

March 8, 2022

Mr. Jonathan Crick
Deputy Fire Marshal
Gilroy City Fire Department
7351 Rosanna Street
Gilroy, California 95020-6141

Dear Mr. Crick:

During March 2019 through July 2019, CalEPA and the state program agencies conducted a performance evaluation of the Gilroy City Fire Department Certified Unified Program Agency (CUPA). The CUPA evaluation included a remote assessment of administrative documentation, review of regulated facility file documentation, and California Environmental Reporting System information.

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. The report also includes examples of outstanding Unified Program implementation. Enclosed, please find the final Summary of Findings report.

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

CalEPA recognizes the delay with issuing the final Summary of Findings report. Consequently, as the next CUPA Performance Evaluation is scheduled to begin in June 2022, there is sufficient time for submittal and review of one Evaluation Progress Report, although the timeframe for completion of corrective actions and resolutions may extend beyond submittal of the first Evaluation Progress Report.

The CUPA is required to submit the Evaluation Progress Report 90 days from the receipt of this Final Summary of Findings Report. Please provide the Evaluation Progress Report to Samuel Porras at Samuel.Porras@calepa.ca.gov.

The CUPA is strongly encouraged to provide an update detailing as much progress made as possible in accomplishing the corrective actions and resolutions for each identified deficiency and incidental finding, particularly if steps for corrective actions and resolutions outlined for completion in anticipated subsequent Progress Reports have been completed and addressed at present. Any deficiencies that remain uncorrected and any incidental findings that remain unresolved will be incorporated into the 2022 CUPA Performance Evaluation.

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

If you have any questions or need further assistance, please contact Melinda Blum at Melinda.Blum@calepa.ca.gov.

Sincerely,



Jason Boetzer
Assistant Secretary
Local Program Coordination and Emergency Response

Enclosure

cc sent via email:

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Senior Environmental Scientist, Supervisor
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Ms. Elizabeth Brega
Senior Environmental Scientist, Supervisor
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: Gilroy City Fire Department

Evaluation Period: March 2019 through July 2019

Evaluation Team Members:

- **CalEPA Team Lead:** Marc Lorentzen, Samuel Porras
- **DTSC:** Elizabeth Brega
- **CalEPA/Cal OES*:** Fred Mehr
- **State Water Board:** Lisa Jensen
- **CAL FIRE-OSFM:** Joann Lai, Denise Villauneva

This Final Summary of Findings includes:

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

The findings contained within this evaluation report are considered final. Based upon review and completion of the evaluation, the CUPA's Unified Program implementation and performance is considered satisfactory with improvement needed.

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

CalEPA recognizes the delayed issuance of this Final Summary of Findings report. Consequently, as the next CUPA Performance Evaluation is scheduled to begin in June 2022, there is sufficient time for submittal and review of one Evaluation Progress Report, although the timeframe for completion of corrective actions may extend beyond submittal of the first Evaluation Progress Report.

The CUPA is required to submit the Evaluation Progress Report 90 days from the receipt of this Final Summary of Findings Report. The Evaluation Progress Report must be submitted to the CalEPA Team Lead at samuel.porras@calepa.ca.gov no later than **June 6, 2022**.

The CUPA is strongly encouraged to provide an update detailing as much progress made as possible in accomplishing the corrective actions and resolutions for each identified deficiency and incidental finding, particularly if steps for corrective actions and resolutions outlined for completion in anticipated subsequent Progress Reports have been completed and addressed at present, or in advance. Any deficiencies that remain uncorrected or incidental findings that remain unresolved will be incorporated into the next CUPA Performance Evaluation.

*Effective July 1, 2021, oversight of the Hazardous Materials Release Response Plans and Inventory and the California Accidental Response Prevention Program transitioned from Cal OES to CalEPA.

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

DEFICIENCIES REQUIRING CORRECTION

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

1. DEFICIENCY:

The CUPA is not inspecting all Aboveground Petroleum Storage Act (APSA) tank facilities at least once every three years in accordance with the Inspection and Enforcement (I&E) Plan.

Review of facility files and compliance, monitoring, and enforcement (CME) information in the California Environmental Reporting System (CERS) indicates:

- 8 of 24 (33%) APSA tank facilities that store 1,320 gallons or more of petroleum have not been inspected within the last three years.

Note: The CUPA meets the mandated inspection frequency for the APSA Program.

CITATION:

Health and Safety Code (HSC), Chapter 6.67, Section 25270.5(b)
[OSFM]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop, implement, and provide CalEPA with an action plan to ensure all APSA tank facilities are inspected at least once every three years. The action plan will include the following:

- A sortable spreadsheet of all APSA tank facilities that have not been inspected in the last three years;
- A proposed schedule to inspect those listed APSA tank facilities prioritizing the most delinquent inspections to be completed prior to other inspections based on a risk analysis of all APSA tank facilities (i.e., large volumes of petroleum or proximity to navigable water); and
- Steps to ensure that all APSA tank facilities will be inspected at least once every three years and all CERS CME information is entered.

By the 2nd Progress Report and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with an updated spreadsheet.

By the 4th Progress Report, the CUPA will have inspected each APSA tank facility identified on the 1st Progress report at least once every three years.

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DEFICIENCIES REQUIRING CORRECTION

2. DEFICIENCY:

The CUPA is not consistently citing violations for failure to conduct an overfill prevention equipment inspection as required by California Code of Regulations (CCR), Title 23, Division 3, Chapter 16.1, Sections 2637.2(a) and 2665(b).

No later than October 13, 2018, all overfill prevention equipment must be inspected periodically and after repairs, in accordance with CCR, Title 23, Division 3, Chapter 16.1, Sections 2637.2(a) and 2665(b).

Review of annual UST compliance inspection reports, associated overfill prevention inspection reports, and CERS CME information finds the following:

- CERS ID 10073833 – Overfill Prevention Inspection dated April 3, 2019, was conducted beyond the October 13, 2018, deadline. No violation was reported in CERS, therefore, U.S. EPA TCR 9b reporting is inaccurate.
- CERS ID 10075180 – Overfill Prevention Inspection not conducted by the October 13, 2018, deadline. The January 13, 2019, annual compliance inspection report cites a violation, however, no violation was reported in CERS, therefore, U.S. EPA TCR 9b reporting is inaccurate.
- CERS ID 10146307 – Overfill Prevention Inspection dated April 3, 2019, was conducted beyond the October 13, 2018, deadline. No violation was reported in CERS, therefore, U.S. EPA TCR 9b reporting is inaccurate.

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

CITATION:

CCR, Title 23, Sections 2637.2(a) and 2665(b)
[State Water Board]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will revise and provide CalEPA with the I&E Plan, or other applicable procedure, to ensure personnel consistently and correctly report all violations during the annual compliance inspection and in CERS.

By the 2nd Progress Report, the CUPA will, if necessary, amend the I&E Plan, or other applicable procedure, based on feedback from the State Water Board. The CUPA will provide the amended I&E Plan, or other applicable procedure, to CalEPA. If no amendments are necessary, the CUPA will train personnel on the revised plan or procedure and provide training documentation to CalEPA. Training documentation will include, but not be limited to, an outline of the training conducted and a list of CUPA personnel attending training. Once training is complete, the CUPA will implement the revised I&E Plan or other applicable procedure.

By the 3rd Progress Report, if amendments to the revised I&E Plan or other applicable procedure were necessary, the CUPA will train personnel on the amended I&E Plan or other applicable procedure and will provide training documentation to CalEPA. Training documentation will include, but not be limited to, an outline of the training conducted and a list of CUPA personnel

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DEFICIENCIES REQUIRING CORRECTION

attending training. Once training is complete, the CUPA will implement the amended I&E Plan or other applicable procedure.

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

3. DEFICIENCY:

The I&E Plan and the Processing Permit Application and Collection of Fees Policy have inaccurate or incomplete information.

The following information in the I&E Plan is either inaccurate or incomplete:

- Notice of Violation incorrectly states a local agency shall not issue or renew a permit when a facility is not in compliance.
- The UST Facilities section of Program Specific Enforcement Violations does not correctly quote HSC, Chapter 6.7, Sections 25299, 25299.01, 25299.02, or 25299.03.
- Page 24 refers to the 1995 DTSC Enforcement Policy which is no longer applicable, refer to DTSC's 2017 Enforcement Response Policy (https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/07/DTSC-OP-0006_Enf_Response_Policy.pdf).
- Page 30 lists incorrect hazardous waste penalty amounts, refer to CCR, Title 22, Section 66272.62 for the correct amounts.
- Inspection frequencies for the Permit-By-Rule, Conditionally Authorized, and Conditionally Exempt components of the Hazardous Waste Generator (HWG) Program need to include an "initial inspection within two years of notification and every three years thereafter."

The following information in the I&E Plan is missing:

- 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 HSC, Chapter 6.5, Section 25198.
- Procedures for addressing complaints, including but not limited to, the receipt, investigation, enforcement, and closure of a complaint.
- Information outlining performing a complete physical inspection of a UST facility in the event the inspector is not available to observe the annual monitoring system certification is not included.

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The following information in the Processing Permit Application and Collection of Fees Policy is inaccurate:

- Item 3 states UST permits shall not be issued or renewed unless the tank systems are in compliance with Chapter 6.7 of the California Health and Safety Code. Effective January 1, 2019, a UST permit may be issued unless a red tag has been affixed or unless the facility is subject to an enforcement action seeking to impose administrative civil liability, or criminal liability.

CITATION:

HSC, Chapter 6.7, Section 25285(b)
HSC, Chapter 6.11, Section 25404(e)(4)
CCR, Title 27, Sections 15187(c) and 15200(a)
[DTSC, State Water Board]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will review, revise, and provide CalEPA with the I&E Plan that includes accurate, complete, and missing information. The CUPA will review, revise, and provide CalEPA with the Processing Permit Application and Collection of Fees Policy that includes accurate information.

By the 2nd Progress Report, the CUPA will train personnel on the revised I&E Plan and revised Processing Permit Application and Collection of Fees Policy. The CUPA will provide training documentation to CalEPA. Training documentation will include, but not be limited to, an outline of the training conducted and a list of CUPA personnel attending training.

4. DEFICIENCY:

The Unified Program Facility Permit (UPFP), does not consolidate all required program elements.

Review of issued UPFPs finds the UPFP does not include the required UST Operating Permit nor UST Operating Permit conditions, which are required to be issued to UST facilities.

Note: Effective January 1, 2017, Title 23 includes revisions for permit conditions in Section 2712(c), now allowing UST Operating Permits to be retained electronically or physically at the facility and requires UST Operating Permits to include the CERS ID.

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

CITATION:

CCR, Title 23, Section 2712(c)
CCR, Title 27, Section 15190(h)
[CalEPA, State Water Board]

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DEFICIENCIES REQUIRING CORRECTION

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will provide CalEPA with a revised UPFP template that includes the UST Operating Permit and UST Operating Permit conditions. The CUPA will develop and provide CalEPA with a UST Operating Permit and UST Operating Permit conditions that include all required components.

By the 2nd Progress Report, the CUPA will, if necessary, amend the revised UPFP template, the UST Operating Permit and/or the UST Operating Permit conditions, based on feedback from CalEPA and/or the State Water Board. The CUPA will provide the amended UPFP template, UST Operating Permit and/or UST Operating Permit conditions to CalEPA. If no amendments are necessary, the CUPA will provide CalEPA with five UPFPs, which include the UST Operating Permit and UST Operating Permit conditions, that have been issued to UST Program facilities.

By the 3rd Progress Report, if amendments to the revised UPFP template, the UST Operating Permit and/or the UST Operating Permit conditions were necessary, the CUPA will provide CalEPA with five UPFPs, which include the UST Operating Permit and UST Operating Permit conditions, that have been issued to UST Program facilities.

5. DEFICIENCY:

The Unified Program administrative procedures have not been fully established.

There are no administrative procedures for providing Hazardous Material Release Response Plan (HMRRP) information to emergency response personnel and other appropriate government entities.

CITATION:

HSC, Chapter 6.11, Section 25504(c)
CCR, Title 27, Section 15180(e)
[CalEPA]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop and provide CalEPA with administrative procedures for providing Hazardous Material Release Response Plan (HMRRP) information to emergency response personnel and other appropriate government entities.

By the 2nd Progress Report the CUPA will, if necessary, revise the procedures, based on feedback from CalEPA. The CUPA will provide the revised procedures to CalEPA. If no revisions are necessary, the CUPA will train personnel on the established procedures and provide training documentation to CalEPA. Training documentation will include, but not be limited to, an outline of the training conducted and a list of CUPA personnel attending training. Once training is complete, the CUPA will implement the established procedures.

By the 3rd Progress Report, if revisions to the established procedures were necessary, the CUPA will train personnel on the revised procedures and provide training documentation to CalEPA. Training documentation will include, but not be limited to, an outline of the training conducted and

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a list of CUPA personnel attending training. Once training is complete, the CUPA will implement the revised procedures.

6. DEFICIENCY:

The CUPA is not submitting Quarterly Surcharge Transmittal Reports to CalEPA by the required due date for each fiscal quarter.

- Fiscal Year (FY) 2016/2017
 - No Quarterly Surcharge Transmittal Reports were submitted.
- FY 2017/2018
 - Two Quarterly Surcharge Transmittal Reports were submitted.

CITATION:

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

CORRECTIVE ACTION:

By the next Quarterly Surcharge Transmittal Report due date, the CUPA will prepare and submit to CalEPA the applicable Quarterly Surcharge Transmittal Report. Thereafter, the CUPA will prepare and submit a Quarterly Surcharge Transmittal Report to CalEPA no later than 30 days after the end of each fiscal quarter.

7. DEFICIENCY:

The CUPA did not complete a Self-Audit Report for FY 2016/2017.

CITATION:

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

CORRECTIVE ACTION:

By September 30, 2019, the CUPA will provide CalEPA with the completed Self-Audit Report for FY 2018/2019. Each FY thereafter, the CUPA will complete an annual Self-Audit Report.

8. DEFICIENCY:

The CUPA is not including observations, factual basis, and corrective actions for each violation cited on HWG and Tiered Permit (TP) inspection reports and Notices to Comply.

Review of HWG and TP inspection reports finds no documentation or inadequate documentation for cited violations for nearly all facilities. Examples include, but are not limited to:

- CERS ID 10074445: Inspection dated March 6, 2017.
- CERS ID 10074526: Inspection dated September 5, 2017.
- CERS ID 10074628: Inspections dated January 8, 2018, and October 10, 2017.

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DEFICIENCIES REQUIRING CORRECTION

- CERS ID 10450012: Inspection dated September 7, 2017.
- CERS ID 10408699: Inspection dated May 1, 2017.
- CERS ID 10074685: Inspection dated June 8, 2018.
- CERS ID 10074277: Inspection dated April 10, 2017.
- CERS ID 10075192: Inspections dated May 15, 2018, and August 3, 2017. No violations are noted on the inspection reports; however, several violations are documented in CERS.

CITATION:

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

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will provide inspection report writing training to each CUPA inspector to ensure all HWG and TP violations cited in inspection reports and Notices to Comply include observations, factual basis, and corrective actions. The CUPA will provide training documentation to CalEPA, which will include, but not be limited to, an outline of the training conducted and a list of CUPA personnel attending training.

By the 3rd Progress Report, the CUPA will provide CalEPA with HWG inspection reports citing at least one HWG violation, for six HWG facilities, as requested by DTSC. The inspection reports will contain observations, factual basis, and corrective actions for each violation cited.

9. DEFICIENCY:

The CUPA is not consistently reporting all CME information to CERS for the HWG Program.

Review of CERS CME information indicates CME information was not reported or was incorrectly reported to CERS in the following examples:

- CERS ID 10711699: Inspection and violation information for an inspection conducted on May 5, 2017, is not in CERS.
- CERS ID 10075192: Inspection conducted on November 4, 2016, is entered twice in CERS with different violations for each entry.
- CERS ID 10074526: The two violations noted during the inspection conducted on September 5, 2017, do not match the violations noted in CERS.
- CERS ID 10074628:
 - A minor violation pertaining to fluorescent light tubes noted during the inspection conducted on January 8, 2018, is not in CERS.
 - A minor violation pertaining to failure to inspect tank and tank equipment daily conducted on October 21, 2017, does not match the violation noted in CERS.
 - Violations noted in CERS for the inspection conducted on October 10, 2017, are dated October 7, 2017, which is prior to the date of the inspection.
- CERS ID 10450012: Violations noted during an inspection conducted on September 7, 2017, do not match the violations noted in CERS.

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- CERS ID 10074445: Violations noted in CERS for the inspection conducted on March 6, 2017, are dated February 27, 2017, which is prior to the date of the inspection.
- CERS ID 10074277: Violations noted in CERS for the inspection conducted on April 10, 2017, are dated March 13, 2017, which is prior to the date of the inspection.

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

CITATION:

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

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will revise and provide CalEPA with the Data Management Procedure or other applicable procedure to ensure CUPA personnel consistently and correctly report violation information to CERS.

By the 2nd Progress Report, the CUPA will, if necessary, amend the revised Data Management Procedure or other applicable procedure based on feedback from DTSC. The CUPA will provide the amended Data Management Procedure or other applicable procedure to CalEPA. If no amendments are necessary, the CUPA will train personnel on the revised Data Management Procedure or other applicable procedure and provide training documentation to CalEPA. Training documentation will include, but not be limited to, an outline of the training conducted and a list of CUPA personnel attending training. Once training is complete, the CUPA will implement the revised Data Management Procedure or other applicable procedure.

By the 3rd Progress Report, if amendments to the revised Data Management Procedure or other applicable procedure were necessary, the CUPA will train personnel on the amended Data Management Procedure or other applicable procedure. The CUPA will provide training documentation to CalEPA, which will include, but not be limited to, an outline of the training conducted and a list of CUPA personnel attending training.

By the 4th Progress Report, the CUPA will have reported consistent CME information to CERS.

10. DEFICIENCY:

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

The I&E plan establishes an inspection frequency of at least once every three years for HWG facilities.

Review of all CME information in CERS for FY 2015/2016, FY 2016/2017, and FY 2017/2018 indicates 161 of 197 (81%) HWG facilities had a routine inspection.

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DEFICIENCIES REQUIRING CORRECTION

CITATION:

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

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop, implement, and provide CalEPA with an action plan to ensure each HWG facility is inspected within the required timeframe. The plan will include at a minimum:

- A sortable HWG inspection tracking spreadsheet exported from the CUPA's data management system or CERS, of each HWG facility that has not been inspected within the required timeframe. At a minimum, the spreadsheet will include facility name, address, CERS ID number, and last routine inspection date;
- A proposed schedule to inspect those HWG facilities by prioritizing the most delinquent inspections to be completed prior to any other HWG inspection; and
- Future steps to ensure that all HWG facilities will be inspected within the required timeframe.

By the 2nd Progress Report, and with each Progress Report until considered corrected, the CUPA will provide CalEPA with an updated spreadsheet.

By the 3rd Progress Report, the CUPA will have inspected each HWG facility within the required timeframe.

11. DEFICIENCY:

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

The CUPA has not identified all HWGs operating within the jurisdiction of the CUPA. The CUPA reports 197 regulated HWGs.

Review of the Hazardous Waste Tracking System (HWTS) identifies 259 HWG facilities with active U.S. EPA ID numbers. Review of CERS indicates 230 facilities reporting as HWGs.

CITATION:

HSC, Chapter 6.5, Section 25101(d)
HSC, Chapter 6.11, Section 25404.2(a)(1)(A)
CCR, Title 22, Sections 67450.2(b)(4) and 67450.3(c)
CCR, Title 27, Sections 15100 (b)(3) and 15200(a)(3)(A)
[DTSC]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop, implement, and provide CalEPA with an action plan to identify all regulated facilities subject to the HWG program. In order to identify all HWGs within the jurisdiction of the CUPA, the action plan will require the CUPA to review active EPA ID#s in HWTS and to review facilities in CERS that report being HWGs. The plan shall also

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DEFICIENCIES REQUIRING CORRECTION

incorporate review of the excel spreadsheets provided by DTSC that contain information regarding all generators manifesting waste in the City of Gilroy as well as the Transporter Quarterly Reports (TQR).

By the 2nd Progress Report, the CUPA will have begun to implement the action plan and will provide CalEPA with an update as to the actions taken to implement the action plan.

By the 3rd Progress Report, the CUPA will have begun to inspect any newly identified HWG facilities and provide CalEPA with an update of these inspections including efforts made to ensure facilities are reporting into CERS, if applicable.

By the 4th Progress Report, the CUPA will have inspected all newly identified HWG facilities and provide CalEPA with an update of these inspections including efforts made to ensure facilities are reporting into CERS, if applicable.

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INCIDENTAL FINDINGS REQUIRING RESOLUTION

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

1. INCIDENTAL FINDING:

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

Review of CERS UST facility submittals and the UST Facility/Tank Data Download report obtained from CERS on May 15, 2019, finds the CUPA accepted the following inaccurate or incomplete UST related information:

- 9 USTs with continuous monitoring of pipe secondary containment where the piping secondary containment field is blank
- 5 USTs show no striker plate/bottom protectors
- 4 USTs identified with double-wall pressurized product pipe, incorrectly show having no mechanical or electronic line leak detector
- 3 USTs incorrectly show no spill container being installed
- 3 USTs identified as having no tank installation date
- 1 UST incorrectly shows not having to conduct annual spill container testing

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

Note: This incidental finding was identified as a deficiency during the 2016 CUPA Performance Evaluation and was corrected during the Evaluation Progress Report process.

Note: The following CERS FAQs may be referenced: "General Reporting Requirements for USTs;" "When to Issue a UST Operating Permit;" "Common CERS Reporting Errors;" "Setting Accepted Submittal Status;" and "Which Forms Require Uploading to CERS."

Note: State Water Board correspondence dated November 29, 2016, "When to Review Underground Storage Tank Records" may be referenced.

CITATION:

HSC, Chapter 6.7, Sections 25286 and 25288(a)
CCR, Title 23, Sections 2632(d)(1), 2634(d)(2), and 2641(g) and (h)
[State Water Board]

RESOLUTION:

By the 1st Progress Report, the CUPA will revise the Data Management Procedure, or other applicable procedure, to ensure incorporation of a delineated process for accepting accurate and complete UST related information in CERS, including but not limited to:

- A process for reviewing and not accepting CERS submittals; AND

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- A process for reviewing and accepting only accurate and complete CERS submittals; OR
- A process for reviewing and accepting submittals with minor errors:
 - A condition is set in CERS requiring the submittal to be corrected and resubmitted within a certain timeframe;
 - If the submittal is not corrected, CUPA personnel will change the submittal status from “accept” to “not accept.”

By the 2nd Progress Report, the CUPA will, if necessary, amend the Data Management Procedure or other applicable procedure based on feedback from the State Water Board and will provide the amendments to CalEPA. If no amendments are necessary, the CUPA will train personnel on the revised Data Management Procedure, or other applicable procedure and provide training documentation to CalEPA. Training documentation will include, but not be limited to, an outline of the training conducted and a list of CUPA personnel attending training. Once training is complete, the CUPA will implement the revised Data Management Procedure or other applicable procedure.

By the 3rd Progress Report, if amendments to the Data Management Procedure or other applicable procedure were necessary, the CUPA will train personnel on the amended Data Management Procedure or other applicable procedure and provide training documentation to CalEPA. Training documentation will include, but not be limited to, an outline of the training conducted and a list of CUPA personnel attending training. Once training is complete, the CUPA will implement the amended Data Management Procedure or other applicable procedure.

With respect to submittals already accepted in CERS, the CUPA will review UST related information and require accurate and complete submittals when the next UST submittal is made, but no later than the next annual UST facility compliance inspection.

2. INCIDENTAL FINDING:

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

During the 45-day review process the CUPA must either:

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

Review of CERS information indicates the following for CERS ID 10075192:

- A TP Onsite Hazardous Waste Treatment Notification was submitted by CERS ID 10075192 on January 17, 2017, but was not accepted until March 23, 2017. The Onsite Hazardous Waste Treatment Notification was not reviewed by the CUPA within 45 days of receipt.

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- A TP submittal accepted on June 19, 2018, shows cyanide and chrome treatment listed as one PBR. Cyanide and chrome treatment must be permitted as separate units. An accurate and complete review of the PBR notification was not conducted.

CITATION:

CCR, Title 22, Sections 67450.2(b)(4) and 67450.3(c)(1)
[DTSC]

RESOLUTION:

By the 1st Progress Report, the CUPA will provide a plan to CalEPA to ensure all Onsite Hazardous Waste Treatment Notifications are consistently reviewed, processed, and authorized correctly. The CUPA will review the plan with each inspector and will provide CalEPA with a list of each inspector that completed the review.

By the 1st Progress Report, the CUPA will review the Onsite Hazardous Waste Treatment Notification for Makplate (CERSID: 10075192) to ensure that annual notification submittal is done accurately and represents the actual waste treatment systems used at that facility.

3. INCIDENTAL FINDING:

The CUPA is not consistently citing correct hazardous waste violations in accordance with hazardous waste control law and regulations.

Review of the HWG inspection report checklist utilized by the CUPA finds the following hazardous waste violation citations are incorrect:

- Section 5 (Contingency/Business Plan) and Section 6 (Preparedness and Prevention) contains various waste code citations and references to CCR, Title 22, Section 66264. CCR, Title 22, Section 66264 pertains to “Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities” and is incorrect. The correct citations should be referenced from CCR, Title 22, Section 66265.

Note: DTSC recommends including citations pertaining to Universal Waste violations.

CITATION:

CCR, Title 22, Sections 66265.14, 66265.32, 66265.33, 66265.35 and 66265.37, 66265.53, 66265.54 and 66265.55
[DTSC]

RESOLUTION:

By the 1st Progress Report, the CUPA will provide CalEPA with a revised HWG inspection report checklist that addresses the incorrect citations. The CUPA may choose to use the HWG inspection report checklists provided by the California CUPA Forum Board, available at: <https://calcupa.org/inspection-checklist/index.html>.

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4. INCIDENTAL FINDING:

The CUPA is not consistently and properly classifying HWG violations.

In the following examples, the CUPA cited HWG violations as minor violations that are Class I or Class II violations and, in at least one instance, cited a Class II violation that was a Class I violation:

- Violation for exceedance of authorized accumulation time incorrectly cited as a minor violation. Maximum accumulation time may not be exceeded without a hazardous waste storage permit or grant of authorization from the DTSC. An economic benefit is gained by not disposing of waste within the authorized time. This does not meet the definition of minor violation as defined in HSC, Section 25404(a)(3).
 - CERS ID 10450012: Inspection dated September 7, 2017.
 - CERS ID 10423252: Inspection dated August 24, 2016.
 - CERS ID 10590241: Inspection dated October 17, 2017.
 - CERS ID 10600327: Inspection dated June 16, 2017.

- Violation for failure to provide or conduct training for employees incorrectly cited as a minor violation. Since no training had been provided, employees are not familiar with hazardous waste issues and handling as well as how to respond to emergencies. There may have been an economic benefit to the facility by not providing training. This does not meet the definition of minor violation as defined in HSC, Section 25404 (a)(3).
 - CERS ID 10408699: Inspection dated May 1, 2017.

- Violation for failure to make a hazardous waste determination was incorrectly cited as a Class II violation. Failure to make a hazardous waste determination resulted in illegal disposal of waste. A violation should have been cited for illegal disposal of waste. There is an economic benefit and avoided costs associated with this violation.
 - CERS ID 10073965: Inspection dated October 27, 2017.

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

CITATION:

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

RESOLUTION:

By the 1st Progress Report, the CUPA will train staff on the violation classification terms minor, Class I, and Class II, as described in HSC, Chapter 6.5, Sections 25110.8.5 and 25117.6 and CCR, Title 22, Section 66260.10. The CUPA will provide training documentation to CalEPA.

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Training documentation will include, but not be limited to, an outline of the training conducted and a list of CUPA personnel attending training.

By the 2nd Progress Report, the CUPA will provide CalEPA with inspection reports citing at least one hazardous waste violation, for three HWG facilities, as selected by DTSC.

5. INCIDENTAL FINDING:

On July 10, 2019, DTSC observed a hazardous waste generator inspection conducted by the CUPA inspector. The inspection occurred at CERS ID 10074304, which is a non-Resource Conservation and Recovery Act (RCRA) Large Quantity Generator (LQG). The inspector prepared for the inspection by reviewing previous inspection reports, the facility file, and CERS. The inspector informed DTSC that only access to the public side of the Hazardous Waste Tracking System (HWTS) is available and that review of the HWTS is only to ensure the facility being inspected has an active EPA ID number. The inspector was well prepared for the inspection and reviewed relevant information prior to arriving at the facility. During the inspection, the inspector established rapport with the facility operators, toured the entire site, and communicated information very well to the facility operator.

The inspector requested and reviewed several required documents; however, some required documents were not reviewed. The inspector did not request to review the tank assessments for the waste tanks. The inspector did not ensure the facility was complying with the requirement to establish and maintain a schedule to inspect all emergency equipment. Although the inspector was familiar with the requirements for personnel training, the inspector was not familiar with the emergency response training that is required. Additionally, the inspector misinformed the facility that satellite accumulation containers for used oil only need to state the contents of the container and the accumulation start date. Each container must be labeled with the words "Hazardous Waste," and the following information: (a) the composition and physical state of the wastes; (b) a statement that calls attention to the hazardous properties of the waste; and (c) the name and address of the generator. The initial date that hazardous waste is placed in the container must be clearly marked and visible on all containers used for satellite accumulation. The accumulation start date can say "empty daily" as opposed to a chronological date.

The inspector correctly identified all violations observed at the facility, however, one of the violation classifications was incorrect. The inspector cited a minor violation for failure of the facility to provide training to personnel, which is a non-minor violation. The inspector did not request consent to conduct the inspection at the start of the inspection.

CITATION:

CCR, Title 22, Sections 66262.34, 66265.16, 66265.33 and 66265.192
[DTSC]

RESOLUTION:

By the 1st Progress Report, the CUPA will provide HWG inspection training to all CUPA staff which conduct HWG inspections. The training will consist of review of the following:

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- Hazardous waste tank requirements as outlined in CCR, Title 22, Article 10, including Sections 66265.190 through 66265.202;
- The document “Requirements for Hazardous Waste Tank Systems” located at: <http://www.unidocs.org/hasmat/hazardous-waste/un-047.pdf>.
- Hazardous Waste Generator Requirements
https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/06/HWM_FS_Generator_Requirements.pdf
- Accumulating Hazardous Wastes at Generator Sites
https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/02/FS_OAD_Accumulation.pdf
- Process Based Inspection
<https://www.epa.gov/sites/production/files/documents/process-basedguide.pdf>

The CUPA will provide training documentation to CalEPA. Training documentation will include, but not be limited to, an outline of the training conducted and a list of CUPA personnel attending training.

Additionally, the CUPA will contact DTSC to schedule HWG training and training on the use of the HWTS.

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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.

1. OBSERVATION:

The I&E Plan contains outdated information:

- Page 25: The Uniform Fire Code is referenced. The most current fire code is the California Fire Code (CFC).
Note: The 2016 edition of the CFC was effective during the evaluation, while the 2019 edition of the CFC became effective January 1, 2020.
- Page 25: In the Matrix of Enforcement Options, notice to comply is the only means by which a Unified Program Agency may cite a minor violation at any Unified Program regulated facility, including an APSA tank facility, per HSC, Section 25404.1.2. Also, the administrative enforcement order is an option that a CUPA may use against a Unified Program facility, including an APSA tank facility, per HSC, Section 25404.1.1.
- Page 25: The following statement is incorrect, "*No enforcement is taken by GILROY FIRE PREVENTION CUPA PROGRAM against aboveground storage tanks facilities. If the facility does not have a[n] SPCC, a referral is made to the appropriate Regional Board.*" Since January 2008, APSA requires Unified Program Agencies to implement and enforce the APSA program.
- Page 30: HSC, Sections 25270 and 25270.3 were referenced as giving DTSC and Gilroy Fire Prevention Program enforcement authority to implement and enforce the tank facility standards at a tank facility with 1,320 gallons or more of petroleum. HSC, Section 25270.3 covers the applicability of a tank facility subject to the APSA program. Also, HSC, Chapter 6.67 provides Unified Program Agencies the authority to implement and enforce the APSA program. The appropriate section to reference is HSC, Chapter 6.67 commencing with Section 25270. APSA tank facilities also now include facilities with tanks in underground areas, regardless of the 1,320-gallon petroleum storage capacity.

RECOMMENDATION:

Update the I&E Plan.

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2. OBSERVATION:

Review of CERS UST facility information finds the following facilities are improperly located in CERS Location Map:

- CERS ID 10404757: No latitude or longitude coordinates are provided, or the coordinates are 0, 0 placing the facility in South Atlantic Ocean off the coast of the African continent.
- CERS ID 10073854: The geolocation indicates the facility is located within the county in an empty field approximately 450' Northwest of the facility.
- CERS ID 10074328: The geolocation indicates the facility is located within the county in the street.
- CERS ID 10404655: The geolocation indicates the facility is located within the county more than 1000' from the facility.

Incorrect location of a facility impacts an emergency responder's ability to rely on CERS as a facility location tool in the event of a natural disaster or other emergency.

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

Note: U.S. EPA expects the Facility Location Map data provided in CERS for each facility to accurately reflect the geographic location of the facility. The reference point for each facility should be located in the center of the parcel map and is not required to be directly on top of the UST system.

RECOMMENDATION:

Ensure geolocation of facilities is correctly reflected in CERS. The CUPA or the facility owner/operator may do this by relocating the location drop pin in Location Map in CERS.

3. OBSERVATION:

Review of CERS finds the following UST systems within the jurisdiction of the CUPA which may need to be permanently closed by December 31, 2025, in accordance with HSC, Chapter 6.7, Section 25292.05:

- CERS ID: 10511602 (Tank ID 3)
- CERS ID: 10074151 (Tank IDs 1 – 3)
- CERS ID: 10408795 (Tank ID 3)
- CERS ID: 10409200 (Tank IDs 1 – 3)
- CERS ID: 10146307 (Tank IDs 1 – 3)

Note: The examples provided above may not represent all UST systems which may need to be permanently closed by December 31, 2025, in accordance with HSC, Chapter 6.7, Section 25292.05.

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RECOMMENDATION:

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

http://waterboards.ca.gov/water_issues/programs/ust/single_walled/

The facility owners/operators should be notified 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 tanks. Additional information on funding sources may be found at:

http://www.waterboards.ca.gov/water_issues/programs/ustcf/rust.shtml

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EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

Examples of outstanding program implementation highlight efforts and activities of the CUPA that are considered above and beyond the standard expectations for implementation of the Unified Program.

1. SOFTWARE INTEGRATION:

The CUPA has begun implementation of “Streamline,” which allows CUPA inspectors to conduct inspections in a paperless manner. This electronic process allows the inspector to provide documentation and feedback to the facility owner/operator while on site. Additionally, the paperless process not only reduces waste, but reduces the necessary steps taken to ensure inspection reports are kept on file electronically and retained by the CUPA. This new system will eventually be able to communicate with CERS, thus reducing duplicative work.

2. STAFFING:

The CUPA has recently undergone an almost complete turnover of staff. While this has been a difficult time for the CUPA, it has provided the opportunity to gain a fresh perspective on CUPA operations and identify areas for improvement. CUPA staff have made tremendous progress towards correcting and resolving issues identified during the 2016 CUPA performance evaluation and are eagerly looking forward to the correction and resolution of deficiencies and incidental findings identified during the current evaluation in addition to continuing with program improvement. Even though challenged with the turnover in staff, the CUPA has recently been able to be a part of statewide enforcement cases, attend joint meetings with Santa Clara County CUPAs and PAs, attend joint meetings and inspections with the Building Department, Code Enforcement, Storm Water Program, and Planning Department, and attend monthly Santa Clara Environmental Task Force Meetings. Inspection staff have also provided extensive CERS training to businesses.
