

September 13, 2022

Mr. Warren Farnam, Director
Modoc County Environmental Health
202 West Fourth Street
Alturas, California 96101-3989

Dear Mr. Farnam:

During December 2021 through August 2022, CalEPA and the state program agencies conducted a performance evaluation of the Modoc County Environmental Health 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.

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 (November 15, 2022), 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 at Samuel.Porras@calepa.ca.gov.

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

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

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

Sincerely,



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

Enclosures

cc sent via email:

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CUPA Program Manager
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Mr. Tom Henderson
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cc sent via email:

Mr. John Paine
Unified Program Manager
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Mr. John Elkins
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Ms. Melinda Blum
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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: Modoc County Environmental Health

Evaluation Period: December 2021 through August 2022

Evaluation Team Members:

- **CalEPA Team Lead:** Samuel Porras
- **DTSC:** Ryan Miya, Matthew McCarron
- **CalEPA*:** Mirian Sandoval, Garrett Chan
- **State Water Board:** Sean Farrow
- **CAL FIRE-OSFM:** Mary Wren-Wilson, Glenn Warner

This Final Summary of Findings includes:

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

The findings contained within this evaluation report are considered final.

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

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:

1st Progress Report: November 15, 2022

3rd Progress Report: May 26, 2023

2nd Progress Report: February 24, 2023

4th Progress Report: August 25, 2023

*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.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

DEFICIENCIES REQUIRING CORRECTION

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

1. DEFICIENCY:

The CUPA is not properly classifying Hazardous Waste Generator (HWG) Program violations.

Review of facility files and inspection, violation, and enforcement information, also known as compliance, monitoring, and enforcement (CME) information from the California Environmental Reporting System (CERS) indicates the CUPA is classifying Class I or Class II HWG Program violations as minor violations.

The following violations were cited between January 1, 2019, and December 31, 2021, and were incorrectly classified:

- 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 minor violation as defined in Health and Safety Code, Section 25404(a)(3).
 - CERS indicates the following 6 of 7 (86%) violations cited for exceedance of accumulation timeframe were classified as minor:
 - CERS ID 10476682: inspection dated May 27, 2021
 - CERS ID 10127056: inspection dated September 16, 2021
 - CERS ID 10132579: inspection dated September 30, 2021
 - CERS ID 10132603: inspection dated October 5, 2021
 - CERS ID 10132735: inspection dated October 6, 2021
 - CERS ID 10132741: inspection dated October 6, 2021

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

CITATION:

Health and Safety Code (HSC), Chapter 6.5, Sections 25110.8.5 and 25117.6
HSC, Chapter 6.11, Sections 25404(a)(3)
California Code of Regulations (CCR), Title 22, Section 66260.10
[DTSC]

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

UNIFIED PROGRAM PERFORMANCE EVALUATION
FINAL SUMMARY OF FINDINGS REPORT

DEFICIENCIES REQUIRING CORRECTION

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will:

- Train inspection staff on the classification of minor, Class I, and Class II violations, as defined in:
 - HSC, Chapter 6.5, Sections 25110.8.5 and 25117.6
 - HSC Chapter 6.11, Section 25404(a)(3)
 - CCR, Title 22, Section 66260.10
- Train inspection staff on how to properly classify HWG Program violations during inspections
- Ensure inspection staff review the following:
 - Violation Classification Training Video 2014
<https://www.youtube.com/watch?v=RB-5V6RfPH8>
 - 2020 Violation Classification Guidance for Unified Program Agencies
<https://calepa.ca.gov/wp-content/uploads/sites/6/2020/06/Violation-Classification-Guidance-Document-accessible.pdf>

Currently, the CUPA has only one staff member who develops and implements the Unified Program. Therefore, the corrective action does not require training of CUPA staff on the classification of minor, Class I, and Class II violations. In the event the CUPA employs additional staff, the CUPA will ensure the appropriate training occurs and will document and maintain the training.

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

2. DEFICIENCY:

The CUPA is not inspecting each facility subject to Hazardous Material Business Plan (HMBP) requirements at least once every three years.

Review of CERS CME information, finds:

- 11 of 75 (15%) facilities subject to Business Plan requirements were not inspected within the last three years.

CITATION:

HSC, Chapter 6.95, Section 25511(b)
[CalEPA]

UNIFIED PROGRAM PERFORMANCE EVALUATION
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DEFICIENCIES REQUIRING CORRECTION

CORRECTIVE ACTION:

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

- An analysis and explanation as to why the triennial compliance inspection requirement is not being met for facilities subject to Business Plan requirements. Existing inspection staff resources and the number of facilities scheduled to be inspected each year are factors to consider in the explanation.
- A spreadsheet exported from the CUPA's data management system or CERS, identifying each HMBP facility that has not been inspected within the last three years. For each HMBP facility listed, the spreadsheet will include, at a minimum:
 - Facility name;
 - CERS ID; and
 - Date of the last routine inspection
- A schedule to inspect those HMBP facilities, prioritizing the most delinquent inspections to be completed prior to any other Business Plan inspection, based on risk.
- Future steps to ensure that all HMBP facilities will be inspected at least once every three years.

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

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

3. DEFICIENCY:

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 finds the following HMBP submittals were accepted with missing components:

- CERS ID 10176153: missing components on site map, such as loading area, adjacent streets, and access and exit points.
- CERS ID 10132861: missing components on site map, such as north orientation, adjacent streets, and loading area, and internal roads.
- CERS ID 10166351: missing components on the site map, such as north orientation, loading area, access and exit points, evacuation and staging area, and emergency response equipment.
- CERS ID 10828648: missing components on site map, such as access and exit points, loading areas, evacuation staging areas, and emergency response equipment.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

**UNIFIED PROGRAM PERFORMANCE EVALUATION
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DEFICIENCIES REQUIRING CORRECTION

- CERS ID 10132810: hazardous materials inventory was not revised prior to being accepted.
- CERS ID 10175881: The Emergency Response Plan is incomplete and is missing some emergency contacts (CUPA's phone number, hospital number), location of emergency equipment, and earthquake vulnerability (parts C, G, and H).

CITATION:

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

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop and provide CalEPA with an action plan to ensure that all HMBP submittals are thoroughly reviewed and contain all required elements before being accepted in CERS.

By the 4th Progress Report, CalEPA will review HMBP submittals for each facility identified above, to ensure all HMBP submittals have been thoroughly reviewed and contain all required elements before being accepted in CERS.

4. DEFICIENCY:

The CUPA is not consistently reporting abandoned underground storage tanks (USTs), applying appropriate enforcement to ensure proper closure of abandoned USTs, nor ensuring abandoned USTs are properly closed in accordance with CCR, Title 23, Division 3, Chapter 16 (UST Regulations) and HSC, Division 20, Chapter 6.7.

The CUPA did not initially report abandoned USTs identified at the following UST facility in the Semi-Annual Report (Report 6) for the reporting period of January 2020 through June 2020:

- CERS ID 10763167

CERS indicates the following for the abandoned USTs at CERS ID 10763167:

- Tanks and product pipe have single-walled construction (UST tank IDs 10763167-001, 002, 003);
- Red tags affixed in 2007 have no additional enforcement reported
 - Review of the facility file indicates the CUPA sent the UST owner/operator a letter regarding the affixed red tags in 2012. The letter indicates there has been no submittal to the CUPA to close-in-place or remove the USTs
- Routine inspections were completed in 2018, 2019, 2020, and 2021; and
- UST status in CERS is set as "applicable."

Note: The GeoTracker database indicates the abandoned USTs are within 1,000 feet of four public drinking water wells and need to be removed or closed-in-place as there is a risk to public health and the environment.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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DEFICIENCIES REQUIRING CORRECTION

Note: The following may be referenced:

- State Water Board correspondence dated April 27, 2017, "[Conclusion of the Abandoned Underground Storage Tank Initiative, and Unified Program Agency Inspection and Reporting Requirements](https://www.waterboards.ca.gov/ust/docs/abandoned_storage/2017/abust_closeout_letter.pdf)" (https://www.waterboards.ca.gov/ust/docs/abandoned_storage/2017/abust_closeout_letter.pdf).
- CERS Frequently Asked Question (FAQ) "[Reporting Abandoned USTs](https://www.waterboards.ca.gov/ust/cers/tutorials/ru06_abandoned_usts.html)" (https://www.waterboards.ca.gov/ust/cers/tutorials/ru06_abandoned_usts.html).

CITATION:

HSC, Chapter 6.7, Section 25298 and 25299(a)(5) or (b)(3)
CCR, Title 23, Section 2713(c)
[State Water Board]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop and provide CalEPA with an action plan to properly remove and/or close-in-place the abandoned USTs.

By the 1st Progress Report, the CUPA will review and revise the Inspection and Enforcement Plan (I&E Plan) or other applicable procedure, to ensure the establishment of a process for proper closure of abandoned UST(s), including how the CUPA inspects and applies enforcement for the proper closure of abandoned USTs. The process at a minimum will address:

- Applying appropriate enforcement.
- Ensuring abandoned USTs are reported to CERS and remain in CERS until UST closure is completed.
- Reporting abandoned USTs and Technical Compliance Rate (TCR) information in Report 6.

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

By the 2nd Progress Report, if amendments to the revised I&E Plan or other applicable procedure are necessary based on feedback from the State Water Board, the CUPA will provide CalEPA with the amended I&E Plan or other applicable procedure. If no amendments are necessary, 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 implement the amended I&E Plan or other applicable procedure.

Currently, the CUPA has only one staff member who develops and implements Unified Program policies and procedures, including the I&E Plan. Therefore, the corrective action does not require training of CUPA staff on the revised or amended I&E Plan or other applicable procedure, nor provision of training documentation. In the event the CUPA employs additional staff, the CUPA will ensure the appropriate training occurs and will document and maintain the training.

UNIFIED PROGRAM PERFORMANCE EVALUATION
FINAL SUMMARY OF FINDINGS REPORT

DEFICIENCIES REQUIRING CORRECTION

State Water Board will consider this deficiency closed, but not corrected, upon acceptance of the action plan to properly remove and/or close-in-place the abandoned USTs, and completion and implementation of the revised or amended I&E Plan or other applicable procedure. The State Water Board will verify proper UST closure of the abandoned USTs at CERS ID 10763167 during the next CUPA Performance Evaluation.

5. DEFICIENCY:

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

Review of CERS CME information for the following Fiscal Years (FYs) finds testing or leak detection violations have no documented RTC in CERS:

- FY 2018/2019: 3 of 5 (60%)
- FY 2019/2020: 4 of 19 (21%)
 - Examples include:
 - CERS ID 10154573: Overfill prevention violation dated November 21, 2019, states “Need Overfill Cert.”
- FY 2020/2021: 5 of 11 (45%)
 - Examples include:
 - CERS ID 10154573: Spill container violation dated September 21, 2020, indicates failure to hold 5-gallons.
 - CERS ID 10165739: Overfill prevention violation dated September 23, 2020, states “Need new flapper valve at proper level.”

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

CITATION:

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

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will review the I&E Plan or other applicable procedure, and revise as necessary, to ensure establishment of a process for UST inspection staff to document follow-up actions and applied appropriate enforcement taken by the CUPA when RTC is not obtained within 60 days. The CUPA will provide CalEPA with the revised I&E Plan, or other applicable procedure.

By the 2nd Progress Report, if amendments to the revised I&E Plan or other applicable procedure are necessary based on feedback from the State Water Board, the CUPA will provide CalEPA with the amended I&E Plan or other applicable procedure. If no amendments are necessary, the CUPA will implement the revised I&E Plan or other applicable procedure.

UNIFIED PROGRAM PERFORMANCE EVALUATION
FINAL SUMMARY OF FINDINGS REPORT

DEFICIENCIES REQUIRING CORRECTION

By the 3rd Progress Report, if amendments to the I&E Plan or other applicable procedure were necessary, the CUPA will implement the amended I&E Plan or other applicable procedure.

Currently, the CUPA has only one staff member who develops and implements Unified Program policies and procedures, including the I&E Plan. Therefore, the corrective action does not require training of CUPA staff on the revised or amended I&E Plan or other applicable procedure, nor provision of training documentation. In the event the CUPA employs additional staff, the CUPA will ensure the appropriate training occurs and will document and maintain the training.

By the 4th Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with UST facility records for three UST facilities, as requested by the State Water Board, that include documentation of follow-up actions and applied appropriate enforcement taken by the CUPA when RTC is not obtained within 60 days.

6. DEFICIENCY:

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

Review of UST operating permits finds the following inconsistency with UST Regulations and HSC:

- The UST operating permit indicates UST owners or operators must notify the CUPA of any changes to the permit or UST system within 30 days. CCR, Section 2711(c) requires UST owners or operators to notify the CUPA 30 days prior to any change in substance stored.

Review of UST operating permit conditions finds the following inconsistencies with UST Regulations and HSC:

- Permit Condition 1 references CCR, Chapter 18 and HSC, Chapter 6.75. However, the CUPA does not have regulatory authority to implement cleanup of USTs as a Local Oversight Program (LOP) agency, and therefore cannot cite CCR, Chapter 18 and HSC, Chapter 6.75.
 - The permit condition should reference CCR, Sections 2610 - 2717.7 and HSC, Sections 25280 – 25296 and 25298 - 25299.6. Alternatively, the permit condition could identify what Sections of CCR and HSC are excluded from the reference.
- Permit Condition 2 states, “The owner or operator must report any unauthorized release to the CUPA...” HSC, Section 25295(a)(1) requires an owner or operator to report a “reportable” release to a CUPA within 24 hours after a release has been detected or should have been detected and transit information regarding the unauthorized release to the CUPA no later than five working days after the date of the occurrence of the unauthorized release. In addition, the owner or operator must report the unauthorized release to the Office of Emergency Services if emergency response personnel and equipment were involved at any time during the unauthorized release.
 - Alternatively, Permit Condition 2 could be removed.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

UNIFIED PROGRAM PERFORMANCE EVALUATION
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DEFICIENCIES REQUIRING CORRECTION

- Permit Condition 4 reflects maintaining monitoring and maintenance records for “3 years.” CCR, Section 2712(b)(1) requires UST owners or operators to maintain monitoring and maintenance records for “36 months.”

Note: The following may be referenced:

- State Water Board correspondence dated April 7, 2017 “[Amended Requirements for Unified Program Facility Permits Effective January 1, 2017](https://www.waterboards.ca.gov/ust/docs/amend_permit_cond_04_07_2017.pdf)” (https://www.waterboards.ca.gov/ust/docs/amend_permit_cond_04_07_2017.pdf).

CITATION:

HSC, Section 25295(a)(1)
CCR, Title 23, Sections 2711(c) and 2712(c)
[State Water Board]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will revise the UST operating permit template and UST operating permit conditions to be consistent with UST Regulations and HSC. The CUPA will provide CalEPA with the revised UST operating permit template and revised UST operating permit conditions, to be issued under the UPFP.

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

By the 3rd Progress Report, if amendments to the revised UST operating permit template and/or revised UST operating permit conditions were necessary, the CUPA will begin to issue the amended UST operating permit template and/or amended UST operating permit conditions, to be issued under the UPFP and will provide CalEPA with the amended UST operating permit template and amended UST operating permit conditions issued to three UST facilities under the UPFP.

7. DEFICIENCY:

The local ordinance, *Chapter 8.24 – UNDERGROUND STORAGE OF HAZARDOUS SUBSTANCES*, is inconsistent with UST Regulations and HSC, as well as the current permit issuance cycle.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

DEFICIENCIES REQUIRING CORRECTION

Review of the local ordinance finds the following:

- Section 8.24.020 states, “The county agriculture commissioner is designated as the local agency responsible for administering and enforcing the provisions...” Additionally, the local ordinance references the county agricultural commissioner as the agency implementing the Unified Program in multiple sections. This is inconsistent as Modoc County Environmental Health is the CUPA, and is the agency implementing the Unified Program, including administration and enforcement.
- Section 8.24.040 references using the State Water Resources Control Board form to file an application for a UST. This is inconsistent with UST Regulations and HSC as UST information is required to be submitted to CERS.
- Section 8.24.060 specifies a permit to operate shall be valid for five years, however, this is inconsistent with the current permit issuance cycle as the CUPA issues permits annually.

CITATION:

HSC, Chapter 6.7 Section 25299.2 and 25299.3

CCR, Title 23, Section 2620(c)

CCR, Title 27, Sections 15100(b)(1)(C), 15160, 15330(a) (1) and(a)(2), 15280(c)(5) and 15150(c)(2)

[State Water Board]

CORRECTIVE ACTION:

The CUPA will not implement provisions of the local ordinance that are inconsistent with UST Regulations and HSC.

By the 1st Progress Report, the CUPA will provide CalEPA with a detailed plan to revise and adopt the revised local ordinance or repeal the existing local ordinance. The revised local ordinance will ensure Modoc County Environmental Health is identified as the agency implementing the Unified Program, and is consistent with UST Regulations and HSC, as well as the current permit issuance cycle. The plan at a minimum will include:

- A timeline for revising and adopting the revised local ordinance, including:
 - Provisions for the CUPA to provide a draft of the revised local ordinance to the State Water Board for review (before being adopted), which will allow the State Water Board to work with the CUPA to ensure the revised draft is consistent with UST Regulations and HSC, the CUPA certification approval, and meets all other requirements.
- OR
- A timeline for repealing the existing local ordinance.

By the 2nd Progress Report, the CUPA will, if necessary, revise the plan based on feedback from the State Water Board.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

DEFICIENCIES REQUIRING CORRECTION

Considering the length of time required to revise and adopt a revised local ordinance, or repeal an existing local ordinance, the State Water Board will consider this deficiency closed, but not corrected, after the CUPA has provided an acceptable plan for:

- revising and adopting the revised local ordinance, including an opportunity for the State Water Board to review a draft of the revised local ordinance before adoption, or
- repealing the existing local ordinance.

During the next CUPA performance evaluation, the State Water Board will verify that the existing local ordinance was revised and adopted or repealed. If the existing local ordinance was revised and adopted, during the next CUPA performance evaluation, the State Water Board will verify timely compliance was achieved for those UST facilities identified as not meeting UST Regulations or HSC as a result of the initial ordinance.

UNIFIED PROGRAM PERFORMANCE EVALUATION
FINAL SUMMARY OF FINDINGS REPORT

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:

Required components of the I&E Plan are inaccurate or incomplete.

The following components are inaccurate:

- Pages 4, 35, 41, and 47: There are references to Del Norte County as the CUPA rather than Modoc County.
- Page 4 references a Del Norte County Code section and should be removed, or if applicable, should be replaced with a corresponding Modoc County Code section reference.
- Page 11: There are three hyperlinks that are not functioning. These three hyperlinks are referring to Cal CUPA Forum Board letters.
 - The first hyperlink refers to the “Dorsey letter.” The “Dorsey letter” does not correctly reference HWG Program inspection and enforcement requirements, is inaccurate, misleading, and refers to provisions never enacted in law. This reference should be removed.
- Page 45: The Hazardous Waste Program (HWP) penalty amounts need revision as the hazardous waste fines presented are outdated. This statute was revised on January 1, 2018, and current penalties are \$70,000 per day per violation. The hazardous waste penalties are found in HSC, Section 25189.2 and accordingly, Title 22 has been updated to reflect a new penalty matrix. These regulations can be found beginning in Section 66272.60.
- Most internet links to various guidance documents on CalEPA’s website and Cal CUPA Forum Board letters are broken. Though CCR, Title 27, Section 15200 does not specifically address internet links, subdivision (b) does require the I&E Plan to be annually reviewed and revised as necessary.

The following component is incomplete:

- Page 21: Provisions for ensuring sampling capability and analysis performed by a state certified laboratory should include training, identification of sampling equipment, methods to preserve physical evidence obtained through sampling and testing information. This information was required when the CUPA became certified and is necessary to proceed with any potential enforcement actions as needed.

Note: This incidental finding was identified during the 2018 CUPA Performance Evaluation and was not resolved during the Evaluation Progress Report process.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

INCIDENTAL FINDINGS REQUIRING RESOLUTION

CITATION:

CCR Title 22, Section 66272.60-62
CCR, Title 27, Section 15200(a)(14)
[CalEPA, DTSC]

RESOLUTION:

By the 1st Progress Report, the CUPA will provide CalEPA with the revised I&E Plan that adequately incorporates and correctly addresses all required components.

By the 2nd Progress Report, if amendments to the revised I&E Plan are necessary based on feedback from CalEPA and/or DTSC, the CUPA will provide CalEPA with the amended I&E Plan.

Currently, the CUPA has only one staff member who develops and implements Unified Program policies and procedures, including the I&E Plan. Therefore, the resolution does not require training of CUPA staff on the revised or amended I&E Plan or other applicable procedure, nor provision of training documentation. In the event the CUPA employs additional staff, the CUPA will ensure the appropriate training occurs and will document and maintain the training.

2. INCIDENTAL FINDING:

The CUPA is not consistently classifying Aboveground Petroleum Storage Act (APSA) Program violations properly.

The CUPA is not consistently citing appropriate APSA violations.

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

- Not having, or failure to prepare, a Spill Prevention, Control, and Countermeasure (SPCC) Plan was cited 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 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. Environmental Protection Agency (US EPA).
 - FY 2017/2018 through FY 2020/2021 – 2 of 4 (50%)
 - FY 2021/2022 – 3 of 3 (100%)

Review of facility files and CERS CME information indicates the following APSA Program violations are incorrectly cited:

- CERS 10132579 – May 22, 2018: violation cited for not having an SPCC Plan and not having the SPCC Plan onsite. CUPA inspector noted, “cannot find [SPCC Plan] in file, has been prepared in past.” Violation should only be cited for not having an SPCC Plan or not having the SPCC Plan onsite, not both.

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- CERS ID 10132603 – June 20, 2018: violation cited for not having an SPCC Plan and not having the SPCC Plan onsite. Violation should only be cited for not having an SPCC Plan or not having the SPCC Plan onsite, not both.
- CERS ID 110132741 – October 6, 2021: violation cited for not having an SPCC Plan, however the violation was the facility did not complete, nor document, the 5-year review of the SPCC Plan.
- CERS 10421029 – October 27, 2021: violation cited for not having an SPCC Plan. CUPA inspector noted “need updated [SPCC Plan],” which indicates the violation may have been for not completing the 5-year review of the SPCC Plan and not documenting the review or amending the SPCC Plan.
- CERS ID 10135225 – October 28, 2021: violation cited for not having an SPCC Plan and not having the SPCC Plan onsite. CUPA inspector noted, “Using Tier II template for mobile fuel truck.” Violation should only be cited for not having an SPCC Plan or not having the SPCC Plan onsite, not both.

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

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

CITATION:

HSC, Chapter 6.11, Sections 25404(a)(3), 25404.2(a)(3)-(4)
HSC, Chapter 6.67, Sections 25270.4.1(c), 25270.4.5(a)
CCR, Title 27, Section 15200(a) and (e)
[OSFM]

RESOLUTION:

By the 1st Progress Report, the CUPA will train its inspector(s) on the definition of minor violation as defined in HSC, Chapter 6.11, Section 25404(a)(3) and how to properly classify violations during compliance inspections as minor, Class I, and Class II. Training will also include, at a minimum, review of:

- Violation Classification Training Video 2014 (<https://www.youtube.com/watch?v=RB-5V6RfPH8>)
- 2020 Violation Classification Guidance for Unified Program Agencies (<https://calepa.ca.gov/wp-content/uploads/sites/6/2020/06/Violation-Classification-Guidance-Document-accessible.pdf>).
- Violation Library on APSA Program violations
- APSA or SPCC Refresher (from the 24th Unified Program Annual Training Conference or previous conferences)

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- Review of the SPCC violations in the [“U.S. EPA Civil Penalty Policy for Section 311\(b\)\(3\) and Section 311\(j\) of the Clean Water Act”](https://www.epa.gov/civil-penalty-policy-section-311(b)(3)-and-section-311(j)-of-the-clean-water-act) (https://19january2017snapshot.epa.gov/enforcement/civil-penalty-policy-section-311b3-and-section-311j-clean-water-act-cwa-august-1998_.html), which specifies that a no SPCC Plan violation is not considered minor.

Currently, the CUPA has only one staff member who develops and implements the Unified Program. Therefore, the corrective action does not require training of CUPA staff on the definition of minor violation as defined in HSC, Chapter 6.11, Section 25404(a)(3) and how to properly classify violations during compliance inspections as minor, Class I, and Class II. In the event the CUPA employs additional staff, the CUPA will ensure the appropriate training occurs and will document and maintain the training.

3. INCIDENTAL FINDING:

The CUPA is not consistently documenting in sufficient detail whether the UST owner or operator has demonstrated, to the satisfaction of the CUPA that UST closure, removal-in-place, and soil and/or groundwater sampling complies with UST Regulations and HSC.

Review of facility files finds the letter provided by the CUPA to the owner or operator of UST(s) at CERS ID 10135558, dated November 6, 2013, does not identify whether the UST owner or operator has demonstrated to the satisfaction of the CUPA that UST closure, removal-in-place, and soil and/or groundwater sampling complies with UST Regulations and HSC.

Note: No UST closures have occurred since 2013 at CERS ID 10135558.

Note: The following may be referenced:

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

CITATION:

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

RESOLUTION:

By the 1st Progress Report, the CUPA will develop and provide CalEPA with a UST closure procedure or other applicable procedure, that describes how the CUPA will document in sufficient detail whether the owner or operator has demonstrated to the satisfaction of the CUPA that UST closure, removal-in-place, and soil and/or groundwater sampling complies with UST Regulations and HSC (i.e. correspondence, hardcopy, electronic media). The CUPA will provide CalEPA with a revised UST closure letter template that identifies the UST owner or operator has demonstrated to the satisfaction of the CUPA that UST closure, removal-in-place, and soil and/or groundwater sampling complies with UST Regulations and HSC. The CUPA may consider including the following language in the revised UST closure letter template: “Modoc County Health Services Environment Health Department CUPA has reviewed the UST closure documentation and finds

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the UST closure as properly completed in accordance with HSC Section 25298, subdivision (c) and UST Regulations, Section 2672.”

By the 2nd Progress Report, if revisions to the developed UST closure procedure or other applicable procedure are necessary based on feedback from the State Water Board, the CUPA will provide CalEPA with the revised UST closure procedure or other applicable procedure. If no revisions are necessary, the CUPA will implement the developed UST closure procedure or other applicable procedure. If amendments to the revised UST closure letter template are necessary based on feedback from the State Water Board, the CUPA will provide CalEPA with the amended UST closure letter template. If no further amendments to the revised UST closure letter template are necessary, the CUPA will implement the amended UST closure letter template.

By the 3rd Progress Report, if amendments to the developed UST closure procedure or other applicable procedure were necessary, the CUPA will provide CalEPA with the amended UST closure procedure or other applicable procedure. If no further amendments are necessary, the CUPA will implement the amended UST closure procedure or other applicable procedure.

Currently, the CUPA has only one staff member who develops and implements Unified Program policies and procedures, including the Unified Program administrative procedures. Therefore, the resolution does not require training of CUPA staff on the developed, revised, or amended UST closure procedure or revised or amended UST closure letter template, nor provision of training documentation. In the event the CUPA employs additional staff, the CUPA will ensure the appropriate training occurs and will document and maintain the training.

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

4. INCIDENTAL FINDING:

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

Review of the UST Facility/Tank Data Download report obtained from CERS on March 15, 2022, finds UST monitoring and construction information is incorrect as follows:

- 3 of 23 (13%) USTs installed after January 1, 1984, are identified as having single-walled construction.
- 3 of 23 (13%) USTs identified as having no overflow protection installed.
- 3 of 20 (15%) USTs identified as having double-walled pipe construction and having no pipe/turbine containment sump installed.
- 9 of 23 (39%) USTs identified as having no striker plate installed.

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

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Note: The following CERS Frequently Asked Questions (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: The following State Water Board correspondence dated November 29, 2016, “When to Review Underground Storage Tank Records,” may be referenced.

Note: This incidental finding was identified as an observation during the 2018 CUPA Performance Evaluation.

CITATION:

HSC, Chapter 6.7, Sections 25286 and 25288(a)
CCR, Title 23, Sections 2632(d)(1), 2634(d)(2), 2641(g) and (h) and 2711(d)
[State Water Board]

RESOLUTION:

By the 1st Progress Report, the CUPA will review the I&E Plan or other applicable procedure and if necessary, amend the plan or procedure to adequately incorporate a process for ensuring UST Program related information in CERS is accurate and complete. If no amendments to the I&E Plan or other applicable procedure are necessary, the CUPA will provide a narrative indicating the I&E Plan includes a process for ensuring UST Program related information in CERS is accurate and complete.

Currently, the CUPA has only one staff member who develops and implements Unified Program policies and procedures, including the Unified Program administrative procedures. Therefore, the resolution does not require training of CUPA staff on the revised or amended I&E Plan or other applicable procedure, nor provision of training documentation. In the event the CUPA employs additional staff, the CUPA will ensure the appropriate training occurs and will document and maintain the training.

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

5. INCIDENTAL FINDING:

The Unified Program administrative procedures have components that are incomplete.

The following administrative procedures have incomplete components:

- The procedure for forwarding Hazardous Material Release Response Plan (HMRRP) information identified within the “CUPA Information Management Policy” does not address

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a process for sharing information with emergency response personnel and other appropriate government entities in accordance with HSC, Section 25504(c).

- The Records Maintenance Procedure addressed in the I&E Plan does not include information regarding proper disposal methods and the retention of the following records for a minimum of five years:
 - Copies of self-audits, enforcement files;
 - All records related to hazardous waste enforcement actions from the date the enforcement action is resolved;
 - Detailed records used to produce the summary reports submitted to the state;
 - Surcharge billing and collection records; and
 - Training records

CITATION:

CCR, Title 27, Sections 15180(e)(2), (e)(4), and 15185(b)
[CalEPA]

RESOLUTION:

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

By the 2nd Progress Report, if amendments to the revised Unified Program administrative procedures are necessary based on feedback from CalEPA, the CUPA will provide CalEPA with the amended Unified Program administrative procedures.

Currently, the CUPA has only one staff member who develops and implements Unified Program policies and procedures, including the Unified Program administrative procedures. Therefore, the resolution does not require training of CUPA staff on the revised or amended I&E Plan or other applicable procedure, nor provision of training documentation. In the event the CUPA employs additional staff, the CUPA will ensure the appropriate training occurs and will document and maintain the training.

6. INCIDENTAL FINDING:

The CUPA is not utilizing the Surcharge Transmittal Report template, effective July 1, 2018.

The CUPA submits a quarterly Surcharge Transmittal Report to CalEPA once a year based on the annual billing cycle.

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 current quarterly Surcharge Transmittal Report template can be found at: https://calepa.ca.gov/wp-content/uploads/sites/6/2021/07/SURCHARGE-TRANSMITTAL-REPORT_20210709-ADA.pdf.

Note: An incidental finding was identified during the 2018 CUPA Performance Evaluation and was not resolved during the Evaluation Progress Report process for the CUPA not submitting the

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quarterly Surcharge Transmittal Reports to CalEPA within 30 days after the end of each fiscal quarter when state surcharges are remitted. If surcharge funds have not been collected during a fiscal quarter, the CUPA is encouraged but is not required to submit a surcharge transmittal report to CalEPA.

CITATION:

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

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will have submitted to CalEPA the 2nd quarterly Surcharge Transmittal Report for FY 2022/2023 by the required due date using the current quarterly Surcharge Transmittal Report template. The current quarterly Surcharge Transmittal Report template can be found at: https://calepa.ca.gov/wp-content/uploads/sites/6/2021/07/SURCHARGE-TRANSMITTAL-REPORT_20210709-ADA.pdf and should be submitted to cupa@calepa.ca.gov.

Thereafter, the CUPA will ensure that state surcharge remittance and each quarterly Surcharge Transmittal Report are provided to CalEPA no later than 30 days after the end of each fiscal quarter during which the state surcharge was collected.

7. INCIDENTAL FINDING: RESOLVED DURING EVALUATION

The California Accidental Release Prevention (CalARP) Dispute Resolution Process is missing a required element.

The following element is missing:

- A designation of the official(s) or other employee(s) of the CUPA that will resolve disputes.

CITATION:

CCR, Title 19, Section 2780.1(a)(2)
[CalEPA]

RESOLUTION: COMPLETED

During the evaluation, the CUPA provided a revised CalARP Dispute Resolution process that includes the missing element. This Incidental Finding is considered resolved. No further action is required.

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

1. OBSERVATION:

The 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, 2019, through December 31, 2021, is summarized below:

- CERS indicates 32 facilities self-identified as a HWG, 1 Resource Conservation and Recovery Act (RCRA) Large Quantity Generator (LQG), and 0 Tiered Permitted facilities.
- The three-year inspection frequency for all facilities is currently being met.
- The CUPA conducted 35 total routine HWG inspections, of which 20 (57%) had no violations cited and 15 (43%) had at least one violation cited.
 - 34 total violations were issued, consisting of:
 - 1 Class II violation, and
 - 33 minor violations.
- The CUPA has ensured RTC for 34 of 34 (100%) HWG violations.
 - No formal enforcement actions were completed during the current evaluation period.
- During the facility file review it was noted that for four facilities, several violations were repeatedly cited from the previous inspection, and were still classified as minor the second time cited. A graduated series of enforcement was not applied for repeat violations.
 - Examples include but may not be limited to: CERS ID 10132579, CERS ID 10159377, and CERS ID 10626004.
- Inspection reports contain detailed comments that note the factual basis of cited violations. However, inspection reports do not indicate whether consent to inspect was requested prior to the beginning of each inspection.
- The CUPA's website contains basic information regarding used oil as well as how to register and update CERS.

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

RECOMMENDATION:

Continue with the three-year HWG inspection frequency and applied enforcement efforts in addition to generating quality inspection reports.

Revise the HWG inspection checklist to ensure consent is obtained and documented prior to conducting an HWG inspection.

Review the I&E Plan to address classification of repeated violations cited at facilities and apply a graduated series of enforcement, when applicable.

Review the most common hazardous waste violations issued and provide additional information on the website to better assist HWG facilities with compliance. Used Oil and Household

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Hazardous Waste information may also be provided on the website to better assist the regulated community within the jurisdiction of the CUPA.

2. OBSERVATION:

The I&E Plan contains the following APSA Program information that is inaccurate, outdated, or may benefit from improvement:

- Page 5 of 64, Section V.D.: “Aboveground Storage Tank Program” should include the word “Petroleum”.
- Page 10 of 64: Replace AST with APSA. Include HSC, Section 25270.5(b) for the Unified Program Agency (UPA) authority to inspect tank facilities on an alternate schedule.
- Page 15 of 64, Inspection frequency table: “AST Facilities” should be referred to as “APSA facilities.” Include tank facilities with 10,000 gallons or more of petroleum under mandated frequency.
- Page 25 of 64, Section 6g: Replace “APSA SPCC Plan” with APSA Facility Information, since there is no APSA SPCC Plan submittal element in CERS, and there is no requirement to submit SPCC Plans to CERS.
- Page 29 of 64, Section 5: Remove both references to the Code of Federal Regulations (CFR) Title 40, Part 112 since there is no state delegation of the Federal SPCC rule. Regarding maintaining an SPCC Plan at the facility, this applies to facilities that are normally attended at least four hours per day, or at the nearest field office if the facility is not so attended. Consider rewording the second paragraph of this section. Facility employees do not conduct APSA inspections. The CUPA inspector checks for preparation and implementation of an SPCC Plan, including periodic inspections of the aboveground petroleum tanks/containers/equipment and associated appurtenances, piping, etc. and recordkeeping related to tank inspections performed by tank facility owners or operators.
- Page 40 of 64:
 - Section e: OSFM does not have a UST Enforcement Unit nor does OSFM provide enforcement advice on UST violations. Add OSFM Pipeline Safety and ‘CUPA’ Programs as the contact option for advice on APSA violations.
 - Section f: Replace “AST” with “SPCC Plan requirements”
- Page 41 of 64, Enforcement Tools Table 1: Replace “AST” with “APSA.” Notice to comply is applicable to all Unified Program elements per HSC, Section 25404.1.2(b) when a minor violation is cited.
- Page 42 of 64, Other Enforcement Tools Table 2: Replace “AST” with “APSA.”
- Page 43 of 64, Section 4:
 - Replace “AST” with “APSA”
 - Remove the reference to 40 CFR Part 112 as UPAs have no authority to enforce the Federal SPCC rule.
 - Remove the SPCC and APSA inspection requirement reference, as this statement does not provide enforcement authority to the UPAs.
- Page 46 of 64, Section D: “Aboveground Storage Tank Program” should include the word “Petroleum.”

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- Page 55 of 64:
 - Section 6: “Aboveground Storage Tank Program” should include the word “Petroleum.”
 - Section 6a: Replace HSC, Section 25270.5 with ‘HSC, Chapter 6.67 commencing with Section 25270’ for APSA violations.

RECOMMENDATION:

Update the I&E Plan as indicated above.

3. OBSERVATION:

The CUPA’s webpage,

https://environmentalhealth.co.modoc.ca.us/nav/certified_unified_program_agency_cupa.php contains the following APSA Program information that is inaccurate, outdated, or may benefit from improvement:

- In the document “Submitting your business plan electronically” the hyperlink is broken (<http://www.unidocs.org/hazmat/business-plan/un-020upcf.doc>).
- The “AST FACTS” link should be replaced with a link to the updated 2021 version at <https://osfm.fire.ca.gov/media/z4zlg3pr/apsa-faq-12apr2021-final.pdf>.
- In the Fee document found at <https://webgen1files.revize.com/modocenvironmental/program%20fees/EH%20UPDATED%20FEES%202018.pdf>, the “Aboveground Storage Tank ” references should include the word “Petroleum.”
- On the “Programs, Informational Links, County and City Links” page at <https://environmentalhealth.co.modoc.ca.us/nav/index.php>, consider adding a link to OSFM Pipeline Safety and CUPA Division: <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/>.

RECOMMENDATION:

Update the webpage as indicated above.

4. OBSERVATION:

The CUPA is not consistently ensuring HMBP submittals, provided in lieu of tank facility statements, include site maps that contain all applicable required elements.

Review of CERS indicates the following 4 of 10 (40%) APSA tank facilities were missing multiple required site map elements in recently accepted HMBP submittals:

- CERS IDs 10132735, 10132741, and 10132579: missing emergency shutoff(s) and emergency response equipment
- CERS ID 10421029: missing evacuation staging area, emergency shutoff and north arrow

RECOMMENDATION:

Develop and implement an action plan to ensure that future HMBP submittals, provided in lieu of tank facility statements, are thoroughly reviewed, and contain all applicable required elements

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before being accepted in CERS. The action plan should include steps to follow up with rejected or incomplete HMBP submittals provided in lieu of tank facility statements.

5. OBSERVATION:

Multiple APSA tank facilities submitted an HMBP in lieu of a tank facility statement using the 2011 emergency response and training plans template, which contains obsolete information including but not limited to the 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 2022 template. The 2022 template is posted on the CalEPA Unified Program Publications and Guidance website at: <https://calepa.ca.gov/cupa/publications/> under "Business-to-CUPA Reporting Forms."

6. OBSERVATION:

The CUPA uses the CUPA Forum Board APSA inspection checklists, version 1.0. The checklists are comprehensive, however also outdated as the CERS violation library has changed since version 1.0 of the inspection checklists was made available.

The CUPA used an inspection checklist version that was not applicable to the type of APSA tank facility inspected as follows:

- CERS ID 10132579 – May 15, 2018: Tier I Qualified Facility inspection checklist was used; however, the facility does not meet the Tier I qualified facility criteria with a 6,000-gallon asphalt tank (assuming this is not hot mix asphalt).
- CERS ID 10159377 – June 20, 2018: Tier II Qualified Facility inspection checklist was used; however, the facility does not meet the qualified facility criteria with an aboveground oil storage capacity exceeding 10,000 gallons.
- CERS ID 10719025 – June 20, 2018: Tier II Qualified Facility inspection checklist was used; however, the facility does not meet the qualified facility criteria with an aboveground oil storage capacity exceeding 10,000 gallons.
- CERS ID 10175881 – October 31, 2019: Tier II Qualified Facility inspection checklist was used; however, the facility does not meet the qualified facility criteria with an aboveground oil storage capacity exceeding 10,000 gallons.

RECOMMENDATION:

Consider utilizing the latest version of the CUPA Forum Board APSA inspection checklists when conducting APSA compliance inspections and ensure the checklist being used is applicable to the facility being inspected based on the facility type/status and the SPCC Plan prepared by the facility or conditional exemption status:

- facility is conditionally exempt from SPCC Plan preparation under APSA,
- Tier I qualified facility,

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- Tier II qualified facility, and
- professional engineer (PE)-certified SPCC Plan facility.

For example, if a Tier I or Tier II qualified facility prepares a PE-certified SPCC Plan, use the checklist applicable to a facility with a PE-certified SPCC Plan. If a Tier I qualified facility uses the Tier I qualified facility SPCC Plan template, use the checklist with requirements for a Tier I qualified facility SPCC Plan. If a Tier II qualified facility uses the Tier II qualified facility SPCC Plan template, use the checklist with requirements for a Tier II qualified facility SPCC Plan. If a facility does not meet the qualified facility criteria, the facility must prepare a PE-certified SPCC Plan, and therefore, the checklist that applies to a facility with a PE-certified SPCC Plan should be used.

7. OBSERVATION:

The CERS reporting requirement is currently set as “APSA Applicable” for 25 tank facilities. The CUPA’s data management system identifies 21 APSA related tank facilities.

- 21 APSA tank facilities are identified in both CERS and the CUPA’s data management system.
- 4 APSA tank facilities are reported as “APSA Applicable” in CERS but are not identified as APSA tank facilities in the CUPA’s data management system. Some of these facilities may not be APSA regulated, and the CUPA should change the CERS APSA reporting requirement to “APSA Not Applicable” for each facility. Some of these facilities are APSA regulated, and the CUPA should update the data management system appropriately.

RECOMMENDATION:

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

8. OBSERVATION:

The following administrative procedures are duplicative:

- The CUPA has two separate procedures on responding to Public Information Requests titled “Public Records Request” and “CUPA Information Management Policy.”
- The CUPA has two separate procedures addressing Fee Disputes titled “Fee Consolidated Permit Dispute Resolution Process” and one in the Modoc County Environmental Health 2002 Application for Certification.

RECOMMENDATION:

Remove the duplicative procedures from the established records.

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9. OBSERVATION:

The following errors were found in the Annual Single Fee Summary Reports and Rural Reimbursement Grant:

- The Annual Single Fee Summary Report for FY 2020/2021 was dated “9/15/2020” though it was due September 30, 2021.
- FY 2019/2020:
 - The Rural Reimbursement Grant Application reported revenues of \$5,450.
 - The Annual Single Fee Summary Report reported revenues of \$9,020.
- FY 2020/2021:
 - The Rural Reimbursement Grant Application reported revenues of \$3,795.
 - The Annual Single Fee Summary Report reported revenues of \$9,189.
- FY 2021/2022:
 - The Rural Reimbursement Grant Application reported revenues of \$4,950.
 - The Annual Single Fee Summary Report reported revenues of \$9,339.

RECOMMENDATION:

Ensure the Annual Single Fee Summary Reports and Rural Reimbursement Grant Applications are being completed accurately before being submitted to CalEPA.

10. OBSERVATION:

The current Fee Schedule does not disclose State Surcharge Fees for the public.

RECOMMENDATION:

Ensure the current Fee Schedule includes all State Surcharge Fees.

11. OBSERVATION:

The CUPA is providing duplicate information on each of the Self-Audit Reports under the sections for permitting, inspections, enforcement, and the single fee system.

RECOMMENDATION:

Include more specific information with adequate detail of the performance for each identified section. Consider including the following information as part of the Self-Audit Report, when applicable:

- A report of deficiencies with a plan of correction;
 - An explanation of any discrepancies on the annual and quarterly reports of program activities submitted to the Secretary pursuant to Section 15290;
 - A record of changes in local ordinances, resolutions, and agreement affecting the Unified Program; and
 - A summary of new programs being included in the Unified Program.
-

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12. 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. Information for two other rural CUPAs has been included for further comparison. The information is sourced from the following:

- Information provided by Modoc County Environmental Health 2001 Application for Certification
 - CERS “Summary Regulated Facilities by Unified Program Element Report” generated on May 6, 2022, for Modoc County Environmental Health
 - CERS “UST Inspection Summary Report (Report 6),” generated on May 6, 2022.
- Total Number of Regulated Businesses and Facilities:
 - Modoc County Environmental Health
 - In 2001: **70**
 - Currently: **98**
 - An increase of **28** facilities
 - CUPA #1:
 - Currently: 37
 - CUPA #2:
 - Currently: 42
 - Total Number of Hazardous Materials Release Response Plan and Inventory (Business Plan) Regulated Businesses and Facilities:
 - Modoc County Environmental Health
 - In 2001: **70**
 - Currently: **92**
 - An increase of **22** facilities
 - CUPA #1:
 - Currently: 37
 - CUPA #2:
 - Currently: 41
 - Total Number of Regulated Underground Storage Tank (UST) Facilities:
 - Modoc County Environmental Health
 - In 2001: **9**
 - Currently: **7**
 - A decrease of **2** facilities
 - CUPA #1:
 - Currently: 3
 - CUPA #2:
 - Currently: 5

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OBSERVATIONS AND RECOMMENDATIONS

- Total Number of Regulated Underground Storage Tanks (USTs):
 - Modoc County Environmental Health
 - In 2001: **26**
 - Currently: **23**
 - A decrease of **3** Underground Storage Tanks
 - CUPA #1:
 - Currently: 4
 - CUPA #2:
 - Currently: 13

- Total Number of Regulated Hazardous Waste Generator (HWGs) Facilities:
 - Modoc County Environmental Health
 - In 2001: None specified
 - Currently: **32**
 - Comments: HWG 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.
 - CUPA #1:
 - Currently: 14
 - CUPA #2:
 - Currently: 17

- Total Number of Regulated Household Hazardous Waste (HHW) Facilities:
 - Modoc County Environmental Health
 - In 2001: None specified
 - Currently: **0**
 - 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.
 - CUPA #1:
 - Currently: 0
 - CUPA #2:
 - Currently: 3

- Total Number of Regulated Tiered Permitting Facilities (Permit By Rule, Conditionally Authorized, Conditionally Exempt):
 - Modoc County Environmental Health
 - In 2001: **0**
 - Currently: **0**
 - No change in the number of facilities
 - CUPA #1:
 - Currently: 0
 - CUPA #2:
 - Currently: 0

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OBSERVATIONS AND RECOMMENDATIONS

- Total Number of Regulated Resource Conservation and Recovery Act (RCRA) Large Quantity Generator (LQG) Facilities:
 - Modoc County Environmental Health
 - In 2001: none specified
 - Currently: **1**
 - 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.
 - CUPA #1:
 - Currently: 0
 - CUPA #2:
 - Currently: 0

- Total Number of Regulated Risk Management Prevention Plan (RMPP) or California Accidental Release Prevention (CalARP) Program Facilities:
 - Modoc County Environmental Health
 - In 2001: **1**
 - Currently: **2**
 - An increase of **1** facility
 - CUPA #1:
 - Currently: 1
 - CUPA #2:
 - Currently: 1

- Total Number of Regulated Aboveground Petroleum Storage Act (APSA) Tank Facilities:
 - Modoc County Environmental Health
 - In 2001: **6**
 - Currently: **25**
 - An increase of **19** facilities
 - CUPA #1:
 - Currently: 16
 - CUPA #2:
 - Currently: 13

Since Modoc CUPA applied for certification in 2001, there has been a general increase in the number of regulated facilities in the Business Plan (31%) and APSA Program (316%), and slight decreases in the number of regulated facilities for most other program areas. The total number of regulated facilities has overall increased by 40%.

The information below is a comparison of the overall full-time equivalent (FTE) of Modoc 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. Staffing levels of two rural CUPAs are included for further comparison. The information is sourced from the Modoc County Environmental Health 2001 Application and recent information provided by the CUPA.

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OBSERVATIONS AND RECOMMENDATIONS

CUPA Personnel:

- Inspection and other Staff
 - Upon Certification in 2001:
 - 5 Staff, with unknown specific time allocation towards the implementation of the Unified Program. The 5 personnel were indicated as staff for all of Environmental Health. It is unknown how many of the 5 staff, as well as the FTE of each staff, were specifically allocated to implementing the Unified Program.
 - Currently:
 - 1 Staff, Part Time = 0.60 FTE
The CUPA inspector is a generalist and is responsible for County disaster and emergency preparedness, food sanitation, general health and environmental code enforcement, land use, medical waste, organized camps, rabies and animal control, recreational public pools and spas, tattoos and body piercing, vector control, wells, septic systems, and the solid waste programs.
 - 3 support staff positions of the Environmental Health Department are allocated to assist the CUPA with administrative tasks and are not included in the above staffing calculation. The 3 support staff positions contribute a combined 0.775 FTE.
- Supervisory and Management Staff
 - Upon Certification in 2001:
 - 1 Staff, Part Time = 0.5 FTE.
 - Currently:
 - 1 Staff, Part Time = 0.12 FTE

Below are the allocated available inspection and other staffing resources (FTEs) of similarly sized CUPAs:

- Inspection and other Staff
 - CUPA #1, as reported in the 2021 CUPA Performance Evaluation:
 - 1 part-time staff at 0.1 FTE, which is a significantly less FTE than Modoc CUPA.
 - The CUPA has 61 less regulated businesses and facilities than Modoc CUPA.
 - CUPA #2, as reported in the 2019 CUPA Performance Evaluation:
 - 0.54 FTE, which is 0.06 less FTE than Modoc CUPA.
 - The CUPA has 56 less regulated businesses and facilities than Modoc CUPA.

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OBSERVATIONS AND RECOMMENDATIONS

- Supervisory and Management Staff
 - CUPA #1
 - 1 part-time staff at 0.1 FTE, which is 0.4 FTE less than Modoc CUPA.
 - CUPA #2
 - 0.13 FTE, which is 0.01 more FTE than Modoc CUPA.

RECOMMENDATION:

The comparison of the implementation of the program upon certification with present-day circumstance reveals there may be a few issues impeding the CUPA's ability to adequately implement the Unified Program within its jurisdiction. Between the creation of CERS in 2013 and increasing responsibilities for electronic reporting and data collection through CERS, as well as the expansion of the Unified Program elements since its inception resulting in a 40% increase across all regulated facilities, there has been a greater demand for adequate staff resourcing to fulfill each of the responsibilities required under regulation and statute in the Unified Program.

The CUPA does maintain detailed fiscal documentation demonstrating the ability to track all Unified Program relevant costs and revenues for each fiscal year, including funding received from CalEPA under the Rural Reimbursement grant program. The CUPA has been a longstanding recipient of the Rural Reimbursement Grant since 2002.

In the last three years, the CUPA has collected 12% more funding from the county realignment fund to support program implementation. In those same years, the CUPA has not increased its fees despite maintaining the same level of service. The CUPA last increased the amount of fees in 2002.

The CUPA has not demonstrated that an annual review and update of the fee accountability program has been conducted 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. The CUPA would likely benefit from conducting an internal review of the current budget and expenditures, single fee assessment for each entity, and funding allocation for program services so that, if applicable, the CUPA is able to justify the need to increase fees, staff levels, and other resources as necessary and reasonable to ensure adequate implementation of each program element.

In addition to implementing the Unified Program, Modoc County Environmental Health Department is responsible for carrying out numerous duties, including providing many other local public health services for the county, such as food sanitation, vector control, water well and water system oversight, sewage disposal, medical waste, solid waste, land use, tattoos and body piercing, recreational pools and spas, general housing, organized camps, and emergency preparedness and response. All duties are handled by the director, CUPA Manager, and one administrative assistant. An additional administrative office assistant staffs the public counter at the county building during business hours and provides assistance to building occupants and serves as a general public contact for several other county departments. The CUPA director is a California Specialized Training Institute (CSTI) Certified Hazardous Material Specialist and a Certified Instructor for local emergency responders.

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OBSERVATIONS AND RECOMMENDATIONS

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 deficiencies, such as maintaining the reporting requirements on CERS for various program elements will be addressed.

13. OBSERVATION:

The CUPA must certify to CalEPA every three years that a complete review of the area plan has been conducted and any necessary revisions have been made. The area plan was last reviewed and certified in April of 2019.

RECOMMENDATION:

Review the area plan and certify to CalEPA that a complete review of the area plan has been conducted and any necessary revisions have been made.

14. OBSERVATION:

Review of information provided by the CUPA finds businesses operating farms are being exempted under the HSC, Section 25507(d) general handler exemption rather than the HSC, Section 25507.1 agricultural handler exemption. The CUPA is choosing to utilize the general handler exemption as authorized under HSC, Section 25507(d). All requirements specified in HSC Section 25507(d) and (f) to implement the general handler exemption were provided to the CUPA on August 5, 2022.

RECOMMENDATION:

CalEPA recommends that any businesses currently being exempted under the HSC, Section 25507(d) general handler exemption are instead regulated under the HSC, Section 25507.1 agricultural handler exemption.

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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. HAZARDOUS WASTE INSPECTIONS:

The CUPA was able to maintain the HWG facility inspection frequencies at least once every three years as stated in the I&E Plan, while also adapting to COVID-19 pandemic limitations. The CUPA was able to conduct 35 HWG inspections, attaining a 100% compliance rate for facilities cited with violations during January 1, 2019, through December 31, 2021.

The CUPA is commended for ensuring the HWG Program is consistently and successfully implemented even while tasked with adapting to COVID-19 protocols.

2. APSA PROGRAM INSPECTION & RETURN TO COMPLIANCE ACHIEVEMENTS:

The CUPA meets the mandated triennial inspection frequency for APSA tank facilities storing 10,000 gallons or more of petroleum and meets the triennial inspection frequency of other APSA tank facilities. The CUPA was able to successfully obtain compliance from facilities that have been cited for APSA violations since the last evaluation in 2018.

3. ASSISTANCE PROVIDED TO NEARBY CUPA JURISDICTIONS:

The CUPA Manager has assisted neighboring CUPAs with conducting required inspections as a result of the continued shortage and inexperienced staff neighboring CUPAs continue to encounter. The CUPA assisted the Sierra County CUPA during the summer of 2021 by conducting at least three UST inspections for various regulated facilities and shadowing the new UST inspector at Sierra County CUPA inspections, which provided valuable field training. As requested by the CUPA Forum Board, the CUPA intends to assist the Siskiyou County CUPA with conducting APSA inspections during the summer of 2022. The CUPA is commended for providing quality assistance and training to its neighboring CUPAs while also satisfactorily implementing the Unified Program within Modoc County.
