

May 21, 2024

Mr. Dexter Marr
Deputy Director
Madera County Environmental Health
200 W. 4th Street, Suite 3100
Madera, California 93637-3548

Dear Mr. Marr:

During July 2023, through May 2024, CalEPA and the Unified Program state agencies conducted a performance evaluation of the Madera County Environmental Health 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. The report also includes acknowledgement of accomplishments and challenges, as well as examples of outstanding Unified Program implementation. Enclosed, please find the final Summary of Findings report.

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

To demonstrate progress towards the correction of program deficiencies and resolution of incidental findings identified in the final Summary of Findings report, the CUPA must submit an Evaluation Progress Report approximately 60 days from the date of this letter. Thereafter, the CUPA will submit each subsequent Evaluation Progress Report to CalEPA in accordance with the specified date provided in the Evaluation Progress Report response, until all deficiencies and incidental findings identified have been acknowledged as corrected or resolved by each issuing state agency. An Evaluation Progress Report template will be provided by the CalEPA Team Lead. Each Evaluation Progress Report must be submitted to the CalEPA Team Lead, Jessica Snow, via email at Jessica.Snow@calepa.ca.gov, or uploaded to the established SharePoint website.

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, at Melinda.blum@calepa.ca.gov. 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
Deputy Secretary
Local Program Coordination and Emergency Response

Enclosure

cc sent via email:

Ms. Phengphanh Phondeth
Assistant Director
Madera County Environmental Health
200 W. 4th Street, Suite 3100
Madera, California 93637-3548

Ms. Cheryl Prowell
Supervising Water Resource Control Engineer
State Water Resources Control Board

Mr. Tom Henderson
UST Leak Prevention Unit and
Office of Tank Tester Licensing Manager
State Water Resources Control Board

Ms. Julie Pettijohn
Environmental Program Manager
CUPA Enforcement Branch
Department of Toxic Substances Control

Ryan Miya, Ph.D.
Senior Environmental Scientist, Supervisor
Department of Toxic Substances Control

Ms. Jennifer Lorenzo
Senior Environmental Scientist, Supervisor
CAL FIRE - Office of the State Fire Marshal

Mr. Dexter Marr
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cc sent via email:

Ms. Kaitlin Cottrell
Environmental Scientist
State Water Resources Control Board

Ms. Magnolia Busse
Environmental Scientist
State Water Resources Control Board

Ms. Mia Goings
Senior Environmental Scientist
Department of Toxic Substances Control

Mr. Glenn Warner
Senior Environmental Scientist, Specialist
CAL FIRE - Office of the State Fire Marshal

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. Jessica Snow
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: Madera County Environmental Health****2023 Evaluation Assessment:** July 2023 to May 2024**Evaluation Team Members:**

- **CalEPA Team Lead:** Jessica Snow, Timothy Brandt
- **DTSC:** Mia Goings, Matthew McCarron
- **CalEPA:** Garrett Chan
- **State Water Board:** Magnolia Busse, Tom Henderson
- **CAL FIRE-OSFM:** Glenn Warner

This Final Summary of Findings includes:

- Accomplishments, Examples of Outstanding Implementation, and Challenges
- Deficiencies requiring correction
- Incidental findings requiring resolution
- Observations and recommendations

The findings contained within this evaluation report are considered final.

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

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

Jessica Snow
CalEPA Unified Program
Phone: (916) 460-2394
E-mail: jessica.snow@calepa.ca.gov

The CUPA is required to submit the first Evaluation Progress Report 60 days from receipt of the Final Summary of Findings Report. Thereafter, the CUPA will submit each subsequent Evaluation Progress Report to CalEPA in accordance with the specified date provided in the Evaluation Progress Report response. For each identified deficiency and incidental finding, the CUPA must complete the corrective action and resolution as indicated to demonstrate sufficient implementation of the Unified Program as required by regulation or statute. The Evaluation Progress Report process will continue until all deficiencies and incidental findings have been acknowledged as corrected or resolved by each issuing Unified Program state agency.

Each Evaluation Progress Report must be submitted to the CalEPA Team Lead via email at jessica.snow@calepa.ca.gov, or uploaded to the established SharePoint website. A narrative stating the status of correcting each deficiency and resolving each incidental finding identified in this Final Summary of Findings Report, and any applicable supporting documentation must be included in each Evaluation Progress Report.

The submittal date for the 1st Evaluation Progress Report is **August 9, 2024**.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

UNIFIED PROGRAM PERFORMANCE EVALUATION PRELIMINARY SUMMARY OF FINDINGS REPORT

ACCOMPLISHMENTS, CHALLENGES, AND EXAMPLES OF OUTSTANDING IMPLEMENTATION

Various accomplishments, outstanding efforts, and challenges that impact and/or enhance the overall ability of the CUPA to implement the Unified Program. Recognition of aspects such as response to local emergency declarations and statewide recovery efforts, which illustrate the accomplishments and challenges the CUPA manages in the efforts to continue implementation of the Unified Program.

1. CORONAVIRUS (COVID-19) STAFF REASSIGNMENTS:

The CUPA faced significant challenges as a result of the COVID-19 pandemic, which impacted the ability to fully implement each aspect of all Unified Program elements. During the initial phase of the pandemic, the Madera County Government Center was shut down for two weeks. After the initial shutdown of the Madera County Government Center, as an essential entity, the CUPA was able to operate with minimal staff. In response to the subsequent Madera County Public Health Department and State-mandated Health Orders, the Environmental Health (EH) Deputy Director of the Community Economic Development Department halted all field and in-person inspections in all EH programs, including the CUPA, and redirected EH program staff to assist with COVID-19 response efforts.

Through the early stages of the pandemic and upon returning to work in June of 2020, half of the CUPA personnel were working at the office while the other half were teleworking. Beginning late 2020, some inspections at Unified Program regulated facilities were conducted, dependent upon the comfort level of CUPA personnel and the type of facility being inspected. Conducting all field and in-person inspections was not fully resumed until January 2021, at which time the CUPA prioritized conducting inspections based on facility compliance with Unified Program regulatory requirements.

2. DISASTER RECOVERY:

In September 2020, the Creek Fire burned a total of 379,000 acres between Fresno County and Madera County. Within Madera County, 42 buildings and structures were destroyed by the wildfire. In October 2020, in conjunction with local and state agencies, the CUPA began the Phase I recovery process. The CUPA was tasked with conducting preliminary site assessments for all affected properties to determine the hazardous materials in areas affected by the Creek Fire. In December 2020, the CUPA began working with property owners to complete and submit Phase II Right-of-Entry forms for the removal of tree and hazard debris. CUPA involvement with the recovery efforts of the Creek Fire ended in June 2021.

In September 2022, another wildfire, the Fork Fire, burned a total of 819 acres and impacted 43 buildings and structures. The CUPA assisted as a liaison with property owners during the Phase I cleanup recovery efforts. Due to the heavy rain and storms in early 2023, the Phase II cleanup efforts were delayed, until May 2023, making it difficult to work with the property owners of the impacted buildings and structures to complete the right-of-entry forms. The Phase II hazard debris and tree cleanup began in September 2023.

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PRELIMINARY SUMMARY OF FINDINGS REPORT**

3. ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM:

The CUPA continues to meet the mandated triennial inspection frequency for APSA tank facilities storing 10,000 gallons or more of petroleum, as well as the triennial inspection frequency for other APSA tank facilities in accordance with the Inspection and Enforcement (I&E) Plan.

4. STAFFING VACANCIES AND RECRUITMENT:

The prolonged vacancy of the CUPA Manager and inspector positions, as well as recruitment efforts to fulfill positions with experienced staff significantly impacted implementation of the Unified Program. In January 2022, an experienced staff responsible for overseeing implementation of the Underground Storage Tank (UST) Program received a promotion to lead another EH program. Following the departure of the staff, the position remained unoccupied for four months, until May 2022. During this interim period, the absence of a designated UST inspector posed many challenges. To address the challenges, the CUPA program manager re-assigned duties to other CUPA staff, who were able to assist in conducting UST annual compliance inspections until additional staff were able to obtain International Code Council (ICC) California UST Inspector certification.

In January 2023, the CUPA faced another significant staffing challenge with the resignation of an advanced CUPA inspector who fulfilled a pivotal role. Compounding the challenge, EH had been attempting to fill an advanced Registered Environmental Health Specialist (REHS) position since 2021. After unsuccessful attempts to hire journey level inspectors, an entry level staff was hired into the CUPA.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

UNIFIED PROGRAM PERFORMANCE EVALUATION PRELIMINARY SUMMARY OF FINDINGS REPORT

DEFICIENCIES REQUIRING CORRECTION

A program deficiency is considered a major deviation in implementation of the Unified Program from the expected standards set forth in statute or regulation. Commonly identified as a systemic problem in implementation of one or more program elements, a deficiency is likely to have an impact on the safety and protection of human health and the environment. Program deficiencies identify specific aspects regarding implementation of the Unified Program.

1. DEFICIENCY:

The Permit to Operate, issued as the Unified Program Facility Permit (UPFP) and the UST operating permit and permit conditions, issued under the Permit to Operate, include components that are inconsistent with Californian Code of Regulations (CCR), Title 23, Division 3, Chapter 16 (Chapter 16) and Health and Safety Code (HSC), Division 20, Chapter 6.7 requirements.

Review of the Permit to Operate, finds the following inconsistencies with CCR, Chapter 16 and HSC, Chapter 6.7:

- Page 1, states: "Permit may be revoked or suspended for: - non-payment of fees -violations of the California Health and Safety Codes -imminent health hazards".
 - The CUPA does not have the authority to suspend a UST operating permit, per HSC, Chapter 6.7, Section 25285.1
- Page 2, Provision f, for the UST Program references CCR, Chapters 16 and 18.
 - 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.
 - The correct citations are as follows:
 - CCR, Chapter 16, Sections 2610 through 2717.7 and
 - HSC, Chapter 6.7, Sections 25280 through 25296 and 25298 through 25299.6.
- Page 2, UST General Condition 5, states: "A permit shall not be renewed unless the underground storage tank has been inspected by the CUPA within the previous 12 months and the inspection verified that the underground storage tank complied with the provisions of California Code of Regulations, Chapter 16, Article 3 or Article 4, as applicable and with all existing permit conditions. If the inspections indicates noncompliance then the CUPA shall verify by a follow-up inspection that all required corrections have been implemented before renewing the permit."
 - This is more stringent than HSC, Chapter 6.7, Section 25285(b) and there is no local ordinance to enforce this permit condition.
- Page 2, UST General Condition 11, states: "The owner or operator must maintain evidence of Federal Financial Responsibility, which shall be updated annually."
 - This is more stringent than CCR, Chapter 16, Section 2711(a)(11) and there is no local ordinance to enforce this permit condition.

CITATION:

HSC, Chapter 6.7, Sections 25283(b)(1)(B), 25284(b), 25285.1, and 25297.01(b).

CCR, Chapter 16, Sections 2711(a)(11) and 2712(d).

[State Water Board]

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CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will revise the Permit to Operate template, and the UST Operating Permit and Permit Conditions issued under the Permit to Operate, as the UPFP, to be consistent with CCR, Chapter 16 and HSC, Chapter 6.7. An example UST operating permit and permit conditions template has been made available by the State Water Board at: https://www.waterboards.ca.gov/water_issues/programs/ust/docs/permit-template2.docx. The CUPA will contact the State Water Board for assistance with revising the Permit to Operate template, or the UST Operating Permit and Permit Conditions, if necessary. The CUPA will provide the revised Permit to Operate template, including the revised UST Operating Permit and Permit Conditions to CalEPA.

By the 2nd Progress Report, the CUPA will, if necessary, amend the revised Permit to Operate template, including the revised UST Operating Permit and Permit Conditions, based on feedback from the State Water Board. The CUPA will provide the amended Permit to Operate template, including the amended UST Operating Permit and Permit Conditions to CalEPA. If no amendments are necessary, the CUPA will begin to issue the revised Permit to Operate, including the revised UST Operating Permit and Permit Conditions as the UPFP. The CUPA will provide CalEPA with the Permit to Operate issued to five UST facilities using the revised template.

By the 3rd Progress Report, if amendments to the revised Permit to Operate template, including the revised UST Operating Permit and Permit Conditions were necessary, the CUPA will begin to issue the amended Permit to Operate, including the amended UST Operating Permit and Permit Conditions as the UPFP. The CUPA will provide CalEPA with the Permit to Operate issued to five UST facilities using the amended template.

2. DEFICIENCY:

The CUPA is not properly classifying HWG Program violations.

Review of facility files and inspection, violation, and enforcement information, also known as compliance, monitoring, and enforcement (CME) information in the California Environmental Reporting System (CERS) CME information between July 1, 2020, and June 30, 2023, finds the following non-minor violations were classified as minor violations:

- 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).
 - 65 of 88 (74%) violations cited were classified as minor. Examples include, but are not limited to:
 - CERS ID 10411771: inspection dated December 6, 2022
 - CERS ID 10422778: inspection dated January 13, 2023
 - CERS ID 10424155: inspection dated February 7, 2023
- Violation for failure to accumulate hazardous waste in a container that is in good condition (CCR, Title 22, Section 66262.34) incorrectly cited as a minor violation. Storage of hazardous waste in damaged containers may lead to a release of hazardous waste to the

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environment. Failure to accumulate hazardous waste in a container that is in good condition may result in a failure to prevent releases of hazardous waste or constituents to the environment. This does not meet the definition of a minor violation as defined in HSC, Section 25404(a)(3).

- 7 of 7 (100%) violations cited were classified as minor. Examples include, but are not limited to:
 - CERS ID 10425718: inspection dated September 14, 2021
 - CERS ID 10426126: inspection dated December 14, 2021
 - CERS ID 10426012: inspection dated February 15, 2022
- Violation for failure to minimize the possibility of a fire, explosion, or release of hazardous waste to the environment [CCR, Title 22, Sections 66265.31 and 66262.34(d)(2)] incorrectly cited as a minor violation. Failure to minimize the possibility of a fire, explosion, or release may pose a significant threat to human health or safety or the environment, or failure to ensure prevention of releases of hazardous waste or constituents to the environment. This does not meet the definition of minor violation as defined in HSC, Section 25404(a)(3).
 - 4 of 8 (50%) violations cited were classified as minor. Examples include, but are not limited to:
 - CERS ID 10403335: inspection date August 5, 2020
 - CERS ID 10425274: inspection date February 19, 2021
 - CERS ID 10139663: inspection date February 24, 2021

CITATION:

HSC, Chapter 6.5, Sections 25110.8.5 and 25117.6

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

CCR, Title 22, Section 66260.10

[DTSC]

CORRECTIVE ACTION:

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) and Class I, and Class II violations, as defined in:

- HSC, Chapter 6.5, Sections 25110.8.5 and 25117.6 and
- CCR, Title 22, Section 66260.10

The CUPA will train inspection staff on how to properly classify HWG Program violations as minor, Class I, and Class II. Training should include, at minimum, review of the following:

- 2020 Violation Classification Guidance for Unified Program Agencies
<https://calepa.ca.gov/wp-content/uploads/sites/6/2020/06/Violation-Classification-Guidance-Document-accessible.pdf>
 - This document provides examples of what is considered minor versus non-minor violations.

The CUPA will provide CalEPA with training documentation to CalEPA, which at minimum will include, the date training was conducted, an outline of the training conducted, and a list of CUPA inspection staff in attendance.

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

3. DEFICIENCY:

The CUPA is not ensuring all businesses subject to the 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 between September 9, 2022, and October 9, 2023, by businesses subject to Business Plan reporting requirements finds:

- 185 of 736 (25%) Business Plan facilities have not submitted a chemical inventory (including site map) or a no-change certification within the last 12 months.
- 190 of 736 (26%) Business Plan facilities have not submitted emergency response and employee training plans or a no-change certification within the last 12 months.

CITATION:

HSC, Chapter 6.95, Sections 25505(a), 25508(a), and 25508.2
[CalEPA]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop, implement, and provide CalEPA with an action plan to ensure all businesses subject to Business Plan reporting requirements annually submit an HMBP or a no-change certification to CERS. The action plan, at minimum, will include steps to how the CUPA will follow up with facilities that have not submitted an HMBP or a no change certification to CERS within the last 12 months.

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

- Facility name;
- CERS ID;
- Follow-up actions including:
 - Recent review, acceptance and rejection of HMBPs or no-change certifications; and
 - Enforcement applied by the CUPA to ensure an HMBP or no-change certification is annually submitted to CERS.

By the 4th Progress Report, the CUPA will ensure each facility subject to Business Plan reporting requirements has submitted an HMBP or a no change certification to CERS annually, or the CUPA will have applied enforcement.

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4. DEFICIENCY:

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

Review of CERS CME information between July 1, 2020, and June 30, 2023, finds:

- 211 of 736 (29%) facilities subject to HMBP requirements were not inspected within the last three years.

CITATION:

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

CORRECTIVE ACTION:

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

- A sortable spreadsheet exported from the CUPA's data management system or CERS, identifying each facility subject to HMBP reporting requirements that has not been inspected within the last three years. For each facility listed, the sortable spreadsheet will include, at minimum:
 - Facility name;
 - CERS ID;
 - Date of the last routine inspection, and
 - A schedule to inspect each facility subject to HMBP reporting requirements that has not been inspected within the last three years, prioritizing the most delinquent inspections to be completed prior to any other HMBP facility inspection based on risk. For each facility, the schedule to inspect should reflect an estimated date or date range.
- Future steps to ensure all facilities subject to HMBP reporting requirements will be inspected at least once every three years.

By the 2nd Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with an updated sortable spreadsheet and a brief narrative as to how the CUPA is continuing to ensure that all facilities subject to HMBP reporting requirements will be inspected at least once every three years.

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

5. DEFICIENCY:

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

Review of CERS CME information between July 1, 2020, and June 30, 2023, finds:

- 7 of 24 (29%) facilities subject to CalARP Program requirements were not inspected within the last three years.

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CITATION:

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

CORRECTIVE ACTION:

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

- A sortable spreadsheet exported from the CUPA's data management system or CERS, identifying each CalARP Program facility that has not been inspected within the last three years. For each facility listed, the sortable spreadsheet will include, at minimum:
 - Facility name;
 - CERS ID;
 - Date of the last routine inspection, and
 - A schedule to inspect each facility subject to CalARP Program requirements that has not been inspected within the last three years, prioritizing the most delinquent inspections to be completed prior to any other CalARP Program facility inspection based on risk. For each facility, the schedule to inspect should reflect an estimated date or date range.
- Future steps to ensure all CalARP Program facilities will be inspected at least once every three years.

By the 2nd Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with an updated sortable spreadsheet and a brief narrative of how the CUPA is continuing to ensure that all CalARP Program facilities will be inspected at least once every three years.

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

6. DEFICIENCY:

The CUPA is not ensuring each stationary source in the CalARP Program reviews and updates the Risk Management Plan (RMP) at least once every five years.

Review of information provided by the CUPA finds:

- 7 of 24 (29%) stationary sources in the CalARP Program have not updated the RMP at least once in the last five years.

CITATION:

CCR, Title 19, Section 2745.10(a)(1) and (b)(1)
[CalEPA]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop, implement, and provide CalEPA with an action plan to ensure each stationary source in the CalARP Program has reviewed and updated the RMP at least once every five years. The CUPA will provide CalEPA with a sortable

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spreadsheet obtained from the CUPA's data management system, or CERS, that includes, at minimum, the following for each stationary source:

- Facility name;
- CERS ID;
- Date the RMP was last reviewed and updated by the stationary source; and
- recent follow-up actions with CalARP Program facilities that have not revised and updated the RMP at least once every five years. If a facility is no longer regulated as a CalARP facility, provide a brief explanation regarding the closure of the facility and de-registration pursuant to CCR, Title 19, Section 2745.10 (c) or (d).

By the 2nd Progress Report, the CUPA will provide a statement to CalEPA confirming each stationary source has reviewed and updated the RMP at least once within the last five years, or the CUPA will have applied enforcement or, has submitted a de-registration pursuant to CCR, Title 19, Section 2745.10(c) or (d).

7. DEFICIENCY: CORRECTED DURING EVALUATION

The CUPA is not consistently ensuring APSA tank facilities annually submit an HMBP to CERS, when an HMBP is provided in lieu of a tank facility statement.

Review of HMBPs submitted to CERS by APSA tank facilities in lieu of tank facility statements finds:

- 37 of 173 (21%) APSA tank facilities have not submitted a chemical inventory and site map within the last 12 months.
- 37 of 173 (21%) APSA tank facilities have not submitted emergency response and employee training plans within the last 12 months.

CITATION:

HSC, Chapter 6.67, Section 25270.6(a)
[OSFM]

CORRECTIVE ACTION: COMPLETED

During the evaluation, the CUPA ensured additional APSA tank facilities annually submitted an HMBP to CERS.

On January 24, 2024, review of HMBPs submitted to CERS by APSA tank facilities in lieu of tank facility statements finds:

- 32 of 173 (18%) APSA tank facilities have not submitted a chemical inventory and site map within the last 12 months.
- 32 of 173 (18%) APSA tank facilities have not submitted emergency response and employee training plans within the last 12 months:

This Deficiency is considered corrected.

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INCIDENTAL FINDINGS REQUIRING RESOLUTION

An incidental finding is considered a minor deviation in implementation of the Unified Program from the expected standards set forth in statute or regulation. Commonly identified as a minor issue that may be problematic in implementation of one or more program elements, an incidental finding is not likely to have an impact on the safety and protection of human health and the environment.

1. INCIDENTAL FINDING:

Required components of the I&E Plan are inaccurate.

Review of the I&E Plan finds the following components are inaccurate:

- Introduction, page 3, states “Authority: H&SC, Chapter 6.7 §25280–25299.8; CCR T23, Div 3, CH 16, § 2610-2729.”
 - The correct citations are as follows:
 - CCR, Chapter 16, Sections 2610 through 2717.7
 - HSC, Chapter 6.7, Sections 25280 through 25296 and 25298 through 25299.6
- General Inspection Procedures table, page 8, states “In addition, compliance times for specific violations are located in HSC §§ 25291, 25292, and 25295.5.”
 - The correct citation for compliance times is CCR, Chapter 16, Section 2712(f).
- Section 6, page 24, Permit Revocation, states “HSC 25284 with Article 3 (commencing with Section 25299.30) of 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 HSC, Chapter 6.75.
 - The correct citations are as follows:
 - CCR, Chapter 16, Section 2610 through 2717.7, and
 - HSC, Chapter 6.7, Sections 25280 through 25296 and 25298 through 25299.6
- Section 7, page 24, Administrative Enforcement Orders, states “Underground Storage Tank Program (UST): H&SC, Chapter 6.7 (commencing with § 25280). Not including violations of corrective action requirements established by or issued pursuant to § 25296.10.”
 - The correct citations are as follows:
 - CCR, Chapter 16, Sections 2610 through 2717.7
 - HSC, Chapter 6.7, Sections 25280 through 25296 and 25298 through 25299.6

CITATION:

CCR, Title 23, Chapter 16, Section 2712(f).
[State Water Board]

RESOLUTION:

By the 1st Progress Report, the CUPA will revise the I&E Plan to address the inaccuracies with CCR, Chapter 16 and HSC, Chapter 6.7. The CUPA will provide CalEPA with the revised I&E Plan.

By the 2nd Progress Report, if amendments to the revised I&E Plan are necessary, based on feedback from the State Water Board the CUPA will provide the amended I&E Plan to CalEPA. If

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no amendments are necessary, the CUPA will train UST inspection staff on the revised I&E Plan. Once training is conducted, the CUPA will implement the revised I&E Plan. The CUPA will provide CalEPA with a statement that training has been conducted.

2. INCIDENTAL FINDING:

The established Unified Program administrative procedures have components that are inaccurate or missing.

The CUPA has not established all Unified Program administrative procedures.

The following administrative procedure has a component that is inaccurate:

- Information collection, Retention, and Management
 - The procedure identifies a retention time of three years for all records related to hazardous waste enforcement actions from the date the enforcement action is resolved.
 - These records are required to be retained for a period of five years.

The following administrative procedures have components that are missing:

- Information collection, Retention, and Management
 - The procedure does not identify the following documents are being maintained for a minimum of five years:
 - Copies of Self Audits
 - Surcharge billing and collection records following closure of any billing period, or until completion of any audit process, whichever is longer.
 - Training records required by section 15260 of this chapter and any other required training records specific to each program element.
- Public participation procedures that ensure receipt and consideration of comments from regulated businesses and the public
 - The procedure includes a discussion on public hearings and public notices but does not include receipt and consideration of comments.
- Permitting
 - The CUPA shall provide for a single point of local contact for permit applicants.
 - The permitting procedure does not provide regulated businesses a single point of local contact for obtaining information on, the requirements for, and the application process for the Unified Program facility permit.
- Providing Hazardous Material Response Plan (HMRRP) Information to emergency response personnel and other appropriate government entities in accordance with HSC, Section 25504(c).
 - The document titled, "HMRRT information Access," does not include a procedure for providing emergency response personnel and other appropriate government entities access to CERS.

CITATION:

CCR, Title 27, Sections 15180(e), 15185, 15190
[CalEPA]

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RESOLUTION:

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

By the 2nd Progress Report, if amendments to the revised Unified Program administrative procedures are necessary based on feedback from CalEPA, the CUPA will provide CalEPA with the amended Unified Program administrative procedures. If no amendments are necessary, the CUPA will train CUPA personnel on the revised Unified Program administrative procedures. Once training is complete, the CUPA will implement the revised Unified Program administrative procedures. The CUPA will provide CalEPA with a statement that training has been conducted.

By the 3rd Progress Report, if amendments to the revised Unified Program administrative procedures were necessary, the CUPA will train CUPA personnel on the amended Unified Program administrative procedures. Once training is complete, the CUPA will implement the amended Unified Program administrative procedures. The CUPA will provide CalEPA with a statement that training has been conducted.

3. INCIDENTAL FINDING: RESOLVED DURING EVALUATION

The CUPA is not annually completing a Self-Audit Report.

The CUPA did not complete an annual Self-Audit Report for Fiscal Year (FY) 2020/2021.

CITATION:

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

RESOLUTION: COMPLETED

During the evaluation, the CUPA provided a Self-Audit Report for FY 2022/2023, which includes all required components and incorporates a date of completion to demonstrate the report was compiled by September 30th. This Incidental Finding is considered resolved.

4. INCIDENTAL FINDING: RESOLVED DURING EVALUATION

The CUPA is not submitting Quarterly Surcharge Transmittal Reports to CalEPA within 30 days after the end of each fiscal quarter (FQ) when state surcharge revenues are remitted.

- FY 2019/2020
 - 3rd FQ:
 - Due April 30, 2020, submitted May 27, 2020.
- FY 2021/2022
 - 1st FQ:
 - Due October 30, 2021, submitted February 3, 2022

CITATION:

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

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RESOLUTION: COMPLETED

Following receipt of the Quarterly Surcharge Transmittal Report for the 1st FQ of 2021/2022, each subsequent Quarterly Surcharge Transmittal Report has been provided to CalEPA within 30 days after the end of each FQ. The CUPA will continue to ensure that each Quarterly Surcharge Transmittal Report, along with any state surcharge remittance, is provided to CalEPA within 30 days after the end of each FQ. This Incidental Finding is considered resolved.

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 receipt.

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.

Review of CERS CME information finds the following PBR Onsite Hazardous Waste Treatment Notification submitted between July 1, 2020, and June 30, 2023, was not reviewed, processed, or authorized by the CUPA within 45 days of receipt:

- CERS ID 10425742
 - PBR notification submitted November 1, 2022, and marked as “Under Review” on November 6, 2023.

CITATION:

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

RESOLUTION: COMPLETED

During the evaluation, the CUPA reviewed and processed the PBR Onsite Hazardous Waste Treatment Notification for CERS ID 10425742 by marking it as “Not Applicable.” Subsequent submittals were marked as either “Not Applicable” or “Not Accepted.” This Incidental Finding is considered resolved.

6. INCIDENTAL FINDING: RESOLVED DURING EVALUATION

The CUPA is not consistently following up and documenting return to compliance (RTC) information in CERS for APSA tank facilities cited with violations.

Review of CERS CME information between July 1, 2018, and June 30, 2023, finds there is no documented RTC for the following APSA Program violations:

- FY 2022/2023
 - 21 of 83 (25%)

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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 obtained RTC for several APSA violations.

On January 24, 2024, review of CERS CME information between July 1, 2022, and June 30, 2023, finds there is no documented RTC for the following APSA Program violations:

- 12 of 77 (16%)

This Incidental Finding is considered resolved.

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OBSERVATIONS AND RECOMMENDATIONS

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

1. OBSERVATION:

The following is a summary of inspection and violation information for the HMBP and CalARP Programs based on review of facility files and CERS CME information between July 1, 2020, and June 30, 2023:

- HMBP Requirements:
 - July 1, 2020, through June 30, 2021
 - The CUPA conducted routine inspections at 118 facilities, of which 74 (63%) had no violations cited and 44 (37%) had at least one violation cited.
 - A total of 223 violations were cited, consisting of:
 - 5 (2%) Class I violations.
 - 65 (29%) Class II violations.
 - 153 (69%) Minor violations.
 - The CUPA has ensured RTC for 223 of 223 (100%) violations cited.
 - July 1, 2021, through June 30, 2022
 - The CUPA conducted routine inspections at 283 facilities, of which 169 (60%) had no violations cited and 114 (40%) had at least one violation cited.
 - A total of 185 violations were cited, consisting of:
 - 6 (3%) Class I violations.
 - 78 (42%) Class II violations.
 - 101 (55%) Minor violations.
 - The CUPA has ensured RTC for 182 of 185 (98%) violations cited.
 - July 1, 2022, through June 30, 2023
 - The CUPA conducted routine inspections at 242 facilities, of which 162 (67%) had no violations cited and 80 (33%) had at least one violation cited.
 - A total of 258 violations were cited, consisting of:
 - 0 (0%) Class I violations.
 - 64 (25%) Class II violations.
 - 194 (75%) Minor violations.
 - The CUPA has ensured RTC for 237 of 242 (92%) violations cited.
- CalARP Program:
 - July 1, 2020, through June 30, 2021
 - The CUPA conducted a routine inspection at 1 facility, which had at least one violation cited.
 - A total of 6 violations were cited, consisting of:
 - 1 (17%) Class I violation.
 - 1 (17%) Class II violation.
 - 4 (66%) Minor violations.
 - The CUPA has ensured RTC for 6 of 6 (100%) violations cited.

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- July 1, 2021, through June 30, 2022
 - The CUPA conducted routine inspections at 10 facilities, of which 4 (40%) had no violations cited and 6 (60%) had at least one violation cited.
 - A total of 28 violations were cited, consisting of:
 - 10 (36%) Class I violations.
 - 9 (32%) Class II violations.
 - 9 (32%) Minor violations.
 - The CUPA has ensured RTC for 28 of 28 (100%) violations cited.
- July 1, 2022, through June 30, 2023
 - The CUPA conducted routine inspections at 6 facilities, of which 2 (33%) had no violations cited and 4 (67%) had at least one violation cited.
 - A total of 6 violations were cited, consisting of:
 - 0 (0%) Class I violations.
 - 2 (33%) Class II violations.
 - 4 (67%) Minor violations.
 - The CUPA has ensured RTC for 4 of 6 (67%) violations cited.

RECOMMENDATION:

Maintain the three-year inspection frequency for all HMBP facilities and all CalARP facilities, as required by statute. Ensure complete and thorough inspections are conducted to identify all violations at facilities. Generate detailed inspection reports that include all factual basis and proper citations for each identified violation. Follow up with facilities that have not obtained RTC by the scheduled RTC date and apply enforcement per the I&E Plan when facilities do not obtain RTC.

2. OBSERVATION:

On December 13, 2023, HMBP oversight inspections were conducted at CERS ID 10030543 and CERS ID 10425769. The inspector was well prepared for the inspection and reviewed relevant information prior to arriving at the facility. The inspector established rapport with the facility operators, toured the entire site, verified inventory, and emergency response plan information and training on site, and effectively communicated technical information to the facility operators. During the inspection at CERS ID 10425769, the inspector verified site map information on site. The inspector identified and disclosed all violations during each inspection.

On December 14, 2023, a CalARP oversight inspection was conducted at CERS ID 10425706. The inspector was prepared for the inspection and reviewed relevant information prior to arriving at the facility. The inspector was knowledgeable, established rapport with the facility operators, requested and reviewed the most current RMP information, toured the entire site, and effectively communicated technical information to the facility operators.

RECOMMENDATION:

Continue to conduct thorough HMBP and CalARP inspections.

3. OBSERVATION:

The CUPA has webpages that contain multiple resources for the public and regulated community.

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Review of the Aboveground Storage Tank webpage at:

<https://www.maderacounty.com/government/community-economic-development-department/divisions/environmental-health-division/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act-apsa> contains the following information that may benefit from improvement:

- The discussion related to an “aboveground petroleum storage tank” should also include a tank in an underground area (TIUGA).
- The discussion related to facilities subject to APSA should also include:
 - a tank facility that is subject to the Federal Spill Prevention, Control, and Countermeasure (SPCC) rule and
 - a tank facility that has a storage capacity of less than 1,320 gallons of petroleum and has one or more TIUGAs.

Review of the APSA ‘Env. Health Documents and Forms’ webpage at:

<https://www.maderacounty.com/government/community-economic-development-department/divisions/environmental-health-division/env-health-documents-and-forms/-folder-127> contains the following information that may benefit from improvement:

- The August 2015, Tier II Qualified Facility SPCC Plan template is outdated. The current May 2021, template is available on the OSFM APSA webpage at: https://34c031f8-c9fd-4018-8c5a-4159cdf6b0d-cdn-endpoint.azureedge.net/-/media/osfm-website/what-we-do/pipeline-safety-and-hazardous-materials/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/calfire-osfm_tierii_spcc_plantemplate_05-2021-accessible.pdf?rev=0f2757843940483c88247338d4a5b31e.

Review of the HMBP ‘Env. Health Documents and Forms’ webpage at:

<https://www.maderacounty.com/government/community-economic-development-department/divisions/environmental-health-division/env-health-documents-and-forms/-folder-133> contains the following information that may benefit from improvement:

- The Consolidated Emergency Response Contingency Plan 2017 version has been superseded by the current 2023 version. The current template is available in CERS (<https://calepa.ca.gov/wp-content/uploads/sites/6/2022/03/Emergency-Response-Plan-corrected-6-27-22.pdf>), on the CERS Central – Business webpage at: <https://cers.calepa.ca.gov/businesses/>, and the CalEPA Unified Program Publications and Guidance webpage at: <https://calepa.ca.gov/cupa/publications/>.

Review of the Environmental Health Division webpage at:

<https://www.maderacounty.com/government/community-economic-development-department/divisions/environmental-health-division> contains the following information that may benefit from improvement:

- Under the Environmental Health Links – “Regulatory Agencies” or “Hazardous Materials/Waste Info” section, include the following link to the OSFM APSA webpage at: <https://osfm.fire.ca.gov/what-we-do/pipeline-safety-and-cupa/certified-unified-program-agency/aboveground-petroleum-storage-act>.

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RECOMMENDATION:

Update the webpages as indicated above.

4. OBSERVATION:

The I&E Plan contains information that is inaccurate and may benefit from improvement.

- Page 3: The reference to CCR, Title 24, Chapter 50, Sections 5001.5.1 - 501.5 for the fire code Hazardous Materials Management Plans (HMMP) and Hazardous Materials Inventory Statements (HMIS) is incorrect. The correct reference is CCR, Title 24, Part 9 (California Fire Code), Chapter 50, Sections 5001.5.1 and 5001.5.2 or California Fire Code, Chapter 50, Sections 5001.5.1 and 5001.5.2.
- Page 22: The notice to comply reference should also include the HSC, Ch. 6.11 citation.
- Appendix F: The 2006 version of the Violation Classification Guidance for Unified Program Agencies is outdated; a 2020 version is available.

RECOMMENDATION:

Update the I&E Plan as indicated above.

5. OBSERVATION:

The CERS reporting requirement is currently set as “APSA Applicable” for 208 APSA tank facilities. The CUPA’s data management system identifies 144 APSA tank facilities.

- 143 APSA tank facilities are identified in both CERS and the CUPA’s data management system.
- 65 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.
- 1 tank facility is identified as an APSA tank facility in the CUPA’s data management system and is not identified in CERS as an APSA tank facility.

Additionally, the CUPA regulates farms as conditionally exempt tank facilities.

RECOMMENDATION:

Determine if each facility identified as “APSA Applicable” in CERS and not identified as an APSA tank facility in the CUPA’s data management system should be regulated under APSA.

Determine if each facility identified as an APSA tank facility in the CUPA’s data management system and not identified as “APSA Applicable” in CERS should be regulated under APSA.

Complete the reconciliation of the APSA Program information in the CUPA’s data management system with CERS to ensure all APSA tank facilities are consistently identified in the CUPA’s data management system and in CERS.

- If a facility is not subject to being regulated under APSA, the APSA reporting requirement should be set to “APSA Not Applicable” in CERS and the facility should not be identified as an APSA tank facility in the CUPA’s data management system.

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- If a facility is subject to being regulated under APSA, the APSA reporting requirement should be set to “APSA Applicable” in CERS and the facility should be identified as an APSA tank facility in the CUPA’s data management system.
 - Farms that are no longer regulated under APSA due to Senate Bill 612 and the Federal Water Resources Reform and Development Act (WRRDA) oil applicability thresholds should be identified in CERS as “APSA Not Applicable”.
-

6. OBSERVATION:

Some APSA tank facilities submitted an HMBP in lieu of a tank facility statement using an outdated consolidated emergency response and training plans template, which contains obsolete information.

RECOMMENDATION:

Encourage each APSA tank facility to use the current 2023 version of the consolidated emergency response and training plans template as part of the HMBP submittal, when providing an HMBP in lieu of a tank facility statement.

7. OBSERVATION:

The area plan contains information that may benefit from improvement:

- Part 1 – Basic Plan, Page 10: The list of Unified Program elements is missing the fire code HMMP/HMIS Program, which is consolidated with the HMBP requirements to streamline the regulatory requirements for regulated facilities.
- Appendix R-2, Page 89: Remove the Monrovia reference in the 24/7 State Fire Marshal duty chief line (916-323-7390).

RECOMMENDATION:

With the next review, revise the area plan as indicated above.

8. OBSERVATION:

The information below is a summary of the overall implementation of the HWG Program and the CUPA’s hazardous waste related activities based on review of policies and procedures, CERS CME information, facility file information, information provided by the CUPA and Self-Audit Reports between July 1, 2020, and June 30, 2023:

- CERS reflects 311 regulated HWG facilities, including 10 Resource Conservation and Recovery Act (RCRA) Large Quantity Generators (LQGs), and 1 Household Hazardous Waste (HHW) facility within the jurisdiction of the CUPA.
- The 4-year inspection frequency for Small Quantity Generator (SQG) and Conditionally Exempt Small Quantity Generator (CESQG) facilities, and the 3-year inspection frequency for all other HWG Program facilities is currently being met.
- The CUPA conducted 309 inspections, including 291 “Routine” and 18 “Other” inspection types.
 - 116 of 291 (40%) “Routine” inspections had no violations cited.
 - 175 of 291 (60%) “Routine” inspections had at least one violation cited.
 - 519 total violations were cited, consisting of:

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- 27 (5%) Class I violations
- 108 (21%) Class II violations
- 384 (74%) minor violations
- The CUPA has ensured RTC for 448 of 519 (86%) violations cited.
- Inspection reports contain detailed comments that note the factual basis of cited violations.
- Violation observations and corrective action language are generally included in inspection reports and are being entered in CERS.

RECOMMENDATION:

Continue with the current HWG inspection frequency and applied enforcement efforts in addition to generating quality inspection reports with detailed comments for describing the factual basis for cited violations. Continue to ensure that detailed factual basis of each violation is included in inspection reports and in CERS, to support any enforcement efforts.

Follow-up with facilities that have not obtained RTC by the scheduled TRC date and apply enforcement, per the I&E Plan. Ensure CUPA personnel continually complete and maintain current HWG training. DTSC may be contacted to provide CUPA personnel with training opportunities.
