



Gavin Newsom
Governor

Jared Blumenfeld
Secretary for Environmental Protection

May 26, 2021

Mr. Fred Chun
Assistant Fire Marshal and CUPA Manager
Santa Clara City Fire Department
Hazardous Materials Division
1675 Lincoln Street
Santa Clara, California 95050-4653

Dear Mr. Chun:

During July through December, 2020, CalEPA and the state program agencies conducted a performance evaluation of the Santa Clara City Fire Department Hazardous Materials Division Certified Unified Program Agency (CUPA). The CUPA evaluation included a remote assessment of administrative documentation and review of regulated facility file documentation and California Environmental Reporting System data.

Upon completion of the evaluation, a preliminary Summary of Findings report was developed to identify various findings: program deficiencies with corrective actions, incidental findings with resolutions and program observations and recommendations. Enclosed, please find the final Summary of Findings report.

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

To demonstrate progress towards the correction of program deficiencies and incidental findings identified in the final Summary of Findings, the CUPA must submit an Evaluation Progress Report within 60 days from the date of this letter (July 28, 2021), and every 90 days thereafter. Evaluation Progress Reports are required to be submitted to CalEPA until all deficiencies and incidental findings identified have been acknowledged as corrected or resolved. Each Evaluation Progress Report must be submitted to Tim Brandt at Timothy.Brandt@calepa.ca.gov, or mail.

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

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

Mr. Fred Chun
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If you have any questions or need further assistance, please contact Melinda Blum at Melinda.Blum@calepa.ca.gov or John Paine, Unified Program Manager, at John.Paine@calepa.ca.gov.

Sincerely,



Jason Boetzer
Assistant Secretary
Local Program Coordination and Emergency Response

Enclosures

cc sent via email:

Mr. Jake Tomlin
Fire Marshal
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Hazardous Materials Division
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Ms. Cheryl Prowell
Supervising Water Resource Control Engineer
State Water Resources Control Board
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Ms. Laura Fisher
Senior Environmental Scientist, Supervisor
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Ms. Maria Soria
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Mr. Fred Chun
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cc sent via email:

Mr. James Hosler, Chief
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Ms. Jennifer Lorenzo
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Mr. Larry Collins, Chief
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Mr. Glenn Warner
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Mr. Fred Chun
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cc sent via email:

Mr. Garrett Chan
Environmental Scientist
California Office of Emergency Services
3650 Schriever Avenue
Mather, California 95655-4203

Mr. John Paine
Unified Program Manager
California Environmental Protection Agency

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

Mr. Tim Brandt
Environmental Scientist
California Environmental Protection Agency

UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

CUPA: Santa Clara City Fire Department – Hazardous Materials Division

Evaluation Period: July 2020 – December 2020

Evaluation Team Members:

- **CalEPA Team Lead:** Tim Brandt
- **DTSC:** Kevin Abriol
- **Cal OES:** Jack Harrah, Garrett Chan
- **State Water Board:** Laura Fisher, Sean Farrow, Wesley Franks (Shadowing)
- **CAL FIRE-OSFM:** Glenn Warner

This Final Summary of Findings includes:

- Deficiencies requiring correction
- Incidental findings requiring resolution
- Observations and recommendations
- Examples of outstanding program implementation

The findings contained within this evaluation report are considered final.

Based upon review and completion of the evaluation, the Unified Program implementation and performance of the CUPA is considered: **satisfactory with improvements needed.**

Questions or comments regarding this evaluation should be directed to the CalEPA Team Lead:

Tim Brandt

CalEPA Unified Program
P.O. Box 2815
Sacramento, CA 95812
Phone: (916) 323-2204

E-mail: timothy.brandt@calepa.ca.gov

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

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

Evaluation Progress Report submittal dates for the first year following the evaluation are:

1st Progress Report: July 28, 2021

2nd Progress Report: October 28, 2021

3rd Progress Report: January 28, 2022

4th Progress Report: April 28, 2022

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

DEFICIENCIES REQUIRING CORRECTION

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

1. DEFICIENCY:

The CUPA is not consistently following up and documenting return to compliance (RTC) information in the California Environmental Reporting System (CERS) for Aboveground Petroleum Storage Act (APSA) tank facilities, Hazardous Waste Generator (HWG) facilities, and Underground Storage Tank (UST) facilities cited with violations.

Review of compliance, monitoring, and enforcement (CME) information in CERS indicates there is no documented RTC for the following violations:

APSA Program:

- Fiscal Year (FY) 2017/2018: 53 of 70 (76%)
 - Including five violations for not having a Spill Prevention, Control, and Countermeasure (SPCC) Plan (CERS violation library #4010001).
- FY 2018/2019: 19 of 35 (54%)
- FY 2019/2020: 16 of 23 (70%)

Note: Duplicate entries of APSA CME data were observed for FY 2017/2018 and FY 2018/2019, which may be inflating the number of violations with no RTC.

HWG Program:

- FYs 2017/2018, 2018/2019, and 2019/2020: 467 of 646 (72%)

UST Program:

- FY 2017/2018: 29 of 45 (64%) of testing and leak detection failures
- FY 2018/2019: 41 of 88 (46%) of testing and leak detection failures
- FY 2019/2020: 49 of 75 (65%) of testing and leak detection failures
 - Below are examples of the testing and leak detection violations with no documented RTC in CERS:
 - CERS ID 10133107: CERS violation dated August 6, 2019, indicates failure of the regular unleaded spill container as it was leaking test water into the UST. There is no documented RTC in CERS.
 - CERS ID 10084975: CERS violation dated September 27, 2019, indicates failure of overfill audio alarm not correctly functioning. There is no documented RTC in CERS.
 - CERS ID 10085143: CERS violation dated February 28, 2020, indicates the diesel UST does not have overfill prevention. There is no documented RTC in CERS.

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

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DEFICIENCIES REQUIRING CORRECTION

CITATION:

HSC, Chapter 6.5, Section 25187.8(b) and (g)
HSC, Chapter 6.7, Section 25288(d)
HSC, Chapter 6.11, Section 25404.1.2(c)
CCR, Title 27, Sections 15185(a) and (c), and 15200(a)
[OSFM, DTSC, State Water Board, CalEPA]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will review, revise, and provide CalEPA with the Inspection and Enforcement (I&E) Plan or other applicable procedure to ensure a delineated process for implementation of appropriate graduated series of enforcement is applied, when necessary, to ensure facilities with cited violations return to compliance.

By the 1st Progress Report, the CUPA will review and revise the existing CME component of the data management procedures to incorporate and implement an action plan that addresses the root cause(s) of duplicate APSA, HWG, and/or UST CME information reported in CERS. The CUPA will provide the revised CME component of the data management procedures to CalEPA.

By the 1st Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with a sortable spreadsheet obtained from the CUPA's local data management system or CERS, that includes at minimum the following information for each APSA, HWG, and UST facility that has open violations (no RTC):

- Facility name;
- Facility address;
- CERS ID;
- Inspection and violation dates;
- Scheduled RTC date;
- Actual RTC date (when applicable);
- RTC qualifier; and
- In the absence of obtained RTC, a narrative of the applied informal or formal graduated series of enforcement taken by the CUPA to ensure the facility obtains compliance. The CUPA will prioritize follow-up actions with each facility based on the level of hazard violations present to public health and the environment.

By the 2nd Progress Report, the CUPA will, if necessary, amend the I&E Plan or other applicable procedure, based on feedback from OSFM, DTSC, and State Water Board and will submit the amendments to CalEPA. If no amendments to the I&E Plan are necessary, the CUPA will train CUPA personnel on the revised I&E Plan or other applicable procedure and provide training documentation to CalEPA, which will include at minimum, an outline of the training conducted and a list of CUPA personnel attending training. Once training is completed, the CUPA will implement the revised I&E Plan or other applicable procedure.

By the 3rd Progress Report, if amendments to the I&E Plan or other applicable procedure were necessary, the CUPA will train CUPA personnel on the revised I&E Plan or other applicable procedure and provide training documentation to CalEPA, which will include at minimum, an

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outline of the training conducted and a list of CUPA personnel attending training. Once training is completed, the CUPA will implement the revised I&E Plan or other applicable procedure.

By the 3rd Progress Report and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with documentation of applied informal or formal graduated series of enforcement for up to three APSA, HWG, and UST facilities as requested by OSFM, DTSC, and State Water Board.

By the 4th Progress Report, the CUPA will have ensured each APSA tank facility identified on the spreadsheet from the 1st Progress Report with no SPCC Plan (CERS violation library #4010001) has prepared an SPCC Plan, or the CUPA will have applied a graduated series of enforcement.

2. DEFICIENCY:

The CUPA is not ensuring that all businesses subject to Hazardous Materials Business Plan (HMBP) reporting requirements maintain an HMBP in CERS.

- 434 of 960 (45%) business plan facilities in CERS have not submitted inventories or no-change certifications within the last 12 months.
- 442 of 951 (46%) business plan facilities in CERS required to submit emergency response and training plans have not submitted these plans or no-change certifications within the last 12 months.

CITATION:

HSC, Chapter 6.95, Sections 25505 and 25508(a)

[Cal OES]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop and provide CalEPA with an action plan to ensure that all handlers have annually submitted a complete HMBP.

By the 3rd Progress Report, the CUPA will follow up with each handler identified in the action plan, to ensure the handler submits a complete HMBP or the CUPA will initiate appropriate enforcement actions.

3. DEFICIENCY:

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

Review of facility files, CME information from CERS, and additional information provided by the CUPA indicates the following:

- 668 of 960 (70%) business plan facilities listed in CERS were not inspected within the last three years.

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DEFICIENCIES REQUIRING CORRECTION

CITATION:

HSC, Chapter 6.95, Section 25511(b)

[Cal OES]

CORRECTIVE ACTION:

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

- An explanation as to why the annual compliance inspection requirement for the HMPB program is not being met. Factors to consider include existing inspection staff resources and how many facilities each inspector is scheduled to conduct each year.
- A sortable spreadsheet exported from the CUPA's data management system or CERS, identifying each HMBP facility that has not been inspected within the last three years. For each HMBP facility listed, the spreadsheet will include, at minimum:
 - Facility name;
 - Facility address;
 - CERS ID;
 - Facility ID (if applicable), and
 - date of the last inspection
- A proposed schedule to inspect those HMBP facilities, prioritizing the most delinquent inspections to be completed prior to any other HMBP inspection based on risk.
- Future steps to ensure that all HMBP facilities will be inspected at least once every three years.

By the 2nd Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with an updated spreadsheet to demonstrate the number of HMBP facility inspections that have been conducted during the previous three months.

By the 8th Progress Report, the CUPA will have inspected each HMBP facility at least once in the last three years.

4. DEFICIENCY:

The CUPA is not consistently or correctly reporting complete and accurate CME information to CERS for the HWG Program.

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

- Enforcement data was not reported or incorrectly reported in CERS for the following:
 - CERS ID 10087504: Civil Enforcement Final Disposition dated December 12, 2018, was entered into CERS, however no violations were linked to the enforcement action.
 - CERS ID 10087429: Criminal Enforcement Referral to the District Attorney with a Final Disposition dated April 16, 2019, was not entered into CERS. Additionally, there are no violations associated with this facility.

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DEFICIENCIES REQUIRING CORRECTION

- Violation data was not reported or incorrectly reported in CERS for the following:
 - CERS ID 10085302: Inspection Report dated November 6, 2018
 - Violation for failure to label all containers is missing from CERS.
 - CERS ID 10085308: Inspection information dated July 28, 2018
 - Violation for illegal transportation of satellite accumulation waste offsite is missing from CERS.
 - CERS ID 10085740: Inspection report dated May 16, 2018
 - Violation for failure to prepare and maintain a written inspection schedule and daily recordings is missing from CERS.
 - CERS ID 10085842: Inspection report dated May 15, 2018
 - Violation for failure to maintain universal waste disposal records is missing from CERS.
 - Violation for failure to clean sludge deposit on and under the catwalk grate is missing from CERS.
 - CERS ID 10087813 (Penske Truck Leasing Co., LP): Inspection report dated October 26, 2018
 - Violation cited for failure properly label hazardous waste containers is missing from CERS.
 - Violation cited for failure to keep hazardous waste containers closed except when adding or removing hazardous waste is missing from CERS.
 - Violation for failure properly manage empty containers is missing from CERS.

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

CITATION:

HSC, Chapter 6.11, Section 25404(e)(4)
CCR, Title 27, Sections 15187(c) and 15290(b)

[DTSC]

CORRECTIVE ACTION:

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

- Identification and correction of the cause(s) of missing or incorrect HWG Program CME information reported to CERS, including any data transfer from the local data management system or portal to CERS to ensure all CME information is reported accurately to CERS;
- Identification of HWG Program CME information not previously reported to CERS, or reported to CERS incorrectly;
- A process for reporting HWG Program CME information identified as not being reported to CERS, or reported incorrectly to CERS;
- A process for ensuring CUPA personnel are trained in the consistent use of CERS violation type numbers; and
- Future steps to ensure all HWG Program CME information is reported consistently and correctly to CERS.

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DEFICIENCIES REQUIRING CORRECTION

By the 1st Progress Report, the CUPA will revise the existing CME reporting component of the data management procedure, or other applicable procedure, to ensure CME information is consistently and correctly reported to CERS. If revisions are made to a procedure other than the Data Management Procedure, the I&E Plan must be revised to incorporate reference to the revised procedure.

By the 2nd Progress Report, if amendments to the revised CME reporting component of the data management procedure, or other applicable procedure are necessary based on feedback from DTSC, the CUPA will provide CalEPA with a copy of the amended CME reporting component of the data management procedure or other applicable procedure. If amendments are made to a revised procedure other than the Data Management Procedure, the I&E Plan must be revised to incorporate reference to the amended procedure. If amendments are not necessary, the CUPA will train CUPA personnel on the revised CME reporting component of the data management procedure, or other applicable procedure. The CUPA will provide training documentation to CalEPA which will include, at minimum, an outline of the training conducted and a list of CUPA personnel in attendance. Once training is complete, the CUPA will implement the revised CME reporting component of the data management procedure or other applicable procedure.

By the 3rd Progress Report, if amendments to the revised CME reporting component of the data management procedure, or other applicable procedure were necessary, the CUPA will provide CalEPA with a copy of the amended CME reporting component of the data management procedure or other applicable procedure. If amendments are made to a revised procedure other than the Data Management Procedure, the I&E Plan must be revised to incorporate reference to the amended procedure. The CUPA will train CUPA personnel on the amended CME reporting component of the data management procedure, or other applicable procedure. The CUPA will provide training documentation to CalEPA which will include, at minimum, an outline of the training conducted and a list of CUPA personnel in attendance. Once training is complete, the CUPA will implement the amended CME reporting component of the data management procedure or other applicable procedure.

By the 3rd Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with a copy of an inspection report for an inspection conducted during the previous three months or RTC documentation obtained during the previous three months for up to five HWG Program facilities as requested by DTSC. In the absence of RTC documentation, the CUPA will provide CalEPA with a narrative of the informal or formal graduated series of enforcement applied to ensure facilities cited with violations return to compliance.

By the 5th Progress Report, the CUPA will consistently and correctly report all HWG Program CME information to CERS.

5. DEFICIENCY:

The CUPA is not inspecting all HWG facilities with the inspection frequency reported in the I&E Plan.

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DEFICIENCIES REQUIRING CORRECTION

The CUPA's I&E Plan states an inspection frequency for HWG facilities at least once every three years. Review of facility files, CME information from CERS, and additional information provided by the CUPA indicates:

- 246 of 502 (49%) of HWG facilities were not inspected between July 1, 2017 – June 30, 2020.

Note: This deficiency was identified during the 2017 CUPA Performance Evaluation and was not corrected during the Evaluation Progress Report process.

CITATION:

CCR, Title 27, Section 15200(a)(3)

[DTSC]

CORRECTIVE ACTION:

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

- An analysis and explanation as to why the inspection frequency for the HWG program is not being met. Existing inspection staff resources and how many facilities each inspector is scheduled to conduct each year are factors to address in the explanation.
- A sortable spreadsheet exported from the CUPA's data management system or CERS, identifying each HWG facility that has not been inspected at least once every three years. For each HWG facility listed, the spreadsheet will include, at minimum:
 - Facility name,
 - Facility address,
 - CERS ID,
 - Facility ID (if applicable), and
 - Date of the last inspection.
- A proposed schedule to inspect those HWG facilities, prioritizing the most delinquent inspections to be completed prior to any other HWG inspection based on risk.
- Future steps to ensure that all HWG facilities will be inspected at least once every three years.

By the 2nd Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with an updated spreadsheet to demonstrate the number of HWG facility inspections that have been conducted during the previous three months.

By the 6th Progress Report, the CUPA will have inspected each HWG facility at least once every three years.

6. DEFICIENCY:

The CUPA is not properly classifying HWG violations.

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DEFICIENCIES REQUIRING CORRECTION

Review of facility files and CERS CME information indicates the CUPA is classifying Class I or Class II HWG Program violations as minor violations in the following instances:

Violation for exceedance of authorized accumulation time incorrectly cited as a minor violation. Maximum accumulation time may not be exceeded without a hazardous waste storage permit or grant of authorization from the Department. An economic benefit is gained by not disposing of waste within the authorized time. This does not meet the definition of minor violation as defined in Health and Safety Code, section 25404(a)(3).

- CERS data indicates 37 of 50 (74%) violations cited between July 1, 2017 – June 30, 2020, for exceedance of accumulation timeframe were classified as minor.

Violation for failure to obtain and maintain a written assessment certified by a professional engineer was incorrectly cited as a minor violation. Failure to have a tank system certified by a professional engineer poses risks to human health and the environment in the event the tank system is not fit for use. An economic benefit is gained by not hiring an independent professional engineer to assess the tank system. This does not meet the definition of minor violation as defined in Health and Safety Code, section 25404(a)(3).

- CERS data indicates 6 of 9 (67%) violations cited between July 1, 2017 – June 30, 2020, for failure to obtain a tank assessment certified by a professional engineer were classified as minor.

Violations for providing employee training and lack of a written training plan for large quantity generators (LQGs) were cited as minor violations. A minor violation would not include a violation that enables the violator to benefit economically from noncompliance. An economic benefit is gained by not providing training for employees and developing a written training plan.

- CERS data indicates 32 of 37 (86%) violations cited between July 1, 2017 – June 30, 2020, for not providing employee training and lack of a written training plan for LQGs were classified as minor.

Note: This deficiency was identified during the 2017 CUPA Performance Evaluation and was not corrected during the Evaluation Progress Report process.

CITATION:

HSC, Chapter 6.5, Sections 25110.8.5, 25117.6

CCR, Title 22, Sections, 66260.10, 66262.34

[DTSC]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will train staff on the terms: minor, Class I, and Class II violations, as described in HSC, Chapter 6.5, Sections 25110.8.5, 25117.6 and CCR, Title 22, Section 66260.10. Also, the CUPA will review the violation classification video, violation classification guidance, and train personnel on when and how to properly cite violations for each program element during routine compliance inspections. The CUPA will provide CalEPA with proof of training.

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Violation Classification:

- [Violation Classification Training Video 2014](https://www.youtube.com/watch?v=RB-5V6RfPH8)
<https://www.youtube.com/watch?v=RB-5V6RfPH8>
- [2020 Violation Classification Guidance for Unified Program Agencies](https://calepa.ca.gov/wp-content/uploads/sites/6/2020/06/Violation-Classification-Guidance-Document-accessible.pdf)
<https://calepa.ca.gov/wp-content/uploads/sites/6/2020/06/Violation-Classification-Guidance-Document-accessible.pdf>

By the 2nd Progress Report, the CUPA will provide CalEPA with a copy of three inspection reports for facilities cited with hazardous waste violations that were inspected within the last three months.

7. DEFICIENCY:

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

The CUPA provided a list of 502 HWG facilities currently permitted within the Santa Clara City jurisdiction. DTSC reviewed CERS, the Hazardous Waste Tracking System (HWTS) and Transporter Quarterly Report (TQR) data and noted the following:

- CERS indicates 645 facilities that self-identified as HWG on the business activities page.
- HWTS and TQR data show the following:
 - Between 2014-2017, approximately 996 facilities shipped hazardous waste (this data was collected as part of the 2017 evaluation cycle),
 - Between 2017-2020, data indicates approximately 884 facilities shipped hazardous waste.

CITATION:

HSC, Chapter 6.5, Sections 25101(d)

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

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

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

[DTSC]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop, implement, and provide CalEPA with an action plan to identify and inspect all regulated facilities subject to the HWG program. The action plan will require the CUPA to review data from the HWTS and TQR (compiled in a spreadsheet provided to the CUPA by DTSC), and compare it with a spreadsheet compiled by the CUPA containing facilities that generate hazardous waste. The spreadsheet shall include (where available) CERS ID, whether the facility is currently being regulated by the CUPA as a HWG facility, the last inspection date, and any other notes deemed informative regarding the facility. If after investigation the CUPA has determined that a facility is not a HWG, then the CUPA shall provide the specific details on the how the determination was made. Site visits and aerial photography (e.g., Google Maps) may be used to assist in identifying non-regulated facilities. The CUPA shall provide the action plan to CalEPA.

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DEFICIENCIES REQUIRING CORRECTION

By the 2nd Progress Report and with each subsequent Progress Report until considered corrected, the CUPA will have begun to implement the action plan and will provide CalEPA with an updated version of the spreadsheet indicating the progress of the investigation of all HWGs including efforts made to ensure facilities are being inspected, permitted, and reporting into CERS.

By the 4th Progress Report, the CUPA will have inspected all new HWG facilities that were identified and provide CalEPA with an update of these inspections.

8. DEFICIENCY:

The CUPA did not consistently include observations, factual basis, and corrective actions for each violation cited on HWG and Tiered Permitting (TP) inspection reports and Notices to Comply.

DTSC found inadequate documentation on inspection reports for the following facilities that were cited for violations by the CUPA:

- CERS ID 10085302:
 - Inspection Report dated November 6, 2018, cites a violation for “Failure to properly label hazardous waste accumulation containers and portable tanks with the following requirements: "Hazardous Waste", name and address of the generator, physical and chemical characteristics of the Hazardous Waste, and starting accumulation date” with a corrective action to “Label all waste containers”, however the inspector did not document the number of containers missing labels, if any of the containers were partially labeled, or if the contents of the containers are known.
 - Inspection Report dated December 26, 2018, cites a violation for “Failure of the owner or operator to meet the applicable requirements while adding spent cyanide-containing process solutions to the aqueous waste for the purpose of reducing cyanide processing hazards”, however observations and factual basis are missing in the report.
 - Inspection Report dated December 26, 2018, cites a violation for “Failure of the owners or operators treating cyanide waste solutions to implement best management practices (BMP) to reduce waste generation, and minimize or eliminate releases to work areas and the environment”, however observations and factual basis are missing in the report.
- CERS ID 10085842:
 - Inspection report dated May 15, 2018, cites a violation for failure to maintain universal waste disposal records, however observations and factual basis are missing in the report.
 - Inspection report dated May 15, 2018, cites a violation for failure to clean sludge deposit on and under the catwalk grate, however observations and factual basis are missing in the report.
 - Inspection report dated May 15, 2018, cites a violation for failure properly label excluded recyclable materials, however observations and factual basis are missing in the report.

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DEFICIENCIES REQUIRING CORRECTION

- CERS ID 10085935:
 - Inspection report dated July 18, 2019, cites a violation for “failure to accumulate or store hazardous waste in container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored” with a note stating “Located in transportation tote. Need to be in 55 gal drum”, however a complete description of observations and factual basis including a description of the waste and container incompatibility are missing in the report.
 - Inspection report dated July 18, 2019, cites a violation for failure to provide training, maintain a training plan and records, however observations, factual basis, and complete corrective actions are missing in the report.

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

Note: This deficiency was identified during the 2017 CUPA Performance Evaluation and was not corrected during the Evaluation Progress Report process.

CITATION:

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

CORRECTIVE ACTION:

By the 1st Progress Report the CUPA will review the Inspection Report Writing Guidance for Unified Program Agencies and train personnel on inspection report writing requirements to ensure that all violations cited in HWG inspection reports and Notices to Comply include observations, factual basis, and corrective actions. The CUPA will provide CalEPA with proof of training.

- Inspection Report Writing Guidance for Unified Program Agencies
<https://calepa.ca.gov/wp-content/uploads/sites/6/2016/10/CUPA-Documents-Inspection-InspectionRpt-accessible.pdf>

By the 2nd Progress Report, the CUPA will provide CalEPA with a copy of five HWG/TP inspection reports, completed within the past three months, that the CUPA has cited at least one HWG violation.

9. DEFICIENCY:

The CUPA is not consistently citing correct HWG violations and properly applying hazardous waste control law and regulations.

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DEFICIENCIES REQUIRING CORRECTION

The following are examples where the CUPA cited both Small Quantity Generator (SQG) and Large Quantity Generator (LQG) violations on a HWG inspection report:

- CERS ID 10085935: CERS violation data for an inspection dated July 18, 2019.
- CERS ID 10086199: CERS violation data for an inspection dated January 29, 2019.
- CERS ID 10087876: CERS violation data for an inspection dated July 16, 2019.
- CERS ID 10085740: CERS violation data for an inspection dated May 16, 2018.
- CERS ID 10084558: CERS violation data for an inspection dated July 27, 2017.

The following are examples where the CUPA cited a violation for failure to maintain records for weekly container inspections where records are not required:

- CERS ID 10084558: CERS violation data for an inspection dated July 27, 2017.
- CERS ID 10084645: CERS violation data for an inspection dated June 6, 2019.
- CERS ID 10085068: CERS violation data for an inspection dated May 6, 2019.
- CERS ID 10085935: CERS violation data for an inspection dated July 18, 2019.
- CERS ID 10086880: CERS violation data for an inspection dated April 23, 2019.

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

CITATION:

CCR, Title 22, Sections 66262.34(a) and (d), and 66265.174

[DTSC]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will review the hazardous waste generator fact sheets linked below. Additionally, the CUPA will provide CalEPA with a narrative document stating that the CUPA inspectors have viewed all of the training material and will include a signature from the inspector and the date the training was completed.

- [Hazardous Waste Generator Requirements Fact Sheet](https://dtsc.ca.gov/hazardous-waste-generator-requirements-fact-sheet/)
<https://dtsc.ca.gov/hazardous-waste-generator-requirements-fact-sheet/>
- [California Hazardous Waste Generator Summary Chart](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/05/California-Generator-Chart.pdf)
<https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/05/California-Generator-Chart.pdf>
- [Accumulating Hazardous Waste at Generator Sites Fact Sheet](https://dtsc.ca.gov/accumulating-hazardous-wastes-at-generator-sites/)
<https://dtsc.ca.gov/accumulating-hazardous-wastes-at-generator-sites/>

10. DEFICIENCY:

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

The CUPA is not citing violations for failure to conduct an overfill prevention equipment inspection. No later than October 13, 2018, all overfill prevention equipment must be inspected.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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DEFICIENCIES REQUIRING CORRECTION

Review of the UST compliance inspection reports, associated Overfill Prevention Equipment Inspection Report Forms, and CERS CME information indicates the following overfill prevention equipment inspections were conducted beyond the October 13, 2018, deadline and the CUPA did not cite violations:

- CERS ID 10084414: Overfill Prevention Equipment Inspection Report Form dated June 5, 2019. The CUPA did not 1) issue the correct violation during the UST compliance inspection August 6, 2019, and 2) provide accurate United States Environmental Protection Agency (U.S. EPA) TCR 9b reporting.
- CERS ID 10084420: Overfill Prevention Equipment Inspection Report Form dated June 5, 2019. The CUPA did not 1) issue the correct violation during the UST compliance inspection August 6, 2019, and 2) provide accurate U.S. EPA TCR 9b reporting.
- CERS ID 10085143: Overfill Prevention Equipment Inspection Report Form dated February 13, 2019. The CUPA did not 1) issue the correct violation during the UST compliance inspection February 13, 2019, and 2) provide accurate U.S. EPA TCR 9b reporting.

In addition, the following instances indicate the CUPA citing a violation in the UST compliance inspection report, whereas, CERS does not reflect the issued violation:

- CERS ID 10084750: UST compliance inspection report dated May 9, 2019, indicates the CUPA inspector witnessed the float chain assembly in under dispenser containment 2, 5, 7 and 9 fail testing, and failures were corrected prior to leaving facility. However, the failures were not reported as violations in CERS.
- CERS ID 10084414: UST compliance inspection report dated August 24, 2018, indicates a violation for financial responsibility. However, the violation was not reported in CERS.
- CERS ID 10134673: UST compliance inspection report dated April 24, 2018, indicates a violation for spill container not having 5-gallon capacity. However, the violation was not reported to CERS.

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

Note: This deficiency was identified during the 2017 CUPA Performance Evaluation and was not corrected during the Evaluation Progress Report process.

CITATION:

HSC, Chapter 6.7, Sections 25288(b) and 25299
CCR, Title 23, Sections 2637.2(a) and 2665(b), and 2713(c) and (d)
CCR, Title 27, Section 15290(a)(3)

[State Water Board]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will revise and provide CalEPA with the I&E Plan, or other applicable procedure, that establishes a process for UST inspection staff to correctly report all UST violations including TCR in CERS.

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DEFICIENCIES REQUIRING CORRECTION

By the 2nd Progress Report, the CUPA will, if necessary, amend the I&E Plan or other applicable procedure, based on feedback from the State Water Board and will submit the amended I&E Plan or other applicable procedure to CalEPA. If no amendments to the I&E Plan are necessary, the CUPA will train UST inspection staff on the revised I&E Plan or other applicable procedure and provide training documentation to CalEPA, which will include at minimum, an outline of the training conducted and a list of UST inspection staff attending training. Once training is completed, the CUPA will implement the revised I&E Plan or other applicable procedure.

By the 3rd Progress Report, if amendments to the I&E Plan were necessary, the CUPA will train UST inspection staff on the amended I&E Plan or other applicable procedure and provide training documentation to CalEPA, which will include, at minimum, an outline of the training conducted and a list of UST inspection staff attending training. Once training is completed, the CUPA will implement the amended I&E Plan or other applicable procedure.

By the 4th Progress Report, the CUPA will provide up to five UST facility records, if not available in CERS, as selected by State Water Board, including but not limited to, UST compliance inspection reports, Overfill Prevention Equipment Inspection Report Forms, Monitoring System Certification Forms, Secondary Containment Testing Report Form, and Spill Container Testing Report Forms. If the required Overfill Prevention Equipment Inspection has not been completed, or if UST violations have not been corrected within the time established in the CUPA's I&E Plan, the CUPA will provide CalEPA with documentation of applied graduated series enforcement.

11. DEFICIENCY:

The CUPA is not documenting in sufficient detail whether the UST owner or operator has demonstrated to the satisfaction of the CUPA, UST closure, removal, and soil and groundwater sampling complies with California Code of Regulations, Title 23, Division 3, Chapter 16 (UST Regulations) and Health and Safety Code, Chapter 6.7 (HSC).

The following is an example:

CERS ID 10402927

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

Please refer to State Water Board UST Program Leak Prevention [Frequently Asked Question 15](https://www.waterboards.ca.gov/ust/leak_prevention/faq15.shtml) (https://www.waterboards.ca.gov/ust/leak_prevention/faq15.shtml).

CITATION:

HSC, Chapter 6.7, Section 25298(c)

CCR, Title 23, Section 2672(d)

[State Water Board]

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DEFICIENCIES REQUIRING CORRECTION

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop and provide CalEPA with a UST Closure procedure or other applicable procedure (procedure) that establishes a process, which will include at minimum how the CUPA will:

- Document in sufficient detail the owner or operator has demonstrated to the satisfaction of the CUPA, UST closure, removal, and soil and groundwater sampling complies with UST Regulations and HSC; and
- Provide UST closure documentation to the UST owner or operator which demonstrates to the satisfaction of the CUPA, UST closure, removal, and soil and groundwater sampling complies with UST Regulations and HSC.

In addition, the CUPA will provide CalEPA with a UST closure letter template. The CUPA may consider including the following language in the UST closure letter template: “the City of Santa Clara Fire Department CUPA has reviewed the UST closure documentation and approves the UST closure as properly completed in accordance with HSC section 25298, subdivision (c) and UST Regulations, section 2672.”

By the 2nd Progress Report, the CUPA will, if necessary, revise the procedure and/or UST closure letter template, based on feedback from the State Water Board, and will submit the revised procedure and/or UST closure letter template to CalEPA.

By the 3rd Progress Report, the CUPA will train UST inspection staff on the revised procedure and/or UST closure letter template, and provide training documentation to CalEPA, which will include, at minimum, an outline of the training conducted and a list of UST inspection staff attending training. Once training is complete, the CUPA will implement and begin to utilize the revised procedure and/or UST closure letter template.

With respect to facilities which have not been provided adequate UST closure documentation, in the event of a public records request for UST closure documentation, the CUPA will use the revised UST closure letter template and provide the requested documentation.

To demonstrate correction of this deficiency, for the next UST removal or closure in place, or until considered corrected, the CUPA will provide CalEPA a copy of the UST closure documentation demonstrating the CUPA’s satisfaction UST closure, removal and soil and groundwater sampling complies with UST Regulation and HSC.

12. DEFICIENCY: CORRECTED DURING EVALUATION

The CUPA is not inspecting all APSA tank facilities that store 10,000 gallons or more of petroleum at least once every three years.

Review of facility files, CME information from CERS, and additional information provided by the CUPA indicates:

- 9 of 35 (26%) APSA facilities that store 10,000 gallons or more of petroleum have not been inspected in the last three years, including five facilities that have never been inspected.

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DEFICIENCIES REQUIRING CORRECTION

CITATION:

HSC, Chapter 6.67, Section 25270.5(a)

[OSFM]

CORRECTIVE ACTION: COMPLETED

The CUPA was able to conduct additional inspections on APSA tank facilities storing 10,000 gallons or more of petroleum. No further action is required.

13. DEFICIENCY: CORRECTED DURING EVALUATION

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

Review of facility files, CME information from CERS, and additional information provided by the CUPA indicates:

- 2 of 4 (50%) CalARP stationary source facilities were not inspected within the last three years.

CITATION:

HSC, Chapter 6.95, Section 25537(a)

CCR, Title 19, Section 2775.3

[Cal OES]

CORRECTIVE ACTION: COMPLETED

The CUPA provided evidence indicating inspections on the remaining two CalARP stationary sources were conducted. No further action is required at this time.

14. DEFICIENCY: CORRECTED DURING EVALUATION

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

During the 45-day review process the CUPA must:

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

CERS data indicates:

- 47 of 68 (69%) PBR Onsite Hazardous Waste Treatment Notifications reviewed by the CUPA were not reviewed by the CUPA within 45 days.
- 42 of 110 (38%) PBR submittals were not reviewed due to a more recent submission having been received.

The CUPA is not always conducting accurate and complete reviews of the PBR annual notifications that are processed within the required timeframe. The following are examples of inaccurate or incomplete review by the CUPA:

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DEFICIENCIES REQUIRING CORRECTION

- CERS ID 10088215: Facility has historically been regulated as a PBR as indicated by CERS data from February 24, 2014 – August 9, 2018. However, a submittal made on May 21, 2020, was marked as Accepted under the Conditionally Exempt – Commercial Laundry Tier.
- CERS ID 10088437: Inspection dated May 24, 2018, cites a violation with the following comment: “On-site treatment notification currently states that treatment unit is operating under the Conditionally Authorized Tier. Amend Treatment notification to identify the unit as a PBR unit and include all required documents.” However, a TP submittal made on August 6, 2018, was marked as Accepted under the Conditional Authorization Tier.

Note: This deficiency was identified during the 2017 CUPA Performance Evaluation and was not corrected during the Evaluation Progress Report process.

CITATION:

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

[DTSC]

CORRECTIVE ACTION: COMPLETED

The CUPA provided suitable evidence to DTSC illustrating that this finding had been corrected. No further action is required at this time.

15. DEFICIENCY: CORRECTED DURING EVALUATION

The Inspection and Enforcement (I&E) Plan has components that are missing, inaccurate or incomplete.

- The following component is missing:
 - The I&E Plan does not include a description of all available enforcement options identified as either formal or informal enforcement.

CITATION:

CCR, Title 27, Section 15200(a)

[CalEPA]

CORRECTIVE ACTION: COMPLETED

The CUPA provided CalEPA with an updated I&E Plan which included all available informal and formal enforcement options. No further action is required at this time.

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INCIDENTAL FINDINGS REQUIRING RESOLUTION

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

1. INCIDENTAL FINDING:

The CUPA is not properly classifying APSA violations.

Not having an SPCC Plan (CERS violation library #4010001) was classified as a minor violation as follows:

FY 2017/2018 - FY 2019/2020

- 5 of 6 (83%) instances

Not having an SPCC Plan is not considered a minor violation as defined in HSC Section 25404(a)(3). Based on the definition of a “minor violation,” a minor violation does not include the following: (1) a violation that presents a significant threat to human health or the environment; or (2) a violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.” In addition, issuing a minor violation for not having an SPCC Plan is inconsistent with, and less stringent than, the U.S. Environmental Protection Agency (U.S. EPA).

Note: The Federal SPCC rule is not delegated to any state. However, APSA requires consistency and compliance with the Federal SPCC rule for SPCC Plan preparation and implementation, as well as consistency with Federal enforcement guidance.

CITATION:

HSC, Chapter 6.67, Sections 25270.4.1(c), 25270.12, 25270.12.1, and 25270.12.5
[OSFM]

RESOLUTION:

By the 1st Progress Report, the CUPA will train inspectors on the classification of minor, Class I and Class II violations, as defined in HSC, Chapter 6.11, Section 25404(a)(3) and consistent with the U.S. EPA Civil Penalty Policy, Section 311(b)(3) and Section 311(j) of the Clean Water Act, emphasizing that the violation for an APSA tank facility with no SPCC Plan should be classified as a Class I or Class II violation.

Training should include, at minimum, review of:

- [Violation Classification Training Video 2014](https://www.youtube.com/watch?v=RB-5V6RfPH8)
(<https://www.youtube.com/watch?v=RB-5V6RfPH8>)
- [2020 Violation Classification Guidance for Unified Program Agencies](https://calepa.ca.gov/wp-content/uploads/sites/6/2020/06/Violation-Classification-Guidance-Document-accessible.pdf)
(<https://calepa.ca.gov/wp-content/uploads/sites/6/2020/06/Violation-Classification-Guidance-Document-accessible.pdf>)
- [U.S. EPA Civil Penalty Policy for Section 311\(b\)\(3\) and Section 311\(j\) of the Clean Water Act, August 1998](#) for SPCC violations

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INCIDENTAL FINDINGS REQUIRING RESOLUTION

(https://19january2017snapshot.epa.gov/enforcement/civil-penalty-policy-section-311b3-and-section-311j-clean-water-act-cwa-august-1998_.html)

The CUPA will provide CalEPA with training documentation, which will include at minimum, an outline of the training conducted and a list of CUPA inspectors attending the training.

2. INCIDENTAL FINDING:

The CUPA did not provide CalEPA with a Formal Enforcement Summary Report for each formal enforcement case that received a final judgement.

- Five Formal Enforcement Summary Reports were not provided to CalEPA within 30 days of the final judgement being issued for the following facilities:
 - CERS ID 10455934
 - CERS ID 10805428
 - CERS ID 10153579
 - CERS ID 10087504
 - CERS ID 10130653

CITATION:

CCR, Title 27, Section 15290(a)(5)
[CalEPA]

RESOLUTION:

During the evaluation, the CUPA provided a Formal Enforcement Summary Report for the following facilities:

- CERS ID 10087504
- CERS ID 10153579
- CERS ID 10805428

Effective immediately, the CUPA will provide CalEPA with a Formal Enforcement Summary Report within 30 days of final judgment for each future formal enforcement case, not including statewide formal enforcement cases.

By the 1st Progress Report, the CUPA will provide CalEPA with a Formal Enforcement Summary Report for both of the formal enforcement cases outlined above which received final judgments, as identified in CERS, but were not provided during the evaluation.

- The [Formal Enforcement Summary Report template](#) is available at: <https://calepa.ca.gov/wp-content/uploads/sites/6/2016/10/CUPA-Documents-eReporting-Template.pdf>
- [Instructions for filling out a Formal Enforcement Summary Report](#) template are available at: <https://calepa.ca.gov/wp-content/uploads/sites/6/2016/10/CUPA-Documents-eReporting-Instructions.pdf>
- Completed forms shall be submitted via email to CUPA@calepa.ca.gov

UNIFIED PROGRAM PERFORMANCE EVALUATION
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INCIDENTAL FINDINGS REQUIRING RESOLUTION

3. INCIDENTAL FINDING:

The Unified Program administrative procedures have components that are incomplete.

The following components are incomplete:

- Records Maintenance procedures which include proper disposal methods:
 - The Records Maintenance Procedure indicates records will be destroyed in accordance with procedures established by the City Attorney and City Clerk; however, the referenced procedure is not listed or made readily available in the Records Maintenance Procedure, and was not found within the City Clerk or City Attorney webpages.
- Permitting procedures which establish a permitting cycle:
 - The procedure for processing permits does not include a description of the permitting cycle for different program elements.

CITATION:

CCR, Title 27, Section 15180(e), Section 15185(b), and Section 15220

[CalEPA]

RESOLUTION:

By the 1st Progress Report, the CUPA will provide CalEPA with a copy of the revised Unified Program administrative procedures that address the identified incomplete components.

By the 2nd Progress Report, if amendments to the revised Unified Program administrative procedures are necessary based on feedback from CalEPA, the CUPA will provide CalEPA with a copy of the amended Unified Program administrative procedures. If no amendments are necessary, the CUPA will train CUPA personnel on the revised Unified Program administrative procedures. The CUPA will provide training documentation to CalEPA, which at minimum will include an outline of the training conducted and a list of CUPA personnel in attendance. Once training is complete, the CUPA will implement the revised or amended I&E Plan or other applicable procedures.

By the 3rd Progress Report, if amendments to the revised Unified Program administrative procedures were necessary, the CUPA will train CUPA personnel on the amended Unified Program administrative procedures. The CUPA will provide training documentation to CalEPA, which at minimum will include an outline of the training conducted and a list of CUPA personnel in attendance. Once training is complete, the CUPA will implement the revised or amended I&E Plan or other applicable procedures.

4. INCIDENTAL FINDING:

The Underground Storage Tank (UST) Operating Permit template does not reflect issuance under a consolidated Unified Program Facility Permit (UPFP).

CITATION:

CCR Title 27, Section 15190(b)

[CalEPA]

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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INCIDENTAL FINDINGS REQUIRING RESOLUTION

RESOLUTION:

By the 1st Progress Report, the CUPA will provide CalEPA with a revised UST Operating Permit template that reflects issuance under a consolidated UPFP.

By the 2nd Progress Report, the CUPA will, if necessary, amend the revised UST Operating Permit template, based on feedback from CalEPA, and will provide the amended template to CalEPA. If no amendments are necessary, the CUPA will provide CalEPA with a copy of three UST Operating Permits issued to UST facilities using the revised UST Operating Permit template, issued under the consolidated UPFP.

By the 3rd Progress Report, if amendments to the revised UST Operating Permit template were necessary, the CUPA will provide CalEPA with a copy of three UST Operating Permits issued to UST facilities using the amended UST Operating Permit template, issued under the consolidated UPFP.

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UNIFIED PROGRAM PERFORMANCE EVALUATION
PRELIMINARY SUMMARY OF FINDINGS REPORT

OBSERVATIONS AND RECOMMENDATIONS

Observations and recommendations identify areas of Unified Program implementation that could be improved and provide suggestions for improvement. Though the CUPA is not required by regulation or statute to apply the recommendations provided, the CUPA would benefit in applying the recommendations provided to improve the overall implementation of the Unified Program.

1. OBSERVATION:

The CUPA may not be regulating all APSA tank facilities. CERS identifies approximately 119 facilities as APSA applicable. However, the CUPA's local database identifies 77 APSA facilities. OSFM estimates 74 facilities are in both CERS and the CUPA's local database, however, there are three tank facilities identified in the CUPA's local database that are not in CERS, and 45 APSA facilities identified in CERS that are not in the CUPA's local database.

RECOMMENDATION:

Complete the reconciliation of the CUPA's local database with CERS for APSA program information to ensure all APSA regulated facilities are in each, including facilities that store 10,000 gallons or more of petroleum.

2. OBSERVATION:

The CalARP Performance Audits are, for the most part, excellent. However, the response to bullet 7, of CCR, Title 19, Section 2780.5(b)(7), should reflect how many staff, and what part of their time does it take to implement the program rather than how long staff have been implementing the program. For example, if the CUPA has three staff, each working half-time on CalARP, then the response would be "three personnel, 1.5 Personnel Years (PYs)."

RECOMMENDATION:

With the next CalARP Performance Audit, tailor the response to CCR, Title 19, Section 2780.5(b)(7) to reflect the example provided above.

3. OBSERVATION:

Review of overall implementation of the HWG program, including CERS data, and facility file information between July 1, 2017, and June 30, 2020, is summarized below:

- CERS indicates 312 routine HWG inspections were conducted.
 - 197 (63%) of these inspections resulted in one or more violations being cited
 - 115 (37%) of these inspections had no violations.
- CERS indicates that no Class I violations were cited and 64 of 88 (73%) Class II violations cited remain out of compliance.
- CERS indicates 403 of 558 (72%) minor violations cited remain out of compliance.
- Formal enforcement actions were completed for the HWG program during the evaluation period, however the CME data was not properly entered to CERS.

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

UNIFIED PROGRAM PERFORMANCE EVALUATION
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OBSERVATIONS AND RECOMMENDATIONS

RECOMMENDATION:

Ensure complete and thorough inspections are conducted to identify all violations at facilities. Ensure inspection reports are detailed and include all observations, factual basis of violations, and corrective actions. Adhere to the I&E Plan to follow up with facilities that have not returned to compliance by the scheduled RTC date and pursue a graduated series of informal or formal enforcement for facilities that do not RTC.

4. OBSERVATION:

Review of CERS finds the following USTs or UST systems have single-walled components which may require permanent closure by December 31, 2025, in accordance with HSC, Chapter 6.7, Section 25292.05. Below are all the facilities requiring closure:

- CERS ID 10159517 (Tank IDs 002 & 003);
- CERS ID 10084630 (Tank IDs 001 & 002);
- CERS ID 10084984 (Tank IDs 001, 002, & 003); and
- CERS ID 10134169 (Tank ID 001)

RECOMMENDATION:

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

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

https://www.waterboards.ca.gov/water_issues/programs/ustcf/rust.html.

5. OBSERVATION:

Review of time to accept CERS UST submittals indicates a limited number of instances where the time to accept a CERS submittal is greater than the expectations outlined in the State Water Board correspondence dated November 29, 2016, "[When to Review Underground Storage Tank Records](https://www.waterboards.ca.gov/ust/cers/docs/when_to_review_ust_records.pdf)" (https://www.waterboards.ca.gov/ust/cers/docs/when_to_review_ust_records.pdf).

RECOMMENDATION:

Review State Water Board correspondence identified above and establish a procedure to ensure UST inspection staff review CERS UST submittals for completeness and accuracy, though not necessarily field verified, as soon as possible, but no later than 60-days after the submittal date.

6. OBSERVATION:

Review of the UST Facility/Tank Data Download report obtained from CERS on September 1, 2020, indicates there are a limited number of instances where CERS monitoring and construction data are incorrect as follows:

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PRELIMINARY SUMMARY OF FINDINGS REPORT

OBSERVATIONS AND RECOMMENDATIONS

- USTs identified as having no striker plate installed.
- USTs identified as having no spill container installed.
- USTs identified as having double-walled product pipe with no continuous interstitial monitoring.

Note: Reference the following CERS FAQs:

- “General Reporting Requirements for USTs”
- “When to Issue a UST Operating Permit”
- “Common CERS Reporting Errors”
- “Setting Accepted Submittal Status” and
- “Which Forms Require Uploading to CERS”

RECOMMENDATION:

Provide refresher training to UST inspection staff who review CERS UST facility submittals for accuracy and continue to assist facility owners or operators with reporting accurate and complete UST facility submittals with the next CERS submittal, but no later than one year.

7. OBSERVATION:

In accordance with State Water Board guidance issued March 2020, the CUPA provided a list of UST facilities (with Report 6) that were not inspected during government imposed COVID-19 public health and safety restrictions. The CUPA subsequently this summer and fall prioritized the past due inspections, and conducted the following inspections.

- 10084903
- 10084870
- 10132456
- 10156275
- 10180313
- 10087750
- 10128409
- 10088530

RECOMMENDATION:

The next UST annual compliance inspection for these facilities should either return to coordinate with the annual maintenance activity, or require the owner/operator to coordinate the service technician to be present to provide access for CUPA inspection.

8. OBSERVATION:

The CUPA’s ability to adequately implement each Unified Program element appears to be restricted by persistent inadequate staffing. The information below reflects the degree to which both the total number of regulated facilities and total Unified Program elements have increased or decreased since the initial certification of the CUPA. While the number of regulated facilities or entities within certain program elements, such as the UST Program, Tiered Permitting Program, and CalARP Program have decreased, the overall trend shows the number of regulated facilities or entities regulated by the CUPA as of FY 2019/2020 have significantly increased, with approximately 375 more regulated facilities now managed by the CUPA than at

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the time of certification. Program elements for APSA and RCRA LQG facility monitoring have been added since the original CUPA certification, which increased both the total facility count and general workload undertaken by the CUPA.

Summarized below are the differences in the regulated community upon certification and today:

- Total Number of Regulated Businesses and Facilities:
 - Upon Certification in 1996: **626**
 - As of October 9, 2020*: **1001**
 - Delta: **+375**
 - Comments: According to the CUPA application, total facility count, HMRRP facility count, and HWG count are all estimates based on available data at the time.

- Total Number of Hazardous Material Business Plan (HMBP) Program Regulated Businesses and Facilities:
 - Upon Certification in 1996: **580**
 - As of October 9, 2020*: **1001**
 - Delta: **+421**
 - Comments: According to the CUPA application, total facility count, HMRRP facility count, and HWG count are all estimates based on available data at the time.

- Total Number of Regulated Underground Storage Tank (UST) Facilities:
 - Upon Certification in 1996: **105**
 - As of October, 2020*: **64**
 - Delta: **-57**

- Total Number of Regulated USTs:
 - Upon Certification in 1996: **263**
 - As of October 9, 2020*: **153**
 - Delta: **-110**

- Total Number of Regulated HWG Facilities:
 - Upon Certification in 1996: **460**
 - As of October 9, 2020*: **634**
 - Delta: **+174**
 - Comments: According to the CUPA application, total facility count, HMRRP facility count, and HWG count are all estimates based on available data at the time.

- Total Number of Regulated Household Hazardous Waste (HHW) Facilities:
 - HHW Facilities were not regulated under the Unified Program in 1996
 - As of October 9, 2020*: **2**
 - Delta: **+2**

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- Total Number of Regulated Tiered Permitting (TP) Facilities (Permit By Rule, Conditionally Authorized, Conditionally Exempt):
 - Upon Certification in 1996: **87**
 - As of October 9th, 2020*: **45**
 - Delta: **-38**
- Total Number of Regulated Resource Conservation and Recovery Act (RCRA) Large Quantity Generator (LQG) Facilities:
 - RCRA LQG Facilities were not regulated under the Unified Program in 1996
 - As of October 9, 2020*: **55**
 - Delta: **+55**
- Total Number of Regulated Risk Management Prevention Plan (RMPP) or California Accidental Release Prevention (CalARP) Program Facilities:
 - Upon Certification in 1996: **30**
 - As of October 9, 2020*: **6**
 - Delta: **-24**
- Total Number of Regulated APSA Tank Facilities
 - Upon Certification in 1996: N/A
 - As of October 9, 2020*: **118**
 - Delta: **+118**

*Number was generated from the CERS "Regulated Facility Report"

As indicated with the information below, despite the expansion of both the program elements and facilities managed by the CUPA, staffing levels as of the FY 2019/2020 are substantially less than when the program was first certified in 1996.

Full Time Equivalent of CUPA Personnel:

- Inspection and other Staff
 - Upon Certification in 1996:
 - 10 Staff, each at a 100% Full Time Equivalent= 10 Full Time positions
 - Currently:
 - 3 Staff, each at a 100% Full Time Equivalent= 3 Full Time positions
 - Note: According to provided budgetary documents, the CUPA currently has funding for 4 Full Time inspector positions.
- Supervisory and Management Staff
 - Upon Certification in 1996:
 - 2 Staff, each at a 100% Full Time Equivalent= 2 Full Time positions
 - Currently:
 - 1 Staff, at a 100% Full Time Equivalent= 1 Full Time position

The comparison of the implementation of the program upon certification with present-day circumstance reveals there may be several issues impeding the CUPAs ability to adequately

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implement the Unified Program within its jurisdiction. Between growth within the county and the expansion of the Unified Program elements since its inception, the number of regulated facilities for this CUPA has grown substantially since the CUPA was first certified. As of the most recent performance evaluation, however, the CUPA has seven fewer full-time personnel on staff than when the agency was first certified, which in and of itself is a factor that reduces the ability of the CUPA to implement all program elements effectively. As such, the CUPA should continue with and/or expand recruiting efforts to ensure that all vacant staff positions are filled in a timely manner.

RECOMMENDATION:

Conduct a fee study to determine the current necessary and reasonable costs to implement all aspects of the Unified Program with the existing regulated businesses and facilities within each program element. Based on the provided analysis, CalEPA recommends the CUPA reevaluate the single fee assessment for each entity, and funding allocation for program services so that, if needed, the CUPA is able to justify the need to increase fees, staff levels, and other resources as necessary and reasonable to adequately implement each program element.

Once the CUPA has the necessary resources to obtain and maintain an adequate staff, it is likely the issues causing the identified and recurring deficiencies, such as falling short of meeting the mandated inspection frequency and obtaining RTC for various program elements, will be addressed.

The ability to apply each aspect of inspection, compliance, monitoring and enforcement for all Unified Program activities is not only vital to the success of the program, but it further ensures the protection of health and safety of the community and environment at large. Ensuring the necessary resources are obtained and maintaining an adequate staff, will assist in addressing the likely issues causing the identified and recurring deficiencies, such as falling short of meeting the mandated inspection frequency for various program elements.