

CERTIFIED UNIFIED PROGRAM AGENCY
Evaluation Progress Report #3**CUPA: City of Berkeley Planning Department – Toxics Management Division****Evaluation Period:** February 2021 – June 2021**Evaluation Team Members:**

- **CalEPA Team Lead:** Timothy Brandt
- **DTSC:** Kevin Abriol
- **Cal OES/CalEPA*:** Jack Harrah, Garrett Chan
- **State Water Board:** Jessica Botsford
- **CAL FIRE-OSFM:** Glenn Warner

Evaluation Progress Report #3 Submitted to CalEPA: May 10th, 2022**Deficiencies Pending Correction:** #'s 1-6**Incidental Findings Pending Resolution:** #'s 1-3**Next Evaluation Progress Report #4 Due to CalEPA:** October 3rd, 2022**Deficiencies Pending Correction:** #'s 4 & 5 (#3 Closed but not Corrected)**Incidental Findings Pending Resolution:** N/A – All Resolved

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

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

Each Evaluation Progress Report must include a narrative stating the status of progress towards the correction of each deficiency and resolution of each incidental findings identified in the Final Summary of Findings Report. Evaluation Progress Reports will continue to be submitted until all deficiencies and incidental findings have been acknowledged as corrected and resolved by each issuing state agency.

Each Evaluation Progress Report must be submitted to the CalEPA Team Lead via mail or E-mail.

Though subject to change, the Evaluation Progress Report submittal dates for the first year following the evaluation are as follows:

1st Progress Report: October 12, 2021**3rd Progress Report:** May 10th, 2022**2nd Progress Report:** February 10th, 2022**4th Progress Report:** October 3rd, 2022

*Effective July 1, 2021, oversight of the Hazardous Materials Release Response Plans and Inventory and the California Accidental Release Prevention Program transitioned from Cal OES to CalEPA.

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1. DEFICIENCY: CORRECTED

The Underground Storage Tank (UST) operating permit and permit conditions, which are required to be issued under the Unified Program Facility Permit (UPFP), are inconsistent with UST Regulations and Health and Safety Code (HSC) requirements.

Review of UST operating permits issued under the UPFP, finds the following inconsistencies with UST Regulations and HSC:

- The UST Operating Permit template does not reflect issuance under a UPFP.
- Permit conditions reference HSC, Chapters 6.75 and 18, however, the CUPA does not have regulatory authority under HSC, Chapters 6.75 or 18.
- Permit conditions state the UST Monitoring Plan, Emergency Response Plan, and plot plans shall be maintained at the facility; however, the regulatory requirement is to have these plans in CERS.
- Permit conditions reference federal financial responsibility; however, the CUPA does not have the authority to implement federal requirements.
- Permit conditions state the permit holder shall notify the CUPA of an unauthorized release within 24 hours, however, only “reportable” unauthorized releases must be reported to the CUPA within 24 hours.
- Permit conditions state all monitoring performed shall be maintained at the facility by the operator and be available for inspection for a period of at least three years, however, the regulatory requirement is 36 months.
- Permit conditions state the permit holder shall perform testing and preventative maintenance on all leak detection monitoring equipment annually, however, preventative maintenance is more stringent than UST Regulations and HSC and there is no local ordinance authority to require preventative maintenance.
- Permit conditions state testing documents shall be maintained at the facility for a period of at least three years, however, the regulatory requirement is 36 months.

Note: State Water Board correspondence dated April 7, 2017, “Amended Requirements for Unified Program Facility Permits Effective January 1, 2017,” may be referenced.

CITATION:

HSC, Chapter 6.7, Section 25295(a)(1)

California Code of Regulations (CCR), Title 23, Sections 2650, 2651, 2652, and 2712(c) and (i)

CCR, Title 27, Section 15190(h)

[CalEPA, State Water Board]

CORRECTIVE ACTION: COMPLETED

During the evaluation, the CUPA provided a revised UST operating permit to reflect issuance under a UPFP. CalEPA & State Water Board will review the revised UST operating permit template and revised UST operating permit conditions for consistency with UST Regulations and HSC. CalEPA & the State Water Board will provide feedback on the revisions to the CUPA with the 1st Progress Report response.

By the 2nd Progress Report, the CUPA will, if necessary, amend the revised UST operating permit template and UST operating permit conditions, based on feedback from CalEPA & the State Water Board, and will provide the amended UST operating permit template and revised UST

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operating permit conditions to CalEPA. If no amendments are necessary, the CUPA will begin to issue the revised UST operating permit and revised UST operating permit conditions under the consolidated UPFP.

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

CUPA Update 1:

Revised UST operating permit and revised UST operating permit conditions were submitted to SWRCB, and approved on August 26, 2021. This permit will be issued to any facilities that have changes warranting a new permit, and to all UST facilities on July 1, 2025.

Evaluation Team Response 1 [CalEPA, State Water Board]:

CalEPA: Review of the provided UST template shows that it is now being issued under a UPFP template. CalEPA considers this deficiency corrected. Please refer to the response provided by the State Water Board.

State Water Board: Although the CUPA provided a revised permit and permit conditions, not all necessary revisions were addressed. Review of the UST operating permit and permit conditions provided during the evaluation finds the following revisions remain necessary:

- Permit condition 10 needs to address that UST owners or operators may also be required to comply with additional reporting requirements, including, but not limited to, reporting requirements in Water Code, Sections 13271 and 13272 and reporting an unauthorized release to the Office of Emergency Services if emergency response personnel and equipment were involved at any time [HSC, Section 25295(c)].
- Permit condition 13 no longer states the permit holder shall perform preventative maintenance on all leak detection monitoring equipment annually. However, to reflect the regulatory requirement, the permit condition should state testing shall be performed on all leak detection monitoring equipment at least once every 12 months rather than annually.

Though not identified in the initial review during the evaluation, revision of the following UST permit condition is necessary in order to comply with UST Regulations and HSC:

- Permit condition 9 states the facility shall be inspected annually, however the requirement is for the UST facility to be inspected at least once every 12 months.
- Permit condition 13 states testing shall be performed on all leak detection monitoring equipment annually, while the regulatory requirement is to test all leak detection monitoring equipment at least once every 12 months.

With the next Progress Report, provide the amended UST operating permit conditions to CalEPA.

CUPA Update 2:

Please see the attached revised UST Operating Permit.

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Evaluation Team Response 2 [State Water Board]:

Due to extenuating circumstances, the State Water Board is not able to review the revised UST Operating Permit that was provided at this time. The State Water Board will provide a response with the next Progress Report.

CUPA Update 3:

The CUPA awaits SWRCB's response for further direction on this item.

Evaluation Team Response 3 [State Water Board]:

No additional amendments to the revised UST operating permit or revised UST operating permit conditions provided are necessary. The CUPA may begin to issue the revised UST operating permit and revised UST operating permit conditions documents under the consolidated UPFP. This deficiency is considered corrected.

2. DEFICIENCY: CORRECTED

UST compliance inspection information and facility inventory in the Semi-Annual Report (Report 6) is inconsistent with compliance, monitoring, and enforcement (CME) information in the California Environmental Reporting System (CERS).

Review of Report 6 and CERS CME UST facility inspection frequency information for the following Fiscal Years (FYs.) finds:

- FY 2019/2020
 - Report 6: 31 of 30 (103%) UST facilities inspected
 - CERS CME information: 29 of 30 (96%) UST facilities inspected
- FY 2018/2019
 - Report 6: 26 of 30 (87%) UST facilities inspected
 - CERS CME information: 26 of 30 (87%) UST facilities inspected
- FY 2017/2018
 - Report 6: 33 of 31 (106%) UST facilities inspected
 - CERS CME information: 30 of 31 (97%) UST facilities inspected

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

Note: Inspection frequency for FY 2019/2020 was calculated using the most recently reported number of UST facilities reported by the CUPA in Report 6.

CITATION:

HSC, Chapter 6.11, Section 25404(e)(4)
CCR, Title 23, Section 2713(c)(3)
CCR, Title 27, Sections 15187(c) and 15290(b)
[State Water Board]

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CORRECTIVE ACTION: COMPLETED

By the 1st Progress Report, the CUPA will develop and provide CalEPA with an action plan that, at minimum, includes:

- A thorough analysis and explanation as to how Report 6 and CERS CME information have inconsistent UST compliance inspection information; and
- A strategy to ensure UST compliance inspection information in Report 6 and CERS will be accurately reported.

By the 1st Progress Report, the CUPA will review and revise the Data Management procedure, or other applicable procedure, to ensure establishment of a process, which at a minimum will address how UST compliance inspection information is accurately reported in Report 6 and CERS. The CUPA will provide CalEPA with the revised Data Management Procedure, or other applicable procedure.

By the 2nd Progress Report, if amendments to the revised Data Management Procedure, or other applicable procedure are necessary based on feedback from the State Water Board, the CUPA will provide CalEPA with a copy of the amended Data Management Procedure, or other applicable procedure. If no amendments are necessary, the CUPA will train UST inspection staff on the revised Data Management Procedure, or other applicable procedure. The CUPA will provide training documentation to CalEPA, which at minimum, will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the revised Data Management Procedure, or other applicable procedure.

By the 3rd Progress Report, if amendments to the revised Data Management Procedure, or other applicable procedure were necessary, the CUPA will train UST inspection staff on the amended Data Management Procedure, or other applicable procedure. The CUPA will provide training documentation to CalEPA, which at minimum, will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the amended Data Management Procedure, or other applicable procedure.

By the 4th Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will have accurately reported UST compliance inspection information in Report 6 and CERS for two consecutive Report 6 reporting periods.

CUPA Update 1:

The CUPA analyzed the Report 6s and CME data transfers during this evaluation period and found that the discrepancy in data between the Report 6s and CME transfers appear to be mostly Report 6 reporting errors. The Report 6s were completed manually, and it appears a miscount of facilities inspected occurred in some fiscal years (FY 17/18 and FY 19/20), resulting in over reporting of the number of facilities inspected. There were some facilities that were reported to have more than one routine inspection per fiscal year. These inspections were incorrectly reported as routine inspections occurring at unique facilities. We also had two UST facilities that merged in 2017. The USTs at this newly combined site were inspected on two different dates during the fiscal years, with each of these inspections being incorrectly reported as routine inspections occurring at two different facilities. The way inspections at this facility are reported was corrected during this evaluation, resulting in only one routine inspection being reported at this facility per fiscal year.

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In FY 18/19, it appears the CME transfer data was used as the Report 6 data, rather than manually collected data. During this time period, it appears that the number of facility inspections was under reported. We believe only one facility was not inspected, resulting in 29 of 30 facilities being inspected. We believe that the reason this number was under reported is due to data transfer errors between Envision Connect (the CUPAs data management system) and CME. When data is pushed from Envision Connect to CERS through a CME transfer, facility inspections will not be transferred unless all required data fields have been entered by the inspector. If the inspector did not correct this data, their inspection will not be transferred to CERS. It appears 3 inspections had uncorrected data entry errors, resulting in the inspections not being transferred to CERS.

The CUPA reached out to SWRCB and tried to correct the Report 6s. The CUPA was told there is no way for Report 6s to be corrected, once submitted. The CUPA prepared an SOP (attached) to ensure Report 6 data is checked for accuracy and matched with CME data.

Evaluation Team Response 1 [State Water Board]:

Review of the action plan and the SOP on Report 6 accuracy finds them acceptable. With the next progress report the CUPA will train UST inspection staff on the Report 6 Accuracy Confirmation SOP. The CUPA will provide training documentation to CalEPA, which at minimum, will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the Report 6 Accuracy Confirmation SOP.

CUPA Update 2:

UST ICC Certified staff at the CUPA have been trained on the SOP. Please see attached outline and training certificates.

Evaluation Team Response 2 [State Water Board]:

Due to extenuating circumstances, the State Water Board is not able to review the training documentation that was provided at this time. The State Water Board will provide a response with the next Progress Report.

CUPA Update 3:

The CUPA awaits SWRCB's response for further direction on this item.

Evaluation Team Response 3 [State Water Board]:

The training documentation provided by the CUPA indicates adequate training on the SOP has been provided to UST inspection staff. Further, the CUPA has accurately reported UST compliance inspection information in Report 6 and CERS for the Report 6 reporting periods of July 1, 2021 through December 31, 2021, and January 1, 2022 through June 30, 2022. This deficiency is considered corrected.

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3. DEFICIENCY: CLOSED

The CUPA's local ordinance, Chapter 15.12 Hazardous Materials and Wastes Management, is inconsistent with UST Regulations and HSC.

Review of the local ordinance finds the following inconsistencies:

- 15.12.010(G) states the CUPA assumes responsibility for the abatement of nuisances and remediation of the contamination resulting from releases of hazardous material and waste; however, the CUPA is not a certified Local Oversight Program (LOP) and therefore does not have the authority to conduct abatement or remediation.
- 15.12.070(A)(1) and (2) references a Unified Program Consolidated Form, however, the CUPA no longer uses the paper form, the form is now submitted electronically in CERS.

CITATION:

HSC, Chapter 6.7 Section 25299.2, 25299.3

CCR, Title 23, Section 2620(c)

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

[State Water Board]

CORRECTIVE ACTION:

The CUPA will no longer implement provisions of the local ordinance that are less stringent or inconsistent with UST Regulations and HSC, including:

- assuming responsibility for the abatement of nuisances and remediation of the contamination resulting from releases of hazardous material and waste.

By the 1st Progress Report, the CUPA will provide CalEPA with a detailed plan to revise and adopt the local ordinance to be consistent with UST Regulations and HSC. The plan will at minimum include:

- a timeline for revising, drafting, and adopting the ordinance; and
- provisions for the CUPA to provide the revised local ordinance to the State Water Board for legal analysis to ensure consistency with UST Regulations and HSC.

By the 2nd Progress Report, the CUPA will, if necessary, revise the plan for revision and adoption, or repealing, of the revised local ordinance, based on feedback from the State Water Board.

Considering the length of time required to draft and adopt local ordinances, the State Water Board will consider this deficiency closed, but not corrected, after the CUPA has provided an acceptable plan for the revision and adoption of the revised local ordinance as outlined above. During implementation of the plan, the State Water Board must have an opportunity to review the revised draft of the local ordinance, which will allow the State Water Board to work with the CUPA to ensure the revised draft of the local ordinance is consistent with UST Regulations and HSC, the CUPA certification approval, and meets other legal requirements.

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CUPA Update 1:

The CUPA began drafting the revision of Berkeley Municipal Code Chapter 15 in May of 2021. By the end of calendar year 2021, the CUPA will submit the draft language to the State Water Board for legal analysis. Pending this approval, the CUPA will then submit the draft to the Office of the City Attorney for Review before submitting to City Council. Ordinances require two readings at City Council meetings and take effect 30 days after Council approval.

Evaluation Team Response 1 [State Water Board]:

Review of the plan outlined above finds it acceptable. With the next progress report, provide the draft local ordinance to CalEPA.

CUPA Update 2:

The draft revision of Berkeley Municipal Code Chapter 15 has been included. Revised verbiage in question was modeled after the municipal codes of surrounding CUPAs within Alameda County.

Evaluation Team Response 2 [State Water Board]:

Due to extenuating circumstances, the State Water Board is not able to review the revisions to Berkeley Municipal Code Chapter 15 that were provided at this time. The State Water Board will provide a response with the next Progress Report.

CUPA Update 3:

The CUPA awaits SWRCB's response for further direction on this item.

Evaluation Team Response 3 [State Water Board]:

Review of the draft local ordinances provided finds they are consistent with UST Regulations and HSC. This deficiency is considered closed, but not corrected.

4. DEFICIENCY:

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

Review of UST facility files finds the CUPA did not provide UST closure documentation to the owner or operator upon completion of UST closure activities for the following:

- CERS ID 10196554

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

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

CITATION:

HSC, Chapter 6.7, Section 25298(c)
CCR, Title 23, Section 2672(d)
[State Water Board]

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CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will develop a UST closure procedure, or other applicable procedure, ensuring the establishment of a process, which will include at a minimum, how the CUPA will:

- Document in sufficient detail, the owner or operator has demonstrated to the satisfaction of the CUPA, UST closure, removal, and soil and/or groundwater sampling complies with HSC, Chapter 6.7, Section 25298(c) and CCR, Title 23, Section 2672(d) (i.e. correspondence, hardcopy, electronic media) and
- Provide UST closure documentation to the owner or operator, which demonstrates to the satisfaction of the CUPA, UST closure, removal, and soil and/or groundwater sampling complies with UST Regulations and HSC.

The CUPA will provide the developed UST closure procedure, or other applicable procedure to CalEPA.

By the 1st Progress Report, the CUPA will develop a UST closure letter template. The CUPA may consider including the following language in the UST closure letter template: “the City of Berkeley Planning Department – Toxic Managements Division has reviewed the UST closure documentation and approves the UST closure as properly completed in accordance with HSC, Chapter 6.7, Section 25298(c) and CCR, Title 23, Section 2672(d)” to include reference to specific UST code citations. The CUPA will provide the developed UST closure letter template to CalEPA.

By the 2nd Progress Report, if revisions to the UST closure procedure, or other applicable procedure are necessary based on feedback from the State Water Board, the CUPA will provide CalEPA with the revised UST closure procedure or other applicable procedure. If no revisions are necessary, the CUPA will train UST inspection staff on the UST closure procedure or other applicable procedure. The CUPA will provide training documentation to CalEPA, which at minimum will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the UST closure procedure or other applicable procedure.

By the 2nd Progress Report, if revisions to the UST closure letter template are necessary based on feedback from the State Water Board, the CUPA will provide CalEPA with the revised UST closure letter template. If no revisions are necessary, the CUPA will train UST inspection staff on the use of the UST closure letter template. The CUPA will provide training documentation to CalEPA, which at a minimum will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will issue the UST closure letter template.

By the 3rd Progress Report, if amendments to the revised UST closure procedure, or other applicable procedure were necessary, the CUPA will train UST inspection staff on the amended UST closure procedure, or other applicable procedure. The CUPA will provide training documentation to CalEPA, which at a minimum will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the amended UST closure procedure or other applicable procedure.

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By the 3rd Progress Report, if amendments to the revised UST closure letter template were necessary, the CUPA will train UST inspection staff on the use of the amended UST closure letter template. The CUPA will provide training documentation to CalEPA, which at a minimum will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will issue the amended UST closure letter template.

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

By the 4th Progress Report, or until considered corrected, for the next two UST removals or closures in place, the CUPA will provide CalEPA with the UST closure documentation that demonstrates to the satisfaction of the CUPA, UST closure, removal and soil and/or groundwater sampling complies with UST Regulations and HSC.

CUPA Update 1:

The CUPA drafted a UST closure letter and UST closure procedure, and emailed them to SWRCB, on May 28, 2021. SWRCB rejected these drafts. The CUPA requested acceptable closure letter and closure procedure samples from SWRCB and drafted a new closure letter for this update (attached). The CUPA is in the process of revising the UST closure SOP.

Evaluation Team Response 1 [State Water Board]:

Review of the UST closure letter template finds the revisions acceptable. With the next progress report, provide the amended UST closure SOP.

CUPA Update 2:

Please see the attached UST Closure SOP.

Evaluation Team Response 2 [State Water Board]:

Due to extenuating circumstances, the State Water Board is not able to review the revised UST Closure SOP that was provided at this time. The State Water Board will provide a response with the next Progress Report.

CUPA Update 3:

The CUPA has realized that an outdated draft to correct this deficiency was forwarded to the evaluation team on February 10th. Please see the attached response to Deficiency 4, which is the correct response that should have been forwarded to the evaluation team on February 10th.

Evaluation Team Response 3 [State Water Board]:

The amended UST closure SOP provided by the CUPA is acceptable. With the next progress report the CUPA will train UST inspection staff on the UST closure SOP. The CUPA will provide training documentation to CalEPA, which at minimum, will include an outline of the training conducted and a list of UST inspection staff in attendance. Once training is complete, the CUPA will implement the UST closure SOP.

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5. DEFICIENCY:

The CUPA is not consistently ensuring return to compliance (RTC) is obtained for Hazardous Waste Generator (HWG) Program facilities cited with violations.

Review of CERS CME information from January 1, 2018 - December 31, 2020, indicates there is no documented RTC for the following:

- 72 of 364 (20%) HWG violations.

CITATION:

HSC, Chapter 6.5, Sections 25110.8.5, 25117.6, and 25187.8(b) and (g)

HSC, Chapter 6.7, Section 25288(d)

HSC, Chapter 6.11, Section 25404.1.2(c)

CCR, Title 27, Sections 15200(a) and (e), and 15185(a) and (c)

[DTSC]

CORRECTIVE ACTION:

By the 1st Progress Report, the CUPA will review, revise and provide CalEPA with the Inspection and Enforcement (I&E) Plan, which includes a delineated process to:

- ensure facilities cited with violations RTC through appropriate enforcement, and
- follow up with facilities and document RTC in CERS.

By the 1st Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with a spreadsheet obtained from the CUPA's local data management system or CERS, that includes at a minimum the following information for each HWG facility with open violations (no RTC):

- Facility name;
- CERS ID;
- Inspection and violation dates;
- Scheduled RTC date;
- Actual RTC date (when applicable);
- RTC qualifier; and
- In the absence of obtained RTC, a narrative of the appropriate enforcement taken by the CUPA to ensure RTC. The CUPA will prioritize follow-up actions with each facility based on the level of hazard violations present to public health and the environment.

By the 2nd Progress Report, if amendments to the revised I&E Plan are necessary based on feedback from DTSC, the CUPA will provide CalEPA with the amended I&E Plan. If no amendments to the I&E Plan are necessary, the CUPA will train CUPA personnel on the revised I&E Plan. The CUPA will provide training documentation to CalEPA, which at a minimum will include an outline of the training conducted and a list of CUPA personnel in attendance. Once training is complete, the CUPA will implement the revised I&E Plan.

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By the 3rd Progress Report, if amendments to the I&E Plan were necessary, the CUPA will train CUPA personnel on the amended I&E Plan. The CUPA will provide training documentation to CalEPA, which at a minimum will include an outline of the training conducted and a list of CUPA personnel in attendance. Once training is complete, the CUPA will implement the amended I&E Plan.

By the 3rd Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with three facility records, as requested by DTSC, that include documentation of RTC or a narrative of the appropriate enforcement taken in the absence of RTC.

CUPA Update 1:

The CUPA generated a spreadsheet of the requested data, attached. One facility, Berkeley Car Care East, is under active enforcement with the District Attorney's office of the County of Alameda. Some facilities are within their RTC timeframe. Other facilities will be returned to compliance by the assigned inspector before the next Progress Report. Two inspectors are no longer with the City of Berkeley, and their assigned facilities have been divided amongst the current inspectors, who will return them to compliance before the next Progress Report and will prioritize facilities based on hazard level.

The CUPA's data management system, Envision Connect, has been programmed to email a report of all violations to the CUPA Manager and all Hazardous Materials Specialists. The CUPA Manager will increase supervision by requiring weekly check-ins with the Hazardous Materials Specialists where violations are reviewed and enforcement is discussed for overdue violations.

Evaluation Team Response 1 [DTSC]:

Comparison of the spreadsheet of open violations cited between January 1, 2018 - December 31, 2020 (16 open violations) and CERS data for violations issued during this time frame (26 open violations) shows a difference of 10 violations. The difference may be due to the CME issues discussed in Incidental Finding 3.

An updated I&E Plan was not provided. DTSC is recommending the CUPA incorporate the procedures provided in the narrative update into the CUPA's I&E Plan which includes violation reports generated from Envision Connect and weekly check-ins with inspectors regarding overdue violations.

With the next Progress Report, provide CalEPA with an updated I&E Plan that includes a delineated process to ensure facilities cited with violations RTC through appropriate enforcement, follow-up with facilities, and document RTC in CERS.

CUPA Update 2:

The CUPA generated a spreadsheet of the requested data, attached. One facility is within the RTC timeframe. Other out of compliance facilities have been issued Second Notices of Violation and will be returned to compliance by the assigned inspector before the next Progress Report. Two inspectors are no longer with the City of Berkeley, and their assigned facilities were divided amongst the current inspectors, who returned them to compliance before this Progress Report.

The I&E Plan has been updated to include recommended language and is attached.

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Evaluation Team Response 2 [DTSC]:

The CUPA has updated the I&E Plan with violation follow-up procedures, which includes review of an automated Envision Connect violation report and weekly check-ins with inspectors to discuss violations and enforcement.

Review of the spreadsheet provided indicates all violations cited between January 1, 2018 through December 31, 2020, have returned to compliance. However, CERS indicates that between January 1, 2018 through December 31, 2020, the following facilities have violations that remain out of compliance:

- CERS ID 10180341: 3 violations
- CERS ID 10196113: 2 violations
- CERS ID 10196116: 3 violations

With the next progress report, provide the compliance status of the violations for the CERS IDs listed above.

With the next progress report, provide documentation of RTC for the following facilities:

- CERS ID 10196371: RTC documented on January 19, 2022
- CERS ID 10783663: RTC documented on February 9, 2022
- CERS ID 10649956: RTC documented on February 15, 2022

CUPA Update 3:

The CUPA generated a spreadsheet of the requested data, attached. Facilities with CERS ID 10196902 and 10749970 are still within the 30 day return to compliance timeframe. 10442710 was re-inspected on May 2nd, 2022 after the December 22nd, 2021 inspection, and the outstanding violations were escalated from Minor to Class II. 10196908 was issued a Second NOV previously, and recently a Show Cause letter on May 5th, 2022. 10196980 was issued a Second NOV on May 10th, 2022.

Facilities with CERS IDs 10180341, 10196113, and 10196116 have all returned to compliance. CME transfer errors are why they appeared out of compliance. The data should be fixed.

10196371 RTC documentation is attached. 10783663 RTC documentation is attached. 10649956 ceased operation in Berkeley, but did not go through a proper closure process. A copy of a closure form submitted by the company's landlord is attached.

Evaluation Team Response 3 [DTSC]:

The provided RTC documentation for CERS IDs 10196371, 10783663, and 10649956 is sufficient. As of June 1, 2022, review of CERS CME information indicates CERS ID 10180341 has returned to compliance, however, there is no RTC date for CERS IDs 10196113 and 10196116.

With the next progress report, provide documentation of RTC for the following facilities:

- CERS ID 10196113 for inspection dated February 27, 2020
- CERS ID 10196116 for inspection dated February 27, 2020

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6. DEFICIENCY: CORRECTED

The CUPA is not properly classifying HWG Program violations.

Review of facility files CERS CME information indicates the CUPA is classifying Class I or Class II HWG Program violations as minor violations in the following instances:

- Violation for exceedance of authorized accumulation time (CCR, Title 22, Section 66262.34) incorrectly cited as a minor violation. Maximum accumulation time may not be exceeded without a hazardous waste storage permit or grant of authorization from DTSC. An economic benefit is gained by not disposing of waste within the authorized time. This does not meet the definition of minor violation as defined in HSC, Section 25404(a)(3).
 - CERS indicates 21 of 26 (81%) violations cited between January 1, 2018 – December 31, 2020, for exceedance of accumulation timeframe were classified as minor.
- Violation for failure to obtain and maintain a written tank assessment certified by a professional engineer [CCR, Title 22, Section 66265.192(h)] incorrectly cited as a minor violation. Failure to obtain a tank system certified by a professional engineer poses risks to human health and the environment in the event the tank system is not fit for use. There is an economic benefit to the facility by not hiring an independent professional engineer to assess the tank system. This does not meet the definition of minor violation as described in HSC, Section 25404(a)(3).
 - CERS indicates 2 of 3 (67%) violations cited between January 1, 2018 – December 31, 2020, for failure to obtain and maintain a written tank assessment certified by a professional engineer were classified as minor.
- Violation for failure to implement a Large Quantity Generator (LQG) training program (CCR, Title 22, Section 66265.16) incorrectly cited as a minor violation. Failure to provide training and/or maintain related training program records may result in hazardous waste mismanagement issues and an inability to respond to emergencies. Additionally, there may have been an economic benefit to the facility by not providing training or maintaining training program records. This does not meet the definition of minor violation as defined in HSC, Section 25404(a)(3).
 - CERS indicates 9 of 11 (82%) violations cited between January 1, 2018 – December 31, 2020, for failure to implement a LQG training program were classified as minor.

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

CITATION:

HSC, Chapter 6.5, Sections 25110.8.5 and 25117.6

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

CCR, Title 22, Section 66260.10

[DTSC]

CORRECTIVE ACTION: COMPLETED

Beginning immediately, the CUPA will ensure violations are correctly classified and appropriate enforcement actions are pursued for non-minor (Class I and Class II) violations.

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During the evaluation process, the CUPA provided sufficient documentation indicating that staff conducting inspections of HWG facilities completed the trainings outlined below:

- Violation Classification Training Video 2014
<https://www.youtube.com/watch?v=RB-5V6RfPH8>
- 2020 Violation Classification Guidance for Unified Program Agencies
<https://calepa.ca.gov/wp-content/uploads/sites/6/2020/06/Violation-Classification-Guidance-Documents-accessible.pdf>

DTSC finds this documentation acceptable.

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 completion of the trainings identified above, and within the last three months. Each inspection report will contain observations, factual basis, and corrective actions to correctly identify and classify each observed HWG Program violation.

CUPA Update 1:

The CUPA inspection staff was retrained on the training program and documentation that was provided by DTSC to ensure that inspectors know how to correctly identify the degrees of violations. The CUPA determined that the default violation classifications in Envision Connect is minor or not specified, for these identified violations. The CUPA is working with Envision Connect IT support to change the default degrees for these violations to be at least Class IIs. If the violation is determined to be a Class I, the inspector will manually adjust the degree of violation in Envision Connect. The CUPA will manually check these violations for correct classification until Envision Connect staff is able to correct the defaults.

Evaluation Team Response 1 [DTSC]:

On September 30, 2021, the CUPA reached out to DTSC regarding the corrective action for this deficiency to confirm that updates would begin after the first progress report update. At this time, a review of CERS showed that one violation for exceedance of authorized accumulation time cited on July 2, 2021 was incorrectly cited as a minor violation. A review of CERS on October 27, 2021 showed that all HWG violations cited since July 8, 2021 have been properly classified. With the next Progress Report, provide CalEPA with inspection reports for the following HWG facilities:

- CERS ID 10196374 inspected on July 27, 2021
- CERS ID 10602733 inspected on August 17, 2021
- CERS ID 10762501 inspected on September 2, 2021

CUPA Update 2:

Please see the attached inspection reports for the requested inspections.

Evaluation Team Response 2 [DTSC]:

DTSC received the inspection report for CERS ID 10602733 but did not receive inspection reports for CERS ID 10196374 or CERS ID 10762501. However, a review of inspection comments in CERS indicates that the violations cited at these inspections were classified correctly.

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A review of CERS on March 7, 2022, indicates that several HWG violations cited since November 2021 were likely misclassified. The following inspections were noted in CERS with misclassified violations:

- CERS ID 10196098: inspection dated November 9, 2021, with a minor violation cited for exceedance of accumulation time,
- CERS ID 10196083: inspection dated November 5, 2021, with a minor violation cited for exceedance of accumulation time,
- CERS ID 10196809: inspection dated December 14, 2021, with a minor violation cited for exceedance of accumulation time, and
- CERS ID 10442710: inspection dated December 22, 2021, with a minor violation cited for large quantity generator training program documentation.

Only 1 HWG inspection was conducted in the past three months. This inspection included two properly classified minor violations. Therefore, no inspection reports are being requested by DTSC at this time.

With the next progress report, provide a narrative on the status of changing the incorrect default violation classifications in Envision Connect.

CUPA Update 3:

Violation for CERS ID 10442710 is for a small quantity generator and the violation classification was correct. The default violation classifications have been corrected in Envision Connect.

Evaluation Team Response 3 [DTSC]:

DTSC verified the correction of violation classifications in CERS for CERS IDs 10196098, 10196083, and 10196809.

Though CERS ID 10442710 is a small quantity generator, CERS violation type #3020002 is associated with large quantity generators and employee training. This violation is still incorrect in CERS for the inspection completed on December 22, 2021 at CERS ID 10442710. This deficiency is considered corrected.

7. DEFICIENCY: CORRECTED

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

Review of facility files, CERS CME information, and additional information provided by the CUPA indicates:

- 81 of 474 (17%) HMBP facilities were not inspected within the last three years.

CITATION:

HSC, Chapter 6.95, Section 25511(b)
[Cal OES]

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CORRECTIVE ACTION: COMPLETED

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

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

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

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

CUPA Update 1:

The Toxics Management Division has not met our HMBP inspection frequency requirement as we have been impacted by decreased staffing levels and Covid-19. In mid-2018, the Hazardous Materials Manager, whose time is 70% non-CUPA, retired and one of our four Hazardous Materials Specialists II assumed the role, a loss of 0.7 FTE for the CUPA program.

Throughout 2018 and 2019, one Hazardous Materials Specialist II was off work for a year due to FMLA, and a second Hazardous Materials Specialist II was out on a 4 month leave of absence. We hired on a Hazardous Materials Specialist I in mid-June 2019, but already had a good backlog of CUPA tasks, including overdue inspections.

On March 17, 2020, the City of Berkeley closed its offices and all inspections were halted due to Covid-19 concerns. At the same time, the Division lost an equivalent of 1 FTE Hazardous Materials Specialist to the EOC for approximately 4 months to assist with the City's Covid response. TMD converted to mainly remote video inspections and limited the types of facilities we inspected, which limited the number of inspections we completed.

TMD has been able to resume onsite inspections, but we do have a backlog of overdue inspections. The attached spreadsheet identifies the HMBP facilities that have not been inspected in the last three years. These facilities have been prioritized based on last inspection date and risk.

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TMD is working hard to conduct as many inspections as possible, however, just in the past 3.5 months, the Hazardous Materials Manager retired and a Hazardous Materials Specialist II resigned. The City is working on filling those roles and has hired a new Hazardous Materials Manager and is in the process of hiring a Hazardous Materials Specialist.

In addition to getting back to full staffing and full onsite inspections, the CUPA will be increasing the frequency of the next scheduled inspection date in the data management system, EnvisionConnect, to 2.75 years from the date of the last inspection.

Envision Connect has been programmed to email reports to the CUPA Manager and all Hazardous Materials Specialists the next scheduled inspection data showing the overdue inspections. The CUPA Manager will increase supervision by requiring weekly check-ins with the Hazardous Materials Specialists where overdue inspections are discussed and prioritized in the workload.

Evaluation Team Response 1 [CalEPA/Cal OES]:

Upon review of CERS CME information on November 4, 2021, 30 of 468 (6%) HMBP facilities were not inspected within the last three years. This deficiency is considered corrected.

8. DEFICIENCY: CORRECTED DURING EVALUATION

The CUPA is not inspecting each Aboveground Petroleum Storage Act (APSA) tank facility at least once every three years in accordance with the I&E Plan.

Review of CERS CME information and information provided by the CUPA indicates:

- 4 of 18 (22%) APSA tank facilities under 10,000 gallons have not been inspected within the last three years.

CITATION:

HSC, Chapter 6.67, Section 25270.5(a) and (b)
[OSFM]

CORRECTIVE ACTION: COMPLETED

Over the course of the evaluation period, the CUPA completed additional APSA tank facility inspections. This deficiency is considered corrected.

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1. INCIDENTAL FINDING: RESOLVED

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

Review of the UST Facility/Tank Data Download report obtained from CERS on March 1, 2021, finds the following:

- 3 of 13 (23%) USTs installed on, or after, July 1, 2004, and have single-wall components listed.
- 4 of 15 (27%) single-wall USTs incorrectly identify secondary containment construction.
- 11 of 87 (13%) USTs incorrectly show no spill container being installed.
- 26 of 87 (30%) USTs incorrectly show no striker plate installed.

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

Note: The following CERS FAQs may be referenced:

- Common CERS Reporting Errors
- Setting Accepted Submittal Status
- General Reporting Requirements for USTs
- When to Issue a UST Operating Permit
- Which Forms Require Uploading to CERS

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

- When to Review Underground Storage Tank Records, dated November 29, 2016.

CITATION:

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

RESOLUTION: COMPLETED

By the 1st Progress Report, the CUPA will revise the Data Management Procedure, or other applicable procedure, to ensure UST related information in CERS is consistently accurate and complete. The CUPA will provide CalEPA with the revised Data Management Procedure, or other applicable procedure.

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

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By the 3rd Progress Report, if amendments were necessary, the CUPA will train UST Inspection staff on the amended Data Management Procedure, or other applicable procedure. Once training is complete, the CUPA will implement the amended Data Management Procedure, or other applicable procedure.

CUPA Update 1:

The CUPA evaluates CERS submittal information when it is submitted, and again during the annual UST inspections. The CUPA is double-checking the specific data fields referenced above, and other CERS data, upon receipt of new submittals, and during the annual inspections. The CUPA has prepared a SOP to ensure CERS UST information is correctly reviewed (attached).

Evaluation Team Response 1 [State Water Board]:

Review of the CERS – UST Submittal Review Procedure finds revision is necessary. The procedure incorporates close attention review of the UST related information referenced above, however, all UST related information and each aspect of a CERS UST submittal is required to be reviewed to ensure UST related information in CERS is consistently accurate and complete.

With the next Progress Report, amend the CERS – UST Submittal Review Procedure to reflect consistent review of all UST related information and each aspect of a CERS UST submittal to ensure UST related information in CERS is accurate and complete. Provide the amended CERS-UST Submittal Review Procedure to CalEPA.

CUPA Update 2:

Please see the revised UST Submittal Review Procedure.

Evaluation Team Response 2 [State Water Board]:

Due to extenuating circumstances, the State Water Board is not able to review the revised UST Submittal Review Procedure that was provided at this time. The State Water Board will provide a response with the next Progress Report.

CUPA Update 3:

The CUPA awaits SWRCB's response for further direction on this item.

Evaluation Team Response 3 [State Water Board]:

The Submittal Review Procedure provided by the CUPA addresses a consistent review process of all UST related information ensuring CERS UST submittals are accurate and complete. This incidental finding is considered resolved.

2. INCIDENTAL FINDING: RESOLVED

The CUPA is not inspecting all UST facilities at least once every 12 months.

Review of Report 6 for the following FY finds:

- FY 2018/2019
 - 4 of 30 (13%) UST facilities were not inspected.

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CITATION:

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

RESOLUTION: COMPLETED

The CUPA has been inspecting all UST facilities at least once every 12 months since FY 2018/2019.

The CUPA will inspect all UST facilities at least once every 12 months.

To demonstrate resolution of this incidental finding, the State Water Board will verify all UST facilities are being inspected at least once every 12 months with review of the next two Report 6 report periods and CERS CME data.

CUPA Update 1:

The CUPA found that the data submitted in Report 6 and the data transferred to CERS through CME for FY 2018/2019 was incorrect. The CUPA determined that there is only one facility that was not inspected during FY 2018/2019. Reasons for this misreporting and plans to ensure the data is correct are detailed in the CUPA's response to Deficiency 2, above. To assist in ensuring all UST facilities are inspected annually and on-time, the UST lead will review data entry in Envision Connect and work with inspectors to ensure they are inspected on time.

Evaluation Team Response 1 [State Water Board]:

Review of the CUPA's response above finds it acceptable. With the next Progress Report, the State Water Board will review Report 6 to ensure all UST facilities have been inspected at least once in the last 12 months.

CUPA Update 2:

The CUPA will submit the next Report 6 by the March 1, 2022 deadline.

Evaluation Team Response 2 [State Water Board]:

Due to extenuating circumstances, the State Water Board is not able to provide feedback on the most recent Report 6 that was submitted on March 1st, 2022. The State Water Board will provide a response with the next Progress Report.

CUPA Update 3:

The CUPA awaits SWRCB's response for further direction on this item.

Evaluation Team Response 3 [State Water Board]:

The State Water Board has reviewed Report 6 and confirmed all UST facilities have been inspected at least once during 2021. This incidental finding is considered resolved.

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3. INCIDENTAL FINDING: RESOLVED

The CUPA is not consistently reporting complete and accurate CERS CME information for the HWG Program.

Review of CERS CME information, inspection reports, and other information provided by the CUPA finds the following:

- CERS ID 10670485: RTC information submitted by the CUPA for violations cited on October 4, 2019, indicate that HWG violations have RTC. However, no HWG violations in CERS for this inspection have RTC data.
- CERS ID 10196656: RTC information submitted by the CUPA for violations cited on May 22, 2019, indicate that several HWG violations have RTC. However, no HWG violations in CERS for this inspection have RTC data.
- CERS ID 10196176: RTC information submitted by the CUPA for violations cited on November 2, 2019, indicate that several HWG violations have RTC. However, no HWG violations in CERS for this inspection have RTC data.

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

CITATION:

HSC, Chapter 6.11, Section 25404(e)(4)
CCR, Title 27, Sections 15187(c) and 15290(a)(3) and (b)
[DTSC]

RESOLUTION: COMPLETED

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

- Identification and correction of the cause(s) of missing or incorrect HWG Program CME information reported to CERS, including any data transfer from the local data management system to CERS to ensure all CME information is consistently reported completely and accurately to CERS;
- Review and revision of the existing CME reporting component of the Data Management Procedure, or other applicable procedure, to ensure HWG Program CME information is consistently reported completely and accurately to CERS.
- Identification of HWG Program CME information not previously reported to CERS, or reported to CERS incorrectly from January 1, 2018 – December 31, 2020;
- A process for reporting HWG Program CME information identified as not being previously reported to CERS, or being previously reported incorrectly to CERS, including CME information for any revised inspection reports;
- A process for ensuring CUPA personnel and inspectors are trained in the consistent use of the most recent violation classifications and citations of the local data management system or CERS violation type numbers;
- A comparison of HWG Program CME information (including follow-up actions) in the local CUPA data management system with CERS to identify any HWG Program CME information not being reported, or being reported incorrectly to CERS through electronic data transfer (EDT); and

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- Future steps to ensure all HWG Program CME information is consistently reported completely and accurately to CERS.

By the 2nd Progress Report, if amendments to the revised CME reporting component of the Data Management Procedure, or other applicable procedure are necessary based on feedback from DTSC, the CUPA will provide CalEPA with the amended CME reporting component of the data management procedure or other applicable procedure. If amendments are not necessary, the CUPA will train CUPA personnel on the revised CME reporting component of the data management procedure, or other applicable procedure. Once training is complete, the CUPA will implement the revised CME reporting component of the data management procedure or other applicable procedure.

By the 3rd Progress Report, if amendments to the revised CME reporting component of the data management procedure, or other applicable procedure were necessary, the CUPA will provide CalEPA with the amended CME reporting component of the data management procedure or other applicable procedure. The CUPA will train CUPA personnel on the amended CME reporting component of the data management procedure, or other applicable procedure. Once training is complete, the CUPA will implement the amended CME reporting component of the data management procedure or other applicable procedure.

By the 3rd Progress Report, and with each subsequent Progress Report until considered corrected, the CUPA will provide CalEPA with RTC documentation obtained during the previous three months for three HWG Program facilities, as requested by DTSC.

By the 5th Progress Report, the CUPA will consistently and correctly report all current and previous HWG Program CME information to CERS completely and accurately. The CUPA will provide a statement confirming the completion of all prior HWG Program CME information not previously reported to CERS, or previously reported incorrectly to CERS, from January 1, 2018 – December 31, 2020, as currently and correctly being reported to CERS.

CUPA Update 1:

Facility with CERS ID 10670485 had no data entered in the “RTC Qualifier” field of EnvisionConnect, which caused the RTC data to not transfer to CERS correctly during the CME transfer. Facilities with CERS ID 10196656 and CERS ID 10196176 had Return to Compliance documentation in their files, but the violations were not closed out in EnvisionConnect; thus, the violations still showed in CERS. The CUPA’s Data Entry procedure includes entering data into all requisite fields and closing out violations. The data for these three facilities has been corrected and entered in accordance with the data entry procedure.

The Data Entry – Return to Compliance (RTC) standardized operating procedure (attached) outlines filling out the necessary fields, RTC Qualifier and Complied on Date, in EnvisionConnect. A new Data Management Procedure for CME Transfers was created. This procedure details existing SOPs as well as introduces new redundancies to ensure correct CME transfers.

EnvisionConnect software is aging and no longer serviced by the contracting company. The CUPA is searching for a new software vendor and will select one with a consistent CME transfer process.

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Evaluation Team Response 1 [DTSC]:

Review of CERS CME information for the CERS IDs listed above indicates RTC information has been correctly transferred to CERS.

Upon review, DTSC is not recommending any additional changes to the updated Data Entry – RTC SOP nor the CME Transfers data management procedure.

With the next Progress Report, the CUPA will train CUPA personnel on the updated CME reporting component of the Data Entry – SOP and the CME Transfers data management procedure. Once training is complete, the CUPA will implement the updated Data Entry – SOP and the CME Transfer data management procedure.

Though not required until the 3rd Progress Report, the CUPA may provide CalEPA with RTC documentation for the following HWG Program facilities:

- CERS ID 10769902 inspected on August 31, 2021
- CERS ID 10762501 inspected on September 2, 2021, and
- CERS ID 10861780 inspected on October 13, 2021.

DTSC was unable to determine if the records listed in the provided CME Transfer Errors and CME Transfer Rejections spreadsheets were corrected. Specifically, it appears information for CERS IDs 10649956, 10864930, and 10152641 listed in the CME Transfer Errors spreadsheet may still be missing in CERS. With the next Progress Report, provide a narrative update on the status of the identification and correction of the CME transfer issues from the local data management system to CERS.

CUPA Update 2:

Staff were trained on the CME reporting component of the Data Entry SOP by the Office Specialist. The CME transfer was corrected for 10649956 and 10152641 and those violations are now in CERS. 10864930 is Tilden Park, a facility now under Contra Costa CUPA. TMD is unable to transfer the CME data for this CERS ID. There is an open help request with Accela to address this, Case #01319443.

Evaluation Team Response 2 [DTSC]:

Review of the narrative response indicates that CME data is complete for CERS IDs 10649956 and 10152641. DTSC is recommending coordination with the Contra Costa CUPA regarding violations associated with CERS ID 10864930, if this has not already been done.

With the next progress report, provide a narrative response indicating if all of the CME issues identified by the CUPA, with the exception of CERS ID 10864930, have been corrected. Additionally with the next progress report, provide RTC documentation for the following HWG Program facilities:

- CERS ID 10195945: inspected on January 18, 2022,
- CERS ID 10196809: inspected on December 14, 2021, and
- CERS ID 10196083: inspected on November 9, 2021.

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CUPA Update 3:

Under the guidance of the database vendor Accela, Berkeley Toxics Management (TMD) staff has corrected a number of the CME data transfer errors that were noted. Attached is the list of remaining errors. TMD staff is unable to correct these errors and has submitted a help request to Accela to address these errors. The request is still pending and was escalated by Accela on April 18, 2022, however no progress has been reported. TMD is currently searching for a vendor to replace Accela due to issues including lack of technical support.

RTC documentation for CERS ID 10195945 is attached. RTC documentation for CERS ID 10196809 is attached; site was returned to compliance after a Second NOV and re-inspection. RTC documentation for CERS ID 10196083 is attached.

Evaluation Team Response 3 [DTSC]:

DTSC appreciates the documentation and efforts made by the CUPA to address this finding. This incidental finding is considered resolved.

4. INCIDENTAL FINDING: RESOLVED

The CUPA did not provide CalEPA with a Formal Enforcement Summary Report within 30 days of a judgement being issued or for each formal enforcement case that received a final judgement.

A Formal Enforcement Summary Report was not provided for the following formal enforcement cases:

- CERS ID 10750930
- CERS ID 10706365

CITATION:

CCR, Title 27, Section 15290(a)(5)
[CalEPA]

RESOLUTION: COMPLETED

By the 1st Progress Report, the CUPA will provide CalEPA with a Formal Enforcement Summary Report for each formal enforcement case that has received a final judgement for which a Formal Enforcement Summary Report has not yet been provided. The CUPA will ensure a Formal Enforcement Summary Report is provided to CalEPA within 30 days of final judgment for each future formal enforcement case.

- The [Formal Enforcement Summary Report template](https://calepa.ca.gov/wp-content/uploads/sites/6/2016/10/CUPA-Documents-eReporting-Template.pdf) is available at: <https://calepa.ca.gov/wp-content/uploads/sites/6/2016/10/CUPA-Documents-eReporting-Template.pdf>
- [Instructions for completing the Formal Enforcement Summary Report](https://calepa.ca.gov/wp-content/uploads/sites/6/2016/10/CUPA-Documents-eReporting-Instructions.pdf) template are available at: <https://calepa.ca.gov/wp-content/uploads/sites/6/2016/10/CUPA-Documents-eReporting-Instructions.pdf>
- Completed Formal Enforcement Summary Reports shall be submitted via email to CUPA@calepa.ca.gov.

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CUPA Update 1:

The Toxics Management Division submitted the Formal Enforcement Summary Reports for 10706365 and 10750930 to CalEPA on 9/23/2021.

TMD has issued and completed 5 formal enforcements in 2021. TMD submitted the Formal Enforcement Summary Reports for these enforcements within 30 days of final disposition.

Evaluation Team Response 1 [CalEPA]:

CalEPA acknowledges receipt of the Formal Enforcement Summary Reports for the two facilities highlighted in the initial finding and the five formal enforcement cases that have received a final judgement in 2021. Please continue to submit Formal Enforcement Summary Reports within 30 days of any formal enforcement case receiving a final judgement. This incidental finding is considered resolved.

5. INCIDENTAL FINDING: RESOLVED

The CUPA Self-Audit Report for FY 2017/2018 is missing components and was not completed by September 30th of the respective FY.

- The following component is missing:
 - A report of deficiencies with a plan of correction.

Note: The CUPA Self-Audit Report lists the date of completion as November 1st.

CITATION:

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

RESOLUTION: COMPLETED

By the 1st Progress Report or September 30, 2021 (whichever occurs first), the CUPA will provide CalEPA with a completed Self-Audit Report for FY 2020/2021 that includes all required components.

CUPA Update 1:

The CUPA completed the FY21 Self Audit and submitted it to the CalEPA. The report is attached.

Evaluation Team Response 1 [CalEPA]:

A review of the provided FY 2020/2021 Self-Audit report indicates that it includes all components required by Title 27 and was completed by September 30, 2021. This incidental finding is considered resolved.

6. INCIDENTAL FINDING: RESOLVED DURING EVALUATION

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

- The following components are missing:
 - An adequate narrative of how the CUPA addresses complaints including receiving and closure of complaints is described in the CUPA's Complaint Tracking Policy, however it is not incorporated into the CUPA's I&E Plan by reference.

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- An adequate narrative of the CUPA's sampling capability and ensuring that samples are taken to a state certified laboratory is described in the CUPA's Inspection Policy, however it is not incorporated into the CUPA's I&E Plan by reference.
- The following components are inaccurate or incomplete:
 - The CUPA's maximum initial penalty for hazardous waste violations indicates \$25,000. The correct penalty amount is \$70,000 for hazardous waste violations. Per Assembly Bill 245 effective January 1, 2018, and CCR, Title 22, Section 66272.62, the penalties for hazardous waste violations increased from \$25,000 to \$70,000 for each day of non-compliance.
 - The penalty matrix for the UST Program shows a minimum of \$0, which is inconsistent with HSC. The correct amount is no less than \$500 or no more than \$5,000 per UST, per each day of violation, and per violation.

CITATION:

CCR, Title 27, Section 15200(a)
HSC Chapter 6.7, Section 25299(a)
[CalEPA, DTSC, State Water Board]

RESOLUTION: COMPLETED

During the evaluation, the CUPA provided an updated I&E plan that addressed the items identified above. This finding is considered resolved.

7. INCIDENTAL FINDING: RESOLVED DURING EVALUATION

The CUPA is not properly reviewing, processing, and authorizing each annual Onsite Hazardous Waste Treatment Notification for onsite treatment facilities with a Fixed Treatment Unit (FTU).

Review of the following FTU submittal in CERS finds:

- CERS ID 1044940
 - Conditional Authorization (CA) submittals marked as "Accepted" on June 1, 2017, indicate in the 'Treatment Unit Identification and Details' that sulfuric acid and sodium hydroxide effluent from silicon wafer cleaning and etching baths were being treated. However, the 'Waste and Treatment Process Combinations' section of the notification indicates that the waste stream is being treated by both neutralization of acidic and alkaline wastes and pH adjustment of aqueous waste containing metals.
 - This unit likely does not qualify under the CA tier since the description includes that the waste stream is undergoing both metals treatment and pH neutralization. Wastes that qualify under the CA tier must be hazardous solely due to a single constituent.
 - Additionally, 'Basis for Not Needing a Federal Permit' and "Residuals Management Description" may also be incorrect. Specifically, the submittal indicates it is an elementary neutralization unit which is defined as: a device which is used for neutralizing wastes which are hazardous wastes only because they exhibit the corrosivity characteristic defined in HSC, Section 66261.22, or are listed in Article 4 of Chapter 11 of this division only for this reason.

Internal
CERTIFIED UNIFIED PROGRAM AGENCY
Evaluation Progress Report #3

CITATION:

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

RESOLUTION: COMPLETED

During the evaluation, the CUPA was able to correct the identified submittal inaccuracies for the FTU facility listed. This finding is considered resolved during the evaluation.
