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MEMORANDUM

TO: Greg Vlasek
Assistant Secretary for Local Program Coordination and
Emergency Response

From: Maria Soria *Diara Lebler for Maria Soria*
Environmental Program Manager I
Hazardous Waste Management Program

Date: May 31, 2019

Subject: DEPARTMENT OF TOXIC SUBSTANCES CONTROL REVIEW OF IMPERIAL
COUNTY FIRE DEPARTMENT APPLICATION FOR CERTIFIED UNIFIED
PROGRAM AGENCY CERTIFICATION

Thank you for the opportunity to comment on the May 2019 application submitted by the Imperial County Fire Department (ICFD) for certification as a Unified Program Agency (UPA). The Department of Toxic Substances Control (DTSC) has reviewed ICFD's application to be a CUPA with consideration as to whether the application provides the required information to assure DTSC that ICFD has the capability to implement the hazardous waste generator and tiered permitting program element. It is DTSC's position that the ICFD needs to provide more information to the application to deem the ICFD as having the capacity to carry out the elements of the Unified Program.

Of primary concern are the inadequacy of the transition plan, apparent inadequate allocation of staff necessary in order to implement all of the elements of the Unified Program, specifics regarding how the Unified Program would be carried out while staff is being trained, lack of information on the adequacy of education, expertise and training as required by Title 27, California Code of Regulations, section 15260, incorrect information in the application and insufficient information on how designation of the ICFD as the CUPA will improve consistency, coordination and consolidate the program.

Specific comments are delineated below, and additional comments are provided in the attached application.

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If you have any questions, please contact me at (510) 540-3884 or at maria.soria@dtsc.ca.gov

Enclosure

cc: Rizgar Ghazi
Acting Deputy Director
Hazardous Waste Management Program

DTSC Comments to the May 2019 ICFD CUPA Application:

Page 12 Implementation History - The Application states that 1500 business inspections are conducted annually and the applicant has cited 56 buildings in conjunction with the Planning Department and Environmental Health throughout its history of enforcement. However, there is no information that discusses how many administrative and/or civil enforcement actions the applicant has specifically taken. There is no information regarding the amount of penalties that have been assessed and collected by the applicant. Mention is made regarding enforcement related activities that the applicant has taken, specifically a landlord having to install \$350,000 worth of sprinklers as the building was out of compliance with sprinkler violations. The cost of installing the sprinklers was the result of noncompliance with the requisite regulations and not related to a penalty that the applicant assessed/could have assessed because the entity was in violation of the regulations.

The Application states that "*Designation of ICFD will improve consistency, consolidate the program and improve coordination between local agencies. This has always been the intent of the CUPA program and certification of ICFD as a CUPA will fulfill the intent of the regulations. ICFD will coordinate, consolidate and improve consistency because they will coordinate the fire code inspections with the Unified program inspections. Combining these inspections will improve efficiency since only one inspector will be sent to the facility, it will also reduce the impact on local business with only one interruption for the required inspections.*" The Unified Program consists of six program elements; the Fire Code is not one of these program elements. DTSC fails to see how implementing yet another regulatory program (Fire Code) would result in improved consistency, consolidation and coordination of the six Unified Program elements.

Additionally, many businesses are subject to other regulatory requirements that require inspections by those regulatory agencies. Those businesses are still going to see more than one inspector and have more than one interruption for the required inspections. We are challenged to understand how layering on a complexity of work from the fire code inspections will improve the consistency, consolidation and coordination of the Unified Program in a manner that is better than how DTSC as the CUPA is currently implementing the Unified Program.

Page 13 - Structure of the Imperial County Fire Department CUPA – The August 2018 application did not identify any administrative support for the CUPA Program. The administrative staff identified in this application reported to the Deputy Chief – Prevention. The May 2019 application now identifies administrative support for the CUPA Program and none for the Fire Prevention Program. The application needs to be specific on what mechanisms are in place to ensure that if administrative staff perform work for Fire Prevention, this work will not be charged to the Unified Program. Our comment in the August 2018 application related to requiring additional information to ensure that the CUPA will have permanent staff dedicated to, and funded by, the CUPA

without reliance on outside "indirect" support was not addressed. On page 59 of the Application, the statement still states that, "The remaining support will be provided as indirect administrative support from management staff."

On page 62, Table 3 contains time allocation of staff by activity. The table below summarizes the total hours per year for each activity. On page 59 the Application states that "The total net productive hours and the basis for the FTE calculations are 1,776 hours per year per staff member." Using this FTE, the total staff needed to implement the Unified Program is 10.6 staff. The application states that 7 staff will be dedicated to the Unified Program. There is a discrepancy of 3.7 staff.

Inspections	Enforcement	Permits	Training	Managerial	Indirect Activities	Sum
7324 hrs/yr	1615 hrs/yr	3341 hrs/yr	532 hrs/yr	2194 hrs/yr	3860 hrs/yr	18866 hrs/yr
						18866/1776 FTE= 10.6 PY

Section 9, B. Inspections - The document states that the ICFD staff will receive technical training through CalEPA and BDO staff, the CUPA Forum and private vendors for conducting inspections related to all of the Unified Program elements within eight months of certification and as training opportunities become available. More specificity should be given regarding which vendors would be providing training and in which program areas. A statement should be included on how the training will meet the requirements of Title 27, section 15260. Additionally, the Application does not state how the training that would be conducted by the various entities would be funded.

In DTSCs comments to the August 2018 application, we stated that while the application addresses some elements of how the CUPA program will be transitioned between DTSC as the CUPA and the Applicant as the CUPA, the fact that the application states that "Details of the transfer of programs will be addressed in a Transition Plan that will be developed once certified" is problematic. Again, in order for the regulatory agencies to have enough information to determine whether or not the Applicant has the requisite capability to fully implement all of the Unified Program elements, we need the details of how that transition will occur. The details include, but are not limited to the following:

Chart 1 is a very limited timeline chart regarding time from date of certification that certain transition elements will occur. There is insufficient information in this chart to determine which elements will be transferred to the Applicant on what timeframe, when files would be transferred from the CUPA to the Applicant, and who will be conducting the Program while the Applicants' staff is attending an intense 12 week training program to cover the training requirements for all the

Programs.

The Application states that "*DTSC CUPA will continue to inspect during this transition and it is anticipated that a contract for services or mutually acceptable agreement for inspection services will be developed.*" No agreement has been reached where DTSC will continue to act as the CUPA while the Applicant transitions into the role of the CUPA. How does the Applicant plan to implement the Unified Program if no agreement is reached between DTSC and the Applicant?

The Application states that it is "*estimated that by the end of the first year, the ICFD CUPA will be fully functional and operational.*" Discussions with CalEPA staff however, indicated that a transition can take as long as 24 months. As noted in our comments in the August 2018 application, the two timelines are in stark contrast to each other. If the Program is not fully functional within one year, what provisions will be made for the Unified Program to be implemented, and by who, until they are fully functional (up to another year)?

Section 9, C. Enforcement - The Application states that DTSC CUPA will follow through on any enforcement they initiated. DTSC would not have any authority to enforce the elements of the Program (Business Plan, USTs, APSA, etc.) if DTSC is no longer the CUPA. Upon delegation of the CUPA to the Applicant, DTSC would lose the authority to follow up on any of those enforcement actions.

The Application states that, "*the current two ICFD inspectors are not part of the proposed dedicated CUPA staff but will assist and compliment the CUPA inspectors when needed...*" This is unclear. Will these two Fire inspectors be trained to the same 27 CCR requirements that the Unified Program inspectors are required to be trained to? What types of assistance would they provide if not inspection and enforcement assistance that would require all 27 CCR training?

Section 9, D. Fees – The Application states that the "Department" will begin collection of UPA fees...does this mean the Applicant?

Section 9, E. Timeline for UPA Implementation in Imperial County – see comments above related to transition times.

11. Inspection and Enforcement Plan – This section is missing the following:
- Procedures for closure of a complaint;
 - A description of the graduated series of enforcement actions the Applicant will initiate based on the severity of the violation and elevation of violations based on noncompliance; and
 - Provisions for ensuring the Applicant has sampling capability.

Inspector Training: Hazardous Waste classification is referred to as "HazCat" training.

Hazardous waste classification is not HazCat training. Hazardous waste classification is the knowledge of RCRA and non RCRA wastes and their classifications as listed and/or characteristic wastes.

Pre-inspection Procedures – there is no discussion related to reviewing DTSC's Hazardous Waste Tracking System (HWTS) database prior to an inspection for hazardous waste manifesting information.

Inspection Follow-Up – HSC 25299 was cited as appropriate enforcement provisions for hazardous waste generator violations. This section is for UST enforcement, not hazardous waste generators.

Failure to Return to Compliance Notifications (Notice to Comply) – The Application states, *"On a quarterly basis, ICFD will identify businesses and facilities with documented minor violations that have not been corrected within stipulated deadlines."* This is in conflict with Health and Safety Code which states that facilities have 30 days to correct minor violations. Quarterly follow up would be in violation of the statutory timeframes for following up on these violations.

Final Penalty – The Application is using an outdated penalty matrix. Penalties in Chapter 6.5 of the Health and Safety Code are now \$70,000.00 per day per violation. Section 6. Compliance with California Code of Regulations, Title 22, Section 66272.10 – Reference is made to "ICFD staff is qualified per CCR, Title 22, Section 66272.44." This section has not existed in Title 22 since 1994. It is now in 27 CCR, section 15260. "ICFD has adequate laboratory support through local certified laboratories and the DTSC Hazardous Materials Laboratory". The Applicant should not rely on support from DTSC's laboratories, but must use contract laboratories per 27 CCR requirements. Additionally, DTSC's laboratory is now known as Environmental Chemistry Laboratory.

Section 17. Training and Technical Expertise

B. "Additionally, CCR, Title 22, Section (blank) will be used as a standard for the generator program element." There is no section number provided. The required training to implement the Unified Program elements are in Title 27, not Title 22. As noted in the Comment provided to the August 2018 application, the ICFD has not provided any documentation that demonstrates that they meet the technical expertise requirements as described in Section 15260 of 27 CCR and how the funding will be provided to gain that expertise and requisite training when they have not yet started billing in order to fund the Program.

Certifications – Reference is made to Sections 15270 of Title 27. This section is for Participating Agencies.

Section 9. "I understand that this certification is an integral part of the formal application for Certification as a Unified Program Agency, and that any false statement may be grounds for denial or revocation of the Unified Program authorization by the "Department of Toxic Substances Control." Only the Secretary of the California

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Environmental Protection Agency can deny or revoke a Unified Program authorization, not DTSC.

Throughout the Application, reference is made to the "Department" in referring to the Applicant. Again, the Application has to be clear as to who "the Department" refers to.