

UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

CUPA: Fresno County Department of Public Health Environmental Health Division

Evaluation Period: August 2020 through February 2021

Evaluation Team Members:

- **CalEPA Team Lead:** Samuel Porras
- **DTSC:** Matthew McCarron
- **Cal OES:** Fred Mehr
- **State Water Board:** Jessica Botsford
- **CAL FIRE-OSFM:** Glenn Warner

This Final Summary of Findings includes:

- Deficiencies requiring correction
- Incidental findings requiring resolution
- Observations and recommendations

The findings contained within this evaluation report are considered final.

Based upon review and completion of the evaluation, the Unified Program implementation and performance of the CUPA is considered: Unsatisfactory

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

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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: October 1, 2021 **2nd Progress Report:** January 3, 2022

3rd Progress Report: April 4, 2022 **4th Progress Report:** July 5, 2022

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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 has not established nor implemented all Unified Program administrative procedures. Unified Program administrative procedures have components that are inaccurate or incomplete.

The following administrative procedures have not been established nor implemented:

- Data Management Procedures that include:
 - The collection, retention, and management of electronic data and documents,
 - The transfer and exchange of electronic data through an applicable local information management system or local reporting portal, and
 - The reporting of electronic data.
 - Note: The CUPA developed a Data Management Procedure during the 2017 CUPA Performance Evaluation process, which was not provided during the 2020 CUPA Performance Evaluation.
- Financial Management Procedures that include:
 - Single fee system,
 - Fee accountability program, and
 - Surcharge collection and reimbursement program.

The following administrative procedures have components that are inaccurate or incomplete:

- The Public Participation Procedure does not contain provisions ensuring the receipt and consideration of comments from regulated businesses and the public, in addition to ensuring the CUPA is coordinating, consolidating, and making consistent locally required public hearings. The CUPA has provided the general hours for which a public forum (hearing) will be conducted, however no information is provided in regards to how the CUPA facilitates these meetings.
- The Public Information Request procedure, titled "Inspection of Public Records," does not make any reference to the Environmental Health Document Portal which is a separate method of requesting public records. The procedure has not been updated since June 5, 2000.
- The Record Maintenance Procedure, titled "Requirements for Documents and Files" does not adequately address proper disposal methods.
 - Note: The CUPA developed a Record Maintenance Policy during the 2017 CUPA Performance Evaluation process, which was not provided during the 2020 CUPA Performance Evaluation.

Note: Not establishing nor implementing Financial Management Procedures was identified as a deficiency during the 2017 CUPA Performance Evaluation, and was not corrected during the Evaluation Progress Report process.

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CITATION:

California Code of Regulations (CCR), Title 27, Section 15180(e)
CCR, Title 27, Sections 15185
[CalEPA]

CORRECTIVE ACTION:

By the 2nd Progress Report, the CUPA will develop and provide CalEPA with Data Management Procedures and Financial Management Procedures, which include all required components.

By the 2nd Progress Report, the CUPA will provide CalEPA with revised administrative procedures for the following, including all required components:

- Public Participation
- Public Information Request
- Forwarding and providing HMRRP information
- Record Maintenance.

By the 3rd Progress Report, if revisions to the developed Unified Program administrative procedures (Data Management and Financial Management) are necessary based on feedback from CalEPA, the CUPA will provide CalEPA with the revised Unified Program administrative procedures. If no revisions are necessary, the CUPA will train CUPA personnel on the developed 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 developed administrative procedures.

By the 3rd Progress Report, if amendments to the revised Unified Program administrative procedures (Public Participation, Public Information Request, forwarding and providing HMRRP information, and Record Maintenance) are necessary based on feedback from CalEPA, the CUPA will provide CalEPA with 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 administrative procedures.

By the 4th Progress Report, if revisions to the to the developed Unified Program administrative procedures (Data Management and Financial Management) were 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 administrative procedures.

By the 4th Progress Report, if amendments to the revised Unified Program administrative procedures (Public Participation, Public Information Request, forwarding and providing HMRRP information, and Record Maintenance) were necessary, the CUPA will train CUPA personnel on

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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 amended administrative procedures.

2. DEFICIENCY:

The Self-Audit Report for Fiscal Years (FYs) 2017/2018, 2018/2019, and 2019/2020 has incomplete information.

The following information is incomplete:

- A narrative summary of the effectiveness of activities including enforcement;
- A record of changes in local ordinances, resolutions, and agreements affecting the Unified Program;
- A summary of new programs being included in the Unified Program.

Note: The Self-Audit Report for each FY did not include a date of completion to demonstrate compilation by September 30th.

CITATION:

CCR, Title 27, Section 15280(c)
[CalEPA]

CORRECTIVE ACTION:

By the 2nd Progress Report, the CUPA will provide CalEPA with a completed Self-Audit Report for FY 2020/2021 that includes all required components, and incorporates a date of completion to demonstrate the report was compiled by September 30th. For each subsequent FY, the CUPA will complete a Self-Audit Report, which will include all required components, and incorporate a date of completion to reflect compilation by September 30th.

3. DEFICIENCY:

The CUPA is not consistently or correctly reporting complete and accurate inspection, violation and enforcement information, also known as compliance, monitoring and enforcement (CME) information, to the California Environmental Reporting System (CERS) for the Hazardous Waste Generator (HWG) and Aboveground Petroleum Storage Act (APSA) Programs.

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

HWG Program:

- CERS ID 10692001:
 - Two inspection reports in CERS dated August 2, 2018
 - One inspection report notes two violations and a return to compliance date (RTC) date of September 18, 2019

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- One inspection report notes no violations and a RTC date of July 30, 2019
- CERS ID 10697821:
 - One inspection report in CERS dated July 31, 2018 notes no violations and a RTC date of July 31, 2018
- CERS ID 10657324:
 - One inspection report in CERS dated July 25, 2018 notes no violations and a RTC date of July 25, 2018
- CERS ID 10592833:
 - Four inspection reports in CERS dated August 23, 2017
 - One inspection notes three violations and an RTC date of September 22, 2017

APSA Program:

- CERS ID 10591144:
 - Inspection report dated April 17, 2019
 - Documents one violation.
 - CERS has no record of the inspection or violation.
- CERS ID 10691359:
 - Inspection report dated April 25, 2019
 - Documents four violations.
 - CERS has no record of the inspection or violations.
- CERS ID 10694995:
 - Inspection report dated August 10, 2018
 - Documents one violation.
 - CERS has no record of the inspection or violation.
- CERS ID 10695169:
 - Inspection report dated February 19, 2020
 - Documents one violation.
 - CERS has no record of the inspection or violation.
- CERS ID 10696291:
 - Inspection report dated November 14, 2019
 - Documents one violation.
 - CERS has no record of the inspection or violation.
- CERS ID 10697833:
 - Inspection report dated September 6, 2018
 - Documents one violation.
 - CERS has no record of the inspection or violation.
- CERS ID 10700272:
 - Inspection report dated December 6, 2018
 - Documents seven violations.
 - CERS has no record of the inspection or violations.
- CERS ID 10700284:
 - Inspection report dated November 13, 2017
 - Documents one violation.

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- CERS has no record of the inspection or violation.
- CERS ID 10807462:
 - Inspection report dated May 10, 2019
 - Documents two violations.
 - CERS has no record of the inspection or violations.

Note: The examples provided above for the HWG Program and APSA Program may not represent all instances of this deficiency.

Note: This deficiency was identified for the HWG Program and APSA Program during the 2017 CUPA Performance Evaluation. The deficiency was corrected for the HWG Program during the Evaluation Progress Report process. The deficiency was not corrected for the APSA Program during the Evaluation Progress Report process.

CITATION:

HSC, Chapter 6.11, Section 25404(e)(4)
CCR, Title 27, Section 15187(a)(2), 15187(c) and 15290(b)
[DTSC, OSFM]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop, implement, and provide CalEPA with an action plan for reporting HWG Program and APSA 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 and APSA 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 consistently reported completely and accurately to CERS;
- Review and revision of the existing CME reporting component of the Data Management Procedure, or other applicable procedure, to ensure HWG and APSA Program CME information is consistently reported completely and accurately to CERS;
- Identification of HWG and APSA Program CME information not previously reported to CERS, or reported to CERS incorrectly, since July 1, 2013;
- A process for reporting HWG and APSA Program CME information identified as not being previously reported to CERS, or being previously reported incorrectly to CERS, including CME information for any revised inspection reports going back to July 1, 2013;
- A process for ensuring CUPA personnel and inspectors are trained in the consistent use of the most recent violation classifications and citations of the local data management system or CERS violation type numbers;
- A comparison of HWG Program and APSA Program CME information (including follow-up actions) in the local CUPA data management system with CERS to identify any CME information not being reported, or being reported incorrectly to CERS through electronic data transfer (EDT); and
- Future steps to ensure all HWG and APSA Program CME information is reported consistently and correctly to CERS as required.

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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 and OSFM, the CUPA will provide CalEPA with the amended CME reporting component of the data management procedure or other applicable 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 that 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, and with each subsequent Progress Report until considered corrected, if not available in CERS, the CUPA will provide CalEPA with an inspection report or Return to Compliance (RTC) documentation for up to three HWG Program facilities as requested by DTSC and for three APSA Program facilities as requested by OSFM.

By the 5th Progress Report, the CUPA will consistently and correctly report all current and previous HWG Program and APSA Program CME information to CERS as required. The CUPA will provide a statement confirming the completion of all prior HWG and APSA Program CME information not previously reported to CERS, or previously reported incorrectly to CERS, since July 1, 2013, as currently and correctly being reported to CERS.

4. DEFICIENCY:

The CUPA is not properly classifying HWG Program violations.

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 DTSC. 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 24 of 28 (87%) violations cited for exceedance of authorized accumulation time were incorrectly classified as minor. Examples include:
 - CERS ID 10594900: inspection date February 21, 2018
 - CERS ID 10462696: inspection date January, 19, 2018
 - CERS ID 10467922: inspection date October 13, 2017

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.

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CITATION:

HSC, Chapter 6.5, Sections 25110.8.5 and 25117.6
CCR, Title 22, Sections 66260.10 and 66262.34
[DTSC]

CORRECTIVE ACTION:

Beginning immediately, inspectors will ensure violations are correctly classified and appropriate informal or formal enforcement actions are pursued for non-minor (Class I and Class II) violations.

By the 1st Progress Report, the CUPA will train personnel on the classification of minor, Class I, and Class II violations, as defined in:

- HSC, Chapter 6.5, Sections 25110.8.5 and 25117.6,
- HSC Chapter 6.11, Section 25404(a)(3), and
- CCR, Title 22, Section 66260.10

The CUPA will train personnel on how to properly classify HWG Program violations during inspections and ensure personnel review the following:

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

The CUPA will provide CalEPA with training documentation, which at minimum will include, an outline of the training conducted and a list of CUPA personnel attending the training, to demonstrate each inspector reviewed the Violation Classification Training Video and Guidance Document and received training on how to properly classify HWG Program violations.

By the 2nd Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with a copy of inspection reports citing at least one HWG Program violation, for three HWG Program facilities, as requested by DTSC, that have been inspected after training has been completed and within the last three months. Each inspection report will contain observations, factual basis, and corrective actions to correctly identify and classify each observed HWG Program violation.

Note: The following additional HWG inspection, accumulation and generator requirement training resources are available to assist in training CUPA inspectors:

- Advanced Hazardous Waste Inspector Training Video 2016 (1 of 2)
<https://www.youtube.com/watch?v=Ign3TJftSUM>
- Advanced Hazardous Waste Inspector Training Video 2012 (5 of 7): Tanks and Sumps
<https://www.youtube.com/watch?v=oCrI3MvTd8M>
- Generator Requirements Fact Sheet

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- https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/06/HWM_FS_Generator_Requirements.pdf
- Accumulation Time Fact Sheet
https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/02/FS_OAD_Accumulation.pdf
 - Universal Waste
https://dtsc.ca.gov/wp-content/uploads/sites/31/2016/01/UW_Factsheet1.pdf
 - Managing Used Oil Filters for Generators
https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/02/RAG_Used-Oil-Filters_Generators1.pdf
 - Management of Spent Lead Acid Batteries
https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/02/FS_DutyOfficer_LeadAcidBatteries1.pdf
 - Generator Summary Chart
<https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/05/California-Generator-Chart.pdf>
and https://www.acgov.org/forms/aceh/Generator_Requirements_Summary_Chart.pdf
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5. DEFICIENCY:

The CUPA has not identified all HWG facilities operating within the CUPA's jurisdiction.

- The 2019/2020 Self-Audit Report identifies 2,962 regulated HWG facilities.
- CERS notes 1,810 facilities that self-identified as HWGs on the Business Activities page.
- Review of the DTSC Hazardous Waste Tracking System (HWTS) and Transporter Quarterly Report (TQR) finds 3,381 facilities with either U.S. Environmental Protection Agency (EPA) Identification (ID) or California issued numbers shipped hazardous waste from January 1, 2018 through December 31, 2020. This does not include counts of facilities with provisional U.S. EPA ID numbers issued for emergency or one-time removal actions.

Note: This deficiency was identified during the 2017 CUPA Performance Evaluation and was not corrected during the Evaluation Progress Report process. This deficiency was identified during the 2014 CUPA Performance Evaluation as an observation.

CITATION:

HSC, Chapter 6.5, Section 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, Sections 15100 (b)(3) and 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 all facilities subject to the HWG Program. The action plan will include, at minimum:

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- A review and comparison of the data from the HWTS and TQR (CUPA Report) with the data from the CUPA's local data management system or CERS, to determine all facilities that generate hazardous waste and are subject to HWG Program requirements.
 - The CUPA will develop a spreadsheet containing each facility listed in the HWTS, TQR, the CUPA's local data management system and CERS. For each facility listed, the spreadsheet will, at minimum, include:
 - CERS ID
 - Date of the last routine inspection
 - Whether or not the facility self-identified as a HWG facility on the CERS Business Activities page
 - Any issued HWG permits (Tiered Permitting: Permit By Rule, Conditionally Authorized, Conditionally Exempt)
 - Any informative notes regarding the facility.
 - For facilities identified as not being subject to the HWG Program, the CUPA will provide specific details on how the determination was made. Site visits and aerial photography (e.g., Google Maps) may be used to assist in identifying non-regulated facilities.
 - Facilities identified as being subject to the HWG Program will be incorporated into the existing HWG inspection schedule, prioritizing the most delinquent inspections to be completed prior to any other HWG inspection.

By the 2nd Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with an updated version of the spreadsheet to demonstrate the HWG facilities identified as being subject to the HWG Program that have been inspected, permitted, and are reporting to CERS.

By the 2nd Progress Report, the CUPA will train personnel regarding implementation of the HWG program. The CUPA will provide CalEPA with training documentation, which at minimum will include an outline of the training conducted and a list of CUPA personnel in attendance.

By the 4th Progress Report, the CUPA will have inspected all newly identified HWG facilities.

6. DEFICIENCY:

The CUPA is not inspecting each HWG facility once every three years.

The CUPA is not inspecting each Conditionally Exempt Small Quantity Generator (CESQG) facility that does not require a Hazardous Materials Business Plan (HMBP) due to threshold levels, once every five years, per the inspection frequency established in the I&E Plan.

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

- There are 1,608 HWG facilities with a three-year inspection frequency, per the CUPA.
 - Data from the CUPA's local data management system indicates:
 - 481 (30%) were inspected July 1, 2017 through June 30, 2020;

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- 1,127 (70%) were not inspected within the applicable three-year inspection frequency.
- There are 246 Conditionally Exempt Small Quantity Generator (CESQG) facilities with a five-year inspection frequency, per the CUPA.
 - Data from the CUPA's local data management system indicates:
 - 43 (17%) were inspected January 1, 2015 through December 31, 2020;
 - 203 (83%) were not inspected within the applicable five-year inspection frequency.
- There are 1,810 HWG facilities identified in CERS.
 - 963 (53%) were inspected July 1, 2017 through June 30, 2020;
- 10 of 15 (67%) Tiered Permitting facilities were not inspected within the three-year inspection frequency, as required by statute.

Note: The discrepancy in the number of regulated HWG facilities, the number of inspections conducted, and the corresponding data in CERS is due to the inaccuracies of the information in the CUPA's local data management system, and what is reported to CERS.

Note: This deficiency was identified during the 2003, 2006, 2008, 2011 and 2014 CUPA Performance Evaluations and was not corrected during the Evaluation Progress Report process for any Performance Evaluation.

CITATION:

CCR, Title 27, Section 15200(a)(3)(A)
[DTSC]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will revise the I&E Plan to incorporate steps to ensure HWG facilities are inspected at least once every three years, and once every five years, where applicable. The CUPA will provide the revised I&E Plan to CalEPA.

By the 1st Progress Report, the CUPA will develop, implement and provide CalEPA with an action plan to ensure each HWG and Tiered Permitting facility is inspected per the inspection frequency established in the I&E Plan. 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. 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 HWG and Tiered Permitting facility that has not been inspected per the inspection frequency established in the I&E Plan. For each HWG and Tiered Permitting facility listed, the spreadsheet will include, at minimum:
 - Facility name,
 - CERS ID,
 - Facility ID (if applicable), and
 - Date of the last routine inspection.

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- A schedule to inspect those HWG and Tiered Permitting facilities, prioritizing the most delinquent inspections to be completed prior to any other HWG and Tiered Permitting inspection.
- Future steps to ensure that all HWG and Tiered Permitting facilities will be inspected per the inspection frequencies established in the I&E Plan.

By the 2nd Progress Report, the CUPA will, if necessary, revise the action plan and amend the revised I&E Plan, based on feedback from DTSC. The CUPA will provide the revised action plan and amended I&E Plan to CalEPA. The action plan and inspection schedule will take into account and be adjusted accordingly with any newly identified HWG facilities found operating within the CUPA's jurisdiction as addressed in the Corrective Action for Deficiency 5.

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 and Tiered Permitting facility inspections that have been conducted during the previous three months.

By the 5th Progress Report, the CUPA will have inspected each HWG and Tiered Permitting facility per the inspection frequency established in the I&E Plan.

7. DEFICIENCY:

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

During the 45-day review process the CUPA must:

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

CERS data finds that 14 of 22 (64%) PBR Onsite Hazardous Waste Treatment Notifications were not reviewed, processed or authorized by the CUPA within 45 days of receipt. The following instances are examples where notifications were submitted and the CUPA did not respond:

- CERS ID 10694959: notification submitted February 21, 2020
- CERS ID 10704580: notification submitted March 9, 2020
- CERS ID 10699966: notification submitted March 30, 2020
- CERS ID 10699966: notification submitted April 1, 2020
- CERS ID 10704580: notification submitted April 7, 2020

Note: This deficiency was identified during the 2017 CUPA Performance Evaluation and was corrected during the Evaluation Progress Report process.

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CITATION:

CCR, Title 22, Section 67450.3(d)
[DTSC]

CORRECTIVE ACTION:

By the 2nd Progress Report, the CUPA will provide inspectors with Tiered Permitting (TP) program training regarding how to accurately review, process and authorize Onsite Hazardous Waste Treatment Notifications within the 45-day review process by either:

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

The CUPA will provide CalEPA with training documentation and ensure that written procedures and provided in the I&E Plan to identify new tiered permitting submittals, and steps to assess the quality of those submittals, which at minimum will include an outline of the training conducted and a list of CUPA inspection staff attending the training.

Note: A TP Program training video is available on the California Certified Unified Program Agency Forum Board website at: <https://www.youtube.com/user/orangetreeweb/videos>. Additional TP program training assistance may also be requested from DTSC.

By the 3rd Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide an update to CalEPA on the status of the progress made toward accurately reviewing, processing and authorizing each Onsite Hazardous Waste Treatment Notification to ensure annual notification submittals are accurate, correct and represent the actual waste treatment systems used at the notifying facility.

By the 3rd Progress Report, the CUPA will follow-up with the facilities identified in this deficiency to obtain an Onsite Hazardous Waste Treatment Notification, if required.

8. DEFICIENCY:

The CUPA is not consistently following-up and documenting return to compliance (RTC) information in CERS nor the local data management system for APSA tank facilities cited with violations.

Review of CME information in the local data management system indicates there is no documented RTC for the following APSA Program violations:

FY 2019/2020

- 72 of 108 (67%)
 - Including 29 violations cited for not having an Spill Prevention, Control, and Countermeasure (SPCC) Plan, identified as # 12H139 in the CUPA's data management system.

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FY 2018/2019

- 17 of 64 (27%)
 - Including three violations cited for not having an SPCC Plan

CITATION:

HSC, Chapter 6.11, Section 25404.1.2(c)

HSC, Chapter 6.67, Section 25270.4.5(a)

CCR, Title 27, Sections 15185(a) and (c) and 15200(a)

[OSFM]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will review, revise, and provide CalEPA with the Inspection and Enforcement (I&E) Plan, which includes a delineated process to ensure facilities cited with violations return to compliance through the implementation of appropriate enforcement and addresses following-up with facilities and documenting RTC.

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 facility with open violations (no RTC). The CUPA will prioritize follow-up actions with each facility based on the level of hazard violations present to public health and the environment:

- Facility name;
- 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 appropriate enforcement taken by the CUPA.

By the 2nd Progress Report, if amendments to the revised I&E Plan are necessary based on feedback from CalEPA and OSFM, the CUPA will provide CalEPA with a copy of the amended I&E Plan. If no amendments to the I&E Plan are necessary, the CUPA will train CUPA personnel on the revised I&E Plan. Once training is complete, the CUPA will implement the revised I&E Plan.

By the 3rd Progress Report and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with three APSA tank facility records, as requested by OSFM, that include RTC documentation or a description of the appropriate enforcement taken by the CUPA.

By the 4th Progress Report, the CUPA will have ensured each APSA tank facility identified in the 1st Progress Report for not having an SPCC Plan has achieved compliance, or the CUPA will have applied appropriate enforcement.

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DEFICIENCIES REQUIRING CORRECTION

By the 5th Progress Report, the CUPA will have ensured each APSA tank facility identified in the 1st Progress Report for having a violation has achieved compliance, or the CUPA will have applied appropriate enforcement.

9. DEFICIENCY:

The CUPA is not inspecting each APSA tank facility storing 10,000 gallons or more of petroleum at least once every three years.

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

- 113 of 183 (62%) APSA tank facilities that store 10,000 gallons or more of petroleum have not been inspected within the last three years.

Note: The CUPA's inspection capability was impacted by resource limitations related to the dispatch of CUPA personnel to assist with recovery efforts in the Creek Fire.

CITATION:

HSC, Chapter 6.67, Section 25270.5(a)
[OSFM]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop, implement and provide CalEPA with an action plan to ensure all APSA tank facilities storing 10,000 gallons or more of petroleum and not conditionally exempt are inspected at least once every three years. The action plan will include at minimum:

- An analysis and explanation as to why the inspection frequency requirement for the APSA program is not being met. Existing inspection staff resources and how many facilities are scheduled to be inspected each year are factors to address in the explanation.
- A sortable spreadsheet exported from the CUPA's data management system or CERS, identifying each APSA tank facility storing 10,000 gallons or more of petroleum that has not been inspected once every three years. For each APSA facility listed, the spreadsheet will include, at minimum:
 - Facility name,
 - CERS ID, and
 - Date of the last routine inspection.
- A proposed schedule to inspect those APSA facilities, prioritizing the most delinquent inspections to be completed prior to any other APSA inspection based on a risk analysis of all APSA tank facilities with 10,000 gallons or more of petroleum (i.e., large volumes of petroleum, proximity to navigable water).
- Future steps to ensure that all APSA tank facilities storing 10,000 gallons or more of petroleum will be inspected once every three years.

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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 APSA tank facility inspections that have been conducted during the previous three months.

By the 5th Progress Report, the CUPA will have inspected each APSA tank facility storing 10,000 gallons or more of petroleum within the three-year inspection frequency.

10. DEFICIENCY:

The CUPA is not ensuring APSA tank facilities annually submit an HMBP to CERS when an HMBP is provided in lieu of a tank facility statement.

Review of HMBPs submitted to CERS by APSA tank facilities in lieu of a tank facility statement indicates:

- 186 of 544 (34%) have not submitted a chemical inventory and site map within the last 12 months.
- 192 of 544 (35%) have not submitted emergency response and employee training plans within the last 12 months.

CITATION:

HSC, Chapter 6.67, Section 25270.6(a)
[OSFM]

CORRECTIVE ACTION:

By the 2nd Progress Report, the CUPA will develop, implement and provide CalEPA with an action plan to ensure that HMBPs provided in lieu of a tank facility statement are annually submitted to CERS.

By the 2nd 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 tank facility that has not annually submitted an HMBP when an HMBP is provided in lieu of a tank facility statement to CERS:

- Facility name;
- CERS ID; and
- A narrative of the appropriate enforcement taken by the CUPA.

By the 5th Progress Report, the CUPA will ensure each APSA tank facility has annually submitted an HMBP to CERS when an HMBP is to be provided in lieu of a tank facility statement, or the CUPA will apply appropriate enforcement.

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DEFICIENCIES REQUIRING CORRECTION

11. DEFICIENCY:

The CUPA is not inspecting each facility subject to California Accidental Release Prevention (CalARP) Program requirements at least once every three years.

Review of CME information from CERS finds:

- 92 of 138 (67%) facilities subject to CalARP Program requirements 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:

By the 1st Progress Report, the CUPA will revise the I&E Plan to incorporate steps to ensure CalARP facilities are inspected at least once every three years. The CUPA will provide the revised I&E Plan to CalEPA.

By the 1st Progress Report, the CUPA will develop, implement and provide CalEPA with an action plan to ensure each CalARP Program 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 CalARP 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 spreadsheet exported from the CUPA's data management system or CERS, identifying each CalARP facility that has not been inspected once every three years. For each CalARP facility listed, the spreadsheet will include, at minimum:
 - Facility name,
 - CERS ID, and
 - Date of the last routine inspection.
- A schedule to inspect those CalARP facilities, prioritizing the most delinquent inspections to be completed prior to any other CalARP inspection based on risk.
- Future steps to ensure that all CalARP facilities will be inspected at least once every three years.

By the 2nd Progress Report, the CUPA will, if necessary, revise the action plan and amend the revised I&E Plan, based on feedback from Cal OES. The CUPA will provide the revised action plan and amended I&E Plan to CalEPA.

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 CalARP facility inspections that have been conducted during the previous three months.

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DEFICIENCIES REQUIRING CORRECTION

By the 5th Progress Report, the CUPA will have inspected each CalARP facility at least once in the last three years.

12. DEFICIENCY:

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

Review of CME information from CERS finds:

- 882 of 2180 (40%) facilities subject to HMBP Program requirements were not inspected within the last three years.

CITATION:

HSC, Chapter 6.95, Section 25511(b)
[Cal OES]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will revise the I&E Plan to incorporate steps to ensure HMBP facilities are inspected at least once every three years. The CUPA will provide the revised I&E Plan to CalEPA.

By the 1st Progress Report, the CUPA will develop, implement and provide CalEPA with an action plan to ensure each HMBP Program 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 HMBP 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 spreadsheet exported from the CUPA's data management system or CERS, identifying each HMBP facility that has not been inspected once every three years. For each HMBP facility listed, the spreadsheet will include, at minimum:
 - Facility name,
 - CERS ID, and
 - Date of the last routine inspection.
- A 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, the CUPA will, if necessary, revise the action plan and amend the revised I&E Plan, based on feedback from Cal OES. The CUPA will provide the revised action plan and amended I&E 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 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 5th Progress Report, the CUPA will have inspected each HMBP facility at least once in the last three years.

13. DEFICIENCY:

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

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

- 1,102 of 3,154 (35%) business plan facilities have not submitted a chemical inventory (including site map) or a no-change certification within the last 12 months.

CITATION:

HSC, Chapter 6.95, Sections 25505(a) and 25508(a)
[Cal OES]

CORRECTIVE ACTION:

By the 2nd Progress Report, the CUPA will develop and provide CalEPA with an action plan to ensure that all business plan facilities have annually submitted a HMBP or a no-change certification.

By the 3rd Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with a spreadsheet obtained from the CUPA's data management system or CERS, that includes at a minimum the following information for each regulated business subject to Business plan reporting requirements that has not submitted an HMBP containing all required components within the last 12 months:

- Facility name;
- CERS ID;
- Follow-up actions including:
 - Recent review, acceptance and rejection of HMBPs
 - For those businesses that have not complied, the appropriate enforcement taken by the CUPA to ensure a complete HMBP is annually submitted to CERS.

By the 4th Progress Report, the CUPA will follow-up with each business plan facility identified in the action plan, to ensure the facility submits a complete HMBP or a no-change certification, or the CUPA will apply appropriate enforcement.

By the 5th Progress Report, the CUPA will ensure each regulated business subject to Business Plan reporting requirements submits a complete HMBP or a no-change certification to CERS, or the CUPA will apply appropriate enforcement.

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DEFICIENCIES REQUIRING CORRECTION

14. DEFICIENCY:

The consolidated Unified Program Facility Permit (UPFP) contains permit to operate authorizations for programs inconsistent with statutory and regulatory requirements. The CUPA is issuing permit to operate authorizations for food-operating facilities under the UPFP template.

A review of UPFPs finds the following inconsistencies with statutory and regulatory requirements:

- CERS ID 10146197
 - The UPFP contains a permit to operate for the following: a bakery, restaurant with seating, and a market with a meat department greater than 3,000 square feet. A permit to operate all three components of the regulated facility is not consistent with the permit authorizations allowed under the statutory and regulatory requirements of the UPFP template.
- CERS ID 10174625
 - The UPFP contains a permit to operate for the following: a liquor store market of 1,500 square feet. A permit to operate this component of the regulated facility is not consistent with the permit authorizations allowed under the statutory and regulatory requirements of the UPFP template.
- CERS ID 10691317
 - The UPFP contains a permit to operate for the following: a market without meat, greater than 3,000 square feet. A permit to operate this component of the regulated facility is not consistent with the permit authorizations allowed under the statutory and regulatory requirements of the UPFP template.

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

Note: Though the CUPA is invoicing food operations on the single fee invoice sheets for CUPA Program activities, the CUPA has informed CalEPA that fees are not being retained by the CUPA from food operations.

CITATION:

HSC, Chapter 6.11, Section 25404(a)(6)
CCR, Title 27, Sections 15110(q) and 15190
[CalEPA]

CORRECTIVE ACTION:

By the 2nd Progress Report, the CUPA will provide CalEPA with a revised consolidated UPFP template that includes only required components under the statutory and regulatory requirements and removes any permit to operate authorizations for food-operating facilities.

By the 3rd Progress Report, the CUPA will, if necessary, amend the revised consolidated UPFP 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 consolidated UPFPs issued to food-operating facilities using the revised consolidated UPFP template.

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By the 4th Progress Report, if amendments to the revised consolidated UPFP template were necessary, the CUPA will provide CalEPA with a copy of three consolidated UPFPs issued to food-operating facilities using the amended template.

15. DEFICIENCY:

The Underground Storage Tank (UST) operating permit, and UST operating permit conditions, issued under the consolidated Unified Program Facility Permit (UPFP), is inconsistent with UST Regulations and HSC.

Review of permits, issued under the consolidated UPFP finds the following inconsistencies:

- Permit states “Post in a conspicuous place at the underground storage tank facility”, which is more stringent than UST Regulations and HSC, and where no local ordinance authority exists. UST Regulations require a paper or electronic copy of the UST operating permit be readily accessible at the facility. Additionally, the permit incorrectly cites HSC as the authority to require the UST operating permit to be posted when no provisions of the HSC require the permit to be posted at the facility.
- Permit conditions indicate UST owners or operators shall notify the CUPA of any changes in the usage of the UST within 30 days, while the UST regulatory requirement is to notify the CUPA 30 days *prior* to any change in substance stored.
- Permit conditions indicate UST monitoring plan, emergency response plan, and plot plan shall be maintained on-site, by the owner or operator, at all times, while the UST regulatory requirement is to have these plans submitted to the California Environmental Reporting System (CERS).
- Permit conditions state the Designated Operator(s) (DO) must conduct monthly visual inspections, however, the UST regulatory requirement is “at least once every 30 days”.
- Permit conditions state the permittee shall report any unauthorized release to the CUPA, however, this statement is narrow in scope and implies that only the CUPA is required to be notified when there are other notifications necessary.
- Permit conditions state monitoring records must be maintained on-site for at least 3-years, however, the regulatory requirement is that monitoring records can be maintained on-site or off-site if approved by the Local Agency, for at least 36 months.
- Permit conditions cite HSC, Section 25293 as the authority for UST record retention. The correct implementing citation is UST Regulations, Section 2712(b).
- Permit conditions cite HSC, Section 25284.2 as the authority for spill containment requirements. The correct implementing citation is UST Regulations, Section 2637.1(a)(1).
- Permit conditions indicate the permittee is subject to comply with HSC, Chapter 6.95, however, the correct citation to indicate on the UST operating permit is HSC, Chapter 6.7.
- Permit conditions indicate the permittee shall meet all “Federal/State” financial responsibility requirements, however, the CUPA does not have the authority to implement Federal UST requirements.

Note: The following may be referenced: State Water Board correspondence dated April 7, 2017 “Amended Requirements for Unified Program Facility Permits Effective January 1, 2017.”

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CITATION:

Health and Safety Code (HSC), Chapter 6.7
CCR, Title 23, Sections 2632(d)(1), 2637.1, & 2712
CCR, Title 27, Section 15190(h)
[State Water Board]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will provide CalEPA with a revised UPFP template, which includes the corrected UST operating permit and UST operating permit conditions, consistent with UST Regulations and HSC requirements.

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

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

16. DEFICIENCY:

The CUPA is not consistently ensuring return to compliance (RTC) is obtained within 60 days, or is not consistently following-up and documenting RTC information in CERS for UST testing or leak detection failure violations.

Review of RTC data provided by the CUPA finds the following testing and leak detection failure violations did not obtain RTC within 60 days:

- Fiscal Year (FY) 2019/2020
 - 10 of 26 (38%)
- FY 2018/2019
 - 9 of 29 (31%)
- FY 2017/2018
 - 3 of 12 (25%)

Review of RTC data provided by the CUPA finds the following testing and leak detection failure violations have no documented RTC:

- CERS ID 10019797
 - Violation cited July 2, 2019: Spill containers need replacement to meet five-gallon capacity
- CERS ID 10407922
 - Violations cited March 9, 2020: Spill bucket failure, documentation identifying overfill prevention equipment has been tested, sump containing leaked diesel fuel

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- CERS ID 1039775
 - Violation cited March 16, 2018: Diesel spill bucket failure
- CERS ID 10407919
 - Violation cited January 30, 2019: Overfill Prevention Equipment Inspection not completed

Note: The examples provided above may not represent all instances of this deficiency. These examples only include testing and leak detection and do not include RTC for administrative or minor violations.

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

CITATION:

HSC, Chapter 6.7, Section 25288(d)
[State Water Board]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will review, revise and provide CalEPA with the Inspection and Enforcement (I&E) Plan, which includes a delineated process to ensure facilities with cited violations return to compliance through the implementation of appropriate enforcement and address following-up with facilities and documenting RTC.

By the 1st Progress Report, the CUPA will establish a process for following up with UST facilities which have testing or leak detection violations and require RTC within 60 days. The process, will at minimum document actions as to how the CUPA will:

- follow-up with facilities which have violations cited for testing or leak detection failures and have no RTC within 60 days of the violation being cited; and
- Implement appropriate enforcement for facilities that have no documented RTC for cited violations for testing or leak detection failures.

By the 2nd Progress Report, if amendments to the revised I&E Plan are necessary based on feedback from State Water Board, the CUPA will provide CalEPA with a copy of the amended I&E Plan. If no amendments to the I&E Plan are necessary, the CUPA will train UST inspection staff on the revised I&E Plan. The CUPA will provide training documentation to CalEPA, which at minimum, will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the revised I&E Plan.

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. The CUPA will provide training documentation to CalEPA, which at minimum, will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the amended I&E Plan.

By the 4th Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with five UST facility records, as selected by the State

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Water Board, that include documentation of the applied appropriate enforcement or documentation of RTC. In the event enforcement documentation is confidential, a copy of the enforcement documentation with redacted confidential information can be provided. Any information that can be obtained from CERS is not considered confidential.

17. DEFICIENCY:

The CUPA is not reporting UST inspections or violations, including technical compliance rate (TCR) criteria, in CERS.

Review of UST compliance inspection reports, associated monitoring certifications, and inspection, violation and enforcement information, also known as compliance, monitoring and enforcement (CME) information in CERS finds:

- CERS ID 10146197
 - Inspection Report dated April 9, 2020, identifies 91 and 87 spill container failures. However, the inspection and violation are not in CERS.
- CERS ID 10398253
 - Inspection Report dated November 14, 2018, identifies overfill prevention equipment failure. However, the inspection and violation are not in CERS.
- CERS ID 10407919
 - Inspection Report dated January 22, 2020, identifies a violation for not providing overfill prevention equipment inspection report to the CUPA., However, the inspection and violation are not in CERS.
- CERS ID 10407922
 - Inspection Report dated March 9, 2020, identifies 87 spill bucket failed. However, the inspection and violation are not in CERS.
- CERS ID 10408663
 - Inspection Report dated June 30, 2020, identifies precision line test is past due. However, the inspection and violation are not in CERS.
- CERS ID 10476715
 - Inspection Report dated March 28, 2020, identifies under dispenser containment (UDC) failures on the secondary containment test. However, the inspection and violations are not in CERS.
- CERS ID 10141827
 - Inspection Report dated November 11, 2019, identifies spill bucket failure. However, the inspection and violation are not in CERS.
- CERS ID 10692268
 - Inspection Report dated January 24, 2019, identifies overfill prevention equipment is not functional. However, the inspection and violation are not in CERS.

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

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CITATION:

CCR, Title 23, Section 2713(c)(4) and(d)
CCR, Title 27, Section 15290(a)(3)
[State Water Board]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will review and revise the Data Management Procedure, or other applicable procedure, to ensure the establishment of a process for UST inspection staff to report all inspections and violations, including TCR criteria, in CERS. The CUPA will provide CalEPA with the revised Data Management Procedure, or other applicable procedure.

By the 2nd Progress Report, if amendments to the revised Data Management Procedure, or other applicable procedure are necessary based on feedback from the State Water Board, the CUPA will provide CalEPA with a copy of the amended Data Management Procedure, or other applicable procedure. If no amendments are necessary, the CUPA will train UST inspection staff on the revised Data Management Procedure, or other applicable procedure. The CUPA will provide training documentation to CalEPA, which at minimum, will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the revised Data Management Procedure, or other applicable procedure.

By the 3rd Progress Report, if amendments to the revised Data Management Procedure, or other applicable procedure were necessary, the CUPA will train UST inspection staff on the amended Data Management Procedure, or other applicable procedure. The CUPA will provide training documentation to CalEPA, which at minimum, will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the amended Data Management Procedure, or other procedure.

By the 4th Progress Report, and with each subsequent Progress Report until considered corrected, if not available in CERS, the CUPA will provide CalEPA with facility records for five UST facilities, as selected by the State Water Board, including but not limited to: UST compliance inspection reports, associated monitoring certifications, spill container testing, and any other necessary testing and compliance documentation.

18. DEFICIENCY:

UST compliance inspection information in the Semi-Annual Report (Report 6) is inconsistent with CUPA Self-Audit Reports and CERS CME information.

Review of Report 6, CUPA Self-Audit Reports and CERS CME information for the following Fiscal Years (FYs) finds:

- FY 2019/2020
 - Report 6: 10 of 409 (2%) UST facilities were not inspected
 - CUPA Self-Audit Report: 17 of 408 (4%) UST facilities were not inspected
 - CERS CME information: 330 of 408 (19%) UST facilities were not inspected

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- FY 2018/2019
 - Report 6: 0 of 413 (0%) UST facilities were not inspected
 - CUPA Self-Audit Report: 0 of 417 (0%) UST facilities were not inspected
 - CERS CME information: 341 of 413 (82%) UST facilities were not inspected
- FY 2017/2018
 - Report 6: 404 of 416 (97%) UST facilities were not inspected
 - CUPA Self-Audit Report: 0 of 417 (0%) UST facilities were not inspected
 - CERS CME information: 59 of 415 (14%) UST facilities were not inspected

Note: This deficiency was identified as an Incidental Finding and was not resolved during the 2017 CUPA Performance Evaluation process.

CITATION:

HSC, Chapter 6.11, Section 25404(e)(4)
CCR, Title 23, Section 2713(c)(3)
CCR, Title 27, Sections 15187(c) and 15290(b)
[State Water Board]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will review and revise the Data Management Procedure, or other applicable procedure, to ensure establishment of a process, which at minimum will address:

- How UST compliance inspection information is accurately reported in Report 6, CUPA Self-Audit Reports and CERS.

The CUPA will provide CalEPA with the revised Data Management Procedure, or other applicable procedure.

By the 2nd Progress Report, the CUPA will develop and provide CalEPA with an action plan that, at minimum, includes:

- A thorough analysis and explanation as to how Report 6, CUPA Self-Audit Reports and CERS CME information have inconsistent UST compliance inspection information; and
- A strategy to ensure UST compliance inspection information in Report 6, CUPA Self-Audit Reports and CERS will be accurately reported.

By the 2nd Progress Report, if amendments to the revised Data Management Procedure, or other applicable procedure are necessary based on feedback from the State Water Board, the CUPA will provide CalEPA with a copy of the amended Data Management Procedure, or other applicable procedure. If no amendments are necessary, the CUPA will train UST inspection staff on the revised Data Management Procedure, or other applicable procedure. The CUPA will provide training documentation to CalEPA, which at minimum, will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete,

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the CUPA will implement the revised Data Management Procedure, or other applicable procedure.

By the 3rd Progress Report, if amendments to the revised Data Management Procedure, or other applicable procedure were necessary, the CUPA will train UST inspection staff on the amended Data Management Procedure, or other applicable procedure. The CUPA will provide training documentation to CalEPA, which at minimum, will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the amended Data Management Procedure, or other applicable procedure.

By the 4th Progress Report, the CUPA will have accurately reported UST compliance inspection information in Report 6 and CERS for two consecutive Report 6 reporting periods.

19. DEFICIENCY:

The CUPA is not reporting or inspecting improperly abandoned USTs, enforcing the proper closure of abandoned USTs, or applying appropriate enforcement.

The U.S. Environmental Protection Agency (EPA), State Water Board, and Report 6 identify improperly abandoned USTs at the following facilities:

- Global ID: UST10000275
- Global ID: UST10000277
- Global ID: UST10000280
- Global ID: UST10000286
- Global ID: UST10000287
- Global ID: UST10000289
- Global ID: UST10000349
- CERS ID 10704208: UST10000292 listed in CERS as UST applicable
- CERS ID 10695706: UST10000294 listed in CERS as UST applicable
- CERS ID 10704046: UST10000296
- CERS ID 10700422: UST10000297
- CERS ID 10701604: UST10000347
- CERS ID 10690882: UST10000348

State Water Board finds the following:

- Some of the identified abandoned USTs are not in CERS, listed above with only a Global ID;
- The CUPA is not consistently conducting required UST compliance inspections;
- The CUPA is not applying appropriate enforcement; and
- The CUPA is not reporting TCR information.

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

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Note: The following may be referenced:

- State Water Board correspondence dated April 27, 2017, "Conclusion of the Abandoned Underground Storage Tank Initiative, and Unified Program Agency Inspection and Reporting Requirements"
- CERS FAQ: "Reporting Abandoned USTs."

CITATION:

HSC, Chapter 6.7, Sections 25298 and 25299(a)(5) and/or (b)(3)
[State Water Board]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop an action plan to properly inspect abandoned USTs and/or, implement appropriate enforcement for the proper closure of abandoned USTs. The CUPA will provide CalEPA with the action plan.

By the 2nd Progress Report, the CUPA will review and revise the I&E Plan or other applicable procedure, to ensure establishment of a process for proper closure of abandoned USTs, including how the CUPA inspects abandoned USTs, and enforces proper closure of USTs. The process at minimum will address:

- Ensuring abandoned USTs are reported to CERS and remain in CERS until UST closure is completed;
- Conducting UST compliance inspections;
- Applying appropriate enforcement to obtain RTC; and
- Providing TCR information to the State Water Board.

The CUPA will provide CalEPA with the revised I&E Plan or other applicable procedure.

By the 3rd Progress Report, if amendments to the revised I&E Plan or other applicable procedure are necessary, based on feedback from the State Water Board, the CUPA will provide CalEPA with a copy of the amended I&E Plan or other applicable procedure. If no amendments are necessary, the CUPA will train UST inspection staff on the revised I&E Plan or other applicable procedure. The CUPA will provide training documentation to CalEPA, which at minimum will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the revised I&E Plan or other applicable procedure.

By the 4th Progress Report, if amendments to the revised I&E Plan or other applicable procedure were necessary, the CUPA will train UST inspection staff on the amended I&E Plan or other applicable procedure. The CUPA will provide training documentation to CalEPA, which at minimum will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the amended I&E Plan or other applicable procedure.

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By the 5th Progress Report, and with each subsequent Progress Report until considered corrected, for each remaining abandoned UST, the CUPA will provide CalEPA with UST compliance inspections, TCR information, UST closure records (if applicable), or the applied graduated series of informal and/or formal enforcement.

With respect to the identified abandoned USTs, the CUPA will follow up and ensure proper closure is completed. Any UST installed on or after January 1, 1984, which is operational, or temporarily closed or abandoned, and previously regulated by the CUPA, shall be:

- reported to CERS, or to a local reporting portal;
- inspected annually, applying a graduated series of enforcement if needed, and;
- Reported in Report 6 with TCR information

20. DEFICIENCY:

The CUPA is not consistently implementing proper UST closure activities.

Review of facility files finds the CUPA did not consistently implement the following UST closure activities:

- CERS ID 10705243
 - Proper number of samples taken for each UST
 - Providing documentation of proper disposal of the UST
 - Providing chain of custody for samples taken

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

CITATION:

CCR, Title 23, Section 2672(d)
[State Water Board]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will review and revise the I&E Plan, or other applicable procedure, to ensure establishment of a process for requiring UST closure activities, which will at minimum address:

- Taking soil samples immediately beneath the removed portions of the UST, a minimum of two feet into native material at each end of the UST and/or water samples if water is found in the excavation pit;
- Proper analysis of soil and/or water samples;
- Taking separate samples for each 20 linear-feet of trench for piping;
- Permanent closure where USTs are closed in place, including taking a minimum of one boring sample as close as possible to the midpoint beneath the UST using a slant boring or other appropriate method such as vertical borings drilled on each long dimensional side of the tank as approved by the local agency;

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- Provide documentation of proper disposal of the removed UST or documentation that the USTs were filled with an inert solid; and
- Provide chain of custody for all samples taken

The CUPA will provide CalEPA with the revised I&E Plan or other applicable procedure. If revisions are made to a procedure other than the I&E Plan, the I&E Plan must be revised to incorporate reference to the revised procedure.

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

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

By the 4th Progress Report, or until considered corrected, for the next two UST removals or closures in place, if not available in CERS, the CUPA will provide CalEPA with a copy of the UST closure records, including sampling results.

21. DEFICIENCY:

The CUPA is not consistently issuing closure documentation and 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/ or water sampling complies with UST Regulations and HSC.

Review of facility files finds the CUPA did not provide UST closure documentation to the owner or operator upon completion of UST closure activities for the following:

- 47XX E Kings Canyon
 - The letter provided to document the owner or operator has demonstrated proper closure does not include the section for UST Regulations.
- 36XXX S. Lassen
 - The letter provided was a referral letter to the Regional Board for site cleanup, which does not document in sufficient detail that the owner or operator has demonstrated proper closure to the satisfaction of the CUPA.
- CERS ID 10165937

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- The letter provided was a referral letter to the Regional Board for site cleanup, which does not document in sufficient detail that the owner or operator has demonstrated proper closure to the satisfaction of the CUPA.

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

Note: The following may be referenced: State Water Board UST Program Leak Prevention Frequently Asked Question 15 (https://www.waterboards.ca.gov/ust/leak_prevention/faq15.shtml).

Note: State Water Board appreciates the CUPA generating the required Closure Letter dated December 18, 2020, for UST removals that occurred October 25, 2018, for the 47XX E Kings Canyon facility. However, because this closure letter was generated by the CUPA after State Water Board requested the documentation on December 15, 2020, and subsequently much later than the closure letter should have been issued to the facility owner or operator, State Water Board finds for the purposes of this evaluation that the CUPA has not complied with the requirement to issue closure documentation. State Water Board will, however, use this letter as an example to demonstrate compliance with the corrective action for this deficiency and will reduce the number of closure letters required in the corrective action below.

CITATION:

HSC, Chapter 6.7, Section 25298(c)
CCR, Title 23, Section 2672(d)
[State Water Board]

CORRECTIVE ACTION:

By the 2nd Progress Report, the CUPA will develop or review and revise a UST Closure procedure or other applicable procedure, ensuring a process is established, which will include at minimum how the CUPA will:

- Provide UST closure documentation to the UST owner or operator which demonstrates to the satisfaction of the CUPA, UST closure, removal, and soil and/or water sampling complies with HSC, Chapter 6.7, Section 25298(c) and CCR, Title 23, Section 2672(d).

By the 2nd Progress Report, the CUPA will develop or review and revise a UST closure letter template. The CUPA may consider including the following language in the UST closure letter template: “the Fresno CUPA has reviewed the UST closure documentation and approves the UST closure as properly completed in accordance with HSC, Chapter 6.7, Section 25298(c), and CCR, Title 23, Section 2672(d).” The CUPA will provide the developed or revised UST closure letter template to CalEPA.

By the 3rd Progress Report, if revisions to the developed or amended UST closure procedure or other applicable procedure are necessary based on feedback from the State Water Board, the CUPA will provide CalEPA with a copy of the revised or amended UST closure procedure or other applicable procedure. If no revisions or amendments are necessary, the CUPA will train UST inspection staff on the revised or amended UST closure procedure or other applicable

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procedure. The CUPA will provide training documentation to CalEPA, which at minimum, will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the revised or amended UST closure procedure or other applicable procedure.

By the 3rd Progress Report, if revisions to the developed or amendments to the revised UST closure letter template are necessary based on feedback from the State Water Board, the CUPA will provide CalEPA with a copy of the revised or amended UST closure letter template. If no revisions or amendments are necessary, the CUPA will train UST inspection staff on the use of the revised or amended UST closure letter template. The CUPA will provide training documentation to CalEPA, which at minimum will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will use the revised or amended UST closure letter template.

By the 4th Progress Report, if amendments to the revised or amended UST closure procedure or other applicable procedure were necessary, the CUPA will train UST inspection staff on the revised or amended UST closure procedure or other applicable procedure. The CUPA will provide training documentation to CalEPA, which at minimum, will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the revised or amended UST closure procedure or other applicable procedure.

By the 4th Progress Report, if amendments to the revised or amended UST closure letter template were necessary, the CUPA will train UST inspection staff on the use of the revised or amended UST closure letter template. The CUPA will provide training documentation to CalEPA, which at minimum will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will use the revised or amended UST closure letter template.

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

By the 5th Progress Report or until considered corrected, for the next two UST removals or closures in place, the CUPA will provide CalEPA with a copy of the UST closure documentation that demonstrates to the satisfaction of the CUPA that UST closure, removal and soil and/or water sampling complies with HSC, Chapter 6.7, Section 25298(c) and CCR, Title 23, Section 2672(d).

22. DEFICIENCY:

The CUPA's data management system is unable to consistently electronically transfer or exchange CME information to CERS, therefore all CME information is not in CERS.

Note: This deficiency was identified during the 2017 CUPA Performance Evaluation and was considered corrected during the Evaluation Progress Report process. This deficiency was

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identified during the 2014 CUPA Performance Evaluation and was not corrected during the Evaluation Progress Report process.

CITATION:

HSC, Chapter 6.11, Section 25404(e)(4)
CCR, Title 27, Section 15187(a)(2) and (c)
[CalEPA]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop, implement, and provide CalEPA with an action plan to successfully electronically transfer or exchange CME information from the data management system to CERS, as well as providing the missing CME data. The action plan will identify, at a minimum:

- Problem areas and solutions;
- Timeframe for implementing solutions;
- The anticipated date of resolution, when the local data management system will successfully electronically transfer or exchange CME information to CERS; and
- A schedule for transferring all missing CME information from the local data management system to CERS dating back to July 2013.

By the 2nd Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with an update of the progress towards the successful electronic transfer or exchange of CME information from the data management system to CERS, as well as providing missing CME data.

23. DEFICIENCY:

The CUPA's single fee system does not fund the necessary and reasonable costs necessary to implement the Unified Program.

- The CUPA has not implemented any single fees to recover costs for regulating the APSA Program.
- The CUPA implemented phased fee increases for the CalARP and UST Programs over a two-year period from 2018 through 2019. There have been no other Unified Program fee increases since October 2019.

The CUPA provided Self-Audit Reports for FY 2017/2018, 2018/2019, and 2019/2020 with the budget breakdown of expenditures and revenues for each fiscal year.

- FY 2017/2018:
 - The CUPA reported expenditures of \$2,197,907.75 and single fee revenues of \$1,553,403.64. The CUPA has a budget deficit of \$644,504.11.
- FY 2018/2019

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- The CUPA reported expenditures of \$1,811,608.29 and single fee revenues of \$1,539,323.94. The CUPA has a budget deficit of \$272,284.35.
- FY 2019/2020
 - The CUPA reported expenditures of \$2,434,400 and single fee revenues of \$1,865,188.50. The CUPA has a budget deficit of \$569,211.50.

Note: This deficiency was identified during the 2014 and 2017 CUPA Performance Evaluations and was considered corrected during both of the Evaluation Progress Report processes.

CITATION:

HSC, Chapter 6.11, Section 25404.5(a)(2)(A)
CCR, Title 27, Sections 15210(d) and 15220(a)
[CalEPA]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will provide CalEPA with a plan for the reassessment of the fee accountability program to ensure the single fee amount is adequate to fund the necessary and reasonable costs needed to implement the Unified Program, including the APSA Program.

By the 2nd Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with an update regarding the status of the reassessment of the fee accountability program, including the revised single fee schedule, if adjusted.

24. DEFICIENCY: CORRECTED DURING EVALUATION

The CUPA is not ensuring that emergency response personnel have full access to, and availability of, hazardous materials business plan (HMBP) information submitted to CERS.

CITATION:

HSC, Chapter 6.95, Sections 25500(a), and 25502(b)
CCR, Title 27, Section 15180(e)(4)
[Cal OES]

CORRECTIVE ACTION: COMPLETED

The CUPA has provided a copy of the revised HMRRP Information Forwarding Procedure, which has been determined to be adequate. No further action is required.

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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 submitting quarterly Surcharge Transmittal Reports to CalEPA within 30 days after the end of each fiscal quarter.

The following quarterly Surcharge Transmittal Reports were not received by the required due date:

- FY 2017/2018
 - 1st Quarter submitted on November 6, 2017
 - 4th Quarter submitted on August 20, 2018
- FY 2018/2019
 - 1st Quarter submitted on November 15, 2018
 - 2nd Quarter submitted on February 1, 2019
- FY 2019/2020
 - 1st Quarter submitted on November 4, 2019
 - 2nd Quarter submitted on February 14, 2020

CITATION:

CCR, Title 27, Section 15250(b)(1)
[CalEPA]

RESOLUTION:

By the 2nd Progress Report, the CUPA will have submitted to CalEPA the 1st quarterly Surcharge Transmittal Report for FY 2021/2022 by the required due date. Thereafter, the CUPA will submit each quarterly Surcharge Transmittal Report to CalEPA no later than 30 days after the end of each fiscal quarter.

2. INCIDENTAL FINDING:

The Semi-Annual Report 6 (Report 6) was submitted after the regulatory deadline for the period of July – December 2018, and January – June 2017.

CITATION:

CCR, Title 23, Section 2713(c)
CCR, Title 27, Section 15290 (a)(4)
[State Water Board]

RESOLUTION:

The CUPA will submit Report 6 in accordance with the regulatory deadline of March 1st for the July – December reporting period and September 1st for the January – June reporting period.

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By the regulatory deadline of September 1st, the CUPA will provide Report 6 information for January – June of the current year to the State Water Board.

3. INCIDENTAL FINDING:

The CUPA is not consistently addressing each referred complaint in accordance with the I&E Plan.

The CUPA is not addressing each complaint referred through the CalEPA Environmental Complaint System (<https://calepacomplaints.secure.force.com/complaints/Complaint>). The following complaint numbers were referred to the CUPA and have not been addressed:

- COMP-47199
- COMP-46187
- COMP-42282
- COMP-41782

CITATION:

CCR, Title 27, Section 15200(a)(13)
[DTSC]

RESOLUTION:

During the evaluation, the CUPA stated that the ability for the CUPA to receive and respond to complaints through the CalEPA Environmental Complaint System was compromised due to an internal IT security protocol blocking referrals to the CUPA. The CUPA has ensured a valid email address would enable notification of complaints referred to the CUPA through the CalEPA Environmental Complaint System.

By the 2nd Progress Report for each referred complaint identified in this finding, the CUPA will provide CalEPA with a copy of follow-up documentation and explain the outcome.

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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 has reported significant increases in the number of “Businesses Assessed CUPA Oversight Surcharge” in the Annual Single Fee Summary Reports between FY 2017/2018 (a total of 2,686 facilities) and FY 2018/2019 (a total of 3,310 facilities). There was a 19% increase in the number of facilities between both years.

RECOMMENDATION:

Provide a cover letter addressed to CalEPA with the Annual Single Fee Summary Report, as requested on the Annual Single Fee Summary Report and instructions, including the estimated change in the number of regulated businesses if the CUPA believes the number of regulated businesses will change significantly in the current year or within the next year.

2. OBSERVATION:

The CUPA is issuing a consolidated UPFP that includes an issuance date and an initial valid date, which do not always coincide with one another and may lead to inconsistencies and time lapse in the permitting cycle, ultimately resulting in a period of time where a regulated facility is not permitted.

RECOMMENDATION:

Consolidate the issuance date and valid date on the permit to coincide with one another.

3. OBSERVATION:

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

Number of regulated facilities for each program element:

- *Original Certification Source: Fresno County Department of Public Health Environmental Health Division CUPA Application*
- *Current CUPA Evaluation Sources: CERS “Summary Regulated Facilities by Unified Program Element Report” & CERS “UST Inspection Summary Report (Report 6)”, both generated on December 7th, 2020*

• Total Number of Regulated Businesses and Facilities:

- Upon Certification in 1995: **2,485**
- Current CUPA Evaluation: **4,549**
- An increase of **2,064** facilities

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- Total Number of Hazardous Materials Release Response Plan and Inventory (Business Plan) Regulated Businesses and Facilities:
 - Upon Certification in 1995: **2,485**
 - Current CUPA Evaluation: **3,571**
 - An increase of **1,086** facilities

- Total Number of Regulated Underground Storage Tank (UST) Facilities:
 - Upon Certification in 1995: **785**
 - Current CUPA Evaluation: **420**
 - A decrease of **365** facilities

- Total Number of Regulated Underground Storage Tanks (USTs):
 - Upon Certification in 1995: **2,145**
 - Current CUPA Evaluation: **988**
 - A decrease of **1,157** Underground Storage Tanks

- Total Number of Regulated Hazardous Waste Generator (HWGs) Facilities:
 - Upon Certification in 1995: **560**
 - Current CUPA Evaluation: **1,812***
 - An increase of **1,252*** facilities
 - Comments: *Facility counts may not be accurately reflected due to discrepancies in data reported in CERS and the CUPA's local data management system, as well as all possible HWG facilities not being identified.

- Total Number of Regulated Household Hazardous Waste (HHW) Facilities:
 - Household Hazardous Waste Facilities were not regulated under the Unified Program upon certification in 1995
 - Current CUPA Evaluation: **8**
 - An increase of **8** facilities

- Total Number of Regulated Tiered Permitting Facilities (Permit By Rule, Conditionally Authorized, Conditionally Exempt):
 - Upon Certification in 1995: **107**
 - Current CUPA Evaluation: **12**
 - A decrease of **95** facilities

- Total Number of Regulated Resource Conservation and Recovery Act (RCRA) Large Quantity Generator (LQG) Facilities:
 - Upon Certification in 1995: No count provided.
 - Current CUPA Evaluation: **74**
 - An increase of **74** facilities

- Total Number of Regulated Risk Management Prevention Plan (RMPP) or California Accidental Release Prevention (CalARP) Program Facilities:
 - Upon Certification in 1995: **300**

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- Current CUPA Evaluation: **158**
- A decrease of **115** facilities
- Total Number of Regulated Aboveground Petroleum Storage Act (APSA) Tank Facilities:
 - Upon Certification in 1995: N/A
 - Current CUPA Evaluation: **543**
 - An increase of **543** facilities

CUPA Personnel:

- Inspection and other Staff
 - Upon Certification in 1995:
 - 6 Staff, each at 100% Full Time Equivalent (FTE)= 6 Full Time positions
 - Currently:
 - 18 Staff= 14.05 Full Time positions
 - 9 Environmental Health Specialist Staff, each at 100% FTE
 - 4 Environmental Specialists, each at part-time FTE
 - 1 Health Education Specialist, at 100% FTE
 - 4 Administrative staff, each at part-time FTE
- Supervisory and Management Staff
 - Upon Certification in 1995:
 - 1 Staff at 100% FTE= 1 Full Time position
 - Currently:
 - 3 Staff at Part Time Equivalents= 1.80 Full Time positions

The number of regulated facilities upon initial certification of the CUPA and present day reflected above makes the degree of change apparent as to both the total number of regulated facilities and the total number of facilities in each Unified Program element, illustrating the transformation in the demand of CUPA resources needed for Unified Program implementation.

While the total number of regulated facilities in program elements such as UST, tiered permitting, and CalARP have significantly decreased, the number of regulated facilities in program elements for HMBP, HWG and APSA have substantially increased. The number of regulated facilities managed by the CUPA in total has increased by 2,064 across all program elements, which includes the addition of the APSA Program and RCRA LQG facility monitoring since the CUPA was originally certified.

The full time equivalents for inspection staff have more than doubled and the full time equivalents for supervisory and management staff have nearly doubled. In parallel, the overall number of regulated facilities subject to oversight of the CUPA have also nearly doubled.

The CUPA was cited in a deficiency for the 2017 CUPA Performance Evaluation for not having implemented APSA Program fees despite implementing the APSA Program since 2014. As part of the CUPA's response to Evaluation Progress Report #4, the CUPA stated the following: "We continue to move forward with our proposed new CalARP and APSA annual fees and are

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awaiting the required internal reviews to be completed and have a fee package to our Board by early 2020.” The CUPA has not revised the fee schedule since October 2019. The CUPA planned fee increases for October and November of 2020, but has been postponed by the CUPA due to Coronavirus (COVID-19).

RECOMMENDATION:

Upon full deployment and utilization of the new local data management system, once data is fully reconciled, an analysis of the number of facilities reflected in the data management system and the CUPA resources necessary to adequately implement the Unified Program and regulate each facility within each of the program elements, would assist in demonstrating the need to further increase the single fee for each entity, if necessary. Though the number of regulated facilities has nearly doubled, and the number of staff has nearly doubled in whole as well, the actual resources needed for the CUPA to adequately regulate each of the types of facilities that have increased in number may be greater than the additional resources that have been obtained thus far. Upon completion of the analysis, CalEPA recommends the CUPA reevaluate the allotted budget, single fee assessment for each entity, and funding allocation for program services so that 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. Additionally, APSA Program fees should be reassessed in reasonable time to allow the CUPA to properly fund APSA Program inspections and enforcement activities without using other program fees.

4. OBSERVATION:

Review of overall implementation of the HWG Program, including policies and procedures, CERS data, facility file information, data provided by the CUPA and Self-Audit Reports for July 1, 2017 through June 30, 2020, is summarized below:

- CERS identifies 1,810 HWG facilities, 17 Resource Conservation and Recovery Act (RCRA) Large Quantity Generator (LQG) facilities, and 15 Tiered Permitted facilities.
- The CUPA has a three year inspection frequency for HWG facilities and a five year inspection frequency for facilities that are Conditionally Exempt Small Quantity Generators (CESQGs) and have no business plan reporting requirements.
- Based on CERS during July 1, 2017 through June 30, 2020, the CUPA performed 1,107 HWG inspections, of which 139 (13%) had at least one cited violation.
 - Of the 139 inspections performed with at least one cited violation, 250 total violations were issued, consisting of:
 - 4 Class I violations
 - 23 Class II violations, and
 - 223 minor violations
 - The CUPA has ensured return to compliance for 249 of 250 (99%) violations.
 - Of the 524 inspections conducted since August 3, 2018, no violations were cited.
 - No formal enforcement was conducted July 1, 2017 through June 30, 2020, 1 of 4 Class I violations (cited November 9, 2017 at CERS ID 10705273) has yet to RTC.
- Inspection reports contain detailed comments that note the factual basis of cited violations.
- The CUPA’s website has minimal information for HWGs regarding regulatory assistance.

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

RECOMMENDATION:

Increase inspection efforts to ensure inspections are conducted to meet the three- and five-year HWG inspection frequencies, prioritizing inspections at TP facilities and RCRA Large Quantity Generator facilities. Continue to ensure appropriate enforcement is applied to obtain compliance. Ensure inspection staff have the training and tools necessary to conduct thorough and complete HWG inspections, as no hazardous waste violations cited in 524 HWG inspections conducted in the last two and half years indicates inspections are likely not being conducted as thoroughly and/or the inspectors are not identifying and citing violations that exist at these facilities.

Determine if waste at HWG facilities is being properly classified, so that waste is properly managed and regulated. Improve the CUPA's website by incorporating additional or more detailed hazardous waste information to assist facilities in understanding hazardous waste regulatory requirements and how to obtain regulatory assistance.

5. OBSERVATION:

The HWG inspection checklist only contains seven HWG violations and one "other" violation.

RECOMMENDATION:

Utilize a comprehensive HWG inspection checklist that distinguishes SQG and LQG violations, identifies RCRA and non-RCRA violations, and correctly identifies the most pertinent hazardous waste violations, such as the HWG inspection checklist provided by the CUPA Forum Board. The HWG inspection checklist provided by the CUPA Forum Board can also be used as the basis for updating the current HWG inspection checklist. Investigate the possibility of linking the CERS violation library with electronic tablets to be used in the field while conducting inspections under the new local data management system to assist inspectors in identifying all potential HWG violations. Additionally, it is recommended that CUPA HWG inspectors review CalEPA's 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>), which provides an explanation of HSC Section 25185 requirements to fully detail observations, violations, factual basis for the violations, and corrective actions in inspection reports.

6. OBSERVATION:

The I&E Plan draft version dated October 29, 2020, contains APSA program or other related information that is inaccurate, outdated or may benefit from improvement.

- Page 5, in the required inspection frequency table, the required inspection frequency for the APSA program is shown as once every three years. The mandated inspection frequency of every three years is applicable only to tank facilities with 10,000 gallons or more of petroleum to determine compliance with the SPCC Plan requirements of APSA.
- Page 10, if the local hazmat portal referenced in the HMBP submittal section does not have the ability to exchange data with CERS, the reference should be removed.

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- Page 12, the APSA RTC timeframe discussion could be improved. There are no established RTC timeframes under the APSA Program; however, Unified Program regulated facilities cited with a minor violation have 30 days from the date of the notice to comply to RTC, per HSC, Section 25404.1.2(c)(1).
- Page 31, in the APSA section related to Program Specific Enforcement Violations, only HSC, Section 25270.12 is referenced as specific enforcement actions/penalties; additional APSA enforcement/penalty-related sections to reference are HSC, Sections 25270.12.1, 25270.12.5, and 25270.13.
- Page 40, in the APSA section related to Administrative Penalties – Initial Penalties, the HSC, Chapter 6.67 (commencing with Section 25270) is the correct reference for APSA violations instead of HSC, Section 25270.5, which relates to mandated Unified Program Agency (UPA) inspections of APSA tank facilities of 10,000 gallons or more of petroleum, alternative inspection and compliance plan, and UPA inspector training.
- The APSA program is inaccurately referred to as AST as follows:
 - Pages 5 and 6, in the Inspection Frequency tables,
 - Page 9, in the Cross Training of Staff section,
 - Page 20, in the Enforcement Component/Enforcement Authority section, and
 - Page 40, in the Penalty matrix
- The APSA program is inaccurately referred to as SPCC as follows:
 - Page 3, in the Table of Contents, and
 - Page 4, within the table.

RECOMMENDATION:

Update the I&E Plan as indicated above.

7. OBSERVATION:

The CUPA regulates some farms. Effective January 1, 2016, Senate Bill (SB) 612 aligned the applicability threshold for farms with that of the Federal Spill Prevention, Control, and Countermeasure (SPCC) Rule, which has increased to 2,500 gallons of oil or 6,000 gallons of oil (with no reportable discharge history) per the Federal Water Resources Reform and Development Act (WRRDA) of 2014.

RECOMMENDATION:

Review the list of conditionally exempt tank facilities at farms to verify if the total oil storage capacity at each tank facility meets the WRRDA thresholds and determine if each is still regulated as a conditionally exempt tank facility under APSA.

Identify farms that are no longer regulated under APSA due to SB 612 oil applicability thresholds in CERS as “APSA Not Applicable” by changing the CERS APSA facility reporting requirement from “Applicable” to “Not Applicable” for such farms.

More information on farms regulated under the Federal SPCC rule may be found at:

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- the U.S. Environmental Protection Agency website (<https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spill-prevention-control-and-countermeasure-spcc>)
 - the OSFM fact sheet on farms regulated under APSA (<https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/farms/>).
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8. OBSERVATION:

The CUPA uses a single APSA inspection report checklist (identifying only 34 potential APSA violations) when inspecting Tier I or Tier II qualified facilities and professional engineer (PE)-certified SPCC Plan facilities. The CUPA has no inspection report checklist for use at APSA conditionally exempt tank facilities.

RECOMMENDATION:

Utilize the latest version of the CUPA Forum Board APSA inspection checklists when conducting APSA tank facility inspections, and ensure the APSA inspection checklist being utilized is applicable to the APSA tank facility being inspected.

9. OBSERVATION:

The website contains various resources for the public and regulated community, however, it contains the following APSA program information that is outdated, incorrect or may benefit from improvement.

- The HazMat Compliance webpage (<https://www.co.fresno.ca.us/departments/public-health/environmental-health/hazardous-materials-certified-unified-program-agency-cupa>) should properly identify APSA as the Aboveground Petroleum Storage Act instead of Aboveground Storage Tanks. There may be other hazardous materials stored in aboveground storage tanks besides petroleum products.
- The Aboveground Storage Tanks webpage (<https://www.co.fresno.ca.us/departments/public-health/environmental-health/hazardous-materials-certified-unified-program-agency-cupa/aboveground-storage-tanks>) description of APSA applicability should be updated to reflect other tank facilities subject to APSA, such as tank facilities that are subject to the SPCC Rule and tank facilities with tanks in underground areas (TIUGA) regardless of the 1,320-gallon storage capacity of the facility.
- The APSA Common Questions document (<https://www.co.fresno.ca.us/home/showpublisheddocument?id=34828>) is outdated and incorrect.
 - Include other tank facilities subject to APSA, such as tank facilities that are subject to the SPCC Rule and TIUGAs regardless of the 1,320-gallon storage capacity of the facility, as appropriate.
 - The document omits discussion of the APSA conditional exemption, which does not require certain tank facilities to prepare an SPCC plan.

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- Reflect all oils (not exclusively petroleum) in the discussion of SPCC plan preparation requirements. For example, self-certification of an SPCC Plan applies only to qualified facilities storing 10,000 gallons or less of SPCC regulated oils.
- The correct reference for APSA is HSC, Chapter 6.67.
- The website link provided to assist APSA tank facilities on how to prepare an SPCC Plan via the San Diego County CUPA website is no longer available.
- The APSA information within the FAQ List (found on the website at: <https://www.co.fresno.ca.us/services/advanced-components/faq-list>) can be improved as follows:
 - How often and who can review my SPCC Plan? - When no technical amendment is required, a PE is not required to certify the five-year review of a PE-certified SPCC Plan.
 - Do I have to report any APSA or SPCC information in CERS? – Tank facilities are required to submit a tank facility statement, or an HMBP in lieu of a tank facility statement, annually to CERS.
 - What is the difference between SPCC and APSA? - APSA applies to (1) tank facilities that are subject to the Federal SPCC Rule (has potential threat of discharge to navigable water or adjoining shoreline), (2) tank facilities with 1,320 gallons or more of petroleum (regardless of location to navigable water or adjoining shoreline), and (3) tank facilities with one or more TIUGAs (55-gallon shell capacity) regardless of the tank facility's total storage capacity. Also, APSA regulates petroleum that is liquid at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute pressure, which the Federal SPCC Rule regulates all oils, including petroleum, although there are a few exceptions.

RECOMMENDATION:

Update the information on the websites and within the specified document. Consider providing a link to the new OSFM webpage at <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/> for information on the APSA program, and a link to the U.S. Environmental Protection Agency website at <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations> for information on SPCC requirements.

10. OBSERVATION:

The CUPA may not be regulating all APSA tank facilities.

CERS identifies 544 APSA tank facilities within the CUPA's jurisdiction as APSA applicable.

The CUPA's local data management system identifies 442 APSA tank facilities, consisting of 183 APSA tank facilities storing 10,000 gallons or more of petroleum, and 259 APSA tank facilities storing 1,320 to 9,999 gallons of petroleum.

- There are 408 APSA tank facilities in both CERS and the CUPA's local data management system:

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- 34 APSA tank facilities identified in the CUPA's local data management system are currently reported in CERS as "APSA not applicable."
 - Some of the 34 facilities are actual APSA tank facilities, and should be reflected as "APSA applicable" in CERS.
 - Some of the 34 facilities are not actual APSA tank facilities (due to crude oil production exclusion or small petroleum inventories) and should not be identified as APSA tank facilities in the CUPA's local data management system.
- 136 APSA tank facilities are not included in the CUPA's local data management system, are reported as "APSA applicable" in CERS.
- Nine other potential APSA tank facilities are currently reported as "APSA not applicable" in CERS, and are not identified as APSA tank facilities in the CUPA's local data management system.

RECOMMENDATION:

Complete the reconciliation of the CUPA's local data management system with CERS for APSA program information and APSA tank facilities.

11. OBSERVATION:

Multiple APSA tank facilities submitted an HMBP in lieu of the APSA tank facility statement using the 2011 emergency response and training plans template with the obsolete phone number for OSFM.

RECOMMENDATION:

Encourage each APSA tank facility that utilizes the consolidated emergency response and training plans template to use the current 2017 version, when an HMBP submittal is provided in lieu of the tank facility statement. The 2017 template contains the current OSFM phone number and is available in CERS.

12. OBSERVATION:

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

- CERS ID 10508311: Tank IDs 001 - 004;
- CERS ID 10692268: Tank IDs 308-1 – 308-6; and
- CERS ID 10703536: Tank IDs 1 - 3.

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

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

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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.

13. OBSERVATION:

The CUPA's is not meeting its obligations to implement the Unified Program as outlined in several of the deficiencies and incidental findings documented in the Fresno CUPA 2020/2021 Final Summary of Findings. Due to the excessive nature of the work to be conducted and the associated complexities, the CUPA would benefit from a third-party organizational assessment. An external review and with recommendations of the convergence of many programmatic issues across different program elements could assist CUPA management apply resources efficiently and effectively. Understanding resource expenditures and resource allocation is a critical task to improving the CUPA's performance and gaining momentum toward making long-term institutional changes that will result in improved performance in the implementation of the inspection and enforcement programs and for data management in future years.

RECOMMENDATION:

Contract a third-party company to assist in examining the CUPA's policies and procedures, fee accountability program, and resources to advise the CUPA in the restructuring of personnel and tasks and identify where resourcing is needed to improve program performance. A holistic review of the CUPA and all activities will assist in identifying many of the underlying issues impeding the CUPA's ability to fully implement the Unified Program. Upon review of the assessment and recommendations from the company, the CUPA will consider implementing changes to alleviate challenges and circumstances that impede the CUPA's ability to manage the Unified Program effectively.
