

December 12, 2022

Mr. Robert Krug
Senior Environmental Scientist, Supervisor
Department of Toxic Substances Control
Enforcement and Emergency Response Division
Hazardous Waste Management Program
Imperial County
627 Wake Avenue
El Centro, California 92243-9543

Dear Mr. Krug:

During May 2019 through September 2019, CalEPA and the state program agencies conducted a performance evaluation of the Imperial County Certified Unified Program Agency (CUPA). The CUPA evaluation included a remote assessment of administrative documentation, review of regulated facility file documentation, California Environmental Reporting System information, and oversight inspections.

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

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

CalEPA recognizes the delay with issuing the final Summary of Findings report. Consequently, as the next CUPA Performance Evaluation is scheduled to begin in July 2023, there is sufficient time for submittal and review of two Evaluation Progress Reports, although the timeframe for completion of corrective actions and resolutions outlined in the Summary of Findings report may extend beyond the remaining time period available for the Evaluation Progress Report process before the subsequent CUPA Performance Evaluation begins.

The CUPA is required to submit the first Evaluation Progress Report 60 days from the receipt of this Final Summary of Findings report (February 20, 2023). Please provide the Evaluation Progress Report to the CalEPA Team Lead, Timothy Brandt, at Timothy.Brandt@calepa.ca.gov.

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The CUPA is strongly encouraged to provide an update detailing as much progress made as possible in accomplishing the corrective actions and resolutions for each identified deficiency and incidental finding, particularly if steps for corrective actions and resolutions outlined for completion in anticipated subsequent Progress Reports have been completed and addressed at present, or in advance. Any deficiencies that remain uncorrected, and any incidental findings that remain unresolved will be incorporated into the 2023 CUPA Performance Evaluation.

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

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

Sincerely,



Jason Boetzer
Assistant Secretary
Local Program Coordination and Emergency Response

Enclosure

cc sent via email:

Ms. Cheryl Prowell
Supervising Water Resource Control Engineer
State Water Resources Control Board
P.O. Box 2231
Sacramento, California 95812-2231

Mr. Tom Henderson
Engineering Geologist, UST Unit Coordinator
State Water Resources Control Board
P.O. Box 2231
Sacramento, California 95812-2231

Ms. Maria Soria
Environmental Program Manager
Department of Toxic Substances Control
700 Heinz Avenue, Suite 210
Berkeley, California 94710-2721

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cc sent via email:

Mr. Ryan Miya
Senior Environmental Scientist, Acting Supervisor
Department of Toxic Substances Control
700 Heinz Avenue, Suite 210
Berkeley, California 94710-2721

Mr. James Hosler, Chief
CAL FIRE - Office of the State Fire Marshal
P.O. Box 944246
Sacramento, California 94244-2460

Ms. Jennifer Lorenzo
Senior Environmental Scientist (Supervisor)
CAL FIRE - Office of the State Fire Marshal
P.O. Box 944246
Sacramento, California 94244-2460

Ms. Jenna Hartman, REHS
Environmental Scientist
State Water Resources Control Board
P.O. Box 2231
Sacramento, California 95812-2231

Ms. Kaitlin Cottrell
Environmental Scientist
State Water Resources Control Board
P.O. Box 2231
Sacramento, California 95812-2231

Mr. Matt McCarron
Senior Environmental Scientist, Specialist
Department of Toxic Substances Control
700 Heinz Avenue, Suite 210
Berkeley, California 94710-2721

Mr. Kevin Abriol
Senior Environmental Scientist, Specialist
Department of Toxic Substances Control
700 Heinz Avenue, Suite 210
Berkeley, California 94710-2721

Mr. Brennan Ko-Madden
Senior Environmental Scientist
Department of Toxic Substances Control
700 Heinz Avenue, Suite 210
Berkeley, California 94710-2721

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cc sent via email:

Ms. Mia Goings
Environmental Scientist
Department of Toxic Substances Control
700 Heinz Avenue, Suite 210
Berkeley, California 94710-2721

Mr. Pheleep Sidhom
Environmental Scientist
Department of Toxic Substances Control
700 Heinz Avenue, Suite 210
Berkeley, California 94710-2721

Mr. Glenn Warner
Senior Environmental Scientist, Specialist
CAL FIRE - Office of the State Fire Marshal
P.O. Box 944246
Sacramento, California 94244-2460

Mr. John Paine
Unified Program Manager
California Environmental Protection Agency

Mr. John Elkins
Environmental Program Manager
California Environmental Protection Agency

Ms. Melinda Blum
Senior Environmental Scientist, Supervisor
California Environmental Protection Agency

Ms. Elizabeth Brega
Senior Environmental Scientist, Supervisor
California Environmental Protection Agency

Mr. Garrett Chan
Environmental Scientist
California Environmental Protection Agency

Ms. Esme Hassell-Thean
Environmental Scientist
California Environmental Protection Agency

Mr. Tim Brandt
Environmental Scientist
California Environmental Protection Agency

UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

CUPA: Imperial County, Department of Toxics Substances Control

Evaluation Period: May 2019 through September 2019

Evaluation Team Members:

- **CalEPA Team Lead:** Timothy Brandt, Marc Lorentzen
- **DTSC:** Elizabeth Brega
- **Cal OES/CalEPA*:** Fred Mehr
- **State Water Board:** Jessica Botsford
- **CAL FIRE-OSFM:** Glenn Warner

This Final Summary of Findings includes:

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

Tim Brandt

Phone: (916) 323-2204

E-mail: timothy.brandt@calepa.ca.gov

CalEPA recognizes the delayed issuance of this Final Summary of Findings report. Consequently, as the next CUPA Performance Evaluation is scheduled to begin in July 2023, there is sufficient time for submittal and review of two Evaluation Progress Reports, although the timeframe for completion of corrective actions may extend beyond submittal of the second Evaluation Progress Report.

The CUPA is required to submit the first Evaluation Progress Report 60 days from the receipt of this Final Summary of Findings Report. The Evaluation Progress Report must be submitted to the CalEPA Team Lead at timothy.brandt@calepa.ca.gov no later than **February 20, 2023**. The second Evaluation Progress Report must be submitted to the CalEPA Team Lead 90 days after the first Evaluation Progress Report is submitted, **May 22, 2023**.

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

*Effective July 1, 2021, oversight of the Hazardous Materials Release Response Plans and Inventory and the California Accidental 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 consistently documenting in sufficient detail whether the Underground Storage Tank (UST) owner or operator has demonstrated to the satisfaction of the CUPA that UST closure and soil and/or groundwater sampling complies with California Code of Regulations (CCR), Title 23, Division 3, Chapter 16, Section 2670 and 2672(d) (UST Regulations) and Health and Safety Code (HSC) Division 20, Chapter 6.7, Section 25298(c).

Review of facility files finds the CUPA did not document, in sufficient detail, to the satisfaction of the CUPA, that UST closure complies with statute and regulations and that closure records are maintained for the following facilities:

- CERS ID 10118158
- CERS ID 10126936
- CERS ID 10456744

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

CITATION:

Health and Safety Code (HSC), Chapter 6.7, Section 25298(c)
California Code of Regulations (CCR), Title 23, Section 2672(d)
[State Water Board]

CORRECTIVE ACTION:

The CUPA provided CalEPA with revised UST closure letters and a revised Standard Operating Procedure (SOP). State Water Board review of the revised closure letter and SOP documentation provided finds both address the identified inconsistencies. State Water Board staff will work with the CUPA to continue improving the SOP regarding permanent closure procedures and requirements.

By the 1st Progress Report, the CUPA will train personnel on the revised SOP. The CUPA will provide training documentation to CalEPA, which at minimum will include, the date the training was conducted, an outline of the training conducted and a list of CUPA personnel in attendance. Once training is complete, the CUPA will implement the revised SOP.

With respect to facilities which have not been provided adequate UST closure documentation, the CUPA will use the revised UST closure letter template(s) and will provide the updated closure documentation upon request.

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DEFICIENCIES REQUIRING CORRECTION

The State Water Board will consider this deficiency closed but not corrected upon completion, training, and implementation of the revised UST closure letter template. The State Water Board will verify the CUPA is issuing the revised UST closure letter during the next CUPA performance evaluation.

2. DEFICIENCY:

The CUPA is not consistently issuing UST operating permits, under the Unified Program Facility Permit (UPFP), in accordance with HSC, Chapter 6.7, Section 25285, effective January 1, 2019, which allows CUPAs to withhold UST operating permits for facilities that have a red tag affixed to the UST system, and/or those UST facilities with an owner or operator who is subject to an enforcement action.

Review of UST facility files finds the following facilities were not issued UST operating permits due to non-compliance:

- CERS ID: 10135798
- CERS ID: 10199716

CITATION:

HSC, Chapter 6.7, Section 25285
[State Water Board]

CORRECTIVE ACTION:

The CUPA will immediately issue UST operating permits to all facilities where permits were withheld due to non-compliance.

By the 1st Progress Report, the CUPA will revise and provide CalEPA with the procedure for issuing permits to ensure UPFPs, which includes the UST operating permit, are not withheld from facilities with USTs that are not in compliance.

By the 2nd Progress Report, the CUPA will, if necessary, amend the procedure, based on feedback from the State Water Board and will provide the amended procedure to CalEPA.

By the 3rd Progress Report, the CUPA will train personnel on the revised plan or procedure and provide training documentation to CalEPA, which will include at minimum the date the training was conducted, an outline of the training conducted and a list of CUPA personnel attending training. Once training is complete, the CUPA will implement the new plan or procedure.

UNIFIED PROGRAM PERFORMANCE EVALUATION
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DEFICIENCIES REQUIRING CORRECTION

3. DEFICIENCY:

The CUPA is not consistently reporting all CME information to CERS for the Hazardous Waste Generator (HWG) Program.

Review of CERS CME information finds the following was not reported or incorrectly reported in CERS:

- CERS ID 10124305: inspection dated May 1, 2017
 - A violation is documented in the inspection report for “must maintain fire extinguisher annually. Must maintain eye wash stations”, however, this is not reported in CERS.
- CERS ID 10401739: inspection dated February 24, 2017
 - Large quantity generator violations and small quantity generator violations are simultaneous cited in CERS.
- CERS ID 10479064: inspection dated April 17, 2019
 - The inspection report violations do not match the violations noted in CERS. There are three violations outlined in the inspection report and five violations noted in CERS.
 - Two violations noted in CERS do not match the citation associated with the violations.
 - A violation is documented in CERS for “Citations 22 CCR 12 66262.34(a)(4); 22 CCR 15 66265.32, Facility Emergency Equipment”, however, the violation comment in CERS states that the violation is “There is diesel fuel/water in the secondary containment for the 5,000 gallons diesel fuel tank.”
 - A violation is documented in CERS for “New Tank Assessment Standards”, however, the violation comment in CERS states “Used antifreeze drum missing label. Used oil container missing generator information.”
- CERS ID 10199722: inspection dated April 4, 2019.
 - Violations and comments noted in the inspection report are correct, however, they are incorrect in CERS.
 - A violation is documented in CERS for “New Tank Assessment Standards”, however, the violation comment in CERS states, “At least 6 containers have labels on them, but the generator information is not entered. Waste is properly identified, and an accumulation start date is on the containers.”
 - A violation is documented in CERS for “Emergency Coordinator”, however the violation comment in CERS states “At least 15 55-gallon drums of various wastes are kept in the secondary containment but are touching. This prevents a proper inspection of the container.”

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- A violation is documented in CERS for “Management of 11 or More Spent Vehicle Lead-Acid Batteries”, however, the violation comment in CERS states “Documented Weekly inspections are being conducted as evidenced by weekly inspection checklist, but the quality of the inspection is poor. Problems with labeling, aisle space, and releases are not identified on the inspection form, but were found during the inspection.”
- A violation is documented in CERS for “Facility Emergency Equipment”, however, the violation comment in CERS states “There is oil contaminated dirt and absorbent in the secondary containment for the used oil and waste drums.”
- A violation is documented in CERS for “Incompatible Waste Storage”, however, the violation comments in CERS states “Used batteries do not have a date they were taken out of service.”
- CERS ID 10121407: inspection dated May 31, 2017.
 - A violation is documented in CERS for “Summary Progress Report,” however, the violation comments in CERS pertain to failure to provide a manifest.
- Other examples where violation comments in CERS do not match the violation citations in CERS include, but are not limited to:
 - CERS ID 10121554: inspection dated February 2, 2019.
 - CERS ID 10477981: inspection dated April 15, 2019.
 - CERS ID 10808719: inspection dated April 9, 2019.
 - CERS ID 10494823: inspection dated March 22, 2019.
 - CERS ID 10648750: inspection dated May 1, 2019.
 - CERS ID 10791550: inspection dated March 28, 2019.
 - CERS ID 10199197: inspection dated November 5, 2018.
 - CERS ID 10121431: inspection dated February 28, 2017.
 - CERS ID 10121434: inspection dated July 6, 2017.

CITATION:

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

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will revise and provide CalEPA with the Data Management Procedure or other applicable procedure to ensure CUPA personnel consistently and correctly report CME information to CERS. The CUPA will begin to correct all CME data from July 1, 2013, forward.

By the 2nd Progress Report, or until considered corrected, the CUPA will have correctly reported all CME information to CERS since July 1, 2013.

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DEFICIENCIES REQUIRING CORRECTION

4. DEFICIENCY:

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

Review of CERS CME information finds the CUPA did not correctly cite HWG Program violations in the following examples:

- Small quantity generators (SQGs) of hazardous waste are not required to maintain training records. The following instances are examples of when the CUPA cited a violation for an SQG not providing documentation of training or maintaining training records:
 - CERS ID 10122085: inspection dated December 13, 2017.
 - CERS ID 10199203: inspection dated April 18, 2017.
 - CERS ID 10199443: inspection dated April 27, 2017.
 - CERS ID 10199542: inspection dated May 12, 2017.
 - CERS ID 10121251: Inspection dated June 29, 2017.
- Containers storing used oil shall be marked or clearly labeled with the words "USED OIL". The accumulation start date can say "empty daily" as opposed to a chronological date. The initial date that hazardous waste is placed in the container must be clearly marked and visible on all containers used for satellite accumulation. The following instances are examples of when the CUPA informed facilities that satellite accumulation containers containing used oil only need to state the words "used oil" and "empty daily." However, each container must be labeled with the words "Hazardous Waste," and the following information: (a) the composition and physical state of the wastes; (b) a statement that calls attention to the hazardous properties of the waste; and (c) the name and address of the generator:
 - CERS ID 10649299: inspection dated May 3, 2019.
 - CERS ID 10022071: inspection dated June 4, 2018.
 - CERS ID 10118362: inspection dated November 9, 2018.
 - CERS ID 10122700: inspection dated April 25, 2018.
 - CERS ID 10122856: inspection dated May 31, 2018.
 - CERS ID 10124335: inspection dated March 15, 2017.
 - CERS ID 10125730: inspection dated September 29, 2017.
 - CERS ID 10133635: inspection dated May 11, 2018.
 - CERS ID 10199515: inspection dated April 28, 2017.

CITATION:

CCR, Title 22, Sections 66262.34, 66265.16 and 66279.21

Code of Federal Regulations (CFR), Title 40, Section 262.34 (now CFR, Title 40, Section 262.16)
[DTSC]

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DEFICIENCIES REQUIRING CORRECTION

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will ensure all HWG Program inspectors review the DTSC HWG fact sheets listed below:

Training Material:

- [DTSC Hazardous Waste Generator Requirements Fact Sheet](https://dtsc.ca.gov/hazardous-waste-generator-requirements-fact-sheet/)
<https://dtsc.ca.gov/hazardous-waste-generator-requirements-fact-sheet/>
- Universal Waste Fact Sheet
<https://dtsc.ca.gov/universal-waste-fact-sheet/>
- Managing Used Oil Filters for Generators Fact Sheet
https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/02/RAG_Used-Oil-Filters_Generators1.pdf
- Generator Summary Chart
<https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/05/California-Generator-Chart.pdf>
- [Accumulating Hazardous Wastes at Generator Sites](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/02/FS_OAD_Accumulation.pdf)
https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/02/FS_OAD_Accumulation.pdf

The CUPA will provide CalEPA with a narrative statement including an outline of each DTSC HWG fact sheet that each CUPA inspector has reviewed and the date the review was completed.

5. DEFICIENCY:

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

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

- The I&E Plan (updated July 26, 2019) reflects 685 HWGs (including TP facilities), regulated by the CUPA.
- Review of the DTSC Hazardous Waste Tracking System (HWTS), DTSC finds 795 active U.S. Environmental Protection Agency (EPA) Identification (ID) numbers in Imperial County.

CITATION:

HSC, Chapter 6.5, Section 25101(d)

HSC, Chapter 6.11, Section 25404.2(a)(1)(A)

CCR, Title 22, Sections 67450.2(b)(4) and 67450.3(c)

CCR, Title 27, Sections 15100 (b)(3), and 15200(a)(3)(A)

[DTSC]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop, implement, and provide CalEPA with an action plan to identify and inspect all facilities subject to the HWG program. The action plan will require the CUPA to review data from the HWTS and Transporter Quarterly Reports (TQRs) and to compare it with the CUPA's list of facilities that generate hazardous waste. At minimum, the plan will include a sortable tracking spreadsheet with the following information for all newly identified facilities:

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DEFICIENCIES REQUIRING CORRECTION

- Any informative notes regarding the facility
- Facility name and address;
- Hazardous Waste ID #.
- Date of proposed inspection
- Inspection completion date (when applicable)

By the 2nd Progress Report, and with each subsequent Progress Report, the CUPA will implement the action plan and will provide CalEPA with an updated spreadsheet and a narrative as to the actions taken to implement the action plan.

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

By the 4th Progress Report, the CUPA will have inspected all new HWG facilities that were identified and will provide CalEPA with an update of these inspections.

6. DEFICIENCY:

The CUPA is not consistently ensuring that all facilities that store hazardous waste in a tank system comply with all applicable tank requirements.

- The CUPA has been incorrectly regulating certain tank systems as containers.
- The CUPA is not ensuring all LQG facilities that store hazardous waste in a tank system obtain a tank integrity assessment.

Regulations state that “Tank” means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) which provide structural support, however, the CUPA does not regulate a device as a tank if it is not bolted to the ground or hard plumbed.

The following facilities have a tank system where the CUPA cited container violations for the tank system:

- CERS ID 10118170: inspection dated October 19, 2018.
- CERS ID 10199248: inspection dated June 1, 2018.
- CERS ID 10199395: inspection dated October 15, 2018.
- CERS ID 10118152: inspection dated September 5, 2017.
- CERS ID 10122196: inspection dated November 6, 2018.
- CERS ID 10440202: inspection dated November 2, 2018.

CITATION:

CCR, Title 22, Sections 66260.10, 66265.191 and 66265.192
[DTSC]

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DEFICIENCIES REQUIRING CORRECTION

CORRECTIVE ACTION:

Beginning immediately, the CUPA will regulate any stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of nonferrous materials, as a tank, regardless of the size or if it is bolted to the ground or hard plumbed.

By the 1st Progress Report, the CUPA will identify and require all applicable facilities to obtain a completed tank integrity assessment certified by a professional engineer in accordance with CCR, Title 22, Section 66265.192.

By the 2nd Progress Report, the CUPA will provide CalEPA with six completed tank integrity assessments that were reviewed within the last six months and determined by the CUPA to meet all applicable tank requirements.

7. DEFICIENCY:

The CUPA is not correctly assessing the APSA state surcharge fees to all regulated businesses.

- Review of the FY 2017/2018 Annual Single Fee Summary Report finds \$4,524 was billed to APSA facilities.
 - The 2019 SOP document notes that there are 277 APSA facilities within the jurisdiction of the CUPA.
 - The 2017 SOP document notes that there are 228 APSA facilities within the jurisdiction of the CUPA.
 - This results in a difference from the expected value of the billing amount of -\$2678 and -\$1404 respective to the 2019 and 2017 SOPs.

CITATION:

CCR, Title 27, Section 15250(a)
[CalEPA]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop, implement, and provide CalEPA with a plan to correctly assess, collect, and remit the state surcharge fees. The plan will include, but not be limited to, the following:

- Identification of all facilities that were incorrectly, or not assessed the APSA state surcharge
- The steps and timeframes to correctly assess, collect, and remit the correct APSA state surcharge

By the 2nd Progress Report, the CUPA will provide CalEPA with three invoices from the next billing cycle that show the APSA state surcharge correctly assessed.

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DEFICIENCIES REQUIRING CORRECTION

8. DEFICIENCY: CORRECTED DURING THE EVALUATION

The CUPA is not properly classifying HWG violations.

Review of facility files and CERS CME information finds the CUPA is classifying HWG Class II and Class I violations as minor, and Class I violations as Class II violations in the following examples:

- Violation for improperly managing and comingling non-metal oil filters with metal oil filters and violation for used oil filters not manipulated to remove residual oil incorrectly cited as a minor violation. When non-metal filters are comingled with metal oil filters, they may not be treated according to the correct treatment and disposal standards. When oil filters are not manipulated to remove all residual oil, they are not being handled according to the correct treatment and disposal standards. There is an economic benefit and avoided cost associated with this. This does not meet the definition of minor violation as defined in HSC, Section 25404(a)(3).
 - CERS ID 10199353: inspection dated December 26, 2018.
 - CERS ID 10127113: inspection dated November 29, 2018.
 - CERS ID 10118170: inspection dated October 19, 2018.
 - CERS ID 10121629: inspection dated June 23, 2017.
 - CERS ID 10121869: inspection dated March 21, 2018.
- Violation for failure to dispose of hazardous waste at an authorized location incorrectly cited as a minor violation. Violation for failure to use a DTSC registered transporter (where no manifests or bills of lading were used) cited as a minor violation. The facility did not ensure that hazardous waste is destined for, and delivered to, an authorized hazardous waste facility. An economic benefit is gained. This does not meet the definition of minor violation as defined in HSC, Section 25404(a)(3). This is a Class I violation.
 - CERS ID 10135138: inspection dated August 24, 2018.
 - CERS ID 10199380: inspection dated June 13, 2018.
 - CERS ID 10199716: inspection dated March 6, 2018.
 - CERS ID 10129333: inspection dated May 17, 2017.
- 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 HSC, Section 25404(a)(3).
 - CERS ID 10129333: inspection dated May 17, 2017.
 - CERS ID 10118179: inspection dated May 25, 2017.
 - CERS ID 10118239: inspection dated March 2, 2018.
 - CERS ID 10139355: inspection dated September 26, 2018.
 - CERS ID 10199485: inspection dated February 21, 2017.

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DEFICIENCIES REQUIRING CORRECTION

- Violation for failure of the facility to prevent releases of hazardous waste incorrectly cited as a minor violation. Failure to prevent releases of hazardous waste has the potential to result in injury to persons or property or present a significant threat to human health or the environment. This does not meet the definition of minor violation as defined in HSC, Section 25404(a)(3).
 - CERS ID 10118176: inspection dated February 8, 2019.
 - CERS ID 10121875: inspection dated May 6, 2019.
 - CERS ID 10122085: inspection dated December 13, 2017.

- Violation for failure to provide or conduct training for employees incorrectly cited as a minor violation. Since training was not provided, employees are not familiar with hazardous waste issues and handling nor how to respond to emergencies. There may have been an economic benefit to the facility by not providing training. This does not meet the definition of minor violation as defined in HSC, Section 25404 (a)(3).
 - CERS ID 10121761: inspection dated May 11, 2017.
 - CERS ID 10122370: inspection dated March 29, 2017.
 - CERS ID 10127113: inspection dated November 29, 2018.
 - CERS ID 10129333: inspection dated May 17, 2017.
 - CERS ID 10133644: inspection dated January 10, 2017.
 - CERS ID 10199245: inspection dated May 16, 2017.
 - CERS ID 10199422: inspection dated May 24, 2017.

- Violation for failure to make a hazardous waste determination incorrectly cited as a minor violation. Failure to make a hazardous waste determination (CCR, Title 22, Section 66262.11) may result in illegal disposal of waste. Additionally, if waste is misclassified, it may not be treated according to the correct treatment standards to meet land disposal restriction requirements. There may be an economic benefit and avoided costs associated with this as well. This does not meet the definition of minor violation as defined in HSC, Section 25404(a)(3).
 - CERS ID 10134631: inspection dated October 30, 2018.

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

CITATION:

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

CORRECTIVE ACTION: COMPLETED

Review of CERS CME information between October 2022, and December 2022, finds the CUPA is properly classifying violations noted in the examples provided above. This deficiency is considered corrected. No further action is required.

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INCIDENTAL FINDINGS REQUIRING RESOLUTION

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

1. INCIDENTAL FINDING:

The CUPA is not ensuring all USTs and UST systems, used for the storage of hazardous substances installed on, or after, July 1, 2004, are in compliance with the design, construction, monitoring, and enhanced leak detection (ELD) testing requirements of HSC, Chapter 6.7, Section 25290.1.

Review of CERS and UST facility files finds the following UST facility is not in compliance with HSC, Chapter 6.7, Section 25290.1:

- CERS ID 10199875: UST installed March 26, 2012, that does not meet secondary containment, monitoring requirements or ELD testing for UST systems installed on, or after July 1, 2004.

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

Note: The following State Water Board Local Guidance (LG) Letters may be referenced:

- 161-5, dated March 25, 2008
- 162-5, dated December 12, 2019.

CITATION:

HSC Chapter 6.7, Section 25290.1
[State Water Board]

RESOLUTION:

The CUPA provided CalEPA with ELD test results for CERS ID 10199875.

By the 2nd Progress Report, the CUPA will identify if any USTs or UST systems constructed on or after July 1, 2004, do not comply with the design, construction, monitoring, and/or testing requirements outlined in HSC, Chapter 6.7, Section 25290.1. The CUPA will provide CalEPA with the CERS ID and Tank ID(s) of each identified UST.

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2. INCIDENTAL FINDING:

The CUPA is not properly classifying APSA Program violations.

Review of facility files and CERS CME information indicates the CUPA is incorrectly classifying the following APSA Program violation as a minor violation:

- 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. EPA. Not having an SPCC Plan is not considered a minor violation as defined in HSC Section 25404(a)(3) and for consistency with the US EPA Civil Penalty for Section 311(b)(3) and Section 311(j) of the Clean Water Act. Based on the definition of a “minor violation,” a minor violation does not include the following: (1) a violation that presents a significant threat to human health or the environment; or (2) a violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.”

During FYs 2016/2017 and 2018/2019, 1 of 15 (6%) instances of citing APSA violation #4010001 (not having or failure to prepare an SPCC Plan) was classified as minor.

CITATION:

HSC, Chapter 6.67, Sections 25270.4.1(c), 25270.12, 25270.12.1, and 25270.12.5
[OSFM]

RESOLUTION:

By the 1st Progress Report, the CUPA will train inspection staff on the definition of minor violation as defined in HSC, Chapter 6.11, Section 25404(a)(3).

3. INCIDENTAL FINDING:

The CUPA is not consistently following up and documenting return to compliance (RTC) information in the California Environmental Reporting System (CERS) for facilities cited with Aboveground Petroleum Storage Act (APSA) violations.

Review of inspection, violation and enforcement information, also known as compliance, monitoring and enforcement (CME) information in CERS indicates there is no documented RTC for violation #4010001, not having a Spill Prevention, Control, and Countermeasure (SPCC) Plan for the following facilities:

- Fiscal Year 2015/2016
 - CERS ID 10641085
 - CERS ID 10199152

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CITATION:

HSC, Chapter 6.11, Section 25404.1.2(c)
HSC, Chapter 6.67, Section 25270.4(a)
CCR, Title 27, Section 15200(a) and (e)
[OSFM]

RESOLUTION:

By the 1st Progress Report, the CUPA will provide CalEPA with a list of the facilities that have open violations (no RTC) for not having, or failure to prepare, and SPCC Plan. The CUPA will follow up with the facilities on the list and prioritize follow-up actions based on the level of hazard present to public health and the environment. At minimum, the list will include:

- Facility name;
- CERS ID;
- Actual RTC date (when applicable);
- RTC qualifier, and
- In the absence of obtained RTC, a narrative of the appropriate enforcement taken by the CUPA to ensure RTC.

4. INCIDENTAL FINDING:

The CUPA is not consistently ensuring return to compliance (RTC) information in CERS for HWG Program facilities cited with violations.

Review of CERS CME information from July 1, 2016, through June 30, 2019, finds there is no documented RTC information for 236 of 1,853 (12%) violations, including 92 Class I and Class II violations.

CITATION:

HSC, Chapter 6.5, Sections 25110.8.5 and 25117.6
HSC, Chapter 6.11, Section 25404.1.2(c)
CCR, Title 27, Sections 15185(a) and (c), and 15200(e)
[DTSC]

RESOLUTION:

By the 2nd Progress Report, the CUPA will follow-up with each HWG facility that has not obtained RTC.

By the 3rd Progress Report, the CUPA will provide CalEPA with RTC documentation for the following HWG facilities cited with violations on inspection reports or Notices of Violation (NOV), as requested by DTSC:

- CERS ID 10905688: inspection dated October 26, 2022
- CERS ID 10123363: inspection dated October 25, 2022
- CERS ID 10132621: inspection dated October 12, 2022

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5. INCIDENTAL FINDING:

The CUPA is not consistently requiring UST facilities to submit annual monitoring equipment certification activities on the required Monitoring System Certification Form.

Review of facility files finds the following examples where the required UST Monitoring System Certification Form was not utilized:

- CERS ID 10135798
- CERS ID 10121788

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

CITATION:

CCR, Title 23, Section 2638(c)
[State Water Board]

RESOLUTION:

By the 1st Progress Report, the CUPA will revise the I&E Plan, or other applicable procedure, to describe activities performed by the CUPA that include, but are not limited to:

- A procedure for rejecting annual monitoring system certification activities received on an incorrect Monitoring System Certification Form.

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

By the 2nd Progress Report, the CUPA will, if necessary, amend the I&E Plan, or other applicable procedure, based on feedback from the State Water Board and will provide the amended I&E Plan or other applicable procedure to CalEPA.

6. INCIDENTAL FINDING:

The CUPA is not consistently collecting, managing, and reporting the number of UST facilities or inspections.

Review of CERS CME information, Report 6, and CUPA Self-Audit Reports finds the following inconsistencies in the number of reported UST facilities and UST inspections:

- FY 2018/2019
 - CERS reflects 88 UST facilities
 - Report 6 reflects 80 UST facilities.
- FY 2017/2018
 - CERS reflects 80 UST inspections
 - Report 6 reflects 80 UST inspections
 - Self-Audit Report reflects 82 UST inspections,

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- FY 2016/2017
 - CERS reflects 80 UST inspections
 - Report 6 reflects 81 UST inspections
 - Self-Audit Report reflects 85 UST inspections

CITATION:

CCR, Title 23, Section 2713(c)(3)
CCR, Title 27, Section 15185(a)
[State Water Board]

RESOLUTION:

By the 1st Progress Report, the CUPA will perform a thorough analysis of the Data Management Procedure, or other applicable procedure, and conclude why the number of reported UST facilities and UST inspections differ among CERS, Report 6, and Self-Audit Reports.

By the 2nd Progress Report, the CUPA will revise and provide CalEPA with the Data Management Procedure, or other applicable procedure, based on the analysis. The revised Data Management Procedure, or other applicable procedure will include, but not be limited to:

- Collecting, retaining, managing, and reporting inspection information;
- How personnel report inspection information in the local data management system; and
- How inspection information is reported to CERS.

By the 4th Progress Report, the CUPA will train personnel on the revised Data Management Procedure, or other applicable procedure. Once training is complete, the CUPA will implement the revised Data Management Procedure or other applicable procedure.

To demonstrate correction of this deficiency, the CUPA will consistently report the number of UST inspections conducted in Report 6 and CERS for two consecutive Report 6 reporting periods.

7. INCIDENTAL FINDING:

On July 16, 2019, DTSC observed an HWG facility inspection conducted by the CUPA. The inspection occurred at CERS ID 10199680, which is an SQG. The inspector was well prepared for the inspection and reviewed relevant information prior to arriving at the facility, including previous inspection reports, the facility file, the contingency plan, the emergency equipment inventory, and CERS information. The inspector established rapport with the facility operators and toured the entire site.

During the inspection, the following hazardous waste tank requirements were incorrectly communicated to the facility:

- the inspector stated that tank inspection logs were required to be maintained. As the facility was an SQG at the time of the inspection, inspection logs were not required.

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- regarding the frequency of what needs to be inspected of the tank systems, the inspector stated that everything was required to be inspected daily, however daily inspections are only required for discharge controls (e.g. bypass systems), monitoring data, and to observe the level of tank. Weekly inspections must be conducted to inspect the tank and containment area for leaks.

The inspector cautioned the facility to properly manage all aerosol cans (empty and non-empty) and ensure that facility personnel do not dispose of a non-empty aerosol can in the recycling. Only non-empty aerosol cans should be managed as hazardous waste. Empty aerosol cans can be managed as scrap or trash.

The inspector reviewed manifests but did not ensure that land disposal restrictions were attached, if applicable. The inspector observed all hazardous waste storage areas and ensured there was immediate access to a communication device or alarm system as required in CFR, Title 40, Section 262.34 (now CFR, Title 40, Section 262.16), by actively observing the available presence and use of communication devices at the facility, such as portable radios, landlines, and cell phones during the inspection. Throughout the inspection, the inspector noted several phone calls made at the facility among staff between the work area and hazardous waste storage area. Further, the inspector did not ensure that the facility met the preparedness and prevention requirements as outlined in CFR, Title 40, Section 262.34 (now CFR, Title 40, Section 262.16). The inspector observed the on-site laboratory, but did not inquire about how waste was managed in the lab until prompted.

On July 16, 2019, DTSC observed an HWG inspection conducted by the CUPA. The inspection occurred at CERS ID 10690246, which is an SWG. The inspector was well prepared for the inspection and reviewed relevant information prior to arriving at the facility, including previous inspection reports, the facility file, the contingency plan, and CERS information. The inspector asked for consent to conduct the inspection. During the inspection, the inspector established rapport with the facility operators and toured the entire site. The inspector communicated information to the facility well.

During the inspection, the following HWG requirements were incorrectly communicated to the facility:

- The inspector informed the facility that satellite accumulation containers containing used oil only need to state the words "used oil" and "empty daily." For satellite accumulation containers, each container must be labeled with the words "Hazardous Waste," and the following information: (a) the composition and physical state of the wastes; (b) a statement that calls attention to the hazardous properties of the waste; and (c) the name and address of the generator. The initial date that hazardous waste is placed in the container must be clearly marked and visible on all containers used for satellite accumulation. Containers used to store used oil shall be marked or clearly labeled with the words "USED OIL." The accumulation start date can say "empty daily" as opposed to a chronological date.
- The inspector informed the facility to properly label all drip pans, however, a drip pan is not a proper container as it cannot be closed, and though a label may be added, a drip pan should be emptied immediately once it is no longer in use.

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- The inspector informed the facility that each time a pick-up of waste occurs, the pick-up date should be written on the container as the accumulation start date. The accumulation start date should be added once the first drop of hazardous waste is placed in the container.

The inspector misclassified the violation for failure to dispose of hazardous waste within 180 days of accumulation on the inspection report as a minor violation, the violation should be classified as non-minor.

CITATION:

CCR, Title 22, section 66262.34

CFR, Title 40, Section 262.34 now CFR, Title 40, Section 262.16

[DTSC]

RESOLUTION:

By the 1st Progress Report, the CUPA will ensure inspection staff reviews the HWG fact sheets listed below and will provide CalEPA with a narrative stating inspection staff have viewed all of the training material.

- [Hazardous Waste Generator Requirements](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/06/HWM_FS_Generator_Requirements.pdf)
(https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/06/HWM_FS_Generator_Requirements.pdf)
- [Accumulating Hazardous Wastes at Generator Sites](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/02/FS_OAD_Accumulation.pdf)
(https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/02/FS_OAD_Accumulation.pdf)

By the 2nd Progress Report, the CUPA shall request and complete HWG training from DTSC.

8. INCIDENTAL FINDING:

The CUPA has not established nor implemented all Unified Program administrative procedures.

- The following administrative procedures have not been developed:
 - providing the Hazardous Material Release Response Plan (HMRRP) information to emergency response personnel and other appropriate government entities in accordance with HSC, Section 25504(c).

CITATION:

CCR, Title 27, Section 15180(e)

[CalEPA]

RESOLUTION:

By the 1st Progress Report, the CUPA will develop and provide CalEPA with the Unified Program administrative procedures identified above as not being established, ensuring all required components are adequately incorporated.

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By the 2nd Progress Report, the CUPA will, if necessary, revise the procedures, based on feedback from CalEPA. The CUPA will provide the revised procedures to CalEPA.

By the 3rd Progress Report, the CUPA will train CUPA personnel on the Unified Program administrative procedures.

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OBSERVATIONS AND RECOMMENDATIONS

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

1. OBSERVATION:

Review of the I&E Plan indicates it contains APSA program and fire code information that is inaccurate and could benefit from improvement.

The following information is inaccurate:

- The Table of Contents reference to the Uniform Fire Code in Section 8.0 should be updated to California Fire Code.
- Table 1, Section 1.1: The triennial statutory inspection frequency applies to APSA facilities storing 10,000 gallons or more of petroleum per HSC, Section 25270.5(a). If the CUPA implements an alternative inspection plan (for example, inspecting all APSA facilities including those storing less than 10,000 gallons of petroleum triennially), then it is appropriate to reference HSC 25270.5(b).
- Page 12, the RTC timeframe for APSA is stated as within 30 days from the date of the deficiency notice with the citation HSC, Section 25270. HSC, Section 25404.1.2(b) allows for all Unified Program regulated facilities with minor violations to have 30 days to comply. APSA does not specify an RTC timeframe but does allow the CUPA to establish an alternative compliance plan per HSC, Section 25270.5(b).
 - Note the federal SPCC rule allows facilities six months to amend the SPCC Plan for technical amendments and another six months to implement the amendments.
- Page 28, Section D: It may be appropriate to include the APSA statute reference related to administrative penalties as described in HSC, Section 25270.12.1.
- Page 47, Section 6.0: The facility applicability criteria should be updated to reflect recent APSA statute updates related to Tanks In Underground Areas (TIUGAs), including TIUGAs at facilities storing less than 1,320 gallons.
- Page 54, Section 6.0, AST Performance Standards: The CUPA states “any business that stores petroleum...in containers and/or tanks with a volume equal to or greater than 55 gallons, with a total volume of at least 1,320 gallons, must obtain a certificate from the DTSC Imperial CUPA, unless specifically exempted.” APSA regulates (1) tank facilities (not just businesses) that are subject to the federal SPCC rule, or (2) tank facilities with a petroleum storage capacity of 1,320 gallons or more of petroleum, or (3) tank facilities with one or more TIUGAs (regardless of total petroleum storage capacity). The I&E Plan also states that each facility is required to develop and implement an SPCC Plan; however, certain tank facilities that meet conditions described in HSC, Section 25270.4.5(b) are not required to prepare and implement an SPCC Plan under APSA.

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- Page 54, Section 6.1: The inspection frequency description for APSA facilities storing less than 10,000 gallons is identified as on a case-by-case basis. If the CUPA implements an alternative inspection plan (for example, inspecting all APSA facilities including those storing less than 10,000 gallons of petroleum triennially, or on a case-by-case basis), then it is appropriate to reference HSC, Section 25270.5(b), and confirm that the Inspection Frequency is properly described within Table 1, Section 1.1, and is consistently referenced throughout the I&E Plan. Also, the I&E Plan references HSC, Ch. 6.7, Section 25270.5 for mandated inspections of APSA tank facilities. APSA is found in HSC, Chapter 6.67 and mandated inspections are found in HSC, Section 25270.5(a).
- Page 66, Section 9.11.3.4: The I&E Plan states APSA tank facilities are required to submit business plans (facility information, hazardous materials inventory and site map, and emergency response and training plans). Per HSC, Section 25270.6(a), a tank facility may submit a complete business plan in lieu of the tank facility statement. The new APSA submittal element in CERS, which now incorporates the APSA documentation upload section, has been in effect since April 1, 2019, and should be completed by APSA tank facilities. The APSA documentation upload section in CERS is for uploading the tank facility statement or a locally required document (not including SPCC Plans, which should not be uploaded to CERS).
- Multiple instances of referral to the APSA program as AST were observed, including within Table 1, page 5, page 12 section 1.4.5 (D), page 28 Section D, page 47 Section 6.0, and page 57 Section 9.12.5, and within the Table of Contents.

RECOMMENDATION:

Update the APSA program and fire code information in the I&E Plan.

2. OBSERVATION:

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

More information on farms regulated under the APSA Program may be found on the OSFM website (<https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-untied-program-agency-cupa/aboveground-petroleum-storage-act/farms/>) and more information on farms under the Federal SPCC rule may be found on the [U.S. Environmental Protection Agency website](#).

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RECOMMENDATION:

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

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

3. OBSERVATION:

The CUPA's webpage <https://dtsc.ca.gov/imperial-county-cupa/> contains various resources and information for the regulated community and public.

The following information on the CUPA's webpage is inaccurate:

- The APSA Program is incorrectly referred to as Aboveground Storage Tanks (AST). The program description should identify petroleum rather than hazardous materials.

The CUPA's APSA webpage <https://dtsc.ca.gov/imperial-cupa-aboveground-petroleum-storage-act-program/> contains outdated or inaccurate information:

- The Program Overview discussion could be enhanced relative to TIUGA information. TIUGAs must contain petroleum (not oil). TIUGAs are not necessarily subject to the full requirements of the APSA program if they store less than 55 gallons of petroleum. The information provided regarding APSA regulated facility petroleum storage thresholds needs to be updated to reflect recent TIUGA related statute updates.
- CFR, Title 40, Part 112 is cited as a regulatory authority. The Federal SPCC rule requirements have not been delegated to any state and the CUPA has no authority to implement and enforce the CFR, Title 40, Part 112. The CUPA implements and enforces APSA.
- The 'What is Petroleum?' discussion should omit any reference to counting APSA petroleum capacity as it relates to establishing the type of APSA facility.
- The discussion related to three types of APSA facilities is not entirely accurate. Tier I and Tier II qualified facilities are federal SPCC terms. Also, in lieu of using the term 'Non-qualified facilities', these facilities are 'Full SPCC Plan facilities,' 'Full Plan facilities' or 'PE-certified SPCC Plan facilities.' There are no 'non-qualified SPCC Plans' but rather PE-certified SPCC Plans.

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- The descriptions related to Tier I qualified facilities, Tier II qualified facilities, and Full Plan facilities incorrectly reference petroleum storage volumes. Preparing an SPCC Plan must comply with the SPCC rule, which includes all oils (not just petroleum).
- The Tier II Qualified Facility SPCC Plan template links to an outdated CUPA Forum Board template. The Tier II qualified facility SPCC Plan template was revised by OSFM in May 2021, and is available on the OSFM website (https://osfm.fire.ca.gov/media/13bddwhw/calfire-osfm_tierii_spcc_plantemplate_05-2021-accessible.pdf).
- The Qualified or Non-Qualified flowchart is not accurate and should be updated or removed. SPCC Plan preparation requirement thresholds need refinement to properly state the federal oil (not APSA petroleum) thresholds related to Tier I and Tier II qualified facility SPCC Plan template utilization. APSA petroleum storage capacity is not involved in this determination.
- The Farms and APSA discussion incorrectly reference petroleum storage, rather than oil storage. The SB 612 link goes to the OSFM Farm Fact sheet version dated January 26, 2016, however that version has been superseded by the OSFM Farm Fact sheet revised February 19, 2016. Farms are not APSA regulated if the total oil storage capacity is below the WRRDA thresholds.

RECOMMENDATION:

Update the information on the APSA websites.

4. OBSERVATION:

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

- CERS ID 10155849 (Tank IDs 10155849-001, -002, and -003)
- CERS ID 10310632 (Tank IDs 10310632-001, -002, -003)
- CERS ID 10125883 (Tank IDs 10125883-001, 002)
- CERS ID 10126288 (Tank ID 10126288-001)

RECOMMENDATION:

Continue to provide written and verbal reminders to all applicable UST facility owners/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/operators. The written notification should inform facility owners/operators that, in order to remain in compliance, owners/operators must replace or remove single-walled USTs by December 31, 2025.. Additional information regarding the single-walled UST closure

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requirements may be found at:

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

Notify facility owners/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 tanks. More information on funding sources may be found at:

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

5. OBSERVATION:

The CUPA has implemented an alternative APSA inspection frequency relative to APSA facilities storing less than 10,000 gallons of petroleum.

While the CUPA is meeting the alternative APSA inspection frequency established in the I&E Plan, 44 of 241 (18%) regulated APSA facilities have never been inspected.

RECOMMENDATION:

Complete an APSA inspection at all previously uninspected APSA facilities in accordance with the alternative inspection frequency established in the I&E Plan.
