



**DEPARTMENT OF FORESTRY AND FIRE PROTECTION
OFFICE OF THE STATE FIRE MARSHAL**

P.O. Box 944246
SACRAMENTO, CA 94244-2460
(916) 568-3800
Website: www.fire.ca.gov



June 10, 2019

Greg Vlasek
Assistant Secretary
Local Program Coordination and Emergency Response
California Environmental Protection Agency
P.O. Box 2815
Sacramento, California 95812

**SUBJECT: REVISED IMPERIAL COUNTY CUPA CERTIFICATION APPLICATION –
REQUEST FOR STATE PROGRAM AGENCY REVIEW, COMMENTS, AND
RECOMMENDATIONS**

Dear Assistant Secretary Vlasek:

This letter is in response to the California Environmental Protection Agency's (CalEPA) memorandum, dated May 14, 2019, regarding the revised Imperial County CUPA Certification Application. Based on a review of the revised (2019) application, this letter documents the comments and recommendations from the Department of Forestry & Fire Protection (CAL FIRE) – Office of the State Fire Marshal's (OSFM).

The Imperial County Fire Department (ICFD) addressed most of OSFM's 17 comments from ICFD's 2018 application except for the following items.

1. **Comment 3** – The application stated that if certified, the Department of Toxic Substances Control (DTSC) will continue inspection activities during the transition until ICFD staff is adequately trained. The validity of whether DTSC will continue inspection activities in Imperial County during the transition has not been confirmed.

ICFD Response to Comment 3 – The application has been reviewed and clarified to reflect that ICFD staff will receive training through CalEPA, SWRCB [State Water Resources Control Board], DTSC [Department of Toxic Substances Control], the California CUPA Forum, and private vendors, for conducting inspections related to all of the Unified Program elements. Such training shall take place within six (6) months of ICFD becoming certified as the Imperial County CUPA, and shall continue as training opportunities become available. All staff will be trained in each program area of the Unified Program. Additionally, ICFD is currently in discussions with the State CUPA [DTSC Imperial CUPA] operating in Imperial County regarding opportunities to transition qualified State CUPA staff to ICFD, or to have State CUPA staff assist in training.

OSFM response to ICFD revised application – The validity of whether DTSC will continue inspection activities in Imperial County CUPA during the transition is still unconfirmed. The revised application does not include information to support that, if ICFD is certified, DTSC will in fact continue inspection activities until ICFD staff is adequately trained. In addition, ICFD stated in their revised application (page 16) and in their above response that their staff will receive technical training through CalEPA, SWRCB, DTSC, California CUPA Forum, and private vendors, but the Aboveground Petroleum Storage Act (APSA) Basic Inspector Training is not offered by any of those agencies or entities at this time. Page 25 of the revised application states that ICFD will consolidate its inspections and make the process more efficient and have fire prevention staff conduct CUPA required inspections and the fire code inspections during the same visit, albeit the organizational chart on page 13 separates the CUPA and fire prevention functions. Therefore, ICFD should be proactive by having existing staff meet the training requirements now, in addition to hiring four new staff in the future, to be able to conduct CUPA compliance inspections. The CAL FIRE-OSFM APSA Basic Inspector Training is available to all Unified Program Agencies via an online course and OSFM is open to allowing ICFD staff take this training if requested.

2. **Comment 8** - HSC Section 25270.5(a) is referenced as the ICFD's authority, if certified, to inspect APSA tank facilities on page 23. The ICFD's proposed inspection frequency is to inspect APSA tank facilities at least once every three years. Without indicating a petroleum storage capacity threshold, the proposed frequency assumes all types of APSA tank facilities are included and expected to be inspected at least once every three years. Unified Program Agencies are required to inspect APSA tank facilities with 10,000 gallons or more of petroleum storage capacity at least once every three years (per HSC 25270.5(a)); however, HSC 25270.5(b) allows a Unified Program Agency to develop an alternative inspection frequency subject to approval by the Secretary and the CAL FIRE-OSFM. The ICFD's goal to inspect all APSA tank facilities is ambitious. The ICFD, if certified, will be required to meet the minimum APSA inspection frequency. However, after implementing the APSA program for at least a few years, the ICFD may review and revise its APSA program inspection frequency.

ICFD response to Comment 8 – Comment noted regarding the ability to revise the APSA program inspection frequency, subject to approval by the Secretary for Environmental Protection and the CAL FIRE Office of the State Fire Marshal. The Application has been reviewed and clarified by including APSA within the programs subject to single inspection integration and coordination.

OSFM response to ICFD revised application – If the ICFD's goal is to inspect all APSA tank facilities at least once every three years and included the applicable cost of inspections in ICFD's proposed fees, then ICFD, if certified, has the authority to inspect all the APSA regulated tank facilities. However, OSFM requests that the citation on its inspection frequency table shown on pages 24-25 of

the revised application be amended to Health and Safety Code (HSC) Section 25270.5(b) for ICFD's alternative inspection frequency. Additionally, OSFM requests that Table 1 on page 6 of the revised application be amended to show that the minimum APSA mandated inspection frequency correctly states "at least once every 3 years for tank facilities with 10,000 gallons or more of petroleum" per HSC Section 25270.5(a).

3. **Comment 11** – The application states that, "in the event of continued noncompliance [even after issuance of a Notice of Violation], a formal enforcement action (Administrative Enforcement Order) *may* be initiated if deemed appropriate." Refer to above comments to Page 29. Also, the agency will be expected to follow its Inspection and Enforcement Plan in terms of its graduated series of enforcement actions.

ICFD Response to Comment 11 – The Application has been reviewed and clarified by indicating that enforcement actions "shall" be initiated, rather than "may" be initiated, as required by California Code of Regulations, Title 27, Section 15200(a)(9).

OSFM response to ICFD revised application – Language has been modified in the revised application's Enforcement Plan – Statutory Authority section on page 32 to specify that ICFD *shall* initiate enforcement. However, the revised application's Enforcement Plan – Roles and Responsibilities section on page 34 still states that, "In the event of continued noncompliance, a formal enforcement action (Administrative Enforcement Order) *may* be initiated if deemed appropriate." The California Code of Regulations, Title 27, Section 15200(a)(9) requires that a CUPA, as part of their Inspection and Enforcement Plan, has a description of the graduated series of enforcement actions that the Unified Program Agency *shall* initiate based on the severity of the violation.

4. **Comment 14** – The number of facilities depicted in Table 3 on page 57 does not align with the numbers shown on pages 6 and 56. The number of facilities on pages 6 and 56 were based on data from CERS on 4/19/18. The number of facilities shown on page 57 does not indicate its origin and are lower than those on page 6 (from CERS). Table 3 on page 57 is the basis for ICFD's workload and staff time allocation. Also, Table 3 shows a separate allocation for the HMMP-HMIS program; facilities regulated under the fire code hazardous materials management plan (HMMP) and hazardous materials inventory statement (HMIS) requirements should be consolidated with the HMRRP (Business Plan) program. On page 57, there's a substantial discrepancy between the number of facilities regulated under the HMMP-HMIS requirements compared to those regulated under the HMRRP (Business Plan) program.

Below is a chart showing the numbers of businesses or facilities regulated under the APSA and HMMP-HMIS programs as stated in the application. The numbers of businesses or facilities regulated under such programs taken from CERS on November 30, 2018, have been included in the chart for comparison.

Program	CERS (11/30/18)	Pages 6 and 56 (CERS 4/19/18)	Page 57
APSA	262	184	73
HMMP-HMIS	942 (included under HMRRP)	917 (included under HMRRP)	748 (vs 367 for HMRRP)

ICFD Response to Comment 14 – The Application has been reviewed and clarified by revising Table 3 to reflect the number of facilities stated on pages 6 and 66 [64] of the Application.

OSFM response to ICFD revised application – The revised application now shows consistent numbers of regulated facilities for APSA and the HMMP-HMIS (or HMBP) programs. However, the numbers are based on CERS information from April 19, 2018. The total number of regulated facilities under these programs have changed, especially for the APSA program. Based on CERS information on June 3, 2019, the total number of APSA tank facilities are 289, which is a 157 percent increase compared to the CERS information from April 19, 2018. Also, based on CERS information on June 3, 2019, the total number of HMMP-HMIS (or HMBP) facilities are 941. The current numbers of facilities regulated under the APSA and HMMP-HMIS (or HMBP) programs substantially impact the time allocation of staff noted in Table 3 on page 61 of the revised application. For example, the minimum number of APSA tank facilities needed to be inspected to meet the ICFD's proposal of inspecting all APSA tank facilities at least once every three years will need to increase to 96 (instead of 62 as stated on the revised application).

The following are comments based on the revised (2019) application.

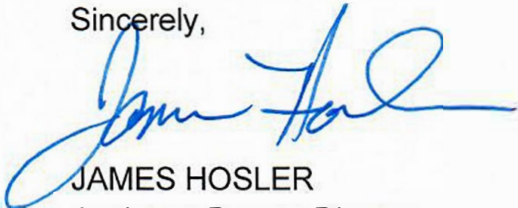
1. **Page 24** – Item D-1 includes the Aboveground Petroleum Storage Act facility statement. However, Unified Program Data Dictionary changes were made recently that became effective April 1, 2019. After April 1, 2019, the existing APSA data field in CERS was revised and four new APSA data fields were added. Details of the new APSA data fields are found in the California Code of Regulations, Title 27, Division 3, Subdivision 1, Chapter 6. Hence, ICFD will also need to review these new APSA data fields in addition to the Aboveground Petroleum Storage Act facility statement in CERS and verify the information through a field inspection.

2. **Page 77** – The certification section of the revised application states that ICFD meets the training requirements as described in Sections 15260 and 15270 of the California Code of Regulations. The revised application does not include information or document to support that ICFD currently meets these training requirements.
3. **CERS User Guide (Attachment 4)** – This guide should incorporate instructions on the tank facility statement submittal and address the new APSA data fields that were effective April 1, 2019. Refer to the above comments on page 24 of the revised application. There are four CERS help materials on the APSA program available on the CalEPA website at <https://cers.calepa.ca.gov/about-cers/help-materials/>.
4. **Area Plan (Attachment 6)** – This document contains references to outdated building standards codes, such as the Uniform Fire Code, Uniform Building Code, and Uniform Mechanical Code. Although these codes are still relevant to previous installations or constructions, there are more current building standards codes. These building standards codes are adopted triennially. (The revised application also references the outdated Uniform Fire Code on page 77.)

Based on a review of the revised application, the CAL FIRE-OSFM finds that the ICFD currently does not meet the necessary technical expertise, staffing resources, and training to implement the Unified Program within Imperial County. ICFD intends to hire and train new staff to implement the Unified Program within its jurisdiction after it is certified as a CUPA. However, ICFD should also be proactive about training its current or existing staff to be able to meet the necessary technical expertise and training to implement the Unified Program within its jurisdiction.

Should you have any questions regarding this letter, please contact the CAL FIRE-OSFM CUPA Program Coordinator, Jennifer Lorenzo at (916) 263-1801 or jennifer.lorenzo@fire.ca.gov.

Sincerely,



JAMES HOSLER
Assistant Deputy Director
CAL FIRE-OSFM Pipeline Safety and CUPA Programs

Enclosure

cc: Jennifer Lorenzo, Senior Environmental Scientist (Supervisor)



DEPARTMENT OF FORESTRY AND FIRE PROTECTION
OFFICE OF THE STATE FIRE MARSHAL

P.O. Box 944246
SACRAMENTO, CA 94244-2460
(916) 568-3800
Website: www.fire.ca.gov



December 6, 2018

Matthew Rodriguez, Secretary
California Environmental Protection Agency
P.O. Box 2815
Sacramento, California 95812

SUBJECT: IMPERIAL COUNTY CUPA CERTIFICATION APPLICATION –
REQUEST FOR STATE PROGRAM AGENCY REVIEW

Dear Secretary Rodriguez:

This letter is in response to your memorandum regarding the Imperial County CUPA Certification Application. Based on a review of the application, this letter documents the comments and recommendations from the Department of Forestry and Fire Protection (CAL FIRE) – Office of the State Fire Marshal (OSFM).

Below are comments specific to the application:

1. Page 12 – The organizational chart illustrated on page 12 indicates that the applicant, Imperial County Fire Department (ICFD), expects to have one program supervisor and four inspectors for their CUPA unit. However, other parts of the application indicate that there will be 9.0 full time equivalent positions under the CUPA unit, including an administrative support (such as an administrative technician), at least five inspectors (such as an environmental specialist), and one program supervisor. The organizational chart should identify all the positions that ICFD deems necessary to implement the Unified Program within its jurisdiction, including whether such positions are vacant or filled.
2. Page 13 – The application references the incorrect citation for regulatory authority to implement and enforce the Aboveground Petroleum Storage Act (APSA). Instead of Health and Safety Code Section 25270.6(c), which is the Unified Program Agency inspector training requirement prior to conducting compliance inspections, the correct citation is Health and Safety Code Chapter 6.67, commencing with Section 25270.
3. Pages 15 and 16 – The application states that if certified, the Department of Toxic Substances Control (DTSC) will continue inspection activities during the transition

until ICFD staff is adequately trained. The validity of whether DTSC will continue inspection activities in Imperial County during the transition has not been confirmed.

4. Page 17 – An implementation timeline is shown as Chart 1 on page 17, including hiring and training staff, billing, permits and fee accountability.

The event “begin inspection training with existing CUPA if possible” is expected to occur 150 days after certification. If certified, ICFD inspectors should receive on-the-job training with DTSC sooner rather than later if possible. If ICFD’s inspectors cannot be trained by DTSC staff during the transition, the ICFD may contact neighboring CUPAs for on-the-job training.

The inspection events listed on the implementation timeline are very aggressive. Inspections will be contingent on the number of inspectors hired and the inspectors’ training and experience.

5. Page 18 – The application states that permits are issued to owners/operators of underground storage tanks (UST). However, the Unified Program allows for the issuance of ‘consolidated’ permits for all Unified Program regulated businesses or facilities.
6. Page 20 – The APSA information on page 20 is outdated and does not reflect current requirements. For example, a tank facility is also regulated under APSA if it has one or more tanks in underground areas regardless of the 1,320-gallon petroleum threshold capacity.
7. Page 21 – The Federal spill prevention, control, and countermeasure (SPCC) rule (Code of Federal Regulations, Title 40, Part 112) is referenced as regulatory authority for APSA on page 21. The Federal SPCC rule was not delegated to any state. Thus, the Unified Program Agencies do not have the authority to enforce the Federal SPCC rule; however, the Unified Program Agencies have the authority to implement and enforce APSA. If an inspector cites a Health and Safety Code (HSC) Chapter 6.67 violation, then the inspector may reference the applicable Federal SPCC rule, if necessary, for clarity on inspection reports, notices to comply or notices of violation, etc.
8. Page 23 – HSC Section 25270.5(a) is referenced as the ICFD’s authority, if certified, to inspect APSA tank facilities on page 23. The ICFD’s proposed inspection frequency is to inspect APSA tank facilities at least once every three years. Without indicating a petroleum storage capacity threshold, the proposed frequency assumes all types of APSA tank facilities are included and expected to be inspected at least once every three years. Unified Program Agencies are required to inspect APSA tank facilities with 10,000 gallons or more of petroleum storage capacity at least once every three years (per HSC 25270.5(a)); however,

HSC 25270.5(b) allows a Unified Program Agency to develop an alternative inspection frequency subject to approval by the Secretary and the CAL FIRE-OSFM. The ICFD's goal to inspect all APSA tank facilities is ambitious. The ICFD, if certified, will be required to meet the minimum APSA inspection frequency. However, after implementing the APSA program for at least a few years, the ICFD may review and revise its APSA program inspection frequency.

Additionally, on page 23, the application states that the ICFD will seek to conduct inspections that combine different programs whenever possible, but excludes APSA program inspections.

9. Page 29 – The application states that it *may* initiate enforcement including an Administrative Enforcement Order if a person or business has committed or is committing a violation of any law, regulation, permit, information request, order or other requirement that the ICFD will be authorized to enforce. The California Code of Regulations, Title 27, Section 15200(a)(9) requires that a CUPA, as part of their Inspection and Enforcement Plan, has a description of the graduated series of enforcement actions that the Unified Program Agency *shall* initiate based on the severity of the violation.
10. Page 30 – The application states that the confidential documents will be stored in a separate locked file cabinet under the control of the CUPA administrative technician. This position was not included in the organizational chart on page 12. Refer to comment 1 on page 12.
11. Page 31 – The application states that, “in the event of continued noncompliance [even after issuance of a Notice of Violation], a formal enforcement action (Administrative Enforcement Order) *may* be initiated if deemed appropriate.” Refer to above comments to Page 29. Also, the agency will be expected to follow its Inspection and Enforcement Plan in terms of its graduated series of enforcement actions.
12. Page 44 – The application states that the “Environmental Specialist” shall document the product level in the tank before affixing any red tag. Up until now, the inspector positions of the CUPA unit have not been discussed or mentioned.
13. Page 56 – The application states that the CUPA unit will have 9.0 full time equivalent staff members, including five inspectors, one program supervisor, and the remaining support will be provided as ‘indirect administrative support from clerical and management staff.’ This information does not align with the organizational chart shown on page 12 (refer to comment 1).

14. Page 57 – The number of facilities depicted in Table 3 on page 57 does not align with the numbers shown on pages 6 and 56. The number of facilities on pages 6 and 56 were based on data from CERS on 4/19/18. The number of facilities shown on page 57 does not indicate its origin and are lower than those on page 6 (from CERS). Table 3 on page 57 is the basis for ICFD's workload and staff time allocation. Also, Table 3 shows a separate allocation for the HMMP-HMIS program; facilities regulated under the fire code hazardous materials management plan (HMMP) and hazardous materials inventory statement (HMIS) requirements should be consolidated with the HMRRP (Business Plan) program. On page 57, there's a substantial discrepancy between the number of facilities regulated under the HMMP-HMIS requirements compared to those regulated under the HMRRP (Business Plan) program.

Below is a chart showing the numbers of businesses or facilities regulated under the APSA and HMMP-HMIS programs as stated in the application. The numbers of businesses or facilities regulated under such programs taken from CERS on November 30, 2018, have been included in the chart for comparison.

Program	CERS (11/30/18)	Pages 6 and 56 (CERS 4/19/18)	Page 57
APSA	262	184	73
HMMP-HMIS	942 (included under HMRRP)	917 (included under HMRRP)	748 (vs 367 for HMRRP)

15. Attachment 1, Draft Ordinance Sec. 2018-53 Program list and code sections – Section (b) states that only limited sections of the APSA program will be incorporated into the ICFD's ordinance: HSC Sections 25270.2 (definitions), 25270.4 (Unified Program Agency implementation of APSA in accordance with regulations adopted by the CAL FIRE-OSFM) and 25270.5(c) (Unified Program Agency inspector training requirement prior to compliance inspections). However, consistent with the other program elements proposed in the draft ordinance, the ICFD, if certified, will be required to implement and enforce the APSA program as codified in Health and Safety Code Division 20, Chapter 6.67, commencing with Section 25270.

Additionally, Section (f) references an outdated citation for the fire code hazardous materials management plan and inventory statement requirements. The correct citation is 2016 California Fire Code Chapter 50, Sections 5001.5.1 and 5001.5.2.

16. Attachment 6, Enforcement Plan – The enforcement authority for the APSA program is omitted. Similar to the other program elements, the enforcement authority for the APSA program should also be included in the enforcement plan.

17. The outdated Uniform Fire Code is referenced in the application, including pages 9, 20, and the draft ordinance Sec. 2018-52 (Authority) in Attachment 1.

Based on a review of the application, the CAL FIRE-OSFM finds that the ICFD currently does not meet the necessary technical expertise, staffing resources, and training to implement the Unified Program within Imperial County. ICFD has yet to hire and train its staff to implement the Unified Program within its jurisdiction. However, the ICFD addresses the actions necessary to fulfill these requirements in its application along with an implementation timeline. If ICFD's transition plan includes a formal agreement with DTSC to continue inspections for a specified timeframe, while ICFD aggressively follows its implementation timeline, especially on hiring and training its staff and inspectors, then ICFD has the potential to implement the Unified Program with minimal impact to the regulated businesses and facilities of Imperial County. Also, hiring a few staff with experience and training in the Unified Program may also increase the ICFD's potential to implement the Unified Program within its jurisdiction.

The ICFD, if certified, will need to address discrepancies in the number of regulated businesses or facilities to ensure accuracy of its workload and staff time allocation. Also, the ICFD will need to update APSA and HMMP-HMIS program information and citations/references, including those contained in the draft or proposed ordinances.

Should you have any questions regarding this letter, please contact the CAL FIRE-OSFM 'CUPA' Program Coordinator, Jennifer Lorenzo at (916) 263-1801 or jennifer.lorenzo@fire.ca.gov.

Sincerely,



DENNIS MATHISEN
State Fire Marshal

cc: Mike Richwine, Assistant State Fire Marshal
Ben Ho, Assistant Deputy Director of Pipeline Safety and CUPA Programs
Jennifer Lorenzo, Senior Environmental Scientist (Supervisor)