

October 13, 2022

Mr. John-Ross Glueck, CIH, CSP, REHS
Acting Deputy Director
San Diego County Department of Environmental Health and Quality
P.O. Box 129261
San Diego, California 92112-9261

Dear Mr. Glueck:

During December 2021 through August 2022, CalEPA and the state program agencies conducted a performance evaluation of the San Diego County Department of Environmental Health and Quality 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 meets or exceeds.

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 (October 13, 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 Timothy.Brandt@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.

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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Mr. John-Ross Glueck
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Mr. John-Ross Glueck
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cc sent via email:

Mr. Tim Brandt
Environmental Scientist
California Environmental Protection Agency

UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

CUPA: San Diego County Department of Environmental Health and Quality

Evaluation Period: December 2021 to August 2022

Evaluation Team Members:

- **CalEPA Team Lead:** Timothy Brandt
- **DTSC:** Brennan Ko-Madden, Matthew McCarron, Kevin Abriol
- **CalEPA, Cal OES*:** 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 to meet or exceed Unified Program standards.

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

Tim Brandt
CalEPA Unified Program
Phone: (916) 323-2204
E-mail: timothy.brandt@calepa.ca.gov

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

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

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

1st Progress Report: December 19, 2022 **2nd Progress Report:** March 24, 2023
3rd Progress Report: June 23, 2023 **4th Progress Report:** September 25, 2023

*Effective July 1, 2021, oversight of the Hazardous Materials Release Response Plans and Inventory and the California Accidental Release 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 ensuring all regulated businesses subject to Business Plan reporting requirements annually submit a Hazardous Materials Business Plan (HMBP) or a no-change certification to CERS.

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

- 2,277 of 9,075 (25%) business plan facilities have not submitted a chemical inventory (including site map) or a no-change certification within the last 12 months.
- 2,366 of 9,075 (26%) business plan facilities have not submitted emergency response and employee training plans or a no-change certification within the last 12 months.

CITATION:

Health and Safety Code (HSC), Chapter 6.95, Sections 25505(a), 25508(a), and 25508.2 [CalEPA, Cal OES]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop and provide CalEPA with an action plan to ensure that all regulated businesses subject to Business Plan reporting requirements have annually submitted an HMBP or a no-change certification to CERS.

By the 2nd Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with a spreadsheet obtained from the CUPA's data management system or CERS, that includes at minimum the following information for each regulated business subject to Business Plan reporting requirements that has not submitted an HMBP or no-change certification to CERS within the last 12 months:

- Facility name:
- CERS ID;
- Follow-up actions for those businesses that have not complied, such as the appropriate applied enforcement taken by the CUPA to ensure a complete HMBP or no-change certification is annually submitted to CERS.

By the 4th Progress Report, the CUPA will follow up with each regulated business subject to Business Plan reporting requirements identified in the spreadsheet provided with the 2nd Progress Report, to ensure an HMBP or a no-change certification has been submitted to CERS, or the CUPA will apply appropriate enforcement.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

**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:

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

The “General” or “General-Local Ordinance” CERS violation library number was used to report HWG Program violations when a more specific or appropriate CERS violation library number was available and should have been used.

HWG inspection types (HW and HWLQG) are not being reported with the correct corresponding violations in CERS, and violations are reported in CERS with an incorrect violation library number.

Review of CERS CME information indicates 1,594 of 5,206 (31%) HWG violations cited between January 1, 2019, through December 31, 2021, were reported using the “General” CERS violation library number.

- 344 violations were cited for “Violation: HMD0138.”
 - The violation comments in CERS state, “Manifest signed by the TSDf not available for inspection. 22 CCR 66262.40(a); HSC 25185(a)(4).”
 - The citations noted in the violation comments do not match the violation language.
 - A more appropriate CERS violation library number exists. The correct CERS violation library number for Resource Conservation and Recovery Act (RCRA) Large Quantity Generators (LQGs) is 3110005 and the correct CERS violation library number for HWGs is 3010010, “Failure to keep a copy of each properly signed manifest for at least three years from the date the waste was accepted by the initial transporter. The manifest signed at the time the waste was accepted for transport shall be kept until receiving a signed copy from the designated facility which received the waste.”
- CERS ID 10370044: Inspection dated May 26, 2021 - The violation is reported in CERS using “General” CERS violation library number 3020 for failure to conduct annual LQG Training at a RCRA LQG facility.
 - The correct general CERS violation library number for a RCRA LQG facility is 3120 and the specific CERS violation library numbers are 3020002 or 3120001.

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UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

INCIDENTAL FINDINGS REQUIRING RESOLUTION

Review of CERS CME information indicates 114 RCRA LQG inspections were not correctly identified as HWLQG inspections in CERS or had corresponding violations incorrectly reported using CERS violation library numbers associated with a “HW” inspection. The following RCRA LQG inspections with cited violations were reported to CERS incorrectly as an “HW” inspection type:

- CERS ID 10153671:
 - RCRA LQG inspection conducted on December 2, 2019, is missing violations in the “HWLQG” inspection entry in CERS.
 - CERS shows violations attributed to an “HW” inspection when the inspection report notes the facility is a RCRA LQG.
- CERS ID 10153689:
 - RCRA LQG inspections conducted on December 19, 2018, and January 23, 2021, are missing violations in the “HWLQG” inspection entries in CERS.
 - CERS shows violations attributed to “HW” inspections when the inspection reports note the facility is a RCRA LQG.
- CERS ID 10155261:
 - RCRA LQG inspections conducted on September 28, 2020, and September 13, 2021, are missing violations in the “HWLQG” inspection entry in CERS.
 - CERS shows violations attributed to “HW” inspections when the inspection reports note the facility is a RCRA LQG.
- CERS ID 10370044:
 - RCRA LQG inspections conducted on July 6, 2018, and May 25, 2021, are missing violations in the “HWLQG” inspection entry in CERS.
 - CERS shows violations attributed to “HW” inspections when the inspection report notes the facility is a RCRA LQG.
- CERS ID 10371022:
 - RCRA LQG inspection conducted on October 13, 2021, is missing violations in the “HWLQG” inspection entry in CERS.
 - CERS shows violations attributed to an “HW” inspection when the inspection report notes the facility is a RCRA LQG.
- CERS ID 10376407:
 - RCRA LQG inspection conducted on February 22, 2019, is missing violations in the “HWLQG” inspection entry in CERS.
 - CERS shows violations attributed to an “HW” inspection when the inspection report notes the facility is a RCRA LQG.
- CERS ID 10388191:
 - RCRA LQG inspection conducted on May 12, 2019, is missing violations in the “HWLQG” inspection entry in CERS.
 - CERS shows violations attributed to an “HW” inspection when the inspection report notes the facility is a RCRA LQG.

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UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

INCIDENTAL FINDINGS REQUIRING RESOLUTION

Review of CERS CME information indicates the following instances when the incorrect HWG Program CERS violation library number was used to cite violations in CERS:

- CERS ID 10153689: A RCRA LQG facility
 - Inspection dated January 23, 2020
 - Inspection report identifies the facility as a RCRA LQG.
 - Violation cited is reported in CERS as violation library number 3030010 for a Small Quantity Generator (SQG): Time Exceeded for Hazardous Waste Conditional Accumulation (180 Days).
 - The correct CERS violation library number for this violation as a RCRA LQG is 3130004.
- CERS ID 10370044: A RCRA LQG facility.
 - Inspection dated May 25, 2021
 - Inspection report identifies the facility as a RCRA LQG.
 - Violation cited is reported in CERS as violation library number 3030010 for an SQG: Time Exceeded for Hazardous Waste Conditional Accumulation (180 Days).
 - The correct CERS violation library number for this violation as a RCRA LQG is 3130004.
 - Inspection dated May 15, 2021
 - Inspection report identifies the facility as a RCRA LQG.
 - Violation cited is reported in CERS as violation library number 3030013 for an SQG: Container in Poor Condition or Damaged.
 - The correct CERS violation library number for this violation as a RCRA LQG is 3130005.

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

CITATION:

HSC, Chapter 6.11, Section 25404(e)(4)

California Code of Regulations (CCR), Title 27, Sections 15187(c) and 15290(a)(3) and (b)
[DTSC]

RESOLUTION:

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

- Identification and correction of the cause(s) of missing or incorrect HWG Program CME information reported to CERS for the examples provided above, including review of inspection report checklist items and any data transfer from the CUPA's data management system to CERS to ensure all CME information is consistently and correctly reported completely and accurately to CERS;
- Identification of HWG Program CME information, for the examples provided above, not previously reported to CERS, or reported to CERS incorrectly from January 1, 2019, through December 31, 2021;

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

INCIDENTAL FINDINGS REQUIRING RESOLUTION

- A process for reporting HWG Program CME information, for the examples provided above, identified as not being previously reported to CERS, or being previously reported incorrectly to CERS;
- A process for ensuring CUPA personnel and inspectors are trained in the consistent use of the most recent citations of the CUPA's data management system or CERS violation library numbers;
- A comparison of HWG Program CME information (including follow-up actions), for the examples provided above, in the CUPA's data management system with CERS to identify any HWG Program CME information not being reported, or being reported incorrectly to CERS through electronic data transfer (EDT); and
- Future steps to ensure all HWG Program CME information is consistently and correctly reported completely and accurately to CERS, such as modifications to inspection report templates or use of CERS violation library numbers.

By the 5th Progress Report, the CUPA will consistently and correctly report all current and previous HWG Program CME information to CERS completely and accurately. The CUPA will provide a statement confirming the completion of all prior HWG Program CME information not previously reported to CERS, or previously reported incorrectly to CERS, from January 1, 2019, through December 31, 2021, as currently and correctly being reported to CERS.

2. INCIDENTAL FINDING:

The Underground Storage Tank (UST) operating permit conditions, issued under the Unified Program Facility Permit (UPFP), are not consistent with HSC, Division 20, Chapter 6.7 and CCR, Title 23, Division 3, Chapter 16 (UST Regulations).

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

- Permit Condition 1 references CCR, Chapter 18 and HSC, Chapter 6.75. The CUPA does not have regulatory authority to implement cleanup of USTs as a Local Oversight Program agency, and therefore cannot cite CCR, Chapter 18 and HSC, Chapter 6.75.
 - The permit condition should reference UST Regulations, Sections 2610 through 2717.7 and HSC, Sections 25280 through 25296 and 25298 through 25299.6.
 - Alternatively, the permit condition could identify the CCR and HSC sections excluded from the reference.

CITATION:

HSC, Chapter 6.7, Sections 25283(b)(1)(B) and 25297.01(b)
[State Water Board]

RESOLUTION:

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

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

INCIDENTAL FINDINGS REQUIRING RESOLUTION

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

As a result of the five-year UST permitting cycle, the State Water Board will consider this incidental finding resolved upon completion and acceptance of the revised or amended UST operating permit conditions template. Issuance of the revised or amended UST operating permit conditions template will be verified during the next CUPA Performance Evaluation.

3. INCIDENTAL FINDING:

The CUPA is not consistently conducting onsite routine compliance inspections of each UST every 12 months.

Note: As a result of the Coronavirus (COVID-19) Health and Safety Restrictions, while the CUPA has followed guidance provided by the State Water Board, there are now UST facilities that have not had an onsite routine compliance inspection in over 24 months.

Review of CERS CME information finds 34 of 975 (3%) UST facilities have not had an onsite routine compliance inspection since 2019. The following are examples:

- CERS ID 10392385
- CERS ID 10383373
- CERS ID 10375450
- CERS ID 10384969
- CERS ID 10385083

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

CITATION:

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

RESOLUTION:

By the 1st Progress Report the CUPA will provide CalEPA with an action plan to ensure each UST facility has an onsite inspection at least once every 12 months. The action plan will include, at a minimum:

- A schedule to conduct an onsite routine compliance inspection at each UST facility at least once every 12 months, prioritizing those UST facilities that have not had an onsite routine compliance inspection within the last 24 months.

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**UNIFIED PROGRAM PERFORMANCE EVALUATION
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INCIDENTAL FINDINGS REQUIRING RESOLUTION

- A spreadsheet exported from the CUPA's data management system or CERS, identifying each UST facility that has not had an onsite routine compliance inspection since 2019. For each facility listed, the spreadsheet will include, at minimum:
 - Facility name;
 - CERS ID; and
 - Date of the last onsite routine compliance inspection

By the 2nd Progress Report, the CUPA will, if necessary, revise the action plan based on feedback from the State Water Board. The CUPA will provide the revised action plan to CalEPA.

By the 2nd Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with:

- a narrative update on ensuring onsite routine compliance inspections are completed for each of the 34 UST facilities identified as not having an onsite routine compliance inspection since 2019; and
- an updated spreadsheet.

4. INCIDENTAL FINDING: RESOLVED DURING EVALUATION

The CUPA is not ensuring each Aboveground Petroleum Storage Act (APSA) tank facility that is not conditionally exempt prepares a Spill Prevention, Control, and Countermeasure (SPCC) Plan.

Review of CERS CME information indicates the following facility was cited for not having, or failure to prepare, an SPCC Plan, and there is no documented RTC:

- Fiscal Year (FY) 2019/2020: CERS ID 10371967

CITATION:

HSC Chapter 6.11, Section 25404.1.2(c)
HSC, Chapter 6.67, Section 25270.4.5(a)
CCR, Title 27, Sections 15185(a) and (c) and 15200(a) and (e)
[OSFM]

RESOLUTION: COMPLETED

During the evaluation the CUPA provided RTC documentation for the above violation in CERS for CERS ID 10371967. This incidental finding is considered resolved. No further action is required.

5. INCIDENTAL FINDING: RESOLVED DURING EVALUATION

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

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

INCIDENTAL FINDINGS REQUIRING RESOLUTION

During the 45-day review process the CUPA must:

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

CERS data finds that 18 of 102 (18%) PBR Onsite Hazardous Waste Treatment Notifications submitted January 1, 2019, through December 31, 2021, were not reviewed, processed, or authorized by the CUPA within 45 days of receipt. Examples include:

- CERS ID 10055566: Submitted July 22, 2019
 - Accepted September 17, 2019 (57 days)
- CERS ID 10055623: Submitted December 22, 2021
 - Still under review (85 days as of March 18, 2022)
- CERS ID 10123747: Submitted March 1, 2020
 - Accepted December 1, 2020 (275 days)
- CERS ID 10123747: Submitted February 26, 2021
 - Accepted September 14, 2021 (200 days)
- CERS ID 10153703: Submitted December 23, 2021
 - Still under review (84 days as of March 18, 2022)
- CERS ID 10362745: Submitted April 15, 2019
 - Accepted August 5, 2019 (112 days)
- CERS ID 10362745: Submitted February 9, 2021
 - Accepted September 14, 2021 (217 days)
- CERS ID 10362745: Submitted December 14, 2021
 - Still under review (93 days as of March 18, 2022)
- CERS ID 10370044: Submitted December 22, 2021
 - Still under review (85 days as of March 18, 2022)
- CERS ID 10388266: Submitted January 2, 2019
 - Accepted February 28, 2019 (57 days)
- CERS ID 10388266: Submitted December 6, 2019
 - Accepted January 28, 2020 (53 days)
- CERS ID 10394803: Submitted February 6, 2019
 - Not Accepted April 2, 2019 (54 days)
- CERS ID 10394803: Submitted April 21, 2020
 - Not Accepted October 6, 2020 (168 days)
- CERS ID 10395169: Submitted March 9, 2020
 - Not Accepted October 7, 2020 (211 days)
- CERS ID 10451746: Submitted June 3, 2019
 - Accepted July 29, 2019 (55 days)
- CERS ID 10712536: Submitted March 2, 2020
 - Accepted December 1, 2020 (274 days)
- CERS ID 10712536: Submitted December 7, 2021
 - Accepted April 3, 2022 (58 days)

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**UNIFIED PROGRAM PERFORMANCE EVALUATION
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INCIDENTAL FINDINGS REQUIRING RESOLUTION

- CERS ID 10823989: Submitted December 14, 2021
 - Still under review (93 days as of March 18, 2022)

Note: Overall, review of CERS CME information finds 26 instances when PBR submittals were not reviewed by the CUPA within 45 days of submittal. The examples provided above may not represent all instances of this finding, and do not include eight instances where the CUPA responded to at least one PBR submittal when a facility submitted multiple PBR submittals within 45 days of one another.

CITATION:

CCR Title 22, Sections 67450.2(b)(4) and 67450.3(c)
HSC, Chapter 6.5, Section 25200.3(e)(3) and 25201.5(d)(7)
[DTSC]

RESOLUTION: COMPLETED

During the evaluation, as of June 22, 2022, the CUPA completed review of each of the 18 outstanding PBR submittals identified above. The CUPA provided revised procedures for reviewing, processing, and authorizing Onsite Hazardous Waste Treatment Notifications, or PBR submittals, within 45 days as well as documentation that CUPA personnel reviewed the revised procedures. This incidental finding is considered resolved. No further action is required.

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UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

OBSERVATIONS AND RECOMMENDATIONS

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

1. OBSERVATION:

Overall implementation of the HWG Program, including policies and procedures, CERS information, facility file information, information provided by the CUPA and Self-Audit Reports for January 1, 2019, through December 31, 2021, is summarized below:

- According to information provided by the CUPA, there are 7,583 regulated HWG facilities, including 576 RCRA LQG facilities. There are 76 Tiered Permitted facilities.
- CERS data shows during January 1, 2019, through December 31, 2021, 8,496 facilities answered “Yes” to being an HWG.
- The CUPA inspected 7,181 HWG facilities and performed 8,502 routine HWG and TP inspections, of which 5,794 (68%) had no violations cited and 2,708 (32%) had at least one violation cited. The state of California average of HWG and TP routine inspections performed having at least one violation cited is 40%.
 - In the 2,708 HWG and TP inspections performed having at least one violation cited, 5,206 total violations were issued, consisting of:
 - 495 Class I violations,
 - 2,778 Class II violations, and
 - 1,933 minor violations.
 - The CUPA has ensured return to compliance for 4,379 of 5,206 (84%) violations cited.
- Review of CERS CME information finds the CUPA initiated 27 separate formal enforcement actions for hazardous waste related violations, resulting in total penalties in the amount of \$1,115,980.00, consisting of fines assessed in the amount of \$654,020.00 and Supplemental Environmental Projects in the amount of \$461,960.00. According to information provided by the CUPA, the CUPA initiated 30 formal enforcement actions for hazardous waste related violations, resulting in total penalties in the amount of \$1,427,544.00 and had a total value of Supplemental Environmental Projects in the amount of \$841,820.00.
- HWG and TP inspection reports contain detailed comments that note the factual basis of cited violations and indicate whether consent to inspect was requested prior to the inspection.
- Review of CERS CME information indicates 1,594 of 5,206 (31%) violations cited between January 1, 2019, through December 31, 2021, were reported using the “General” CERS violation library number.

RECOMMENDATION:

Continue with the three-year HWG inspection frequency and applied enforcement efforts in addition to generating quality inspection reports. Continue to ensure that detailed factual basis of each violation is included in inspection reports and in the CME information transferred to CERS, to support any enforcement efforts. Follow up with HWG and TP facilities that have not returned

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OBSERVATIONS AND RECOMMENDATIONS

to compliance by the scheduled RTC date and apply appropriate enforcement when facilities do not RTC, per the I&E Plan.

2. OBSERVATION:

The annual California Accidental Release Prevention (CalARP) Performance Audit Report would benefit by improvement of the following:

- Addressing time invested into the CalARP program as Personnel Years, which is equivalent to Full-Time Equivalents (FTEs); and
- Separately listing stationary sources which have “been requested to develop RMPs” and those which have “received public comments on the RMP.”

RECOMMENDATION:

Incorporate the suggested improvements above into the upcoming CalARP Performance Audit Report.

3. OBSERVATION:

The CUPA’s website (https://www.sandiegocounty.gov/content/sdc/deh/hazmat/hmd_apsa.html) contains resources for the public and the regulated community; however, it contains information that is outdated or may benefit from improvement.

- Since not all tank facilities are required to prepare and implement an SPCC Plan under APSA if certain conditions are met, include a clarifying statement after the first paragraph about conditionally exempt tank facilities.
- Replace the existing outdated link to the Guide to Understanding Tanks in Underground Areas in the APSA Program with the current link:
<https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/tank-in-an-underground-area-tiuga/>
- Within the Aboveground storage capacity of 10,000 gallons or less section:
 - The Tier II Qualified Facility SPCC Plan template is outdated and should be replaced with the current version (May 2021) available on the OSFM website (https://osfm.fire.ca.gov/media/13bddwhw/calfire-osfm_tierii_spcc_plantemplate_05-2021-accessible.pdf).
- Within the Tanks in Underground Areas (TIUGAs) section:
 - In addition to the “Monthly Checklist for TIUGA Facility with Less than 1,320 Gallons of Petroleum,” link, add a link to the accessible version, compliant with the Americans with Disabilities Act (<https://osfm.fire.ca.gov/media/cmojkmmj/apsa-tiuga-monthly-checklist-less-than-1320-gal.pdf>).
- Within the Additional APSA Information section:
 - Replace the link to the OSFM landing page with the OSFM APSA landing page:
<https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/>.

RECOMMENDATION:

Update the information on the website as indicated above.

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OBSERVATIONS AND RECOMMENDATIONS

4. OBSERVATION:

The I&E Plan contains information that is inaccurate or may benefit from improvement:

- Page 32 – The definition of a minor violation under HSC Chapter 6.11 has been updated. Update the definition to reflect the current statute.
- Page 78 – The inspection frequency table identifies a mandated APSA triennial frequency and identifies the CUPA frequency as triennial. Per HSC, Section 25270.5(a), the mandated inspection frequency is at least once every three years for tank facilities that are required to prepare an SPCC Plan under APSA and have 10,000 gallons or more of petroleum. Unified Program Agencies (UPAs) are provided latitude in the APSA statute per HSC, Section 25270.5(b) to create an alternative inspection plan. The I&E Plan requires triennial inspections at APSA facilities storing less than 10,000 gallons of petroleum. The frequency of inspections table should clearly identify the implementation of the alternative inspection plan.
- Page 97 – Emergency shutoffs on a site map are not exclusively for utilities. Remove “for utilities” after emergency shut-offs to be consistent with statutory requirements on HMBP site maps and the CUPA site map instructions (refer to the site map under “Hazardous Materials Forms including Business Plan” at: https://www.sandiegocounty.gov/content/sdc/deh/hazmat/hmd_forms.html).
- Page 115 – Under the SPCC Plan Templates section, qualified facilities may have up to 10,000 gallons of oil (not less than 10,000 gallons) and no reportable discharge history per the SPCC rule. Update the section to clarify the criteria for a qualified facility.

RECOMMENDATION:

Update the I&E Plan as indicated above.

5. OBSERVATION:

Multiple APSA tank facilities submitted an HMBP in lieu of a tank facility statement using the 2011 consolidated emergency response and training plans template, which contains obsolete information, including but not limited to the OSFM phone number.

The 2022 version of the consolidated emergency response and training plans template is the current template with the correct 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 available in CERS.

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6. OBSERVATION:

The CERS reporting requirement is currently set as “APSA Applicable” for 984 tank facilities. The CUPA’s data management system identifies 943 APSA related tank facilities.

- 918 APSA tank facilities are identified in both CERS and the CUPA’s data management system.
- 66 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 are likely not 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.
- 25 facilities identified as APSA related tank facilities in the CUPA’s data management system are not in the CERS list of APSA facilities. The CUPA should investigate if the facilities really are APSA facilities. Those that are not APSA regulated should not be identified as APSA tank facilities in the CUPA’s data management system. Those that are APSA regulated should have the APSA reporting requirement set to “Applicable.”

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.

7. OBSERVATION:

The CUPA’s Self-Audit reports identify the Unified Program elements in the introduction but are missing the fire code Hazardous Materials Management Plans (HMMP) and Hazardous Materials Inventory Statements (HMIS). The requirements of the HMMP-HMIS are consolidated with the HMBP Program to streamline and reduce the regulatory burden of doing business in the state.

RECOMMENDATION:

Ensure future Self-Audit reports include all Unified Program elements.

8. OBSERVATION:

Review of accepted CERS UST submittals finds 123 UST facilities with single-walled tanks and 72 UST facilities with single-walled pressurized product pipe which require permanent closure by December 31, 2025, in accordance with HSC, Chapter 6.7, Section 25292.05. Example UST facilities are listed below:

- CERS ID 10138475 (10138475-001, 002, 003);
- CERS ID 10165935 (10165935-001, 002, 003); and
- CERS ID 10156195 (10156195-001, 003).

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

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OBSERVATIONS AND RECOMMENDATIONS

RECOMMENDATION:

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

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

9. OBSERVATION:

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

- San Diego County Department of Environmental Health CUPA Application, dated January 24, 1996;
 - CERS “Summary Regulated Facilities by Unified Program Element” report, generated on April 22nd, 2022; and
 - CERS “UST Inspection Summary Report (Report 6),” generated on April 22, 2022.
 - San Diego County Department of Environmental Health and Quality Annual Self-Audit Report for Fiscal Year 2020/2021, dated September 30, 2021
- Total Number of **Business Plan** Regulated Businesses and Facilities:
 - In 1996 Application: 11,488
 - Currently: 14,913
 - An increase of 3,425 facilities
 - Total Number of Regulated **Underground Storage Tank (UST)** Facilities:
 - In 1996 Application: 1,773
 - Currently: 975
 - A decrease of 798 facilities
 - Total Number of Regulated **USTs**:
 - In 1996 Application: 4,470
 - Currently: 2,800
 - A decrease of 1,670 USTs

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- **Total Number of Regulated Hazardous Waste Generator Facilities:**
 - In 1996 Application: 6,231
 - Currently: 8,497
 - An increase of 2,266 facilities

- **Total Number of Regulated Household Hazardous Waste (HHW) Facilities:**
 - In 1996 Application: Not specified
 - Currently: 14
 - Comments: HHW Facilities were regulated under the Unified Program upon certification, though no count was provided in the application for certification. The difference between the current and historic number of facilities cannot be determined at this time.

- **Total Number of Regulated Tiered Permitting (TP) Facilities (Permit By Rule, Conditionally Authorized, Conditionally Exempt):**
 - In 1996 Application: 1,185
 - Currently: 95
 - A decrease of 1,090 facilities
 - Comments: Information in the original CUPA application indicates that the number of TP facilities was an estimate based on information provided by DTSC and was not necessarily representative of the number of facilities in the CUPA's jurisdiction at the time.

- **Total Number of Regulated Resource Conservation and Recovery Act (RCRA) Large Quantity Generator (LQG) Facilities:**
 - In 1996 Application: Not specified
 - Currently: 591
 - 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.

- **Total Number of Regulated Risk Management Prevention Plan (RMPP), also known as California Accidental Release Prevention (CalARP) Program Facilities:**
 - In 1996 Application: 75
 - Currently: 56
 - A decrease of 19 facilities

- **Total Number of Regulated Aboveground Petroleum Storage Act (APSA) Tank Facilities:**
 - In 1996 Application: Not applicable
 - Currently: 980

Since the original application for certification was submitted in 1996, the CUPA has seen significant fluctuations in the number of regulated facilities in nearly all Unified Program elements. In particular, the total number of regulated HMBP facilities increased by 3,425 (or 30%) and the total number of regulated HWG facilities increased by 2,266 (or 36%). The incorporation of the

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APSA program also added another 980 facilities not previously regulated by the CUPA when first certified. The number of regulated UST facilities and regulated USTs decreased respectively by 798 (or 45%) and 1,670 (or 37%), the number of CalARP facilities decreased by 19 (or 25%) and the number of TP facilities decreased by 1,090 facilities (or 92%). For TP facilities, it should be noted that the figure included in the original application is an estimate based on available DTSC data at the time of application and may not have been representative of the true number of TP facilities.

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

- In 1996 Application
 - Staff personnel
 - 37 Specialist positions at 37.3 FTEs
 - Supervisory/Managerial personnel
 - 7 Supervising Specialist positions at 6.5 FTEs
 - 1 Program Manager position at 1 FTE
 - 1 Division Chief position at 1 FTE
 - Note: No actual FTE information was provided in the original application for the Program Manager and Division Chief positions, however, the application suggests an approximate allocation of 1 FTE for each.
- Currently
 - Staff personnel
 - 76 Specialist positions at 71.54 FTEs
 - As of May 26, 2022, there are 11 vacancies (9 of which are being actively filled, 2 in the initial recruitment phase) and 65 filled positions
 - 1 Deputy Director position and 1 Director position dedicate time to the oversight of implementation of the Unified Program, however, the allocation of time dedicated for implementation of the Unified Program is considered as overhead by the Department of Environmental Health and Quality (DEHQ) and thus is not factored into the above FTE calculation.

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- Supervisory/Managerial personnel
 - 12 positions at 10.4 FTEs
 - As of May 26, 2022, there are 2 vacancies (1 supervisor, 1 division chief) and 10 filled positions
 - 1 Deputy Director position and 1 Director position dedicate time to the oversight of implementation of the Unified Program, however, the allocation of time dedicated for implementation of the Unified Program is considered as overhead by the DEHQ and this is not factored into the above FTE calculation.

Since the CUPA applied for certification in 1996, an expansion of responsibilities in the HMBP, HWG, and CalARP programs has occurred, increasing the workload undertaken by the CUPA to further implement regulatory oversight of each of these programs. Additionally, the management of compliance, monitoring, inspection, and enforcement information transitioned from the use of Unified Program Consolidated Forms to the implementation of electronic data reporting through local data management systems and CERS. The CUPA has adapted the budgeted FTEs to allow for the allocation of additional resources to be put towards the incorporation of increased aspects of Unified Program implementation.

RECOMMENDATION:

Based on the information above, the CUPA has been proactive in adapting staffing resources accordingly to meet the changing needs of Unified Program implementation over time.

Continue to regularly assess the allocation of current staff assignments and existing resources to ensure adequate implementation of each program element within the Unified Program is obtained.

10. OBSERVATION:

CERS indicates 22 of 62 (35%) violations cited for failure to obtain and maintain a written tank assessment certified by a professional engineer (PE) were classified as minor at facilities that accumulate used oil and/or antifreeze and meet the provisions of CCR, Title 22, Section 66265.192(j), allowing for non-RCRA tank systems, or tank systems, to be exempt from the engineering assessment specified in CCR, Title 22, Section 66265.192 (k), provided the tank systems meet certain criteria and are approved by a local agency. Such facilities within the jurisdiction of the CUPA are identified as exempt from obtaining and maintaining a written tank assessment certified by a PE with the completion of the "Aboveground Storage Tank (AST) Certification & Engineering Assessment Exemption Notification for Large Quantity Generators" form, available on the CUPA's website.

Given that there are no fees associated with filing the exemption form with the CUPA, and provided the exemption is permitted under CCR, Title 22, Section 66265.192(j), DTSC agrees with the CUPA's logic in classifying this violation as a minor violation when cited at exempt facilities.

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RECOMMENDATION:

Consider classifying this violation as a Class II or Class I violation when cited under certain circumstances. Consider whether all instances of this specific example of this violation meet the definition of a minor violation, in the sense that there is no economic benefit gained with non-compliance. For instance, when an owner/operator with a new tank system qualifies for the exemption under CCR, Title 22, Section 66265.192(j), yet has never completed a tank assessment or taken the necessary steps to receive an exemption, the owner/operator did not obtain a lawfully recognized exemption, thus failed to meet the requirements to obtain a written tank assessment certified by a PE. If an owner/operator fails to take the necessary steps to obtain an exemption from needing a written tank assessment certified by a PE, the owner/operator is required to obtain a written tank assessment, certified by a PE, which could mean an economic benefit was gained during the time which the owner/operator was not in compliance (i.e. an owner/operator operating a tank system for seven years would have missed two cycles of tank assessment certification, assuming re-certification is needed after five years).

11. OBSERVATION:

The CUPA has not periodically audited Risk Management Plans (RMPs) for the CalARP program since FY 2014/2015.

RECOMMENDATION:

Begin periodically auditing RMPs and consider updating the I&E Plan to include procedures that ensure RMPs are periodically audited.

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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. SAMPLING AND HAZARDOUS WASTE DETERMINATION EFFORTS AT SHOOTING RANGES

The CUPA's efforts in regulating Gun and Shooting Ranges within the jurisdiction of the CUPA is outstanding. Gun and Shooting Ranges have historically presented challenges for regulatory agencies responsible for enforcing California's Hazardous Waste Control Laws and identifying the mismanagement of hazardous waste at these types of facilities, which often result in costly site remediation projects. As evidenced by inspection reports made available for this evaluation, the CUPA has taken a proactive approach to regulating these types of facilities by conducting extensive sampling and hazardous waste determinations when facilities claimed wastes were non-hazardous. In one inspection, the inspector demonstrated thoroughness in conducting an inspection and attention to sampling by climbing onto the roof of the facility to inspect the heating, ventilation, and air conditioning (HVAC) system for potential releases of metal dust. The inspection reports for gun and shooting range facility inspections also contain detailed factual basis and observations for violations cited.

In addition, the CUPA presented two training sessions at the 2020 Annual Unified Program Training Conference on the topics of Gun Range Inspection Overview and Shooting Range Inspections, Site Assessment, and Enforcement. DTSC finds the regulatory, enforcement, and leadership efforts of the CUPA in tackling the issues presented by this industry to be above and beyond the standard expectations for the implementation of the HWG program.

2. INSPECTION FREQUENCY DURING COVID-19 RESTRICTIONS

The CUPA has made an outstanding effort in implementing the HWG, TP, and APSA Programs since the last CUPA performance evaluation, all while facing the challenges of COVID-19, such as statewide restrictions.

During January 1, 2019, through December 31, 2021, the CUPA was able to successfully ensure over 90% of HWG facilities within the jurisdiction of the CUPA were inspected once every three years, amidst the hindrance, restrictions, and disruptions caused by COVID-19. The CUPA has maintained a proactive approach to obtaining RTC for HWG and TP violations as evidenced by the formal Notice of Violation (NOV) letters issued to facilities, RTC communications with facilities, and enforcement cases that were reviewed during this evaluation.

During January 1, 2019, through December 31, 2021, the CUPA also met the mandated triennial inspection frequency for APSA tank facilities storing 10,000 gallons or more of petroleum and the inspection frequency for other APSA tank facilities, specified in the I&E Plan as at least once every three years. The CUPA ensured APSA tank facilities annually submitted the tank facility statement or a complete HMBP, when provided in lieu of the tank facility statement. The CUPA initiated nine administrative enforcement actions against tank facilities cited for APSA violations.

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EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

DTSC and OSFM find these inspection efforts to be above and beyond the standard expectations of the implementation of the HWG and APSA programs during the statewide disruptions caused by COVID-19.

3. HWG ENFORCEMENT

The CUPA has made an outstanding effort in applying appropriate enforcement towards significant violators of Hazardous Waste Control Laws. From January 1, 2019, through December 31, 2021, the CUPA issued 495 Class I violations and completed 27 formal enforcement actions through Administrative Enforcement Orders for hazardous waste related violations, and as a result, assessed fines in the amount of \$654,020.00, and allocated \$461,960.00 towards Supplemental Environmental Projects. In addition, the CUPA and the San Diego District Attorney Office have participated in several Statewide enforcement cases involving hazardous waste violations during the time-period assessed for the 2021 CUPA Performance Evaluation.

The CUPA also participates in Hazardous Waste, Enforcement, and other Technical Advisory Groups (TAGs), as well as the CUPA Forum Board, to ensure consistency in the implementation of the enforcement program throughout the state. The number of completed enforcement cases, as well as the CUPA's leadership in the aforementioned groups, are recognized by DTSC as clear indicators of a robust enforcement program. DTSC would like to recognize the CUPA's Enforcement Program and efforts in implementing the HWG Program.

4. APSA PROGRAM ACHIEVEMENTS: STATEWIDE PROGRAM SUPPORT

During the time-period assessed for the 2021 CUPA Performance Evaluation, the CUPA actively participated and supported the efforts of overall implementation and improvement of the APSA Program, including:

- Proposed legislation changes
- Proposed rulemaking
- Development and revision of fact sheets and guidance documents (Tanks in Underground Areas, APSA Frequently Asked Questions, and CERS help materials)
- Fulfillment of the co-chair role of the APSA Advisory Committee
- Development of new and revision of old APSA violations for the CERS violation library
- Fulfillment of the co-track coordinator role for the APSA track session in previous annual Unified Program training conferences in addition to voluntarily providing staff to fulfill the moderator role during APSA-related sessions
- Instruction of the APSA Basic Inspector Training course in San Diego in November 2017 and in Santa Barbara in December 2017.

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- Presented APSA sessions in annual Unified Program training and Industrial Environmental Association (IEA) conferences, including:
 - What to Expect During an APSA Inspection
 - Common APSA Violations
 - Tanks in Underground Areas
 - APSA 201 and APSA 301

The CUPA continues to actively participate in the CUPA Forum Board APSA TAG.
