervisors and Local Health Officer. Additional information about Proposition 65 is available on CalEPA's website at: <http://www.calepa.ca.gov/CUPA/Resources/>.

J. Optional Section – Quarantining Hazardous Waste

It is recommended that the CUPA address when quarantining hazardous waste may be necessary in the I&E Plan. "If an [inspector] has probable cause to believe that any hazardous waste, or any material which the inspector reasonably believes to be a hazardous waste is stored, transported, disposed of, or handled in violation of [Health and Safety Code Chapter 6.5] or in a manner that will constitute a violation of [Health and Safety Code Chapter 6.5], and that the violation may threaten public health and safety or the environment, the [inspector] may issue an order of quarantine by affixing a tag or other

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appropriate marking to the container containing, or to the vehicle transporting the hazardous waste.” (Health and Safety Code section 25187.6(a)).

K. Optional Section – Inspecting Local and State Government Facilities

It is recommended that the CUPA address inspections of local and state government facilities in the I&E Plan. Unless explicitly provided, local and state government facilities do not have exemptions from state or federal environmental laws. Local and state government facilities should be treated the same as any other regulated facility. If a UPA has any difficulty or conflict of interest associated with inspecting or taking enforcement against a local government facility, it is recommended that the UPA contact CalEPA Unified Program staff for assistance.

IV. I&E PLAN REQUIREMENTS: ENFORCEMENT

As noted in the Introduction, each CUPA is required to develop and implement an I&E Plan. (California Code of Regulations, title 27, section 15200(a).) This section discusses the enforcement component of the I&E Plan as required by California Code of Regulations, title 27, section 15200(a)(4) – (11).

A. Enforcement Notification Procedures

Requirement: The I&E Plan shall include “[e]nforcement notification procedures that ensure:

- (A) Appropriate confidentiality; and
- (B) Coordination and timely notification of appropriate agency(ies).”

(California Code of Regulations, title 27, section 15200(a)(4)).

(1) Appropriate Confidentiality

It is recommended that UPAs develop a procedure that is identified in the I&E Plan to ensure that appropriate confidentiality is maintained during any enforcement matter. While some information must and should remain confidential, there is a great deal of enforcement information that can be shared. See CalEPA’s Guidance for Sharing Enforcement Information with Communities at https://calepa.ca.gov/wp-content/uploads/2022/12/CalEPA-Enforcement-Sharing-Guidance_Nov2022.pdf.

It is recommended that the I&E Plan also address how inquiries from the press should be processed. Some CUPAs forward press inquiries to management and information officers for review and subsequent action.

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For Public Records Act requests, it is recommended that UPAs follow any applicable policies and consult legal counsel, as needed.

(2) Coordination and Timely Notification

It is recommended that the I&E Plan discuss the process for referring enforcement matters to the UPA's prosecuting agency's office, such as district attorney, city attorney, county counsel, attorney general, and/or U.S. attorney. Case-Referral Guidance and several example referral letters to prosecuting agencies are available under the "Enforcement" subheading at: <http://www.calepa.ca.gov/CUPA/Resources/>.

The referral process often includes the following:

- A specific timeframe in the referral letter, after which the UPA may consider alternative action;
- Internal tracking to include the date the referral was made, and the date specified in the referral letter for potential alternative action;
- The ultimate outcome of the referral, with a date; and
- The alternative action taken and date.

It is recommended that UPAs follow up with the prosecuting agency prior to taking any alternative action that may be specified in the referral letter to ensure proper coordination. This process respects the prosecuting agency's authority to make civil, criminal, or other filing decisions based on the information provided and retains the UPA's ability to take an alternative enforcement action if the prosecuting agency decides not to accept the case. Referrals to prosecuting agencies are further discussed below.

B. Identification of Available Enforcement Options

Requirement: The I&E Plan shall include "[i]dentification of all available enforcement options." (California Code of Regulations, title 27, section 15200(a)(5).)

It is recommended that the I&E Plan include a discussion of the following two types of enforcement actions:

- "Informal enforcement means a notification to the regulated business of non-compliance that establishes an action and a date by which that non-compliance is to be corrected. Examples include, but are not limited to, a letter, notice of violation (NOV), or notice to comply. Informal Enforcement does not impose sanctions." (California Code of Regulations, title 27, section 15110(e)(2).) Informal enforcement can be a useful tool and it is recommended that it be documented.

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However, formal enforcement may be required to, among other things, protect public health, safety, and the environment; ensure a regulated business returns to compliance in a timely manner; punish the violator for non-compliance; etc.

- “Formal enforcement means a civil, criminal, or administrative action towards the regulated business that mandates compliance, imposes sanctions, and results in an enforceable agreement or order. Enforceable agreement or order means the instrument creates an independent, affirmative obligation for the regulated business to comply and imposes sanctions for the prior failure to comply. Sanctions include fines and penalties as well as other tangible obligations, beyond returning to compliance, that are imposed upon the regulated business.” (California Code of Regulations, title 27, section 15110(e)(1).)

Even if a regulated business has completed RTC activities, the UPA may still decide to take formal enforcement if a non-minor violation occurred. However, formal enforcement should not be delayed simply because RTC has not been achieved yet.

It is recommended that the I&E Plan include a list of available informal enforcement options, which may include:

- Notice to Comply (NTC): When an inspection is conducted and minor violations are identified, the inspector shall issue a NTC to the regulated business. (Health and Safety Code section 25404.1.2(b).) An UPA shall require the business to respond with a certification of compliance indicating the minor violations have been corrected. (*Id.*)
- Notice of Violation (NOV): When an inspection is conducted and violations are identified, the inspector may issue a NOV to the regulated business and require the regulated business to respond with a certification of compliance indicating the violations have been corrected.
- Summary of Violations (SOV): SOVs are only applicable to inspections of hazardous waste generator program facilities. When a hazardous waste generator inspection is conducted and violations are documented, “the inspector shall deliver to the operator of the facility or site a written summary of all violations alleged by the inspector. The inspector shall, prior to leaving the facility or site, deliver the written summary to the operator and shall discuss any questions or observations that the operator might have concerning the inspection.” (Health and Safety Code section 25185(c)(1).)
- Re-Inspection: When a regulated business has not returned to compliance in the specified timeframe, an UPA may choose to re-inspect the facility before taking additional formal or informal enforcement. Re-inspections may be separately billed. (California Code of Regulations, title 27, section 15210(b)(1)(C).)

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- Compliance Meeting: If the regulated business does not RTC, a meeting may be scheduled with the regulated business. The purpose of the meeting is to convey the importance of compliance and explain the possible consequences of non-compliance. If appropriate, a compliance agreement may be reached. It is recommended that a letter confirming the meeting and any agreements be prepared after the meeting and a re-inspection conducted.
- Failure to RTC Letter: If the regulated business does not RTC, a failure to RTC letter may be sent to the regulated business. The purpose of the letter is to convey the importance of compliance and explain the possible consequences of non-compliance.

It is recommended that the I&E Plan include a list of available formal enforcement options, which may include:

- Notice of Significant Violations UST: (UST Red Tag Authority is outlined in Health and Safety Code section 25292.3 and California Code of Regulations, title 23, sections 2717 through 2717.7.) UPAs may, upon the discovery of a significant violation that poses an imminent threat to human health, safety, or the environment, immediately affix red tag to the fill pipe to provide notice that the delivery of petroleum into the UST system is prohibited.
- Administrative Enforcement Orders (AEOs): The AEO is a type of formal enforcement that may be used by an UPA to require a regulated business to correct violations and pay an administrative penalty. (Health and Safety Code section 25404.1.1.) AEO Guidance is available at: <https://calepa.ca.gov/wp-content/uploads/2024/08/AEO-Guidance-July-2024.pdf>
- Unified Program Facility Permit (UPFP) Decisions: UPAs may withhold, modify suspend, or revoke a UPFP, or not issue or renew a UPFP for various reasons as discussed below.

If a regulated business is in violation, the violator has a continuing history of noncompliance, or is not responding to previous informal enforcement actions, the UPFP may be revoked. UPAs may revoke the UPFP pursuant to local administrative procedures provided the revocation also includes conditions of permit reissuance.

Health and Safety Code section 25404.1.1(k)(2) authorizes UPAs to withhold, suspend, or revoke a UPFP for not paying permit fees, fines or penalties associated with a permit, or failing to comply with an order or written notice issued pursuant to Health and Safety Code section 25510(e)(1)(A). Health and Safety Code section 25404.1.1(k)(3)(B) states that a Unified Program facility shall immediately discontinue operations if the facility does not have a valid permit, or if the permit element has been suspended or revoked. The CUPA is required to establish UPFP

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permitting procedures that address permit revocation. (CCR, title 27, section 15190(b)(2).)

In addition, Health and Safety Code section 25285.1 allows the UPAs to revoke or modify an UST permit “for cause, including, but not limited to, any of the following:

- (1) Violation of any of the terms or conditions of the permit.
- (2) Obtaining the permit by misrepresentation or intentional failure to fully disclose all relevant facts.
- (3) A change in any condition that requires modification or termination of the operation of the underground storage tank.”

(California Health and Safety Code section 25285.1(a).)

UPAs should also be aware of UST-specific permit options. “The local agency shall revoke the permit of an underground storage tank issued pursuant to Health and Safety Code section 25284 if the owner or operator is not in compliance with Article 3 (commencing with Section 25299.30) of Chapter 6.75 on the date three months after the date on which the owner or operator of the tank first becomes subject to Article 3 (commencing with Section 25299.30) of Chapter 6.75.” (Health and Safety Code section 25285.1(b).)

Also, Health and Safety Code section 25285(b) discuss instances where a UST operating permit shall not be issued or renewed, including:

- (1) A facility operating a UST while a red tag is affixed.
- (2) A facility that is currently undergoing an Enforcement Action
- (3) A facility that has not paid the fee and surcharge required by Section 25187.

Lastly, the UPAs may also consider conditional authorization or permit-by-rule regulated facilities for revocation or suspension of authorization pursuant to Health and Safety Code section 25186.7 and California Code of Regulations, title 22, section 67450.9(a-b).

- Referral to Outside Agencies: “UPAs are responsible for initiating enforcement actions, but may refer formal enforcement cases to the appropriate local, state, or federal agency for their consideration.” (California Code of Regulations, title 27, section 15200(g).) The next three bullets discuss referral options.

Note: While referrals to outside agencies are not considered formal enforcement, a civil or criminal case that is developed because of a referral would be formal enforcement.

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- Referral to Local, Regional, or State Prosecutors

The UPA may refer the case to the district attorney, city attorney (in large cities where the city attorney has authority to file misdemeanors under state law), County counsels, or attorney general for civil or criminal prosecution. It is recommended that the referral include a statement of facts and all information necessary for the prosecuting agency to take action.

If UPAs have difficulty finding a prosecuting agency to take the case, the UPAs may want to consider contacting the appropriate State Agency for assistance or initiating its own enforcement action.

- Referral to State Agency: For violations of the UST, HWG, HMBP, and CalARP programs, enforcement referrals may be made to a state agency for consideration. UST violations may be referred to the UST Enforcement Unit at the State Water Resources Control Board. HWG violations associated with hazardous waste generator and tiered permitting facilities may be referred to DTSC to revoke or suspend authorization (Health and Safety Code section 25186.7) or for administrative or civil enforcement action. Violations of the HMBP and CalARP programs may be referred to the HMBP-CalARP Unit at CalEPA. It is recommended that the referral include a statement of facts and all evidence supporting the alleged violations. Prior to making a referral, it is recommended that the UPA consult with the agency to determine if the agency will likely accept the case

If the referral is not accepted or acted on by the State Agency, the UPA may initiate its own enforcement action.

- Referral to USEPA: The violations at UST facilities, hazardous waste facilities, CalARP facilities, Emergency Planning and Community Right-to-Know Act (EPCRA) Tier II facilities, and APSA facilities subject to the SPCC rule may be referred to USEPA for appropriate enforcement action. It is recommended that the referral include a statement of facts and all evidence supporting the alleged violations. Prior to referral, it is recommended that the UPA consult with USEPA to determine if the USEPA is likely to accept the case.

If the referral is not accepted or acted on by USEPA, the UPA may consider initiating its own enforcement action.

- Optional – Local UPA Enforcement Actions: UPAs may also implement enforcement options not included on this list through local ordinances if desired and deemed necessary.

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C. Uniform and Coordinated Application of Enforcement Standards

Requirement: The I&E Plan shall include “[u]niform and coordinated application of enforcement standards that includes:

(A) Identification of penalties and enforcement actions that are consistent and predictable for similar violations and no less stringent than California statutes and regulations.

(B) A description of the progressive enforcement actions the UPA shall initiate and implement until compliance has been achieved.”

(California Code of Regulations, title 27, section 15200(a)(6).)

1. Enforcement Actions

It is recommended that the following factors be considered when determining the appropriate type of enforcement:

- The extent of deviation from statutory and regulatory requirements.
- The actual or potential for harm or threat to human health, safety, and the environment.
- The violator’s compliance history.
- The violator’s good faith efforts to comply or lack of efforts.
- The deterrent effect on the violator and the regulated community.
- Any unusual circumstances and or mitigating factors.
- Whether the violator has gained an economic benefit as a result of the noncompliance. Economic benefit includes, but is not limited to, avoided costs, increased profits, having the use of capital from delayed or avoided costs, and avoided interest.

2. Penalties

Formal administrative enforcement generally includes assessment and collection of penalties. It is recommended that the I&E Plan identify minimum and maximum penalty amounts for each program element that are consistent with applicable statutes and regulations. It is also recommended that the I&E Plan discuss procedures governing how penalties will be determined and/or adjusted based on various factors.

Health and Safety Code section 25404.1.1(b) requires UPAs to consider the following when establishing a penalty amount:

- “nature, circumstances, extent and gravity of the violation,”

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- “the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment,”
- “the violator's ability to pay the penalty, and”
- the deterrent effect that the imposing the penalty would have on both the violator and the regulated community.”

For hazardous waste violations, additional administrative penalty assessment procedures are contained in California Code of Regulations, title 22, sections 66272.60 – 66272.69. Some UPAs use the hazardous waste penalty regulations as guidance for determining penalty amounts for other types of Unified Program violations. For additional information about penalty calculations, see the Administrative Enforcement Order Guidance document at available on the CalEPA website.

Program Specific Penalty Provisions

- General Unified Program:
 - Health and Safety Code, Division 20, Chapter 6.11, section 25404.1.1(a)(6)
- Hazardous Materials Release Response Plans:
 - Health and Safety Code, Division 20, Chapter 6.95, Article 1, sections 25515, 25515.2, and 25515.3
- CalARP:
 - California Code of Regulations, title 19, section 5140.5
 - Health and Safety Code, Division 20, Chapter 6.95, Article 2, sections 25540, 25540.5, and 25541
- UST
 - Health and Safety Code, Division 20, Chapter 6.7, sections 25292.3, 25299, 25299.01, 25299.02, 25299.03, and 25299.04
- APSA
 - Health and Safety Code, division 20, Chapter 6.67, sections 25270.12 and 25270.12.1
- Hazardous Waste Generators, Recyclers, Tiered Permitting (PBR, CA, CE), and Household Hazardous Waste Facilities
 - Health and Safety Code, Division 20, Chapter 6.5, sections 25180, 25187, 25188, 25189, 25189.1, 25189.2, 25189.4, 25189.5, 25189.6, 25189.7, 25190, 25191, and 25192
 - California Code of Regulations, title 22, sections 66272.60 – 66272.69

Supplemental Environmental Projects (SEPs)

As stated on CalEPA's website, a SEP “is an environmentally beneficial project that is included as part of a settlement for environmental violations. Violators can voluntarily agree to undertake such projects in lieu of part of the penalty that they are required to pay for the

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violations.” (see <https://calepa.ca.gov/enforcement/supplemental-environmental-projects/>.) It is recommended that the I&E Plan identify when SEPs should be considered as part of a settlement and what requirements must be met (e.g., there needs to be a nexus between the violation and the proposed project). For additional information about SEPs, see CalEPA’s website at <https://calepa.ca.gov/enforcement/supplemental-environmental-projects/>.

3. Progressive Enforcement

Unified Program regulations require that an UPA shall initiate progressive enforcement actions based on the severity of the violations until compliance has been achieved. For violations and regulated businesses that fail to RTC, it is highly recommended that formal enforcement be considered. It is recommended that the description of progressive enforcement that is in the I&E Plan clarify how a CUPA will implement its enforcement actions to accomplish the following goals:

- Return violators to compliance in a timely manner.
- Promote compliance with statutes and regulations.
- Escalate enforcement actions as necessary for continued non-compliance.
- Initiate and conclude enforcement activities in a timely manner.
- Treat facility owners and operators equitably and consistently.
- Deprive violators of any economic benefit gained from violations.
- Prevent any businesses from having an unfair business advantage through non-compliance.
- Deter future violators.

D. Provisions for Multi-Media Enforcement

Requirement: The I&E Plan shall include “[p]rovisions for multi-media enforcement in order to promote the effective detection, abatement and deterrence of violations affecting more than one environmental medium or regulatory scheme.” (California Code of Regulations, title 27, section 15200(a)(7).)

Multi-media inspections are inspections involving more than one environmental medium (e.g., air, water, soil) of a regulated business that results in interagency inspections. USEPA developed a [Multi-Media Investigation Manual](#) that is “a guide for investigators who conduct multi-media environmental compliance investigations of facilities that discharge, emit, prepare, store, or dispose of pollutants regulated by federal, state, and local environmental laws and regulations.”

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The following is a non-comprehensive list of multi-media provisions that CUPAs have included in I&E Plans. It is recommended that CUPAs drafting or updating their I&E Plan review this list and incorporate or develop multi-media enforcement elements as appropriate:

- Inspectors may oversee both CUPA and non-UPA programs during an inspection. Non-UPA programs include public drinking water systems, retail food facilities, public swimming pools, solid waste facilities, medical waste generators, and tattooing and body piercing facilities.
- Inspectors become familiar with the responsibilities and jurisdictions of other federal, state, and local environmental regulatory agencies through in-house technical training for new employees and through cross training of existing staff. In addition, UPAs maintain a contact list for these other agencies. These agencies may include but are not limited to: USEPA, US Coast Guard, DTSC, State Water Board, Cal OSHA, Department of Pesticide Regulation, Department of Fish and Wildlife, Department of Health and Human Services, California Department of Transportation, California Department of Motor Vehicles, State Bar of California, Contractors State License Board, Regional Water Quality Control Board, local fire departments, local and/or state law enforcement, local planning and public works departments, local sewer agencies, and local agricultural commissioner.
- Local code enforcement information.
- Inspectors are encouraged to develop positive working relationships with contacts from other regulatory agencies within their assigned districts, which includes performing joint inspections as necessary. If violations involve multiple regulatory agencies, the inspector attempts to schedule a joint inspection with the other agencies. If meetings are scheduled to work out a compliance schedule, members of other agencies who may have an interest in the facility are invited.
- The UPA regularly attends and participates in Enforcement Task Force meetings. Ongoing enforcement cases may be discussed at this meeting and where possible, follow-up inspections and enforcement activities are coordinated between the various agencies involved.
- Representatives from other regulatory agencies are invited to speak at staff meetings to improve the inspectors' understanding of the role of the other agency and to facilitate interagency communication.

E. Procedures for Ensuring Consistency and Coordination

Requirement: The I&E Plan shall include “[a] description of how the CUPA minimizes or eliminates duplication, inconsistencies, and lack of coordination within the inspection and enforcement program.” (California Code of Regulations, title 27, section 15200(a)(8).)

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It is recommended that the description include, but is not limited to, how CUPAs coordinate enforcement activities with state and federal agencies when practical to eliminate duplicative enforcement efforts and ensure a consistent application of enforcement standards.

The following are examples of techniques CUPAs have used:

- Provisions for combined enforcement, joint enforcement, and integrated/multi-media enforcement. (California Code of Regulations, title 27, section 15200(a)(7).)
 - Combined enforcement is defined as enforcement activities concerning a regulated facility by one inspector representing two or more Unified Program elements or other program elements.
 - Joint enforcement is enforcement of a regulated facility, conducted by two or more inspectors representing different enforcement agencies.
 - Integrated/multi-media enforcement is enforcement involving Unified Program and non-Unified Program agencies, state, and/or federal agencies covering more than one environmental medium (e.g., air, water, soil) of a regulated facility that can result in consolidating enforcement.
- A discussion of any regular meetings that take place between a CUPA, its PAs (if applicable), and any external agencies to ensure consistency and eliminate duplication within its inspection and enforcement program.
- Provisions for coordinating with any environmental task forces. The task force approach of combining federal, state, and local regulatory and law enforcement resources has proved to be a particularly effective tool because of the multi-media nature of environmental enforcement. These cooperative partnerships allow the task force members to pursue investigations that no single entity has the resources to complete individually.
 - Environmental task force coordination is a type of multi-media enforcement where a CUPA participates in regional task forces that facilitate the pooling and exchange of resources dedicated to the deterrence, detection, investigation, and prosecution of environmental violations.
- A description of how new and existing staff inspectors are trained to ensure coordinated and consistent application of compliance, monitoring, and enforcement (CME) standards.
- A CUPA training program procedure often fulfills this requirement.
- Procedures on how a CUPA will conduct audits of CUPA CME data and its local Data Management System (if applicable) to ensure data quality.

F. Coordination of Enforcement Between CUPAs and PAs

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Requirement: The I&E Plan shall include “[p]rocedures for coordinating enforcement efforts between the CUPA and its PA(s), if applicable.” (California Code of Regulations, title 27, section 15200(a)(9).)

Things to consider when drafting these procedures include, but are not limited to:

- How communication and coordination is managed between CUPA and PA(s) enforcement staff regarding inspections and enforcement actions (e.g., regularly scheduled meetings, data exchange, referral systems, etc.).
- Distribution of inspection and enforcement responsibilities as outlined in any existing, established PA agreement or Memorandum of Understanding (MOU).
- How disputes will be resolved between a CUPA and its PA(s) regarding inspections or enforcement actions.

G. Procedures for Addressing Complaints

Requirement: The I&E Plan shall include “[p]rocedures for addressing complaints, including but not limited to the receipt, investigation, enforcement, and closure of a complaint.” (California Code of Regulations, title 27, section 15200(a)(10).)

It is recommended that the I&E Plan include:

- Procedures for receiving complaints from the regulated community, the general public, and the CalEPA Environmental Complaint System.
- Procedures for ensuring the timely investigation of any complaint received by an UPA.
- Procedures for ensuring appropriate enforcement associated with a complaint is taken, if needed.
- Procedures for documenting a complaint from initial notification to closure.
 - Closure of a complaint can include, but is not limited to, reaching a final judgement on an enforcement action, referral to external agencies, and/or obtaining RTC on violations cited as a result of a complaint inspection.
- Procedures for the submittal of findings and references of referral in the CalEPA Environmental Complaint System.

H. Sampling Capabilities

Requirement: The I&E Plan shall include “[p]rovisions for ensuring the CUPA has sampling capability, which may include sampling by a qualified person and ensuring the analysis of any material shall be performed by a state certified laboratory pursuant to HSC, Chapter 6.5, Section 25198.” (California Code of Regulations, title 27, section 15200(a)(11).)

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These provisions may include, but are not limited to, the following:

- Provisions to ensure that samples are collected either by a qualified inspection staff and/or a qualified person or entity outside the CUPA. Staff training relevant to sample collection may include, but is not limited to:
 - Sampling methodologies, use of sampling equipment, sampling of hazardous substances, and any other topics relevant to the collection, proper handling, and analysis of collected samples.
- Identification of sampling equipment available to qualified inspection staff. (See California Code of Regulations, title 27, sections 15260 and 15270). Examples of sampling equipment include, but are not limited to:
 - Ice chests, collection media, scoops, bags, labels, chain of custody documentation, and any other reusable or disposable equipment.
- Provisions to ensure collected samples are analyzed by a state-certified laboratory. This process may include, but is not limited to:
 - Procedures for appropriate preservation, storage, and shipping of collected samples.
 - Procedures for maintaining chain of custody for collected samples.

A list of state-certified Environmental Laboratory Accreditation Program (ELAP) laboratories is available at: https://www.waterboards.ca.gov/drinking_water/certlic/labs/.

Note: It is recommended that UPAs take into consideration the level of specificity contained in their sampling procedures. Highly detailed procedures can have potentially negative consequences on enforcement.

V. ANNUAL REVIEW OF THE I&E PLAN

Requirement: “The CUPA shall review the Inspection and Enforcement Plan annually and revise it as necessary. (1) “The CUPA shall consult and reach consensus with its PA(s), if applicable, prior to any changes that affect program elements for which the PA is responsible.” (California Code of Regulations, title 27, section 15200(b).)

It is recommended that in the I&E Plan, the CUPA include provisions for the annual review and revision of the I&E Plan, the review process, and that the annual review is tracked and documented. CUPAs have tracked this review process in several ways; however, annual review documentation should include, at a minimum:

- A date of latest revision on the cover page of the I&E Plan.
- A change log included with the I&E Plan document.
- Retention of old/outdated I&E Plans as part of the CUPA data management policy.