

October 15, 2021

Mr. Darryl Wong, Director  
County of San Benito Public Health Division  
351 Tres Pinos Road, Suite C-1  
Hollister, California 95023-5588

Dear Mr. Wong:

During January through September, 2021, CalEPA and the state program agencies conducted a performance evaluation of the County of San Benito Public Health Division Certified Unified Program Agency (CUPA). The CUPA evaluation included a remote assessment of administrative documentation, and review of regulated facility file documentation and California Environmental Reporting System data.

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

Based upon review and completion of the performance evaluation, CalEPA has rated the CUPA's overall implementation of the Unified Program as unsatisfactory. The comparison of the implementation of the program upon certification with present-day circumstance reveals there are several issues impeding the CUPA's ability to adequately implement the Unified Program within its jurisdiction. Between growth within the county and the expansion of the Unified Program elements since its inception, the number of regulated facilities for this CUPA have almost doubled since the CUPA was first certified. As of the most recent evaluation, however, the CUPA has only hired one additional part-time personnel on staff than when the agency was first certified, which in and of itself is a factor that impacts the ability of the CUPA to implement all program elements effectively.

To demonstrate progress towards the correction of program deficiencies and incidental findings identified in the final Summary of Findings, the CUPA must submit an Evaluation Progress Report within 60 days from the date of this letter (December 20, 2021), and every 90 days thereafter. Evaluation Progress Reports are required to be submitted to CalEPA until all deficiencies and incidental findings identified have been acknowledged as corrected or resolved. Each Evaluation Progress Report must be submitted to the CalEPA Team Lead, Sam Porras at [Samuel.Porras@calepa.ca.gov](mailto:Samuel.Porras@calepa.ca.gov), or mail.

Failure to adequately correct each of the deficiencies and resolve each of the incidental findings identified in the final Summary of Findings in a timely manner may result in the

establishment of a Program Improvement Agreement between CalEPA and the governing body of the CUPA.

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

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

If you have any questions or need further assistance, please contact Melinda Blum at [Melinda.Blum@calepa.ca.gov](mailto:Melinda.Blum@calepa.ca.gov).

Sincerely,



Jason Boetzer, REHS  
Assistant Secretary  
Local Program Coordination and Emergency Response

Enclosures

cc sent via email:

Ms. Olga Vargas  
Environmental Health Specialist  
County of San Benito Public Health Division  
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Supervising Water Resource Control Engineer  
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Ms. Laura Fisher  
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cc sent via email:

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Mr. James Hosler, Chief  
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Environmental Scientist  
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cc sent via email:

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Mr. Glenn Warner  
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Ms. Denise Villanueva  
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Mr. John Paine  
Unified Program Manager  
California Environmental Protection Agency

Mr. John Elkins  
Environmental Program Manager  
California Environmental Protection Agency

Ms. Melinda Blum  
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California Environmental Protection Agency

Mr. Garrett Chan  
Environmental Scientist  
California Environmental Protection Agency

Mr. Sam Porras  
Environmental Scientist  
California Environmental Protection Agency

## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

**CUPA:** County of San Benito Public Health Division

**Evaluation Period:** January 2021 through September 2021

**Evaluation Team Members:**

- **CalEPA Team Lead:** Samuel Porras
- **DTSC:** Matthew McCarron
- **Cal OES:** Jack Harrah
- **State Water Board:** Wesley Franks, Jessica Botsford, Sean Farrow
- **CAL FIRE-OSFM:** Glenn Warner, Denise Villanueva

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:

**Samuel Porras**  
CalEPA Unified Program  
Phone: (916) 327-9557  
E-mail: [Samuel.Porras@calepa.ca.gov](mailto:Samuel.Porras@calepa.ca.gov)

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

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

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

**1<sup>st</sup> Progress Report:** December 20, 2021  
**3<sup>rd</sup> Progress Report:** June 6, 2022

**2<sup>nd</sup> Progress Report:** March 4, 2022  
**4<sup>th</sup> Progress Report:** September 5, 2022

UNIFIED PROGRAM PERFORMANCE EVALUATION  
FINAL SUMMARY OF FINDINGS REPORT

**DEFICIENCIES REQUIRING CORRECTION**

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

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**1. DEFICIENCY:**

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

The following administrative procedures have not been established nor implemented:

- Public Participation Procedures that:
  - Ensure receipt and consideration of comments from regulated businesses and the public;
  - Coordinate, consolidate, and make consistent locally required public hearings related to any Unified Program element;
  - Coordinate, consolidate, and make consistent public notices for activities related to any Unified Program element.
- Financial Management Procedures that include:
  - Single fee system,
  - Fee accountability program, and
  - Surcharge collection and reimbursement program.

The following procedures have components that are incomplete:

- The Permitting Procedures do not address the following components:
  - Though permitting procedures for the UST Program have been developed, permitting procedures for the Hazardous Waste Generator (HWG) Program, Hazardous Materials Business Plan (HMBP), and Aboveground Petroleum Storage Tank (APSA) Program have not been developed;
  - Time lines and time limits of appeal processes;
  - Provisions for preliminary check for application completeness;
  - Provisions for technical review of permit applications by the responsible agency;
  - A procedure to track permit applications, establish follow-up protocol, and facilitate expeditious processing, when necessary.
- The Dispute Resolution Policy includes forwarding general disputes that cannot be resolved locally to CalEPA for a final decision. The policy does not delineate forwarding disputes regarding the state surcharge process including mechanisms for referring the dispute to CalEPA in writing and including a recommendation for resolution.

The following procedure has components that are inaccurate:

- The Records Retention Policy requires that “all records related to hazardous waste enforcement actions after the enforcement action has been resolved” must be retained for at least three years. These records must be retained for at least five years. In addition, the full list of CUPA-related documents required to be retained for the five-year minimum retention time, including Self-Audit Reports and training records, has not been incorporated.

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

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

**DEFICIENCIES REQUIRING CORRECTION**

**CITATION:**

California Code of Regulations (CCR), Title 27, Sections 15180(e)(1), (e)(5), 15185(b)(2), 15190(d) and 15210(k)  
[CalEPA]

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will provide CalEPA with the revised Unified Program administrative procedures that adequately incorporate all required components.

By the 2<sup>nd</sup> Progress Report, if amendments to the revised Unified Program administrative procedures 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 a 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 3<sup>rd</sup> Progress Report, if amendments to the revised Unified Program administrative procedures were necessary, the CUPA will train CUPA personnel on the amended Unified Program administrative procedures. The CUPA will provide training documentation to CalEPA, which at a 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.

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**2. DEFICIENCY:**

Required components of the Inspection and Enforcement (I&E) Plan, referred to as “Standard Operating Procedures (SOP) 5 and 6,” are incomplete or missing. The I&E Plan has not been reviewed or revised annually.

The following components are incomplete:

- The inspection frequency for HMBP facilities has not been identified
- A description of the graduated series of enforcement actions based on the severity of the violation
  - The CUPA has provided a simple flowchart outlining the framework for applying enforcement and some narrative information connecting the advancement of informal enforcement to formal enforcement through an Administrative Enforcement Order (AEO). The CUPA inspector and the Environmental Health Manager will determine the appropriate enforcement action to be taken if a facility does not come into compliance within the requested timeframe.
  - Delineating the process for applying all available informal enforcement options to gain return to compliance (RTC) before elevating to formal enforcement will assist the CUPA in applying consistent and effective enforcement actions to ensure RTC.

## CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

#### DEFICIENCIES REQUIRING CORRECTION

- Provisions for multi-media enforcement
  - The I&E Plan states the CUPA makes every effort to conduct joint inspections “with other applicable jurisdictions,” but doesn’t detail or specify what those jurisdictions are nor is a process for facilitating joint inspections included.

The following components are missing:

- Enforcement notification procedures that ensure appropriate confidentiality
- Identification of penalties and enforcement actions that are consistent and predictable for similar violations and no less stringent than state statute and regulations
- A description of how the CUPA minimizes or eliminates duplication, inconsistencies, and lack of coordination within the inspection and enforcement program
- Provisions for addressing complaints, including but not limited to the receipt, investigation, enforcement, and closure of a complaint
- Provisions for ensuring the CUPA has sampling capability and ensuring the analysis of any material shall be performed by a state certified laboratory pursuant to Health and Safety Code (HSC), Chapter 6.5, Section 25198.

#### **CITATION:**

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

#### **CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will provide CalEPA with the revised I&E Plan that adequately incorporates all required components and ensures the CUPA is reviewing and revising the I&E Plan annually, as necessary.

By the 2<sup>nd</sup> Progress Report, if amendments to the revised I&E Plan are necessary based on feedback from CalEPA or DTSC, the CUPA will provide CalEPA with the amended I&E Plan. If no amendments are necessary, the CUPA will train CUPA personnel on the revised I&E Plan. The CUPA will provide training documentation to CalEPA, which at a 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 I&E Plan.

By the 3<sup>rd</sup> Progress Report, if amendments to the revised I&E Plan were necessary, the CUPA will train CUPA personnel on the amended I&E Plan. The CUPA will provide training documentation to CalEPA, which at a 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 I&E Plan.

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**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

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**DEFICIENCIES REQUIRING CORRECTION**

**3. DEFICIENCY:**

The CUPA's Single Fee System does not fund the necessary and reasonable costs necessary to implement the Unified Program.

The CUPA provided a budget accountability spreadsheet for Fiscal Years (FYs) 2018/2019 and 2019/2020 that incorporates calculation of full-time equivalent (FTE) hours. The budget spreadsheet includes the total expenditures and revenues for both FYs.

- FY 2018/2019:
  - The CUPA reported expenditures of \$349,502 and single fee revenues of \$302,878. The CUPA has a budget deficit of \$46,624.
- FY 2019/2020:
  - The CUPA reported expenditures of \$376,601 and single fee revenues of \$271,628. The CUPA has a budget deficit of \$104,973.

**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 1<sup>st</sup> Progress Report, the CUPA will develop and provide CalEPA with a Financial Management Procedure that includes a narrative as to how the fee accountability program incorporates additional funding sources, and the relative amount of each additional funding source, used to supplement the necessary and reasonable costs for implementing the Unified Program.

By the 2<sup>nd</sup> Progress Report, if revisions to the Financial Management Procedure are necessary based on feedback from CalEPA, the CUPA will provide CalEPA with the revised Financial Management Procedure.

By the 2<sup>nd</sup> Progress Report, the CUPA will provide the annual Self-Audit Report for Fiscal Year 2020/2021, which will include a narrative to specify the additional funding sources, and the amount of each additional funding source, used to supplement the necessary and reasonable costs for implementing the Unified Program.

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**DEFICIENCIES REQUIRING CORRECTION**

**4. DEFICIENCY:**

The CUPA is not certifying to Cal OES every three years that a complete review of the area plan has been conducted and any necessary revisions have been made.

- The last certification to Cal OES was June 2011.

**CITATION:**

HSC, Chapter 6.95, Section 25503(d)(2)  
[CalEPA, Cal OES]

**CORRECTIVE ACTION:**

The CUPA is currently revising the area plan, and is anticipating completion of revision by late 2021 or early 2022.

By the 2<sup>nd</sup> Progress Report, the CUPA will certify to CalEPA/Cal OES that a complete review of the area plan has been conducted and any necessary revisions have been made. Upon review of the area plan, the CUPA will ensure the area plan has all the required elements. The CUPA will provide CalEPA with the reviewed and revised area plan.

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**5. DEFICIENCY:**

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

Review of facility files, inspection, violation and enforcement information, also known as compliance, monitoring, and enforcement (CME) information from the California Environmental Reporting System (CERS), and additional information provided by the CUPA indicates:

- 102 of 358 (28%) facilities subject to business plan requirements were not inspected within the last three years.

**CITATION:**

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

**CORRECTIVE ACTION:**

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

- An analysis and explanation as to why the triennial compliance inspection requirement is not being met for business plan facilities. 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 local data management system or CERS, identifying each business plan facility that has not been inspected within the last three years. For each HMBP facility listed, the spreadsheet will include, at a minimum:

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**DEFICIENCIES REQUIRING CORRECTION**

- Facility name;
- CERS ID; and
- Date of the last routine inspection
- A schedule to inspect those business plan facilities, prioritizing the most delinquent inspections to be completed prior to any other business plan inspection based on risk.
- Future steps to ensure that all business plan facilities will be inspected at least once every three years.

By the 2<sup>nd</sup> Progress Report, the CUPA will, if necessary, revise the action plan, based on feedback from Cal OES, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with an updated spreadsheet to demonstrate the number of business plan facility inspections that have been conducted during the previous three months.

By the 5<sup>th</sup> Progress Report, the CUPA will have inspected each business plan facility at least once in the last three years.

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**6. DEFICIENCY:**

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

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

- 10 of 10 (100%) facilities subject to CalARP Program requirements were not inspected within the last three years.

Note: The CUPA indicated that four CalARP facilities are new facilities, and thus not necessarily due for an inspection as of yet.

**CITATION:**

HSC, Chapter 6.95, Section 25537(a), CCR, Title 19, Section 2775.3  
[CalEPA, Cal OES]

**CORRECTIVE ACTION:**

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

- An analysis and explanation as to why the triennial compliance inspection requirement is not being met for CalARP facilities. 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 local data management system or CERS, identifying each CalARP facility that has not been inspected within the last three years. For each CalARP facility listed, the spreadsheet will include, at a minimum:

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- 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 facilities inspection based on risk.
- Future steps to ensure that all CalARP facilities will be inspected at least once every three years.

By the 2<sup>nd</sup> Progress Report, the CUPA will, if necessary, revise the action plan, based on feedback from Cal OES, 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.

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

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**7. DEFICIENCY:**

The CUPA is not inspecting each Hazardous Waste Generator (HWG) facility once every three years, per the inspection frequency established in the I&E Plan.

Review of CERS CME information and additional information provided by the CUPA indicates from January 1, 2018, to December 31, 2020:

- 44 of 183 (24%) HWG facilities were not inspected once every three years.

Note: This deficiency was identified during the 2018 CUPA Performance Evaluation and considered corrected during the Evaluation Progress Report process.

**CITATION:**

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

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will develop, implement, and provide CalEPA with an action plan to ensure each HWG facility is inspected per the inspection frequency established in the I&E Plan. The action plan will include, at a minimum:

- A spreadsheet exported from the CUPA's data management system or CERS, identifying each HWG facility that has not been inspected once every three years. For each HWG facility listed, the spreadsheet will include, at a minimum:
  - Facility name,
  - CERS ID,
  - Date of the last routine inspection.

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- A schedule to inspect those HWG facilities, prioritizing the most delinquent inspections or those that present the most potential risk, to be completed prior to any other HWG inspection.
- Future steps to ensure that all HWG facilities will be inspected once every three years.

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

By the 5<sup>th</sup> Progress Report, the CUPA will have inspected each HWG facility once every three years.

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**8. DEFICIENCY:**

The CUPA is not ensuring all HWG facilities RTC and is not applying a graduated series of enforcement when facilities with violation(s) do not RTC within the scheduled timeframe.

Review of CME information in CERS and the CUPA's local data management system indicates the CUPA did not elevate the classification of violations without RTC, or obtain RTC for HWG Program facilities within a timely manner.

- January 1, 2018, through December 31, 2020, 34 of 44 (80%) minor HWG violations did not RTC in 30 days.
  - CERS ID 10634749: Inspection dated February 8, 2018, cites one minor violation. The facility did not RTC.
  - CERS ID 10424989: Inspection dated January 8, 2018, cites four minor violations. The CUPA's local data management system indicates a RTC date of December 3, 2020, which is beyond the scheduled RTC timeframe. No follow-up actions are noted in the CUPA's local data management system or in the facility file.
  - CERS ID 10630546: Inspection dated April 23, 2018, cites nine minor violations. The CUPA's local data management system indicates a RTC date of December 4, 2018, which is beyond the scheduled RTC timeframe.
- June 11, 2019, through February 8, 2021, there were no HWG violations issued although the CUPA conducted 80 consecutive HWG inspections. Given the nature of the HWG Program, it is highly unlikely that 80 consecutive HWG inspections would result in no violations being issued.
- On February 9, 2021, the CUPA issued one minor violation, which to date has no RTC.

Note: This deficiency was identified during the 2018 CUPA Performance Evaluation and was not corrected during the Evaluation Progress Report process.

**CITATION:**

HSC, Chapter 6.5, Section 25187.8(b) and (g)

HSC, Chapter 6.11, Section 25404.1.1

CCR, Title 27, Section 15200(a)(6) and (9)

[DTSC]

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**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will review, revise, and provide CalEPA with the I&E Plan, which includes a delineated process to:

- revise the processes for initiating a graduated series of enforcement and for initiating formal enforcement options,
- ensure facilities cited with violations RTC through appropriate enforcement, and
- address follow-up with facilities and documenting RTC in CERS.

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

- 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 to ensure 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.

By the 2<sup>nd</sup> Progress Report, if amendments to the revised I&E Plan are necessary based on feedback from DTSC, the CUPA will provide CalEPA with 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. The CUPA will provide training documentation to CalEPA, which at a 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 I&E Plan.

By the 3<sup>rd</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with five HWG facility records, as requested by DTSC, that include documentation of RTC or the appropriate enforcement. 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.

With each Progress Report, the CUPA will provide CalEPA with an updated list on the progress towards implementing a graduated series of enforcement for each facility. The CUPA will also include any additional facilities with violations that warrant a graduated series of enforcement since the previous Progress Report.

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**DEFICIENCIES REQUIRING CORRECTION**

**9. DEFICIENCY:**

The CUPA is not consistently following up and documenting RTC information in CERS for Aboveground Petroleum Storage Act (APSA) tank facilities cited with violations.

Review of CERS CME information indicates there is no documented RTC for the following APSA Program violations:

FY 2017/2018

- 5 of 11 (45%) APSA violations, including one violation for not having, or failure to prepare, a Spill Prevention, Control, and Countermeasure (SPCC) Plan

**CITATION:**

HSC, Chapter 6.67, Section 25270.4.5(a)

HSC, Chapter 6.11, Section 25404.1.2(c)

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

[OSFM]

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with a spreadsheet obtained from the CUPA's local data management system or CERS, that includes at a minimum the following information for each APSA tank facility with open violations (no RTC). The CUPA will prioritize follow-up actions with each facility based on the level of hazard 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 to ensure the facility RTC.

By the 3<sup>rd</sup> 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 includes documentation of RTC or description of the appropriate enforcement taken by the CUPA.

By the 4<sup>th</sup> Progress Report, the CUPA will have ensured each APSA tank facility identified in the 1<sup>st</sup> Progress Report with an open violation for no SPCC Plan has achieved compliance, or the CUPA will have taken appropriate enforcement.

# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

### DEFICIENCIES REQUIRING CORRECTION

#### 10. DEFICIENCY:

The CUPA is not consistently conducting complete annual underground storage tank (UST) compliance inspections.

Review of the CUPA's Technical Compliance Rate (TCR) indicates not all UST violations are being cited as the TCR reported by the CUPA is significantly higher in comparison to the average TCR for California and the Nation.

- The TCR is a measurement of how a UST facility complies with performance measures as determined by the United States Environmental Protection Agency (U.S. EPA).
  - A low TCR indicates a low rate of compliance.
  - A high TCR indicates a high rate of compliance.
- Therefore, a significantly higher TCR than the California and National average is indicative of not citing UST violations at the same frequency as other CUPAs and States comprising the National average.

Review of the CUPA's TCR information in comparison with the average TCR for California and the Nation for the following reporting periods finds the following:

- January – June 2019
  - San Benito CUPA: 10/16 (62.5%)
  - California average: 3039/7540 (40%)
- July – December 2019:
  - San Benito CUPA: 6/7 (86%)
  - California average: 2902/6141 (47%)
- January – June 2020:
  - San Benito CUPA: 10/14 (71%)
  - California average: 4036/6646 (60%)
- July – December 2020:
  - San Benito: 9/9 (100%)
  - California average: 3698/6048 (61%)

The CUPA's high TCR compared to the California average is indicative of the CUPA not consistently observing non-compliance during the annual UST compliance inspection, not consistently citing and documenting violations in annual UST compliance inspection reports and/or in CERS, which provides inaccurate U.S. EPA TCR reporting, impacting the assessment of national compliance with UST Program requirements.

Review of the National TCR average (which includes all states and territories under the authority of U.S. EPA) for the following reporting periods finds the following:

- April 2020 – March 2021: 59%
- October 2018 – September 2019: 44%

Note: Although the National TCR report includes two reporting periods, comparison with the TCR rate of the CUPA demonstrates how the CUPA's TCR is higher than the reported averages for the State of California and on a National level.



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In comparison with the California and National TCR averages and in comparison, with an equivalently sized CUPA, the high TCR of the CUPA is indicative of the CUPA not consistently observing non-compliance during the annual UST compliance inspection, not consistently citing and documenting violations in annual UST compliance inspection reports and/or in CERS.

Review of annual UST compliance inspection reports, associated testing and leak detection documents, and CERS CME information finds the following examples where the CUPA did not consistently conduct complete annual UST compliance inspections:

- CERS ID 10156411
  - Spill Bucket Testing Report Form dated March 8, 2018, identifies “T3-DSL bucket failing test.”
  - The UST inspection staff did not observe non-compliance, cite a violation for failure to have a functional drain valve in the annual UST compliance inspection report dated April 5, 2018.
  - The CUPA did not provide accurate U.S. EPA TCR 9a reporting.
- CERS ID 10634860
  - Secondary containment testing dated February 2, 2020, occurred more than 36 months after the last secondary testing date of November 16, 2016.
  - The UST inspection staff did not cite a violation for failure to conduct secondary containment testing within 36 months of the last secondary testing date in the annual UST compliance inspection report dated December 3, 2019.
  - The CUPA did not provide accurate U.S. EPA TCR 9d reporting.
- CERS ID 10624252
  - Annual Monitoring Certification (AMC) dated May 26, 2020, identifies “91 and 87 Submersible Turbine Pump sump sensors failed.”
  - The UST inspection staff did not observe non-compliance, cite a violation for failure of the leak detection equipment to be installed, calibrated, operated, and/or maintained properly in the annual UST compliance inspection report dated May 26, 2020.
  - The CUPA did not provide accurate U.S. EPA TCR 9d reporting.
- CERS ID 10628536
  - AMC dated May 24, 2018, identifies “replaced 87 line leak detector (LLD), like for like.”
  - The UST inspection staff did not observe non-compliance, cite a violation for failure to have functional LLD monitoring pressurized piping in the annual UST compliance inspection report dated June 2, 2018.
  - The CUPA did not provide accurate U.S. EPA TCR 9d reporting.

The CUPA is not consistently requiring the UST owner or operator to maintain current UST financial responsibility documentation, not consistently citing and documenting violations in the corresponding annual UST compliance inspection report and/or in CERS, and not consistently providing accurate U.S. EPA TCR 11 reporting, impacting the assessment of national compliance with financial responsibility requirements.

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Review of UST financial responsibility documentation in CERS finds the following examples where the CUPA did not consistently conduct complete annual UST compliance inspections:

- CERS ID 10420816:
  - Last accepted UST certificate of financial responsibility in CERS is dated May 1, 2018.
  - The UST inspection staff did not observe non-compliance, cite a violation for failure to submit and maintain complete and current certificate of financial responsibility or other mechanism of financial assurance.
  - The CUPA did not provide accurate U.S. EPA TCR 11 reporting.
- CERS ID 10612576:
  - Last accepted UST certificate of financial responsibility in CERS is dated May 18, 2017.
  - The UST inspection staff did not observe non-compliance, cite a violation for failure to submit and maintain complete and current certificate of financial responsibility or other mechanism of financial assurance.
  - The CUPA did not provide accurate U.S. EPA TCR 11 reporting.
- CERS ID 10634854:
  - Last accepted UST certificate of financial responsibility in CERS is dated October 29, 2015.
  - The UST inspection staff did not observe non-compliance, cite a violation for failure to submit and maintain complete and current certificate of financial responsibility or other mechanism of financial assurance.
  - The CUPA did not provide accurate U.S. EPA TCR 11 reporting.

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

Note: The following may be referenced:

- Local Guidance (LG) letter 159 “Annual Underground Storage Tank Compliance Inspection”
- LG letter 164-4, dated June 30, 2020
- State Water Board correspondence dated November 29, 2016, “When to Review Underground Storage Tank Records”
- State Water Board guidance dated July 1995, “Petroleum Underground Storage Tank Financial Responsibility Guide”

Note: This deficiency was identified during the 2018 CUPA Performance Evaluation and was not corrected during the Evaluation Progress Report process.

**CITATION:**

HSC, Chapter 6.7, Section 25288(b), 25292.2 and 25299  
CCR, Title 23, Section 2713(c)(4), 2711(a)(11), and 2809(a)  
CCR, Title 27, Section 15290(a)(3)  
[State Water Board]

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##### **CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will perform a thorough analysis of the UST element of the Unified Program and identify why complete annual UST compliance inspections are not consistently conducted. This analysis shall include, at a minimum:

- discussion on what procedures and tools may be needed to consistently conduct complete annual UST compliance inspections
  - e.g. identifying areas of the annual UST compliance inspection checklist that can be improved, specific to review of UST financial responsibility documentation to the File Review section of the inspection checklist (refer to the California CUPA Forum “UST Inspection Checklist,” at <https://calcupa.org/inspection-checklist/index.html>).
  - a plan for addressing all the reasons why complete annual UST compliance inspections are not consistently conducted.
  - Identification of the types and frequency of training needed to consistently conduct complete UST compliance inspections.

By the 2<sup>nd</sup> Progress Report, based on the findings identified in the CUPA’s analysis, the CUPA will review and revise the I&E Plan, or other applicable procedure, to ensure, at minimum, procedures for:

- Directing UST inspection staff to conduct complete annual UST compliance inspections;
- Review and follow up of submitted testing and leak detection documents by the UST owner or operator as part of the annual UST compliance inspection.
- Documenting and reporting observed noncompliance in annual UST compliance inspection reports and in CERS.
- Conducting annual UST compliance inspections when UST inspection staff are on-site to witness the monitoring system certification and visually inspect all UST required components;
- Conducting annual UST compliance inspections when UST inspection staff are not on-site and cannot witness the monitoring system certification and visually confirm all UST requirements are met;
- Providing accurate U.S. EPA TCR reporting.
- Reviewing the annual UST compliance inspection checklist for thoroughness to capture citations in accordance with UST Regulations, HSC, and the CERS violation library.
- Requiring the UST owner or operator to maintain current UST financial responsibility documentation.

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

By the 3<sup>rd</sup> 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 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 a 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.

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By the 4<sup>th</sup> Progress Report, if amendments 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 a 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 5<sup>th</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide UST facility records, for five UST facilities, as selected by the State Water Board, including, at a minimum, annual UST compliance inspection reports and associated testing, and leak detection documents.

By the 6<sup>th</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the State Water Board will review records to identify violations have been observed and cited, as well as verify TCR information in Report 6 and CERS for two consecutive Report 6 reporting periods to determine if the CUPA is consistently conducting complete UST compliance inspections.

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**11. DEFICIENCY:**

The CUPA is not ensuring UST related information in CERS is accurate and complete.

Review of the CERS UST Facility/Tank Data Download report obtained from CERS on March 25, 2021, finds construction and leak detection information is incorrect as follows:

- 4 of 53 (8%) USTs installed between January 1, 1984, and June 30, 2004, incorrectly show no continuous interstitial monitoring.
- 4 of 54 (7%) USTs installed on or after January 1, 1984, incorrectly identified as single-walled or listed as having an incorrect installation date.
- 3 of 57 (5%) USTs show no striker plate/bottom protectors.
- 1 of 44 (2%) UST systems with double-walled pressurized pipe incorrectly identifies no mechanical line leak detector or electronic line leak detector.

Review of the Semi-Annual Report (Report 6) for July 2020 – December 2020, and UST facility files finds CERS ID 10709776 is in temporary closure, however the UST facility is not identified as being in temporary closure in CERS. The CUPA has not yet required the UST owner or operator to create a CERS submittal reflecting the current status of this UST facility to reflect temporary closure.

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

Note: This deficiency was identified during the 2018 CUPA Performance Evaluation and considered corrected during the Evaluation Progress Report process.

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Note: The following may be referenced:

- CERS Frequently Asked Questions (FAQ) “General Reporting Requirements for USTs”;
- CERS FAQ “Common CERS Reporting Errors”;
- CERS FAQ “Setting Accepted Submittal Status”;
- CERS FAQ “Which Forms Require Uploading to CERS”;
- State Water Board correspondence dated November 29, 2016, “When to Review Underground Storage Tank Records”; and
- State Water Board UST Program Leak Prevention Frequently Asked Question 12 ([https://www.waterboards.ca.gov/water\\_issues/programs/ust/leak\\_prevention/faq12.shtml](https://www.waterboards.ca.gov/water_issues/programs/ust/leak_prevention/faq12.shtml))

### CITATION:

HSC, Chapter 6.7, Section 25291 and 25292

CCR, Title 23, Section 2632(d)(1), 2634(d)(2), 2641(g) and (h), and 2711(d)

[State Water Board]

### CORRECTIVE ACTION:

By the 1<sup>st</sup> Progress Report, the CUPA will review and revise the Data Management Procedure, or other applicable procedure, to ensure the establishment of a process directing UST inspection staff to review UST information in CERS for accuracy and completeness. The revised procedure will, at a minimum, delineate the CUPA’s process for reviewing CERS UST submittals for accuracy and completeness regarding construction and leak detection requirements as follows:

- Based on the UST installation date, the CUPA will review UST CERS submittals for correct construction and leak detection requirements associated with the date of UST installation or, based on construction and leak detection information, review UST CERS submittals for inaccurate UST installation date.
- When UST submittal information is identified as incorrect, the CUPA will either:
  - accept UST CERS submittals with minor errors utilizing a condition set in CERS requiring the submittal to be corrected and resubmitted within a certain timeframe or;
  - not accept UST CERS submittals and provide comments with the requirement to resubmit UST information within a specified time.
- When the UST submittal is not corrected within the time specified by the CUPA, the CUPA will apply appropriate enforcement per the I&E Plan.

By the 2<sup>nd</sup> 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 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 a 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.

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By the 3<sup>rd</sup> 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 a 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 4<sup>th</sup> Progress Report, and with each subsequent Progress Report until considered corrected, to verify accuracy and completeness, the State Water Board will review five UST submittals accepted by the CUPA in CERS after UST inspection staff received training.

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**12. DEFICIENCY:**

The CUPA is not consistently ensuring RTC is obtained within 60 days or is not consistently following up and documenting RTC information in CERS for UST testing or leak detection violations.

Review of CERS CME information for the following FYs finds the following testing and leak detection violations did not obtain RTC over 90 days:

- FY 2017/2018
  - 7 of 20 (35%)
- FY 2018/2019
  - 11 of 21 (52%)
- FY 2019/2020
  - 2 of 7 (29%)

Below are examples of the testing and leak detection violations with no documented RTC in CERS after 90 days:

- CERS ID 10635112: Annual UST compliance inspection, dated June 27, 2019, indicates failure to submit a copy of the overfill prevention equipment inspection results on the Overfill Prevention Equipment Inspection Report Form to the CUPA 30 days after the inspection.
- CERS ID 10635088: Annual UST compliance inspection, dated October 9, 2019, indicates failure to maintain the interstitial space monitoring such that a breach in the primary or secondary containment is detected before the liquid or vapor phase of the hazardous substance stored in the UST is released into the environment.
- CERS ID 10471912: Annual UST compliance inspection, dated February 15, 2019, indicates failure of the functional LLD monitoring pressurized piping to be monitored at least hourly with the capability of detecting a release of 3.0 gallons per hour leak at 10 pounds per square inch and restrict or shut off the flow of product through the piping when a leak is detected.

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Note: The examples provided above may not represent all instances of this deficiency and only include testing and leak detection violations.

**CITATION:**

HSC, Chapter 6.5, Sections 25110.8.5, 25117.6, and 25187.8(b) and (g)  
HSC, Chapter 6.7, Section 25288(d)  
HSC, Chapter 6.11, Section 25404.1.2(c)  
CCR, Title 27, Sections 15185(a) and (c) and 15200(a) and (e)  
[State Water Board]

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will review and revise the I&E Plan, or other applicable procedure, to ensure establishment of a process for UST inspection staff to follow up with UST facilities which have testing or leak detection violations and require RTC within 60 days, to document follow-up actions taken by the CUPA, and to apply appropriate enforcement. The CUPA will provide CalEPA with the revised I&E Plan, or other applicable procedure.

By the 2<sup>nd</sup> 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 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 a 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 3<sup>rd</sup> Progress Report, if amendments to the 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 a 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 4<sup>th</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with UST facility records for five UST facilities, as selected by the State Water Board, that include documentation of the applied appropriate enforcement or documentation of RTC.

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**13. DEFICIENCY:**

The UST operating permit and permit conditions, issued under the Unified Program Facility Permit (UPFP), are inconsistent with UST Regulations and HSC and are missing required UST Program elements.

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Review of UST operating permits, issued under the UPFP, finds the following inconsistencies with UST Regulations and HSC:

- Permit states “This permit must be prominently displayed or readily available on the premises”, 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 and all conditions to be readily accessible at the facility.
- Permit condition A states “Any change in owner, operator, or operations must be reported to San Benito County Environmental Health,” which is inconsistent with UST Regulations, Section 2711(c), requiring the UST owner or operator to notify the CUPA 30 days prior to any changes in substance stored.
- Permit condition G references California Fire Code, however, fire code is not a Unified Program element and cannot be included in the UST operating permit conditions.
- Permit condition H references HSC Chapters 6.75 and 18, however, the CUPA does not have regulatory authority to implement or therefore cite these chapters.

Review of UST operating permits finds the following is missing:

- Individual UST identification numbers.

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

**CITATION:**

HSC, Chapter 6.7, Section 25284 and 25285  
CCR, Title 23, Sections 2712(c) and (i)  
CCR, Title 27, Section 15100(q) and 15190(h)  
[State Water Board]

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will provide CalEPA with a revised UST operating permit template and revised UST operating permit conditions issued under the UPFP, consistent with UST Regulations and HSC.

By the 2<sup>nd</sup> Progress Report, the CUPA will, if necessary, amend the revised UST operating permit template and UST operating permit conditions, based on feedback from the State Water Board, and will provide the amended UST operating permit template and UST operating permit conditions to CalEPA. If no amendments are necessary, the CUPA will begin to issue the revised UST operating permit issued under the UPFP and will provide CalEPA with five UST operating permits issued to UST facilities using the revised UST operating permit template.

By the 3<sup>rd</sup> Progress Report, if amendments to the revised UST operating permit template and UST operating permit conditions were necessary, the CUPA will begin to issue the amended UST operating permit issued under the UPFP and will provide CalEPA with five UST operating permits issued to UST facilities using the amended UST operating permit template.



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**14. DEFICIENCY:**

The CUPA is not consistently citing violations for failure to conduct an overfill prevention equipment inspection. Initial overfill prevention equipment inspections must have been completed no later than October 13, 2018. Upon adoption of this new provision in UST Regulations, the CUPA did not consistently cite violations to ensure the new provision was implemented.

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

- CERS ID 10419946: The Overfill Prevention Equipment Inspection Report Form is dated November 15, 2018. The UST inspection staff did not cite the violation for failure to conduct the Overfill Prevention Equipment Inspection during the annual UST compliance inspection dated June 12, 2019, nor provide accurate U.S. EPA TCR 9b reporting.
- CERS ID 10420816: The Overfill Prevention Equipment Inspection Report Form is dated February 14, 2019. The UST inspection staff did not cite the violation for failure to conduct the Overfill Prevention Equipment Inspection during the annual UST compliance inspection dated January 29, 2020, nor provide accurate U.S. EPA TCR 9b reporting.
- CERS ID 10612576: The Overfill Prevention Equipment Inspection Report Form is dated March 10, 2019. The UST inspection staff did not cite the violation for failure to conduct the Overfill Prevention Equipment Inspection during the annual UST compliance inspection May 15, 2019, nor provide accurate U.S. EPA TCR 9b reporting.

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

**CITATION:**

HSC, Chapter 6.7, Sections 25288(b), and 25299

CCR, Title 23, Sections 2637.2(a), 2665(b), 2712(c), (e), (g), and 2713(c) and (d)

CCR, Title 27, Section 15290(a)(3)

[State Water Board]

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will review and revise the I&E Plan, referred to as Standard Operating Procedure (SOP) 5, to ensure the establishment of a process directing UST inspection staff to consistently cite all UST violations on annual UST compliance inspection reports, report all UST violations in CERS, and provide accurate U.S. EPA TCR reporting. The process will, at a minimum, delineate how the CUPA will cite UST violations for failure to conduct an overfill prevention equipment inspection, or for failure to implement any new provision in UST Regulations or HSC. The CUPA will provide CalEPA with the revised I&E Plan, or other applicable procedure.

By the 2<sup>nd</sup> 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 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

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CUPA will provide training documentation to CalEPA, which, at a 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 3<sup>rd</sup> Progress Report, if amendments were necessary to the 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 a 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 4<sup>th</sup> Progress Report, and with each subsequent Progress Report until considered corrected, if not available in CERS, the CUPA will provide CalEPA with the UST compliance inspection report and Overfill Prevention Equipment Inspection Report Form for five UST facilities, as selected by the State Water Board, that have been inspected after training has been completed. For each UST facility that has not had a completed overfill prevention equipment inspection, the CUPA will provide CalEPA with a narrative of the applied appropriate enforcement.

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**15. DEFICIENCY:**

The CUPA's UST removal procedure, "San Benito County Standard Operating Procedure (SOP) Underground Tank Removal" is inconsistent and less stringent with UST Regulations and HSC.

Review of the procedure "San Benito County SOP Underground Tank Removal" finds the following:

- The "San Benito County SOP Underground Tank Removal" states "removal of an underground storage tank (UST) shall be in compliance with the standards set by the Regional Water Quality Control Board (RWQCB)," while UST closure and removal standards are defined by provisions set forth under UST Regulations and HSC and not the RWQCB.
- The "San Benito County SOP Underground Tank Removal" states "if no leak is suspected, a core sample is taken at both ends of the tank to be analyzed for hydrocarbons, MTBE, BTEX, and possibly lead. If a leak is suspected, the soil is removed and placed on plastic sheeting separated from the other spoils. Sampling is done in the area of the staining, at each end of the tank and a composite sample is taken of the contaminated spoils pile." This guidance is less stringent as soil samples are taken regardless of whether a leak is suspected and is incomplete as it does not include the soil and/or groundwater sampling requirements of UST Regulations, Section 2672(d).
- The "San Benito County SOP Underground Tank Removal" states "Additional remediation of the site or closure of the site is made with the concurrence of the RWQCB," however, the CUPA is not a Local Oversight Program (LOP) and does not have the authority to implement site remediation. Starting on July 1, 2013, only State Water Board certified LOPs can implement corrective actions for the cleanup of leaking USTs.

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

**CITATION:**

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

**CORRECTIVE ACTION:**

The CUPA will no longer implement provisions of the “San Benito County SOP Underground Tank Removal” that are inconsistent and less stringent than UST Regulations and HSC.

By the 1<sup>st</sup> Progress Report, the CUPA will review and revise the “San Benito County Standard Operating Procedure (SOP) Underground Tank Removal” procedure which will address the incomplete, inconsistent, and less stringent provisions including, but not limited to, those identified above, and will ensure the establishment of a process, which will include at a minimum how the CUPA will:

- Take 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 groundwater samples if groundwater is found in the excavation pit;
- Ensure proper analysis of soil and/or groundwater samples;
- Take separate soil samples for each 20 linear-feet of trench for piping;
- Provide documentation of proper disposal of the removed UST(s) or documentation that the UST(s) were filled with an inert solid;
- Provide chain of custody for all samples taken; and
- Permanent closure where UST(s) 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.

The CUPA will provide CalEPA with the revised “San Benito County SOP Underground Tank Removal,” procedure.

By the 2<sup>nd</sup> Progress Report, if amendments to the revised “San Benito County SOP Underground Tank Removal” are necessary based on feedback from the State Water Board, the CUPA will provide CalEPA with the amended “San Benito County SOP Underground Tank Removal” procedure. If no amendments are necessary, the CUPA will train UST inspection staff on the revised procedure. The CUPA will provide training documentation to CalEPA, which at a 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 “San Benito County SOP Underground Tank Removal” procedure.

By the 3<sup>rd</sup> Progress Report, if amendments to the revised “San Benito County SOP Underground Tank Removal” were necessary, the CUPA will train UST inspection staff on the amended procedure. The CUPA will provide training documentation to CalEPA, which at a minimum, will include an outline of the training conducted and a list of UST inspection staff in attendance.

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Once training is complete, the CUPA will implement the revised “San Benito County SOP Underground Tank Removal” procedure.

Opportunities to conduct UST closure activities are limited within the CUPA’s jurisdiction, therefore, this deficiency may unnecessarily remain open while waiting for USTs to undergo closure. The State Water Board will consider this deficiency corrected upon completion of the revised “San Benito County SOP Underground Tank Removal” procedure. State Water Board will verify the CUPA is utilizing the revised “San Benito County SOP Underground Tank Removal” procedure during the next CUPA Performance Evaluation.

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**16. DEFICIENCY: CORRECTED DURING EVALUATION**

The CUPA is not requiring the UST owner or operator to submit testing and leak detection documents within 30 days.

Note: This deficiency was identified during the 2018 CUPA Performance Evaluation and was not corrected during the Evaluation Progress Report process.

**CITATION:**

HSC, Chapter 6.7, Section 25289(b)  
CCR, Title 23, Section 2637(f), 2638(d), and 2643(g)  
[State Water Board]

**CORRECTIVE ACTION: COMPLETED**

The CUPA provided the outreach materials sent to UST owners and operators and testers to notify them of the requirement to submit testing and leak detection documents, and provided testing and leak detection documents for the UST facilities requested beginning January 19, 2021, through present. The State Water Board verified the CUPA has consistently required UST owners or operators to submit testing and leak detection documents. No further action is required.

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**17. DEFICIENCY: CORRECTED DURING EVALUATION**

The CUPA is not consistently preparing annual UST compliance inspection reports.

Note: This deficiency was identified during the 2018 CUPA Performance Evaluation and was not corrected during the Evaluation Progress Report process.

**CITATION:**

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

**CORRECTIVE ACTION: COMPLETED**

The CUPA provided annual UST compliance inspection reports for inspections conducted during the past three years that were consistently prepared. No further action is required.

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DEFICIENCIES REQUIRING CORRECTION

**18. DEFICIENCY: CORRECTED DURING EVALUATION**

The CUPA is not ensuring all regulated businesses subject to Business Plan reporting requirements annually submit a complete HMBP or certification to CERS. A complete HMBP includes a chemical inventory, site map, and emergency response and employee training plans.

The CUPA is not ensuring submitted HMBPs are thoroughly reviewed and contain all required elements before being accepted in CERS.

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

- 57 of 358 (16%) regulated businesses have not submitted a chemical inventory (including site map) or certification within the last 12 months.
- 60 of 358 (17%) regulated businesses have not submitted emergency response and employee training plans or certification within the last 12 months.

**CITATION:**

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

**CORRECTIVE ACTION: COMPLETED**

On June 22, 2021, the CUPA provided documentation to demonstrate that only 35 of 365 (10%) businesses had not submitted an annual HMBP or a certification to CERS. No further action is required.

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**19. DEFICIENCY: CORRECTED DURING EVALUATION**

The CUPA is not properly classifying HWG Program violations.

Review of 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 (CCR, Title 22, Section 66262.34) 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 a minor violation as described in HSC, Section 25404(a)(3).
  - 4 of 4 (100%) violations cited between January 1, 2018 through December 31, 2020, for exceedance of accumulation timeframe were classified as minor.
    - CERS ID 10630561: inspection dated October 16, 2018
    - CERS ID 10625536: inspection dated August 9, 2018
    - CERS ID 10130655: inspection dated June 11, 2018
    - CERS ID 10630546: inspection dated April 23, 2018 (this violation was a repeat violation from February 14, 2014 inspection.)

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**DEFICIENCIES REQUIRING CORRECTION**

- Violation for failure to accumulate hazardous waste in a container that is in good condition (CCR, Title 22, Section 66262.34) incorrectly cited as a minor violation. Storage of hazardous waste in damaged containers may lead to a release of hazardous waste to the environment. Failure to accumulate hazardous waste in a container that is in good condition may result in a failure to prevent releases of hazardous waste or constituents to the environment. This does not meet the definition of a minor violation as described in HSC, Section 25404(a)(3).
  - 4 of 4 (100%) violations cited between January 1, 2018, through December 31, 2020, for failure to accumulate hazardous waste in a container that is in good condition were classified as minor
    - CERS ID 10630546: inspection dated April 23, 2018
    - CERS ID 10634383: inspection dated May 1, 2018
    - CERS ID 10635112: inspection dated June 13, 2018
    - CERS ID 10649434: inspection dated May 28, 2019
- Violation for failure to prepare a written cost estimate, failure to adjust closure costs and failure to submit financial assurance [CCR, Title 22, Sections 67450.13(a)(1), (a)(2) and (a)(3) respectively] incorrectly cited as minor violations. Failure to have accurate and adequate financial assurance inhibits the ability of the facility to properly close a treatment unit. An economic benefit is gained by not adequately identifying the necessary costs of closing the units and having the proper financial assurance mechanisms in place to fund the cost of closing the units. This does not meet the definition of minor violation as described in HSC, Section 25404(a)(3).
  - CERS ID 10424989: inspection dated January 8, 2018, and RTC on December 3, 2020.

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

Note: This deficiency was identified during the 2018 CUPA Performance Evaluation and was corrected during the Evaluation Progress Report process.

**CITATION:**

HSC, Chapter 6.5, Sections 25110.8.5 and 25117.6

HSC, Chapter 6.11, Sections 25404(a)(3)

CCR, Title 22, Section 66260.10

CCR, Title 27, Section 15200(a) and (e)

[DTSC]

**CORRECTIVE ACTION: COMPLETED**

The CUPA addressed a software issue that used a default classification of minor for the above violations. The CUPA has updated the software and corrected the default classifications. No further action is required.

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**DEFICIENCIES REQUIRING CORRECTION**

**20. DEFICIENCY: CORRECTED DURING EVALUATION**

The CUPA is not ensuring that each CalARP stationary source is updating the Risk Management Plan (RMP) every five years.

- 2 of 10 (20%) CalARP stationary sources have not updated the RMP in the last five years.

**CITATION:**

CCR, Title 19, Sections 2745.10(a)(1) and (b)(1)  
[Cal OES]

**CORRECTIVE ACTION: COMPLETED**

During the evaluation, the CUPA made progress towards ensuring each CalARP stationary source is updating the RMP every five years. 1 of 10 (10%) CalARP stationary sources have not updated the RMP in the last five years. The CUPA will ensure the remaining CalARP stationary source updates the RMP. The CUPA will continue to ensure each CalARP stationary source is updating the RMP every five years. 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.

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**1. INCIDENTAL FINDING:**

The CUPA is not utilizing the current Surcharge Transmittal Report template and is not properly filling out the Surcharge Transmittal Report, effective July 1, 2018.

The Check Number on the report is not being completed before being provided to CalEPA each fiscal quarter.

Note: Effective June 25, 2021, the quarterly Surcharge Transmittal Report template was updated to reflect the increased CUPA Oversight state surcharge, which includes an assessment for the CERS NextGen Project. The CUPA was not using the previous iteration of the quarterly Surcharge Transmittal Report effective July 1, 2018.

**CITATION:**

CCR, Title 27, Section 15250(b)(1) and (2)  
[CalEPA]

**RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will provide CalEPA with the instructions given to administrative staff to ensure the Check Number is identified on the Surcharge Transmittal Report provided to CalEPA each quarter.

By the 1<sup>st</sup> Progress Report, the CUPA will have submitted to CalEPA the 2<sup>nd</sup> quarterly Surcharge Transmittal Report for FY 2021/2022 by the required due date using the current quarterly [Surcharge Transmittal Report](#) template. Thereafter, the CUPA will submit each quarterly Surcharge Transmittal Report to CalEPA at [cupa@calepa.ca.gov](mailto:cupa@calepa.ca.gov) no later than 30 days after the end of each fiscal quarter. The current quarterly [Surcharge Transmittal Report](#) template, effective June 25, 2021, can be found at: [https://calepa.ca.gov/wp-content/uploads/sites/6/2021/07/SURCHARGE-TRANSMITTAL-REPORT\\_20210709-ADA.pdf](https://calepa.ca.gov/wp-content/uploads/sites/6/2021/07/SURCHARGE-TRANSMITTAL-REPORT_20210709-ADA.pdf).

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**2. INCIDENTAL FINDING:**

The Self-Audit Reports for FYs 2017/2018, 2018/2019, and 2019/2020 have missing or incomplete components.

The following components are missing:

- 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, if applicable.



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**INCIDENTAL FINDINGS REQUIRING RESOLUTION**

The following components are incomplete:

- A narrative summary of the effectiveness of permitting;
- An explanation of any discrepancies on the annual and quarterly reports of program activities submitted to the Secretary.

Note: The Self-Audit Reports did not include a date of completion to demonstrate compilation by September 30<sup>th</sup> of each year.

**CITATION:**

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

**RESOLUTION:**

By September 30, 2021, and in each subsequent year, the CUPA will complete the Self-Audit Report that includes all required components, and incorporates a date of completion to demonstrate the report was compiled by September 30<sup>th</sup>.

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**3. INCIDENTAL FINDING:**

Review finds a previous local ordinance requirement, no longer in effect, required UST systems to be constructed with tertiary containment. There is currently no verification that testing and leak detection of UST systems constructed with tertiary containment are in compliance with the secondary containment requirements of UST Regulations and HSC. UST regulations and HSC are intended for single and double containment. The CUPA has implemented applicability of these regulations to tertiary containment without verification of regulatory or component accuracy/eligibility.

The CUPA identifies one UST facility, CERS ID 10634860, that has UST systems constructed with tertiary containment. It is unknown at this time if there are other UST systems with tertiary containment.

**CITATION:**

CCR, Title 23, Sections 2630(d), 2631(a), 2642(f), and 2711  
[State Water Board]

**RESOLUTION:**

By the 2<sup>nd</sup> Progress Report, the CUPA will assess and provide CalEPA with 1) a list of any additional UST systems constructed with tertiary containment, and 2) information necessary for the State Water Board, in coordination with the CUPA, to determine if existing testing and leak detection activities currently implemented for tertiary containment comply with the secondary containment requirements of UST Regulations and HSC. The assessment will include, at a minimum, for each UST:

- CERS ID;
- Manufacturer of the UST system;
- How and where the UST is monitored;

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**INCIDENTAL FINDINGS REQUIRING RESOLUTION**

- How the UST owners or operators complete secondary containment testing; and
- Other secondary containment provisions that may be impacted by tertiary containment construction.

State Water Board will discuss the assessment with the CUPA and, if necessary, will provide guidance to the CUPA as to how the CUPA will advise the UST owner or operator of necessary changes in testing and leak detection required to be in compliance with UST Regulations and HSC.

By the 3<sup>rd</sup> Progress Report, if necessary, the CUPA will draft written correspondence addressed to UST owners or operators informing them of the requirement to test and monitor secondary containment. The written correspondence will include language stating that failure to test and monitor secondary containment will lead to appropriate enforcement. The draft written correspondence will be provided to CalEPA for review by the State Water Board. The CUPA will not distribute the correspondence until receiving feedback from the State Water Board.

By the 4<sup>th</sup> Progress Report, the CUPA will, if necessary, revise the draft correspondence, based on feedback from the State Water Board and will submit the revised correspondence to CalEPA. If no revisions are necessary, the CUPA will distribute the correspondence to the applicable UST owners or operators.

By the 5<sup>th</sup> Progress Report, if no revisions to the correspondence are necessary, the CUPA will distribute the correspondence to the applicable UST owners or operators.

The State Water Board will consider this incidental finding resolved upon completion of the assessment and if the UST systems are found to be in compliance with the secondary containment requirements of UST Regulations and HSC.

The State Water Board will consider this incidental finding closed, but not resolved, and will verify that the UST systems are in compliance with the secondary containment requirements of UST Regulations and HSC, during the next CUPA Performance Evaluation if the UST systems with tertiary containment are found to not be tested and monitored in accordance with UST Regulations and HSC and the CUPA provides written correspondence to the UST owner or operator.

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**4. INCIDENTAL FINDING:**

UST compliance inspection information and facility inventory in Report 6 is inconsistent with CUPA Self-Audit Reports and CERS CME information.

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

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**INCIDENTAL FINDINGS REQUIRING RESOLUTION**

Review of Report 6, CUPA Self-Audit Reports, and CERS CME information finds the following UST inspection frequency for each FY:

- In FY 2017/2018
  - Report 6 – 24 of 23 (104%)
  - CUPA Self-Audit Report – 22 of 24 (92%)
  - CERS CME Information – 23 of 23 (100%)
- In FY 2018/2019
  - Report 6 – 23 of 23 (100%)
  - CUPA Self-Audit Report – 22 of 23 (96%)
  - CERS CME Information – 22 of 23 (96%)
- In FY 2019/2020
  - Report 6 – 21 of 23 (91%)
  - CUPA Self-Audit Report – 23 of 23 (100%)
  - CERS CME Information – 19 of 23 (83%)

Note: This incidental finding was identified during the 2018 CUPA Performance Evaluation and was corrected during the Evaluation Progress Report 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]

**RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will develop and provide CalEPA with an action plan that, at a minimum, includes:

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

By the 1<sup>st</sup> Progress Report, the CUPA will review and revise the Data Management Procedure, or other applicable procedure, to ensure the establishment of a process, which at a minimum will address how UST compliance inspection information is consistently 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 2<sup>nd</sup> 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 the amended Data Management Procedure, or other applicable procedure. If no amendments are necessary, the CUPA will train UST inspection staff on the

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**INCIDENTAL FINDINGS REQUIRING RESOLUTION**

revised Data Management Procedure, or other applicable procedure. Once training is complete, the CUPA will implement the revised Data Management Procedure, or other applicable procedure.

By the 3<sup>rd</sup> 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. Once training is complete, the CUPA will implement the amended Data Management Procedure, or other applicable procedure.

By the 4<sup>th</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will have consistently reported UST compliance inspection information in Report 6 and CERS for two consecutive Report 6 reporting periods.

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**5. INCIDENTAL FINDING: RESOLVED DURING EVALUATION**

The CUPA is not properly classifying APSA Program violations.

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

- Not having or failure to prepare an SPCC Plan was classified as a minor violation. Facilities that operate without an SPCC Plan present a significant threat to human health or the environment, and may benefit economically from noncompliance either by reduced costs or by competitive advantage. This does not meet the definition of a minor violation as defined in HSC, Section 25404(a)(3). In addition, classifying a violation for not having an SPCC Plan as minor is inconsistent with, and less stringent than, the U.S. EPA.
  - FY 2017/2018 through FY 2019/2020: 2 of 3 (67%) violations issued for not having or failure to prepare an SPCC Plan were classified as minor

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

**CITATION:**

HSC, Chapter 6.11, Sections 25404(a)(3), 25404.2(a)(3) and 25404.2(a)(4)

HSC, Chapter 6.67, Sections 25270.4.1(c), 25270.4.5

CCR, Title 27, Section 15200(a) and (e)

[OSFM]

**RESOLUTION: COMPLETED**

The CUPA has modified the violation classification in the Envision Connect software to classify a violation issued for not having or failure to prepare an SPCC Plan as a non-minor violation. No further action is required.

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**OBSERVATIONS AND RECOMMENDATIONS**

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

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**1. OBSERVATION:**

The CUPA provided emergency response personnel an opportunity to access Hazardous Materials Release Response Plan (HMRRP) information through CERS in accordance with HSC section 25504(c) during FY 2016/2017. To encourage emergency response personnel to establish access to CERS, the CUPA provided emergency response personnel from the City of Hollister Fire Department, City of San Juan Bautista Fire Department, and the California Department of Forestry Aromas and Fairview Stations with instructions as to how to request access to CERS. However, the City of Hollister Fire Department, City of San Juan Bautista Fire Department and the California Department of Forestry Aromas and Fairview Stations have not yet created a CERS regulatory account or requested access to CERS.

**RECOMMENDATION:**

Follow up with emergency response personnel at the City of Hollister Fire Department, City of San Juan Bautista Fire Department and the California Department of Forestry Aromas and Fairview Stations to determine if a request for regulatory access to CERS and establishment of a CERS regulatory account will be completed in order to access HMRRP information.

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**2. OBSERVATION:**

The information provided below is a comparison of the total number of regulated facilities within each Unified Program element upon certification of the CUPA with present-day circumstance and the degree to which the number of regulated facilities has increased or decreased. The information is sourced from the following:

- Information provided by County of San Benito Public Health Division 1996 Application for Certification
- CERS “Summary Regulated Facilities by Unified Program Element Report” generated on April 15, 2021
- CERS “UST Inspection Summary Report (Report 6),” generated on April 15, 2021
  
- Total Number of Regulated Businesses and Facilities:
  - In 1996: **200**
  - Currently: **384**
  - An increase of **184** facilities
  
- Total Number of Hazardous Materials Release Response Plan and Inventory (Business Plan) Regulated Businesses and Facilities:
  - In 1996: **175**
  - Currently: **360**
  - An increase of **185** facilities

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OBSERVATIONS AND RECOMMENDATIONS

- Total Number of Regulated Underground Storage Tank (UST) Facilities:
  - In 1996: **20**
  - Currently: **23**
  - An increase of **3** facilities
  
- Total Number of Regulated Underground Storage Tanks (USTs):
  - In 1996: **100**
  - Currently: **57**
  - A decrease of **43** Underground Storage Tanks
  
- Total Number of Regulated Hazardous Waste Generator (HWGs) Facilities:
  - In 1996: **20**
  - Currently: **182**
  - An increase of **162** facilities
  - Comments: In the 1996 Application for Certification, the CUPA stated that the HWG Program was a new program element for the Division and had been previously administered by the County of San Benito Office of Emergency Services prior to the CUPA applying for certification. The Hazardous Waste Tracking System (HWTS) identified 52 facilities shipping waste within the CUPA's jurisdiction in 1996.
  
- Total Number of Regulated Household Hazardous Waste (HHW) Facilities:
  - In 1996: None specified
  - Currently: **1**
  - Comments: HHW facilities were regulated under the Unified Program upon certification, though no count was provided in the application for certification. The difference between the current and historic number of facilities cannot be determined at this time.
  
- Total Number of Regulated Tiered Permitting Facilities (Permit By Rule, Conditionally Authorized, Conditionally Exempt):
  - In 1996: **3**
  - Currently: **2**
  - A decrease of **1** facility
  
- Total Number of Regulated Resource Conservation and Recovery Act (RCRA) Large Quantity Generator (LQG) Facilities:
  - In 1996: none specified
  - Currently: **4**
  - Comments: RCRA LQG facilities were regulated under the Unified Program upon certification, though no count was provided in the application for certification. The difference between the current and historic number of facilities cannot be determined at this time.

# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

### OBSERVATIONS AND RECOMMENDATIONS

- Total Number of Regulated Risk Management Prevention Plan (RMPP) or California Accidental Release Prevention (CalARP) Program Facilities:
  - In 1996: **2**
  - Currently: **10**
  - An increase of **8** facilities
- Total Number of Regulated Aboveground Petroleum Storage Act (APSA) Tank Facilities:
  - In 1996: **N/A**
  - Currently: **72**
  - An increase of **72** facilities

Since the CUPA applied for certification in 1996, an expansion of responsibilities in the Business Plan, HWG, CalARP, and APSA programs has occurred, increasing the total regulated facility count and attributing to an increased workload undertaken by the CUPA to further implement regulatory oversight of each of these programs. The Business Plan Program increased by 185 facilities (51%), the HWG Program increased by 162 facilities (89%), the CalARP Program increased by 8 facilities (80%), and the APSA Program increased by 72 facilities (100%). In addition, the CUPA currently oversees 4 RCRA LQG facilities that were not identified in the 1996 Application for Certification. The number of USTs decreased by 43 (43%) and the TP Program decreased by 1 facility (33%). The overall trend shows the number of regulated facilities managed by the CUPA as of April 15, 2021, has increased by about 48% since the CUPA applied for certification in 1996.

The information below is a comparison of the overall full-time equivalent (FTE) of CUPA personnel allocated to the implementation of the Unified Program upon certification of the CUPA with present-day circumstance and the degree to which allocated inspection and supervisory/management staff has increased. The information is sourced from the County of San Benito Public Health Division 1996 CUPA Application and recent information provided by the CUPA.

#### CUPA Personnel:

- Inspection and other Staff
  - Upon Certification in 1996:
    - 1 Staff at a 100% FTE = 1 Full-Time position
    - A new position was created for an additional CUPA inspector.
  - Currently:
    - 2 Staff, each at a 40% FTE = 80% of 1 Full-Time position
    - Each CUPA inspector is a generalist and is responsible for consumer protection, land use, and handling complaint investigations for non-CUPA related environmental health department issues.
- Supervisory and Management Staff
  - Upon Certification in 1996:
    - 1 Staff at a 100% FTE = 1 Full-Time position

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**OBSERVATIONS AND RECOMMENDATIONS**

- Currently:
  - 1 Staff at a 10% FTE= 10% of 1 Full-Time position
  - The Environmental Health Manager also oversees other County programs including, but not limited to consumer protection and land use.

**RECOMMENDATION:**

Conduct a fee accountability study to determine the current necessary and reasonable costs to implement all aspects of the Unified Program with the existing regulated businesses and facilities within each program element. Based on the provided analysis, CalEPA recommends the CUPA reevaluate the 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. As part of this evaluation, CalEPA also recommends the CUPA examine how its current resources are being used to ensure that required program elements are prioritized first before any supplemental tasks that may not be specifically required are undertaken.

The comparison of the implementation of the program upon certification with present-day circumstance reveals there are several issues impeding the CUPAs ability to adequately implement the Unified Program within its jurisdiction. Between growth within the county and the expansion of the Unified Program elements since its inception, the number of regulated facilities for this CUPA have almost doubled since the CUPA was first certified. As of the most recent evaluation, however, the CUPA has only hired one additional part-time personnel on staff than when the agency was first certified, which in and of itself is a factor that impacts the ability of the CUPA to implement all program elements effectively.

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

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**3. OBSERVATION:**

In each of the CalARP Performance Audits, the information provided in response to “a summary of the personnel and personnel years necessary to directly implement, administer and operate the CalARP program” is information relative to training. The summary provided is intended to specify how many staff and how much time of each staff is required to successfully and efficiently implement, administer and operate the CalARP program. For example, if there are two inspectors, each devoting 10% of a full time equivalent to implement the CalARP program, the correct response would be “2 personnel, 0.2 PY (person years).”

**RECOMMENDATION:**

Starting with the next CalARP Performance Audit, structure the response depicting the summary of personnel and personnel years as shown above.



## CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

#### OBSERVATIONS AND RECOMMENDATIONS

#### 4. OBSERVATION:

Review of overall implementation of the HWG Program, including policies and procedures, CERS data, facility file information, information provided by the CUPA and Self-Audit Reports for January 1, 2018, through December 31, 2020, is summarized below:

- There are 183 regulated HWG facilities, 4 Resource Conservation and Recovery Act (RCRA) Large Quantity Generator (LQG) facilities, and 2 Tiered Permitted facilities.
- The three year inspection frequency for all facilities is currently at 76%.
- 195 HWG inspections were conducted, of which 175 (90%) HWGs were not issued any violations and 20 HWGs (10%) were issued at least one violation.
  - Of the 195 inspections performed, 46 total violations were issued, consisting of:
    - 0 Class I violations,
    - 2 Class II violations, and
    - 44 minor violations.
      - 34 of 44 (77%) minor violations exceeded the statutorily required 30 days to RTC.
  - 44 of 46 (96%) violations have obtained RTC.
  - Of the 80 inspections performed during June 11, 2019, through February 8, 2021, no violations were issued.
    - Given the nature of the HWG Program, it is highly unlikely that 80 consecutive HWG inspections would result in no violations being issued.
- The CUPA did not initiate any formal enforcement.
- When issued, inspection reports contain detailed comments that note the factual basis of cited violations, inspection reports do indicate consent to inspect was requested prior to the inspection.
- The CUPA uses several separate Standard Operating Procedures (SOPs) in lieu of an I&E Plan. Details regarding inspection preparation, conducting the inspection, required follow up actions and how graduated series of enforcement will be implemented do not meet the requirements of CCR, Title 27, Section 15200(a).
- SOP #9 cites incorrect regulatory requirements that apply to the management of hazardous waste for generators.
- The CUPA's website for information on Hazardous materials does not describe the program elements or why a business should comply. The link only points to the DTSC website and no other programs info or to access CERS.

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

#### RECOMMENDATION:

Continue with the three-year HWG inspection frequency and consider using the CalEPA I&E Plan as a template for development of more comprehensive SOPs.

Conduct thorough process-based HWG inspections to identify all violations that exist at each HWG facility, correctly classify cited violations, ensure RTC is obtained and apply appropriate enforcement when necessary. This will help to ensure all HWG facilities are operating in a manner to appropriately manage generated hazardous waste.

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**OBSERVATIONS AND RECOMMENDATIONS**

Review, and revise as necessary, each SOP to ensure all components required in the I&E Plan are correctly and accurately reflected. Consolidate all SOPs for ease of use, training and reference.

Revise SOP #9 to cite correct regulatory requirements that apply to the management of hazardous waste for generators using the information in the Violation Classification Guidance (<https://calepa.ca.gov/wp-content/uploads/sites/6/2020/06/Violation-Classification-Guidance-Documents-accessible.pdf>) and information on the DTSC website (<https://dtsc.ca.gov/generators>) for reference.

The CUPA website could be improved to provide updated and correct regulatory guidance to hazardous waste generators.

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**5. OBSERVATION:**

The I&E Plan version dated 2020 contains APSA program information that may benefit from improvement.

- Due to the significant number of APSA regulated conditionally exempt farm facilities, the inspection frequency language on page 1 can be improved by stating APSA tank facilities with storage capacity of 10,000 gallons or more of petroleum will be triennially inspected for compliance with the SPCC Plan requirements of APSA.
- The I&E Plan lacks specific discussion of multiple APSA elements commonly present in I&E Plans.

**RECOMMENDATION:**

Update the I&E Plan as indicated above.

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**6. OBSERVATION:**

The CERS reporting requirement is currently set as “APSA Applicable” for 71 tank facilities. The CUPA’s local data management system identifies 71 APSA tank facilities.

- 65 APSA facilities are identified in both CERS and the CUPA’s local data management system. However, 27 of these facilities appear to be farms, some of which may no longer be regulated under APSA due to Senate Bill (SB) 612 (Jackson, Statutes of 2015, Chapter 452) oil applicability thresholds.
- Six facilities are identified on the CUPA’s local data management system, but are not reported as “APSA Applicable” in CERS. All six facilities are likely not APSA regulated.
- Six tank facilities are reported as “APSA Applicable” in CERS, but are not identified as APSA tank facilities in the CUPA’s local data management system. Two of these facilities are likely APSA regulated, while four facilities are likely not APSA regulated.

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**RECOMMENDATION:**

Complete the reconciliation of the APSA Program information in the CUPA's local data management system with CERS to ensure all regulated APSA tank facilities are included in both systems.

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**7. OBSERVATION:**

The CUPA regulates some farms. Effective January 1, 2016, SB 612 aligned the applicability threshold for farms with that of the Federal 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.

The OSFM information on APSA and farms is available at:

<https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/farms/>. More information on farms under the Federal SPCC rule may be found on the U.S. Environmental Protection Agency website at: <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spill-prevention-control-and-countermeasure-spcc>.

**RECOMMENDATION:**

Review the list of conditionally exempt tank facilities at farms, verify if the total oil storage capacity meets the WRRDA thresholds, and determine if the farms are still regulated as conditionally exempt tank facilities under APSA.

Farms that are no longer regulated under APSA due to SB 612 oil applicability thresholds should be identified in CERS as "APSA Not Applicable". The CUPA is encouraged to change the CERS APSA facility reporting requirement from "Applicable" to "Not Applicable" for such farms.

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**8. OBSERVATION:**

The website at: <https://hhsa.cosb.us/environmental-health> identifies the CUPA oversight of several Hazardous Materials programs, but it omits the APSA program.

**RECOMMENDATION:**

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.

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**9. OBSERVATION:**

The area plan may benefit from improvement as follows:

- Page 8: It is better to refer to the APSA program as Aboveground Petroleum Storage Act instead of the “Aboveground Tank Spill Prevention Plan Program” for consistency with the statute.
- Page 8: The fire code Hazardous Materials Management Plans and Hazardous Materials Inventory Statements should be included on the list of Unified Program elements that the CUPA implements within its jurisdiction.

**RECOMMENDATION:**

Update the area plan.

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**10. OBSERVATION:**

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

The 2017 version of the consolidated emergency response and training plans template contains the current OSFM phone number.

**RECOMMENDATION:**

Encourage each APSA tank facility that utilizes the consolidated emergency response and training plans template as part of the HMBP submittal, in lieu of the tank facility statement, to use the current 2017 template. The current template is available in CERS.

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**11. OBSERVATION:**

SPCC plan submittals were accepted by the CUPA for CERS IDs 10644385 and 10475653.

SPCC Plans are not required as part of any CERS submittal; therefore, SPCC Plans should not be uploaded to CERS.

**RECOMMENDATION:**

Provide feedback (using the regulator comments field) to facilities that submit SPCC Plans in future CERS submittals.

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**12. OBSERVATION:**

Review of CERS finds CERS ID 10471912 (Tank IDs 001 – 004) as the only UST system having single-walled components which require permanent closure by December 31, 2025, in accordance with HSC, Chapter 6.7, Section 25292.05. While CERS indicates one UST facility, all other UST systems having single-walled components that may otherwise not be represented in CERS require permanent closure by December 31, 2025, in accordance with HSC, Chapter 6.7, Section 25292.05.

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**RECOMMENDATION:**

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

[http://waterboards.ca.gov/water\\_issues/programs/ust/single\\_walled/](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](https://www.waterboards.ca.gov/water_issues/programs/ustcf/rust.html).

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**13. OBSERVATION:**

The Minimum Qualifications for CUPA personnel, as an Environmental Health Specialist, uses language that is vague in ensuring hired personnel meet the educational requirements of Title 27, Section 15260(a)(1)(B).

**RECOMMENDATION:**

Revise the Minimum Qualifications language under the “*Typical Qualifications – Training and Experience*” section to clarify technical program staff and supervisors are required to meet the education requirements of Title 27, Section 15260(a)(1)(B).

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**14. OBSERVATION:**

In the 2018 CUPA Performance Evaluation and in Deficiency 20 of the current CUPA Performance Evaluation, the CUPA has not been properly classifying HWG Program violations. Though a software issue was identified and addressed, it is not clear whether or not:

- Improperly classified violations have been corrected in CERS, and
- Facilities were issued properly classified HWG violations.

**RECOMMENDATION:**

Perform a quality assurance and quality control review of CERS CME data to ensure HWG violations are properly classified upon electronic data transfer.

Notify facilities that were issued improperly classified HWG violations of the proper violation classification, refer to Deficiency 20.

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