

August 14, 2024

Mr. Ryan Rucker  
Deputy Chief/Fire Marshal  
Livermore/Pleasanton Fire Department  
3650 Nevada Street  
Pleasanton, California 94566-6267

Dear Mr. Rucker:

During June 2023, through May 2024, CalEPA and the Unified Program state agencies conducted a performance evaluation of the Livermore/Pleasanton Fire Department 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, Kaeleigh Pontif, via email at [Kaeleigh.Pontif@calepa.ca.gov](mailto:Kaeleigh.Pontif@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](mailto: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](mailto:Melinda.Blum@calepa.ca.gov).

Sincerely,



Jason Boetzer  
Deputy Secretary  
Local Program Coordination and Emergency Response

Enclosure

cc sent via email:

Ms. Kim Colantuono  
Acting Assistant Fire Marshal  
Livermore/Pleasanton Fire Department  
3650 Nevada Street  
Pleasanton, California 94566-6267

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

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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. Michelle Suh  
Environmental Scientist  
State Water Resources Control Board

Mr. Brennan Ko-Madden  
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. Kaeleigh Pontif  
Environmental Scientist  
California Environmental Protection Agency

## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

**CUPA:** Livermore/Pleasanton Fire Department

**Evaluation Period:** June 2023 through May 2024

**Evaluation Team Members:**

- **CalEPA Team Lead:** Kaeleigh Pontif
- **CalEPA:** Garrett Chan
- **DTSC:** Brennan Ko-Madden
- **State Water Board:** Kaitlin Cottrell
- **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:

**Kaeleigh Pontif**  
CalEPA Unified Program  
Phone: (916) 803-0623  
E-mail: [Kaeleigh.pontif@calepa.ca.gov](mailto:Kaeleigh.pontif@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 [Kaeleigh.pontif@calepa.ca.gov](mailto:Kaeleigh.pontif@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 the Final Summary of Findings Report, and any applicable supporting documentation must be included with each Evaluation Progress Report.

The submittal date for the 1<sup>st</sup> Evaluation Progress Report is **November 20, 2024**.

# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL SUMMARY OF FINDINGS REPORT

### ACCOMPLISHMENTS, EXAMPLES OF OUTSTANDING IMPLEMENTATION, AND CHALLENGES

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.

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#### 1. ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM:

The CUPA has met 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.

The CUPA ensured APSA tank facilities annually submitted a tank facility statement or a Hazardous Materials Business Plan (HMBP), when an HMBP was provided in lieu of a tank facility statement, to the California Environmental Reporting System (CERS).

The CUPA successfully enforced requirements of the APSA Program and obtained a high rate of return to compliance (RTC) for APSA tank facilities cited with violations.

These efforts are above and beyond the standard implementation expectations of the APSA Program during the statewide restrictions and challenges resulting from the coronavirus (COVID-19).

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#### 2. 2019 CUPA PERFORMANCE EVALUATION DEFICIENCY CORRECTED:

In conducting the assessment for the 2023 CUPA Performance Evaluation, the following Deficiency previously identified as closed but not corrected upon closure of the 2019 CUPA Performance Evaluation, is now considered corrected and no longer requires further action:

*The CUPA is not consistently citing violations for failure to conduct overfill prevention equipment inspections as required by California Code of Regulations (CCR), Title 23, Division 3, Chapter 16, Sections 2637.2(a)(1)(A) and 2665(b).*

A significant delay in the issuance of the 2019 Final Summary of Findings report, issued February 9, 2023, resulted in sufficient time for submittal and review of only two Evaluation Progress Reports prior to the onset of the 2023 CUPA Performance Evaluation. During the Evaluation Progress Report process, the CUPA revised the I&E Plan to ensure incorporation of a procedure for CUPA personnel to consistently and correctly cite and report all violations identified during the annual compliance inspection in CERS, and trained CUPA personnel on the procedure.

Upon conclusion of the Evaluation Progress Report process, the Deficiency was considered closed but not corrected due to the insufficient time available for the CUPA to conduct annual UST compliance inspections and provide Overfill Prevention Inspection Reports after CUPA personnel were trained on the I&E Plan procedure.

Review of Overfill Prevention equipment inspection reporting finds, the CUPA is consistently citing Overfill Prevention Equipment inspection violations, including failure to conduct testing. This Deficiency is considered corrected.

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**3. 2019 CUPA PERFORMANCE EVALUATION INCIDENTAL FINDING RESOLVED:**

In conducting the assessment for the 2023 CUPA Performance Evaluation, the following Incidental Finding previously identified as not resolved upon closure of the 2019 CUPA Performance Evaluation is now considered resolved and no longer requires further action:

*Unified Program administrative procedures for forwarding Hazardous Materials Release Response Plan (HMRRP) information to emergency responders had not been established nor implemented.*

A significant delay in the issuance of the 2019 Final Summary of Findings report, issued February 9, 2023, resulted in sufficient time for submittal and review of only two Evaluation Progress Reports prior to the onset of the 2023 CUPA Performance Evaluation. During the Evaluation Progress Report process, the CUPA confirmed all emergency response personnel are trained in the use of CERS and are proficient in obtaining information from CERS, including but not limited to the HMRRP. However, a written administrative procedure was not established for forwarding HMRRP information to emergency response personnel and other appropriate government entities.

Review of Unified Program administrative procedures finds the CUPA has established and implemented a procedure for forwarding Hazardous Materials Release Response Plan (HMRRP) information to emergency responders. This Incidental Finding is considered resolved.

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**4. AGENCY COORDINATION:**

Livermore/Pleasanton Fire Department CUPA participates in the Alameda County Environmental Task Force, which is led by the District Attorney's Office, with the goal of promoting consistency in enforcement throughout the County.

The CUPA coordinates inspection activities with other relevant agencies via the monthly County Hazardous Materials Code Enforcement Officers Section meetings, the County Enforcement Task Force, and a variety of other government agencies including U.S. Environmental Protection Agency (U.S. EPA), the Department of Toxic Substances Control (DTSC), the California Highway Patrol (CHP), Publicly Owned Treatment Works (POTWs), Bay Area Air Quality Management District (BAAQMD), and more.

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**5. HAZARDOUS WASTE GENERATOR (HWG) PROGRAM AND TIERED PERMIT (TP) COMPONENT OF THE HWG PROGRAM:**

The CUPA has ensured over 90% of identified HWG facilities within the jurisdiction of the CUPA were inspected between October 1, 2020, and September 30, 2023. The inspection frequency established in the Inspection and Enforcement (I&E) Plan for HWG facilities is every four years. However, the CUPA strives to meet an internal goal to inspect all HWG facilities every three years and each TP facility every two years. As observed during the 2023 CUPA Performance Evaluation, in some instances, HWG facilities (excluding TP facilities), were inspected more frequently than the four-year inspection frequency established in the I&E Plan.

During the HWG Program oversight inspections conducted on May 15, 2024, and May 16, 2024, each CUPA inspector demonstrated outstanding knowledge and expertise. Both inspections were conducted thoroughly and with a process-based approach. Both inspectors were highly proficient in their understanding of the HWG Program, demonstrated excellent reasoning skills, and were

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able to provide helpful guidance to the facilities when asked questions on complex regulatory matters.

These efforts are above and beyond the standard implementation expectations of the HWG Program during the statewide restrictions and challenges resulting from the Coronavirus (COVID-19).

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# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

## UNIFIED PROGRAM PERFORMANCE EVALUATION FINAL 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.

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#### 1. DEFICIENCY:

The 2023 area plan is missing required elements.

Review of the 2023 area plan finds the following required elements are missing:

- Pre-emergency Planning
  - Provisions for pre-incident surveys of business sites by first responders for the purpose of site familiarization, if deemed necessary by the administering agency, as required by [CCR, Title 19, Section 5020.3\(b\)](#).
- Notification and Coordination
  - Provisions for notification to the California Governor's Office of Emergency Services of all reports received pursuant CCR, Title 19, Chapter 1, Article 2, as required by [CCR, Title 19, Section 5020.4](#).
- Provisions for training of emergency response personnel in the following areas:
  - Monitoring and decontamination procedures for emergency response personnel and equipment, as required by [CCR, Title 19, Section 5020.5\(a\)\(7\)](#).
  - Emergency procedures for first response to a release or threatened release of hazardous materials, to include pesticide drift exposure incidents, as required by [CCR, Title 19, Section 5020.5\(a\)\(1\)](#) and [5020.1\(c\)](#).
  - Health and safety procedures for response personnel, as required by [CCR, Title 19, Section 5020.5\(a\)\(2\)](#).
  - Use of emergency response equipment and supplies, as required by [CCR, Title 19, Section 5020.5\(a\)\(3\)](#).
  - Procedures for access to mutual-aid resources, as required by [CCR, Title 19, Section 5020.5\(a\)\(4\)](#).
  - Identification of medical facilities capable of providing treatment appropriate for hazardous material incidents, to include pesticide drift exposure incidents, as required by [CCR, Title 19, Section 5020.5\(a\)\(5\)](#).
  - Evacuation plans and procedures, as required by [CCR, Title 19, Section 5020.5\(a\)\(6\)](#).
  - Monitoring and decontamination procedures for emergency response personnel and equipment, as required by [CCR, Title 19, Section 5020.5\(a\)\(7\)](#).
  - First-aid procedures for hazardous material incidents, including pesticide exposure, as required by [CCR, Title 19, Section 5020.5\(a\)\(8\)](#).
  - Procedures for informing the public during emergencies, as required by [CCR, Title 19, Section 5020.5\(a\)\(9\)](#).
  - Psychological stress that may be encountered during disaster operations, as required by [CCR, Title 19, Section 5020.5\(a\)\(10\)](#).



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- Provisions for documenting personnel training.
  - Provisions for joint field or table-top exercises, with affected organizations, with voluntary participation of business representatives, as required by [CCR, Title 19, Section 5020.5\(b\)\(2\)](#).
- Public Safety and Information
  - Provisions for informing business personnel and the affected public of safety procedures to follow during a release or threatened release of a hazardous material, as required by [CCR, Title 19, Section 5020.6\(b\)](#).
  - Procedures, developed in consultation with the County Agricultural Commissioner, to notify residents of a pesticide drift exposure incident and a procedure to assist in the coordination of an evacuation, if deemed necessary by emergency response personnel, as required by [CCR, Title 19, Section 5020.6\(c\)](#).
  - Procedures to identify all languages known to be spoken in the administering agency's county or city, as the case may be, and ensure that any individual is able to access services in their native language as required by Section 11135 of the Government Code. The area plan will outline what these services are and how they will be provided in the languages identified, as required by [CCR, Title 19, Section 5020.6\(d\)](#).
  - Provisions for informing medical and health facilities of the nature of the incident and the substance(s) involved in an incident, as required by [CCR, Title 19, Section 5020.6\(f\)](#).
  - Provisions for evacuation plans that provide for:
    - properties of hazardous materials, such as quantity, concentration, vapor pressure, density, and potential health effects, as required by [CCR, Title 19, Section 5020.6\(g\)\(4\)](#).
    - possible release scenarios, as required by [CCR, Title 19, Section 5020.6\(g\)\(5\)](#).
    - facility characteristics, topography, meteorology, and demography of potentially affected areas, as required by [CCR, Title 19, Section 5020.6\(g\)\(6\)](#).
    - ingress and egress routes and alternatives, as required by [CCR, Title 19, Section 5020.6\(g\)\(7\)](#).
    - location of medical resources trained and equipped for hazardous material response, as required by [CCR, Title 19, Section 5020.6\(g\)\(8\)](#).
    - mass-care facilities, reception areas, and sheltering as required by [CCR, Title 19, Section 5020.6\(g\)\(9\)](#).
    - procedures for post-emergency period population recovery, as required by [CCR, Title 19, Section 5020.6\(g\)\(10\)](#).
- Incident critique and follow up
  - provisions to include an interagency meeting to evaluate the response, to improve future response, and to determine if any area plan revisions are required, as required by [CCR, Title 19, Section 5020.8](#).

Note: This Deficiency was identified in the 2019 CUPA Performance Evaluation and though the CUPA provided an updated area plan during the Evaluation Progress Report process that adequately addressed equipment maintenance and testing protocols, an inventory sheet of all required equipment for the unit was not provided. Review of the area plan provided for the 2023 CUPA Performance Evaluation finds all missing, incomplete, and inaccurate elements identified

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in the Final Summary of Findings for the 2019 CUPA Performance Evaluation have been addressed.

**CITATION:**

HSC, Chapter 6.95, Section 25503(c)  
CCR, Title 19, Article 2, Sections 5020.1 through 5020.8  
[CalEPA]

**CORRECTIVE ACTION:**

By the 2<sup>nd</sup> Progress Report, the CUPA will provide CalEPA with the revised area plan that includes all required elements.

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**2. DEFICIENCY:**

The “Fire Code and Unified Program Consolidated Permit and Registration,” issued as the Unified Program Facility Permit (UPFP) and the “Fire Code and Unified Program Consolidated Permit and Registration Terms and Conditions” are inconsistent with HSC, Chapter 6.7, CCR, Chapter 16, and CCR, Title 27.

Review of the “Fire Code and Unified Program Consolidated Permit and Registration” finds:

- The following component is missing:
  - An addendum used to document permit conditions for each applicable element of the Unified Program.
- The following components are incomplete:
  - The agency responsible for issuing the “Consolidated Permit”
    - The CUPA’s logo is present, however, the issuing agency is not sufficiently identified.
  - The permitted facility by business name and address.
    - The name and address of the facility are only partially identified.
    - The CERS ID is missing.
  - The permit expiration date.
    - The expiration date is only included on the UST portion of the permit.

Review of the “Fire Code and Unified Program Consolidated Permit and Registration Terms and Conditions” finds the following:

- Special Conditions states, “This permit is effective until...ownership changes.”
  - This is more stringent than CCR, Chapter 16, Section 2712(d) and HSC, Section 25284(b), which allow for the transfer of permits.
- General Permit condition 2 states, “Permit/Registration may or may not be transferable...”
  - This is more stringent than CCR, Chapter 16, Section 2712(d) and HSC, Section 25284(b), which allow for the transfer of permits.
- General Permit condition 5 states, “Permits which violate the Fire Code or any applicable law or regulation shall be void and approvals of plans and specifications in the issuance of the permit shall also be void.”
  - Issuance and revocation of permitted Unified Program elements must not be dependent upon provisions of the California Fire Code.
- General Permit condition 6 states, “The permit can be suspended...”

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- The CUPA does not have authority to suspend a UST Operating permit, per HSC, Section 25285.1.

Note: The UST Permit and UST permit conditions do include the CERS ID for the facility and the expiration date.

**CITATION:**

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

HSC, Chapter 6.11, Section 25404.2(a)(2)

CCR, Chapter 16, Section 2712(d)

CCR, Title 27, Section 15190(h)(5)

[CalEPA, State Water Board]

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will revise the “Fire Code and Unified Program Consolidated Permit and Registration,” and the “Fire Code and Unified Program Consolidated Permit and Registration Terms and Conditions” template, to be consistent with HSC, Chapter 6.7, CCR, Chapter 16, and CCR, Title 27. The CUPA will contact CalEPA and/or the State Water Board for assistance with revising the “Fire Code and Unified Program Consolidated Permit and Registration,” and the “Fire Code and Unified Program Consolidated Permit and Registration Terms and Conditions” template, if necessary. The CUPA will provide the revised “Fire Code and Unified Program Consolidated Permit and Registration,” and the “Fire Code and Unified Program Consolidated Permit and Registration Terms and Conditions” template to CalEPA.

By the 2<sup>nd</sup> Progress Report, the CUPA will, if necessary, amend the revised “Fire Code and Unified Program Consolidated Permit and Registration,” and the “Fire Code and Unified Program Consolidated Permit and Registration Terms and Conditions” template, based on feedback from CalEPA and/or the State Water Board. The CUPA will contact CalEPA and/or the State Water Board for assistance with revising the “Fire Code and Unified Program Consolidated Permit and Registration,” and the “Fire Code and Unified Program Consolidated Permit and Registration Terms and Conditions” template, if necessary. The CUPA will provide the amended “Fire Code and Unified Program Consolidated Permit and Registration,” and the “Fire Code and Unified Program Consolidated Permit and Registration Terms and Conditions” template to CalEPA. If no amendments are necessary, the CUPA will begin to issue the revised “Fire Code and Unified Program Consolidated Permit and Registration,” and the “Fire Code and Unified Program Consolidated Permit and Registration Terms and Conditions” template. The CUPA will provide CalEPA with the “Fire Code and Unified Program Consolidated Permit and Registration,” and the “Fire Code and Unified Program Consolidated Permit and Registration Terms and Conditions” issued to five UST facilities using the revised “Fire Code and Unified Program Consolidated Permit and Registration,” and the “Fire Code and Unified Program Consolidated Permit and Registration Terms and Conditions” template.

By the 3<sup>rd</sup> Progress Report, if amendments to the revised “Fire Code and Unified Program Consolidated Permit and Registration,” and the “Fire Code and Unified Program Consolidated Permit and Registration Terms and Conditions” template were necessary, the CUPA will begin to issue the amended “Fire Code and Unified Program Consolidated Permit and Registration,” and the “Fire Code and Unified Program Consolidated Permit and Registration Terms and Conditions” template. The CUPA will provide CalEPA with the “Fire Code and Unified Program Consolidated Permit and Registration,” and the “Fire Code and Unified Program Consolidated Permit and Registration Terms and Conditions” template.

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Registration Terms and Conditions” issued to a UST facility using the amended “Fire Code and Unified Program Consolidated Permit and Registration,” and the “Fire Code and Unified Program Consolidated Permit and Registration Terms and Conditions” template.

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**3. DEFICIENCY:**

The CUPA is not ensuring all businesses subject to Business Plan reporting requirements annually submit an HMBP or a no-change certification to CERS.

Review of HMBPs submitted to CERS between October 4, 2022, and December 4, 2023, by businesses subject to Business Plan reporting requirements finds:

- 172 of 796 (22%) Business Plan facilities have not submitted a chemical inventory (including site map) or a no-change certification.
- 182 of 795 (23%) Business Plan facilities have not submitted emergency response and employee training plans or a no-change certification.

Note: This Deficiency was identified in the 2019 CUPA Performance Evaluation and though the CUPA implemented procedures to actively assist new facility personnel with the HMBP submittal process and CERS, as well as identify Business Plan facilities that have not annually submitted an HMBP, send non-compliance correspondence to those facilities, and apply enforcement when facilities do not provide an annual submittal, the Deficiency was not corrected during the Evaluation Progress Report process. As of August 29, 2023, a significant number of Business Plan facilities had not annually submitted a chemical inventory, emergency response and employee training plans, or a no-change certification.

**CITATION:**

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

**CORRECTIVE ACTION:**

By the 1<sup>st</sup> 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 how the CUPA will follow up with facilities that have not annually submitted an HMBP or a no change certification to CERS.

By the 2<sup>nd</sup> 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 annually submitted an HMBP or a no-change certification to CERS:

- Facility name;
- CERS ID;

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- 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 business 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 on December 4, 2023, between October 1, 2020, and September 30, 2023, finds:

- 223 of 796 (28%) facilities subject to HMBP requirements were not inspected within the last three years.

Note: This Deficiency was identified in the 2019 CUPA Performance Evaluation and though the CUPA reestablished an inspection schedule in accordance with the I&E Plan, the Deficiency was not corrected during the Evaluation Progress Report process. As of June 30, 2023, 247 of 787 (31%) Business Plan facilities had not been inspected within the last three years. Additionally, it was determined that inspection information is only reflected under one CERS ID, however, many facilities inspected have multiple CERS IDs, resulting in many CERS IDs reflecting no inspections.

**CITATION:**

HSC, Chapter 6.95, Sections 25503(e) and 25511(b)  
[CalEPA]

**CORRECTIVE ACTION:**

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

- An analysis and explanation as to why the inspection frequency is not being met. Factors to consider include existing inspection staff resources and the number of facilities scheduled to be inspected each year, response to declared emergencies such as wildfire response and recovery efforts and impacts of COVID-19.
- A sortable spreadsheet exported from the CUPA's data management system or CERS, identifying each facility subject to HMBP 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

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- A schedule to inspect each facility subject to HMBP 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 requirements will be inspected at least once every three years.

By the 2<sup>nd</sup> 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 all facilities subject to HMBP requirements will be inspected at least once every three years.

By the 5<sup>th</sup> Progress Report, the CUPA will have inspected each facility identified in the sortable spreadsheet at least once in the last three years.

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**5. DEFICIENCY: CORRECTED DURING EVALUATION**

The CUPA is not consistently following up and documenting RTC information in CERS for Hazardous Waste Generator (HWG) Program facilities cited with violations.

Review of CERS CME information and information from the CUPA's data management system between October 1, 2020, and September 30, 2023, finds there is no documented RTC for the following HWG Program violations:

- 65 of 356 (18%), consisting of:
  - 27 of 140 (19%) Class II violations have no RTC
  - 38 of 216 (18%) Minor violations have no RTC
    - 107 of 216 (50%) Minor violations did not obtain RTC within 35 days
  - No Class I violations were cited

Note: This Deficiency was identified in the 2019 CUPA Performance Evaluation and was corrected during the Evaluation Progress Report process.

**CITATION:**

Health and Safety Code (HSC), Chapter 6.5, Sections 25110.8.5, 25117.6, and 25187.8(b) and (g) California Code of Regulations (CCR), Title 27, Sections 15185(a) and (c) and 15200(a) and (e) [DTSC]

**CORRECTIVE ACTION: COMPLETED**

At the time of the Exit Briefing, 334 of 363 (92%) of violations had obtained RTC. As of 6/24/24, CERS showed 363 total violations had obtained RTC. The increase may be due to new CME information being entered into CERS. This Deficiency is considered corrected.

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## CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

#### 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.

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#### 1. INCIDENTAL FINDING:

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

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

- Inspection Frequency
  - Page 2, the “Inspection Frequency Chart,” does not identify Household Hazardous Waste Collection Facilities (HHWCF) as a type of HWG facility inspected by the CUPA, nor does it establish an inspection frequency for HHWCFs.
    - CERS reflects at least one facility is reporting as an HHWCF (CERS ID 10169865).
    - Recent inspections in CERS at CERS ID 10469008 reflect the facility is not reporting to CERS as an HHWCF.
- Provisions for ensuring the CUPA has sampling capability
  - Page 8, the existing procedure does not include a description of sampling training, equipment, and methods to preserve physical evidence obtained through sampling, or procedures when sampling is required and when a qualified person or entity is contracted to sample on behalf of the CUPA.
- Hazardous Waste Penalty information
  - Page 11 states, “Penalty amounts are found in the applicable program element statutes. Penalties shall be consistent with state statutes...” This does not sufficiently identify the penalties and statutory maximums for the hazardous waste program. Hazardous waste penalty regulations are found in CCR, Title 22, Sections 66272.60 through 66272.69 and the statutory maximum is found in HSC, Chapter 6.5, Sections 25188 and 25189.

Review of the I&E Plan finds the following component is inaccurate:

- Inspection Frequency
  - Page 3 states, “New facilities with tiered permitting will be inspected within two years of **site authorization**”. The correct inspection frequency for new tiered permit facilities is “...within two years of **notification**.”

Note: This Incidental Finding was identified in the 2019 CUPA Performance Evaluation and was partially resolved upon closure of the 2019 CUPA Performance Evaluation with revision of the I&E Plan to include:

- provisions for ensuring sampling capability and analysis will be performed by a state certified laboratory, and
- accurate reference to HSC and CCR for UST operating permit issuance and renewal.

In conducting the assessment for the 2023 CUPA Performance Evaluation, review of the I&E Plan provided finds the complaint procedures are complete.

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**CITATION:**

HSC, Section 25201.4(b)  
CCR, Title 27, Section 15200(a)  
[CalEPA, DTSC]

**RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will revise the I&E Plan to adequately incorporate and correctly address all required components, including the date of revision. The CUPA will provide the revised I&E Plan to CalEPA.

By the 2<sup>nd</sup> Progress Report, if amendments to the revised I&E Plan are necessary based on feedback from CalEPA and/or DTSC, the CUPA will provide the amended I&E Plan to CalEPA. If no amendments are necessary, the CUPA will train CUPA personnel on the revised I&E Plan. Once training is complete, the CUPA will implement the revised I&E Plan. The CUPA will provide CalEPA with a statement that training has been conducted.

By the 3<sup>rd</sup> Progress Report, if amendments to the revised I&E Plan were necessary, the CUPA will train CUPA personnel on the amended I&E Plan. Once training is complete, the CUPA will implement the amended I&E Plan. The CUPA will provide CalEPA with a statement that training has been conducted.

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**2. INCIDENTAL FINDING:**

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 6 of 6 (100%) PBR Onsite Hazardous Waste Treatment Notifications submitted between October 1, 2020, and September 30, 2023, were not reviewed, processed, or authorized by the CUPA within 45 days of receipt. Examples include:

- CERS ID 10421788
  - PBR notification submitted on February 23, 2021, and Accepted on May 14, 2021 (78 days)
  - PBR notification submitted on February 23, 2022, and Accepted on April 29, 2022 (65 days)
  - PBR notification submitted on February 28, 2023, and Accepted on May 18, 2023 (79 days)
- CERS ID 10135531
  - PBR notification submitted on March 1, 2021, and Accepted on April 27, 2021 (57 days)
  - PBR notification submitted on February 24, 2022, and Accepted on May 2, 2022 (67 days)



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- PBR notification submitted on February 23, 2023, and Accepted on April 28, 2023 (84 days)

Note: The examples provided above may not represent all instances of this incidental finding and exclude instances when a facility submitted multiple PBR submittals within 45 days of one another and at least one was reviewed, processed, or authorized by the CUPA.

Note: This Incidental Finding was identified in the 2019 CUPA Performance Evaluation and was resolved during the Evaluation Progress Report process.

**CITATION:**

CCR Title 22, Sections 67450.2(b)(4) and 67450.3(c)(1) and (d)  
HSC, Chapter 6.5, Section 25200.3(e)(3) and 25201.5(d)(7)  
[DTSC]

**RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will provide inspection staff with training on the Tiered Permit (TP) component of the HWG Program and the procedures within the I&E Plan regarding how to accurately review, process and authorize Onsite Hazardous Waste Treatment Notifications within the 45-day review process by either:

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

The CUPA will provide CalEPA with a statement that training has been conducted.

Note: TP training videos are available on the California CUPA Forum Board website at: <https://www.youtube.com/user/orangetreeweb/videos>. Additional TP training assistance may also be requested from Brennan Ko-Madden, at [Brennan.Ko-Madden@dtsc.ca.gov](mailto:Brennan.Ko-Madden@dtsc.ca.gov).

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**3. INCIDENTAL FINDING:**

The CUPA is not submitting the Annual Single Fee Summary Report to CalEPA by September 30<sup>th</sup> of each FY.

- FY 2020/2021: submitted on October 18, 2021
- FY 2021/2022: submitted on November 2, 2022

Note: The Annual Single Fee Summary Report was submitted on time for FY 2022/2023.

**CITATION:**

CCR, Title 27, Section 15290  
[CalEPA]

**RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will provide CalEPA with the completed Annual Single Fee Summary Report for FY 2023/2024.

The CUPA will complete an Annual Single Fee Summary Report by September 30<sup>th</sup> for each subsequent FY.

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**4. INCIDENTAL FINDING:**

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.

The following Quarterly Surcharge Transmittal Reports were not received by the due date:

- Livermore
  - FY 2020/2021
    - 3<sup>rd</sup> FQ: Due April 30, 2021; submitted May 27, 2021
  - FY 2021/2022
    - 4<sup>th</sup> FQ: Due July 31, 2022; submitted October 18, 2022
- Pleasanton:
  - FY 2021/2022
    - 4<sup>th</sup> FQ: Due July 31, 2022; submitted October 27, 2022

**CITATION:**

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

**RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will have provided the 4<sup>th</sup> Quarterly Surcharge Transmittal Report for FY 2023/2024 by July 30, 2024, using the current Quarterly Surcharge Transmittal Report template, along with any state surcharge remittance, to the California Air Resources Board (CARB) via mail at:

Air Resources Board  
Attn: Accounting  
P.O. Box 1436  
Sacramento, CA 95812

The CUPA will also ensure an electronic copy of the 4<sup>th</sup> Quarterly Surcharge Transmittal Report for FY 2023/2024 is provided to CalEPA via email at [cupa@calepa.ca.gov](mailto:cupa@calepa.ca.gov), by July 30, 2024, using the current Quarterly Surcharge Transmittal Report template.

Thereafter, no later than 30 days after the end of each FQ, the CUPA will ensure each Quarterly Surcharge Transmittal Report, and any state surcharge remittance are provided to CARB via mail, and each Quarterly Surcharge Transmittal Report is provided to CalEPA via email.

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**5. INCIDENTAL FINDING:**

The CUPA is not consistently citing nor requiring the correction of construction violations identified in State Water Board Local Guidance (LG) Letter 150, dated February 2021, at existing used oil UST systems.

Review of the CERS Facility/Tank Data Download information finds the following USTs have single-walled vent or tank risers, and do not meet the secondary containment exemption requirements of CCR, Chapter 16, Section 2636(a) for vent and riser pipe to have overflow

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prevention equipment meeting the requirements specified in CCR, Chapter 16, Section 2635(c)(1)(B) or (C):

- CERS UST Tank ID 10586227-003
- CERS ID UST Tank IDs 10133833-004 and -005
- CERS UST Tank ID 10135096-001

Note: The following may be referenced:

- State Water Board CUPA Evaluation Guidance Documents, Single-Walled Vent or Riser Piping (<https://www.waterboards.ca.gov/ust/single-walled-vent-riser.html>)
- State Water Board LG 150-3 "Underground Storage Tank Overfill Prevention Equipment" ([https://www.waterboards.ca.gov/water\\_issues/programs/ust/leak\\_prevention/lgs/docs/150-3.pdf](https://www.waterboards.ca.gov/water_issues/programs/ust/leak_prevention/lgs/docs/150-3.pdf))

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

**CITATION:**

CCR, Chapter 16, Section 2631(a), 2636(a) and 2635(c)(1)  
[State Water Board]

**RESOLUTION:**

The CUPA must ensure UST systems are properly constructed and meet the secondary containment requirements of CCR, Chapter 16, Section 2636(a).

By the 1<sup>st</sup> Progress Report, the CUPA will identify and provide CalEPA with a list of UST facilities (including the CERS ID and CERS UST Tank ID) which are incorrectly utilizing the overfill prevention equipment exemption.

By the 1<sup>st</sup> Progress Report, the CUPA will provide written correspondence addressed to the UST facility owner(s)/operator(s) to inform the UST owner(s)/operator(s) of the requirement for installation of overfill prevention equipment, or to construct secondary containment for single-walled vent and tank risers. The written correspondence will include language stating that failure to comply with overfill prevention equipment requirements specified in CCR, Chapter 16, Section 2635(c)(1)(B) or (C), or secondary containment exemptions in CCR, Chapter 16, Section 2636(a) will lead to enforcement. The CUPA will include the State Water Board as a carbon copy recipient on the correspondence.

By the 2<sup>nd</sup> Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with an updated list, indicating the status of each UST obtaining compliance. If appropriate steps have not been taken by the UST owner(s)/operator(s) to remedy the construction violations, the CUPA will apply enforcement. The CUPA will provide CalEPA with documentation of the applied enforcement.

By the 3<sup>rd</sup> Progress Report, if appropriate steps have not been taken by the UST owner(s)/operator(s) to remedy the construction violations, the CUPA will apply enforcement, including but not limited to revocation of the UST operating permit portion of the "Fire Code and Unified Program Consolidated Permit and Registration," and issuance of red tags, which prohibit

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the deposit and withdrawal of hazardous substances. The CUPA will provide CalEPA with documentation of the applied enforcement.

The State Water Board will consider this Incidental Finding resolved when the UST owner(s)/operator(s) install the correct overfill prevention equipment, or secondarily contain the vent and fill piping.

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**6. INCIDENTAL FINDING:**

The CUPA is not consistently conducting complete annual UST compliance inspections.

Review of annual UST compliance inspection reports, associated testing and leak detection documents, and CERS information finds the following tank construction and testing discrepancies:

- CERS ID 10470655
  - Annual Monitoring System Certification Form dated December 18, 2020, does not indicate the “L1 – Diesel T-1 STP” submersible turbine pump (STP) sensor was tested.
  - Annual Monitoring System Certification Form dated December 30, 2021, does not indicate the stand-alone sensors were tested.
- CERS ID 10859197
  - Annual Monitoring System Certification Forms dated November 18, 2021, and November 16, 2022, do not indicate the “S-1 DSL Supply SEC” and the “S-2 DSL Vent SEC” secondary containment sensors were tested.
- CERS ID 10449691
  - Annual Monitoring System Certification Form dated May 10, 2022, does not indicate the “L-15 Diesel Annular” sensor was tested.

Review of UST compliance inspection reports, associated testing and leak detection documents, and CERS CME information finds instances when violations are identified on Annual Monitoring Certifications and/or Spill Containment Testing forms and are not reported to CERS:

- CERS ID 10002373
  - Annual Monitoring System Certification Form dated January 28, 2021, states “91 PLLD Did Not Catch on Initial Test - Purged, Retested & Passed.” CERS does not reflect a violation cited for testing failure as Unified Program Violation Library Violation Type Number 2030025 - Line Leak Detector (LLD)-Double-Walled Pressurized Pipe (USEPATCR 9d).
- CERS ID 10485031
  - Annual Monitoring System Certification and Spill Containment Testing was completed May 27, 2022, and subsequent annual testing was performed June 6, 2023. CERS does not reflect violations cited for late testing as Unified Program Violation Library Violation Type Numbers 2030002 - Leak Detection Equipment Maintenance (USEPATCR 9d) and 2060020 - Spill Container (USEPATCR 9a).
- CERS ID 10135096
  - Annual Monitoring System Certification and Spill Containment Testing was completed September 20, 2021, and subsequent annual testing was performed October 4, 2022. CERS does not reflect violations cited for late testing as Unified

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Program Violation Library Violation Type Numbers 2030002 - Leak Detection Equipment Maintenance (USEPATCR 9d) and 2060020 - Spill Container (USEPATCR 9a).

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

Note: The following State Water Board documents may be referenced:

- Local Guidance (LG) letter 159 “Annual Underground Storage Tank Compliance Inspection,” dated November 29, 2016
- State Water Board correspondence “When to Review Underground Storage Tank Records,” dated November 29, 2016
- State Water Board correspondence “Petroleum Underground Storage Tank Financial Responsibility Guide,” dated July 1995.

**CITATION:**

CCR, Chapter 16, Sections 2638(a) and (b), 2637.1(a), and 2713(c)(4)  
CCR, Title 27, Section 15290(a)(3)  
[State Water Board]

**RESOLUTION:**

By the 1st Progress Report, will review and revise the I&E Plan, or other applicable procedure, to ensure the establishment of a process for consistently conducting complete annual UST compliance inspections. The revised I&E Plan, or other applicable procedure will, at minimum include:

- procedures and tools needed to consistently conduct complete annual UST compliance inspections.
- Identification of the types and frequencies of training needed to conduct complete UST compliance inspections.

The CUPA will provide CalEPA with the revised I&E Plan, or other applicable procedure. The CUPA will contact the State Water Board for any assistance needed.

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

By the 3rd Progress Report, if amendments to the revised I&E Plan or other applicable procedure were necessary, the CUPA will train UST inspection staff on the amended I&E Plan, or other applicable procedure. Once training is complete, the CUPA will implement the amended I&E Plan, or other applicable procedure.

By the 4th Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with UST facility records, for the three most recent completed UST compliance inspections, including, at minimum, annual UST compliance inspection reports, and associated testing and leak detection documents.

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**7. INCIDENTAL FINDING:**

The annual CalARP performance audit report for Fiscal Years (FYs) 2020/2021, 2021/2022, and 2022/2023 has missing and incomplete required elements.

The following element is missing:

- An executive summary and a brief description of how the CUPA is meeting the requirements of the program, as listed in CCR, Title, 19, Section 5150.3.

The following element is incomplete:

- A summary of the personnel and personnel years (PYs) necessary to directly implement, administer, and operate the CalARP Program.

Note: This Incidental Finding was identified in the 2019 CUPA Performance Evaluation relative to missing the required list of stationary sources determined by the CUPA to be exempt pursuant to Section 25534(b)(2) and was resolved during the Evaluation Progress Report process.

**CITATION:**

CCR, Title 19, Section 5150.5(b)  
[CalEPA]

**RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will provide CalEPA with the annual CalARP performance audit report for FY 2023/2024 that includes all required elements.

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**8. INCIDENTAL FINDING:**

The Self-Audit Reports for FYs 2019/2020, 2020/2021 and 2021/2022 are missing required components.

The following components are missing:

- A report of deficiencies with a plan of correction.
- A narrative summary of the effectiveness of activities including, but not limited to:
  - Permitting
  - Inspections
  - Enforcement
  - Single Fee System
- An explanation of any discrepancies on the annual and quarterly reports of program activities submitted to the Secretary pursuant to CCR, Title 27, Section 15290 and the Unified Program requirements for those activities.

**CITATION:**

CCR, Title 27, Section 15280  
[CalEPA]

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**RESOLUTION:**

By the 1<sup>st</sup> Progress Report, the CUPA will provide CalEPA with a completed Self-Audit Report for FY 2023/2024 that contains all required components. For each subsequent FY, the CUPA will complete a Self-Audit Report that includes all required components, as well as a date of completion to demonstrate the report was completed by September 30<sup>th</sup>.

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**9. INCIDENTAL FINDING: RESOLVED DURING EVALUATION**

The CUPA is not consistently and/or correctly reporting CME information to CERS for the HWG Program.

Review of CERS CME information between October 1, 2020, and September 30, 2023, and facility files, finds the following HWG inspections and cited violations are not reported to CERS:

- CERS ID 10398547
  - Inspection report dated August 11, 2021, is not reflected in CERS.
- CERS ID 10469008
  - Inspection report dated January 14, 2022, is not reflected in CERS.
- CERS ID 10445548
  - Inspection report dated June 29, 2021, cites one Class II violation for failure to conduct and log daily HW tank inspections. The cited violation is not reflected in CERS.
- CERS ID 10173101
  - Inspection dated October 28, 2022
- CERS ID 10466203
  - Inspection dated May 19, 2023
- CERS ID 10488625
  - Inspection dated April 3, 2023
- CERS ID 10464316
  - Inspection dated August 30, 2023
- CERS ID 10445302
  - Inspection dated January 30, 2023
- CERS ID 10880959
  - Inspection dated March 3, 2022
- CERS ID 10632331
  - Inspection dated June 15, 2021
- CERS ID 10876534
  - Inspection dated January 5, 2023

**CITATION:**

HSC, Chapter 6.11, Sections 25404(e)(4) and 25404.1.2(c)  
[DTSC]

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**RESOLUTION: COMPLETED**

During the evaluation, the CUPA made all required corrections to the CME data. This Incidental Finding is considered resolved.

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**10. INCIDENTAL FINDING: RESOLVED DURING EVALUATION**

The CUPA is not consistently classifying APSA Program violations properly.

Review of facility files and CERS CME information between July 1, 2019, and June 30, 2023, finds the following non-minor violation was classified 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. Environmental Protection Agency (US EPA).
  - CERS ID 10421788

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

**CITATION:**

HSC, Chapter 6.11, Sections 25404(a)(3) and 25404.2(a)(3)-(4)

HSC, Chapter 6.67, Sections 25270.4.1(c) and 25270.4.5(a)

CCR, Title 27, Section 15200(a) and (e)

[OSFM]

**RESOLUTION: COMPLETED**

During the evaluation, the CUPA trained inspection staff on the definition of minor violation as defined in HSC, Chapter 6.11, Section 25404(a)(3) and how to properly classify violations during compliance inspections as minor, Class I, and Class II. Also, the CUPA set the violation classification for not having, or failure to prepare, an SPCC Plan to default to a Class II violation.

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.

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**1. OBSERVATION:**

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

- There are 425 regulated HWG facilities, including 18 Resource Conservation and Recovery Act (RCRA) Large Quantity Generator (LQG) facilities and 2 Household Hazardous Waste Collection Facilities (HHWCF). There are 6 TP facilities.
- The CUPA inspected 404 HWG facilities and performed 772 Routine or Other HWG inspections, of which 560 (73%) had no violations cited and 210 (27%) had at least one violation cited.
  - In the 210 inspections performed with at least one violation cited, 356 total violations were issued, consisting of:
    - 0 Class I violations,
    - 140 Class II violations, and
    - 216 minor violations
- CERS does not reflect enforcement actions for hazardous waste related violations, and as a result, CERS reflects a cumulative total penalty amount of \$0.
- Inspection reports generally contain detailed comments that note the factual basis of cited violations and indicate whether consent to inspect was requested prior to the inspection. Some inspection reports reviewed contained less detailed comments than others and in some instances were overly general.
- Violation classification was generally consistent and accurate.
- Violation comments are not being entered into CERS.

**RECOMMENDATION:**

Continue with the HWG inspection frequency and applied enforcement efforts in addition to generating inspection reports with detailed comments for describing the factual basis for cited violations. Ensure that detailed factual basis of each violation is included in inspection reports and in the CME information transferred to CERS, to support any enforcement efforts. Enter violation comments in inspection reports to CERS. All violations should be documented and supported by evidence that addresses the elements for the violation. A lack of factual basis for each violation may lead to a deficiency or an incidental finding in future evaluations.

Revisit minor violations cited for failure to make a HW determination. This type of violation often is associated with the violator gaining an economic benefit due to the mismanagement of a waste, which doesn't meet the definition of a minor violation. In other cases, failing to make an HW determination can result in the illegal disposal or shipment of HW to an unauthorized destination. Other violations that typically carry an economic benefit through non-compliance (ex: exceeding accumulation limits, tank assessments, etc.) should also be reviewed.

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Follow up with facilities that have not obtained RTC by the scheduled RTC date and apply appropriate enforcement, per the I&E Plan, when facilities do not RTC. Review and revise the I&E Plan to include procedures to ensure PBR submittals are reviewed within 45 days.

Incorporate trainings on HWG program violation classification and HWG program topics into inspector's continuing training.

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**2. OBSERVATION:**

Some HWG inspection reports were dated several days up to a month after the inspection was conducted. When an HWG facility inspection is conducted, the inspector is required to provide a summary of all cited violations to the facility operator prior to the conclusion of the inspection, per HSC, Section 25185(c)(1).

At minimum, the inspector should review the inspection checklist and/or inspection report and the details of each known cited violation with the facility operator and discuss any questions the facility operator may have. If an electronic inspection report is utilized, the inspector should review the electronic report with the facility operator at the conclusion of the inspection and e-mail a finalized inspection report to the facility operator upon returning to the office.

**RECOMMENDATION:**

Upon conclusion of each HWG inspection conducted, ensure the facility operator is provided with a written summary of violations, which are reviewed with the inspector before the inspector leaves the facility. Develop a Notice of Violation (NOV) or other applicable form, which will summarize all violations documented during the inspection, and can be provided to the facility operator upon conclusion of the inspection while awaiting the final inspection report to be provided to the facility operator via email or mail. In some CUPAs, it is common practice for inspectors to leave the inspection checklist and/or inspection report with the facility operator upon conclusion of the inspection when leaving the facility and email the full inspection report to the facility operator by the end of the same business day in which the inspection was conducted.

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**3. OBSERVATION:**

The CUPA has webpages that contain multiple resources for the public and regulated community. The following webpages contain information that may benefit from improvement:

“Hazardous Materials Unified Program (CUPA)” webpage (<https://www.lpfire.org/about-us/fire-prevention-division/unified-program>)

- The list of Unified Program elements is missing the fire code Hazardous Materials Management Plans (HMMP) and Hazardous Materials Inventory Statements (HMIS), which is consolidated with HMBP requirements to streamline the regulatory requirements for regulated facilities.

“Aboveground Petroleum Storage Act” webpage (<https://www.lpfire.org/about-us/fire-prevention-division/unified-program/aboveground-petroleum-storage-act>)

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- The first criteria for APSA applicability should reference a tank facility with a total storage capacity of 1,320 gallons or more of petroleum products in 55-gallon or larger containers or aboveground tanks.
- The second criteria for APSA applicability should include a tank facility with a total storage capacity of less than 1,320 gallons of petroleum and having one or more 55-gallon or larger tanks in an underground area (TIUGA). Updated TIUGA information is available on 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/tank-in-an-underground-area-tiuga>.
- Add the following as a third criteria for APSA applicability: A tank facility that is subject to the Federal SPCC rule is also subject to APSA.
- The CERS linked document accessed when clicking on the 'View detailed information about this requirement' statement is dated March 19, 2019. The CERS Help Materials webpage contains a link to the updated OSFM APSA webpage content on this topic, located at <https://osfm.fire.ca.gov/what-we-do/pipeline-safety-and-cupa/certified-unified-program-agency/aboveground-petroleum-storage-act/aboveground-petroleum-storage-tank-facility-statement-reporting-requirements>.
- The statement that APSA facilities must prepare and implement an SPCC plan should be modified to reflect conditionally exempt tank facilities. Tank facilities that meet certain conditions are conditionally exempt from having to prepare and implement an SPCC Plan under APSA.

#### **RECOMMENDATION:**

Update the webpages as indicated above.

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#### **4. OBSERVATION:**

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

- Pages 1, 2, 4, and 6: References to the APSA Program are incorrect and should be consistent with statute, which is the Aboveground Petroleum Storage Act (APSA) Program.
- Page 2: The minimum inspection frequency for APSA identified in the table should reference <10,000 gallons, since the statutory inspection frequency is ≥ 10,000 gallons.
- Page 2: The double asterisk information identified in the Inspection Frequency chart for Conditionally Exempt Small Quantity Generators (CESQGs) and Universal Waste Handlers contains outdated information. Generators of less than 100 kilograms of hazardous waste per month or less than 1 kilogram per month of acutely hazardous waste are regulated as Small Quantity Generators (SQGs) and not Very Small Quantity Generators (VSQGs), formerly referred to as CESQGs.
  - On October 11, 2021, DTSC issued the following correspondence to all CUPAs, "CLARIFICATION OF CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS INSPECTION FREQUENCY, STATUS OF SILVER ONLY GENERATORS, AND UNIVERSAL WASTE HANDLERS." In summary, CCR, Title 27 requires CUPAs to establish inspection frequencies for HWGs. As a US EPA authorized State, California is not required to adopt the federal definition of CESQGs (now referred to as VSQGs), nor the special requirements and counting

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requirements of VSQGs specified in the Code of Federal Regulations, Title 40, Sections 262.13 and 262.14.

- Page 4: The link listed below does not work properly:
  - <http://www.calepa.ca.gov/Enforcement/policy/SearchGuide.pdf>
- Page 5: The links listed below do not work properly:
  - <http://www.calepa.ca.gov/CUPA/Documents/Inspection/FctIntervtec.pdf>
  - <http://www.calcupa.net/conference.html>
- Page 6: Remove the reference to HSC, Section 25270.5(a) under the CUPA Permits for APSA. This citation (1) includes the mandated triennial inspections of tank facilities storing 10,000 gallons or more of petroleum, (2) provides Unified Program Agencies the authority to develop an alternative inspection and compliance plan, and (3) requires CUPA inspectors to complete and pass the initial aboveground storage tank training program.

**RECOMMENDATION:**

Update the I&E Plan as indicated above. Refer to DTSC correspondence issued on October 11, 2021, regarding inspection frequencies for CESQGs (now referred to as VSQGs) and revise the Inspection Frequency Chart accordingly.

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**5. OBSERVATION:**

The CERS reporting requirement is currently set as “APSA Applicable” for 75 APSA tank facilities. The CUPA’s data management system identifies 68 APSA tank facilities.

- 65 APSA tank facilities are identified in both CERS and the CUPA’s data management system.
- 10 tank facilities identified as “APSA Applicable” in CERS are not identified as APSA tank facilities in the CUPA’s data management system. Some of these facilities are likely not APSA regulated.
- 3 tank facilities identified as APSA tank facilities in the CUPA’s data management system are not identified in CERS as APSA 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.
- 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.

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**6. OBSERVATION:**

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.

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**7. OBSERVATION:**

The area plan contains the following information that may benefit from improvement:

- Hazardous Materials Phone List and Information
  - The current OSFM Pipeline Safety phone number is (916) 263-6300 (8:00 AM to 5:00 PM) or the State Warning Center can be contacted.

**RECOMMENDATION:**

Update the area plan as indicated above.

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**8. OBSERVATION:**

Review of CERS CME information and the Livermore-Pleasanton Fire Department Fire and Unified Program Inspection Report Summary Page finds violation comments are not being entered into CERS for UST inspections.

Inspection reports contain detailed comments that note the factual basis of cited violations and indicate whether consent to inspect was requested prior to beginning the inspection. However, violation observations and comments are not being reported to CERS.

**RECOMMENDATION:**

Continue writing detailed inspection reports that include all factual bases of each cited violation and properly cite noted violations to support any applicable enforcement efforts. Descriptions of observations and factual basis to support alleged violations, should be detailed enough to clearly demonstrate how a regulatory requirement was not met and support the violation classification. Corrective action language (i.e. language describing what must be done for the facility to obtain RTC) should be prescriptive and clearly describe what must be done for the facility to obtain RTC, including how corrective action documentation should be provided for RTC consideration.

Include details noted in the inspection report for each cited violation in the CERS Violation Comment field.

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**9. OBSERVATION:**

Review finds all required UST closure documentation was provided for CERS ID 10407304 and CERS ID 10459546, including notice that the UST had been removed in accordance with HSC, Chapter 6.7, Section 25298(c) and CCR, Chapter 16, Section 2672.

**RECOMMENDATION:**

Continue to perform thorough UST removal inspections and maintain all required UST closure documentation in facility files. Review the State Water Board UST closure notification template available at [https://www.waterboards.ca.gov/water\\_issues/programs/ust/docs/ust-closure-letter-template-final.pdf](https://www.waterboards.ca.gov/water_issues/programs/ust/docs/ust-closure-letter-template-final.pdf).

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**10. OBSERVATION:**

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

- CERS ID 10405360
- CERS ID 10470655
- CERS ID 10116934

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

**RECOMMENDATION:**

Continue to provide reminders to all applicable UST owners or operators regarding the December 31, 2025, requirement for permanent closure of single-walled USTs.

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**11. OBSERVATION:**

The information below reflects the total number of regulated facilities within each Unified Program element at present-day. The information is sourced from the following:

- *CERS “Summary Regulated Facilities by Unified Program Element Report” & CERS “UST Inspection Summary Report (Report 6)”, both generated on January 31, 2024.*

<b>Program Element</b>	<b>Total Number of Regulated Facilities</b>
All Regulated Facilities	920
Hazardous Materials Release Response Plan and Inventory (Business Plan) Facilities	791
UST Facilities	76
Regulated USTs	209

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<b>Program Element</b>	<b>Total Number of Regulated Facilities</b>
Hazardous Waste Generator (HWG) Facilities	544
Household Hazardous Waste (HHW) Facilities	1
Tiered Permitting (Permit By Rule, Conditionally Authorized, Conditionally Exempt) Facilities	8
Resource Conservation and Recovery Act (RCRA) Large Quantity Generator (LQG) Facilities	27
Risk Management Prevention Plan (RMPP) or California Accidental Release Prevention (CalARP) Facilities	7
Aboveground Petroleum Storage Act (APSA) Tank Facilities	76

The information below reflects the overall full time equivalent (FTE) of CUPA personnel allocated to the implementation of the Unified Program upon certification at present-day. The information is sourced from the CUPA's Organizational Chart.

**CUPA Personnel:**

- Inspection and other Staff
  - 3 Staff at a Full-Time Equivalent= 3 Full-Time positions
- Supervisory and Management Staff
  - 1 Staff at a Full-Time Equivalent= 1 Full-Time position

**RECOMMENDATION:**

Conduct the annual review of the fee accountability program to determine current necessary and reasonable costs to implement all aspects of the Unified Program with the existing regulated businesses and facilities within each program element. The ability to apply each aspect of inspection, compliance, monitoring, and enforcement for all Unified Program activities is not only vital to the success of the program, but it further ensures the protection of health and safety of the community and environment at large.

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**12. OBSERVATION:**

On February 21, 2024, a UST oversight inspection was conducted in conjunction with the compliance inspection during the annual monitoring system certification (AMC), and the spill container (SC) testing at CERS ID 10414615. The inspector confirmed the certifications of the

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technician on site. The technician provided the alarm history and in tank setup of the UST system taken prior to opening any equipment.

The inspector confirmed operability of all sensors and line leak detectors required for the CERS tank information and monitoring plan. Upon receipt of the AMC, SC, and CUPA Inspection Report, the inspector observed the following:

- Liquid in the Diesel turbine sump and under dispenser container (UDC) 11/12.
- No Designated Operator inspection in March of 2023
- Failure to update the Designated Underground Storage Tank Operator Identification Form

The CUPA ensured accuracy of the documentation provided by the facility to confirm RTC of the site.

**RECOMMENDATION:**

When scheduling annual compliance inspections, emphasize the requirement that technicians must not remove any sensors from sumps or UDCs prior to the CUPA inspector's arrival. Continue to perform a thorough review of facility information in CERS and on-site documentation.

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**13. OBSERVATION:**

HWG oversight inspections were conducted with two different lead inspectors from the Livermore/Pleasanton CUPA. On May 15, 2024, an oversight inspection was conducted at CERS ID 10806115, a RCRA LQG facility and on May 16, 2024, an oversight inspection was conducted at CERS ID 10169865, a Permanent Household Hazardous Waste Collection Facility (PHHWCF).

Prior to the inspections, each inspector demonstrated thorough pre-inspection preparation, including using both CERS and DTSC Hazardous Waste Tracking System (HWTS) to gather information on the activities and hazardous waste shipments of each facility inspected. Previous inspection reports and other regulatory guidance documents were also reviewed. Overall, the pre-inspection preparation was detailed and appropriate for the nature of the facilities.

During both inspections the inspectors clearly asked for and obtained consent to inspect and explained the purpose of the inspection. A full walkthrough of both facilities was conducted, and the inspectors observed all areas where hazardous waste was generated and managed. The walkthroughs were extremely thorough and detailed. Both inspectors took thorough notes as well as inspection photos and asked pertinent questions while maintaining control of the inspection. The appropriate documents required of RCRA LQGs and PHHWCFs were requested and reviewed or noted as violations when not available for review.

The violations observed during each inspection were cited and reviewed with the facility representative(s) upon conclusion of each inspection. The violations cited in each of the inspection reports contain the inspector's observations, the correct citations, and corrective actions. Recommendations for improving written content of inspection reports is detailed below. Each inspector demonstrated excellent inspection fundamentals and was able to provide helpful



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guidance to the facility operators. Overall, the inspections were handled professionally and were conducted in a timely manner.

In terms of understanding HWG Program requirements, the lead inspectors demonstrated each was well versed in a range of hazardous waste topics, including the following that were encountered and applied during the oversight inspections: hazardous waste determinations, tank requirements, PHHWCF requirements, open container requirements, and general HWG & RCRA LQG requirements.

**RECOMMENDATION:**

Continue efforts to provide staff with continuing HWG Program training and to remain current with knowledge of evolving topics in the HWG Program, such as the Generator Improvement Rule (GIR). Continue to ensure violations are reviewed with facilities and a written summary of violations is provided to the facility operator(s) onsite prior leaving.

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**14. OBSERVATION:**

On June 19, 2024, an HMBP oversight inspection was conducted at CERS ID 10788370. 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. The inspector identified and disclosed all violations.

On June 20, 2024, an HMBP and a CalARP oversight inspection was conducted at CERS ID 10153947. The inspector was well prepared for the inspection and reviewed relevant information, including the most current RMP, 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, verified inventory, emergency response plan information and training on site, and effectively communicated technical information to the facility operators. The inspector identified and disclosed all violations.

**RECOMMENDATION:**

Continue to conduct thorough HMBP and CalARP inspections.

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**15. OBSERVATION:**

Effective July 22, 2021, Assembly Bill 148 (Chapter 115, Statutes of 2021), transferred the oversight responsibility of the Hazardous Material Inventory and Response Plans (HMBP) Program and the CalARP Program from the California Governor's Office of Emergency Services (Cal OES) to CalEPA.

As a result, on March 6, 2024, the Office of Administrative Law (OAL) approved a rulemaking package submitted by CalEPA to amend and relocate portions of CCR, Title 19, Division 2, Chapters 4 and 4.5 into a new Division (Division 5). The rulemaking does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element. The final regulatory text for the rulemaking package revising the citations is available as follows:

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- For HMBP Program requirements:  
[https://calepa.ca.gov/wp-content/uploads/sites/6/2024/03/19-CCR-Div-5-Ch-1-Final\\_Underline\\_Strikeout.pdf](https://calepa.ca.gov/wp-content/uploads/sites/6/2024/03/19-CCR-Div-5-Ch-1-Final_Underline_Strikeout.pdf)
- For CalARP Program requirements:  
[https://calepa.ca.gov/wp-content/uploads/sites/6/2024/03/19-CCR-Div-5-Ch-2-Final\\_Underline\\_Strikeout.pdf](https://calepa.ca.gov/wp-content/uploads/sites/6/2024/03/19-CCR-Div-5-Ch-2-Final_Underline_Strikeout.pdf)

CalEPA has developed a “regulatory crosswalk” to identify the changes to CCR, Title 19, effective March 6, 2024, available as Guidance Document 24-01, at:

- <https://calepa.ca.gov/wp-content/uploads/sites/6/2024/03/Guidance-Document-24-01-Regulatory-Crosswalk-for-HMBP-and-CalARP-Title-19-Changes.pdf>

**RECOMMENDATION:**

Update administrative documents, standard operating procedures, and other applicable documents to reflect the new citation references to CCR, Title 19 for the HMBP and CalARP Programs using [Guidance Document 24-01](https://calepa.ca.gov/wp-content/uploads/sites/6/2024/03/Guidance-Document-24-01-Regulatory-Crosswalk-for-HMBP-and-CalARP-Title-19-Changes.pdf) as a reference.