



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

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EDMUND G. BROWN JR.
GOVERNOR

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April 24, 2014

Mr. James Miguel
Fire Chief
Livermore-Pleasanton Fire Department
3560 Nevada Street
Pleasanton, California 94566

Dear Mr. Miguel:

The California Environmental Protection Agency (CalEPA), California Office of Emergency Services, Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of the Livermore-Pleasanton Fire Department Certified Unified Program Agency (CUPA) on December 17 and 18, 2013. The evaluation was comprised of an in-office program review and field oversight inspections by State evaluators. The evaluators completed a CUPA Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of preliminary corrective actions, program observations, program recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that the performance of the Livermore-Pleasanton Fire Department CUPA program is satisfactory with some improvements needed. To complete the evaluation process, please submit Deficiency Progress Reports to CalEPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Progress Reports to Katrina Valerio every 90 days after the evaluation date.

CalEPA also noted during this evaluation that the Livermore-Pleasanton Fire Department CUPA has worked to bring about a number of local program innovations, including its outreach to businesses regarding the California Environmental Reporting System. We will be sharing these innovations with the larger CUPA community through the CalEPA Unified Program website to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, please contact Katrina Valerio, evaluation team lead, at (916) 323-2204 or email katrina.valerio@calepa.ca.gov.

Sincerely,

Original signed by Jim Bohon

Jim Bohon, Assistant Secretary
Local Program Coordination and Emergency Response
California Environmental Protection Agency

Enclosure

cc sent via email.

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Mr. Edward Newman
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Enclosure



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CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS - FINAL

CUPA: Livermore-Pleasanton Fire Department

Evaluation Date: December 17 and 18, 2013

EVALUATION TEAM

CalEPA: Katrina Valerio
CalEPA: Samuel Ferris (shadowing)
SWRCB: Sean Farrow
Cal OES: Ed Newman
DTSC: Ari Erman, Ph.D.

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. The evaluation findings are now considered final. Questions or comments can be directed to Katrina Valerio at (916) 323-2204.

	<u>Deficiency</u>	<u>Corrective Action</u>
1	<p>The CUPA is not meeting the mandated annual inspection frequency for the Underground Storage Tank (UST) program.</p> <ul style="list-style-type: none"> In FY 2010/2011, the CUPA inspected 87% of its regulated tank facilities; In FY 2011/2012, the CUPA inspected 82% of its regulated tank facilities; and In FY 2012/2013, the CUPA inspected 88% of its regulated tank facilities. <p>HSC, Chapter 6.7, Section 25288 (a) [SWRCB]</p>	<p>Immediately, the CUPA will identify, and submit to CalEPA, UST facilities that did not receive an annual compliance inspection during FY 2012/2013. In addition, the CUPA will submit a spreadsheet identifying FY 2012/2013 UST inspection dates to CalEPA.</p> <p>By June 18, 2014, the CUPA will complete annual compliance inspections for UST facilities that were not inspected in FY 2012/2013.</p>
2	<p>The CUPA is not consistently following-up on and documenting return to compliance (RTC) for businesses cited with violations during hazardous waste generator inspections.</p> <p>The following businesses were cited for minor hazardous waste violations, but documentation</p>	<p>The CUPA will immediately begin to consistently follow up and document the RTC for businesses cited with violations.</p> <p>By June 18, 2014, the CUPA will follow up with the three (3) facilities listed in this deficiency, documenting RTC and providing a copy of RTC</p>

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	<p>of RTC or CUPA follow-up was not found:</p> <ul style="list-style-type: none"> • Thorate Co. – inspected on 11/28/12 6035 Stoneridge Dr., Pleasanton Family • Auto Service – inspected on 7/6/10 1806 Santa Rita Rd., Pleasanton • Acura of Pleasanton – inspected on 4/21/10 4355 Rosewood Dr., Pleasanton <p>HSC, Chapter 6.5, Section 25187.8 (h) CCR, Title 27, Section 15200 (a) CCR, Title 27, Section 15185 (a) and (c) [DTSC]</p>	<p>documentation to CalEPA.</p> <p>In addition, by June 18, 2014 the CUPA will provide to CalEPA two new examples of RTC documentation for facilities cited with violations during compliance inspections conducted since the December 2013 CUPA evaluation.</p>
<p style="text-align: center;">3</p>	<p>The CUPA is not implementing a graduated series of enforcement and is not consistently following the process outlined in its Inspection & Enforcement (I & E) plan for minor violations.</p> <p>The following businesses were cited for minor hazardous waste violations and did not return to compliance within the allocated time (35 days), and inspectors did not pursue additional enforcement actions:</p> <ul style="list-style-type: none"> • Cooper Vision – inspected 6/29/11 RTC 10/14/11 5870 Stoneridge Dr., Suite 1 & 3, Pleasanton • Safeway Inc. – inspected 7/31/08 RTC 9/9/13 5928 Stoneridge Mall Rd., Pleasanton • Acura of Pleasanton – inspected 4/21/10 NO RTC 4355 Rosewood Dr., Pleasanton <p>CCR, Title 22, Section 15200(a)(9) [DTSC]</p>	<p>By June 18, 2014, the CUPA will provide three (3) new examples of RTC documentation to CalEPA for facilities cited with hazardous waste violations in Notices To Comply, Notices of Violation, and/or inspection reports. For minor violations, RTC documentation must indicate that the facility has either returned to compliance within 35 days of the Notice To Comply or received a graduated series of enforcement.</p>
<p style="text-align: center;">4</p>	<p>The CUPA has not provided certification to Cal OES that a complete review and necessary revisions of the Area Plan were conducted. The existing Area Plan document was last updated September 2006.</p> <p>HSC, Chapter 6.95, Section 25503(d) [Cal OES]</p>	<p>By December 18, 2014, the CUPA will conduct a complete review of its Area Plan and make any necessary revisions.</p> <p>By January 3, 2015, the CUPA will forward the updated Area Plan to Cal OES.</p>

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5	<p>The CUPA’s FY 2012/2013 CalARP Performance Audit Reports did not contain a list of stationary sources that have been audited, inspected and requested to develop a Risk Management Plan (RMP).</p> <p>CCR, Title 19, Section 2780.5 [Cal OES]</p>	<p>By June 18, 2014, the CUPA will provide an amended FY 2012/2013 CalARP Performance Audit Report to CalEPA, listing stationary sources that have been audited, inspected, and requested to develop a RMP.</p>
6	<p>The CUPA is not ensuring that businesses submit an annual Hazardous Material Business Plan (HMBP) inventory. Of the records reviewed by Cal OES, 83% of Livermore, and 80% of Pleasanton facilities did not have a current business plan inventory.</p> <p>HSC, Chapter 6.95, Section 25505(d) [Cal OES]</p>	<p>By June 18, 2014, the CUPA will submit a plan to CalEPA to ensure all handlers will submit current inventories into CERS by December 31, 2014.</p> <p>By January 1, 2015, the CUPA will ensure all inventories are updated annually in CERS and will provide progress updates to CalEPA.</p>
7	<p>The CUPA is not inspecting businesses subject to the HMBP program requirements (at least once every three years). Of the hazardous materials business plan records reviewed by Cal OES, 60% of Pleasanton and 33% of Livermore facilities have not been inspected within the past three (3) years.</p> <p>HSC, Chapter 6.95, Section 25508(b) [Cal OES]</p>	<p>By June 18, 2014, the CUPA will submit to CalEPA:</p> <ul style="list-style-type: none"> • a list of all business plan facilities including the name of the facility, facility address, and the date the facility was last inspected. • a plan that details how the CUPA will bring its inspection frequency back into compliance. <p>By January 18, 2015, the CUPA will inspect all businesses plan facilities that have not been inspected in three (3) or more years and will provide CalEPA a list including the name of the facility, facility address, and the date the facility was last inspected.</p>
8	<p>The CUPA is not maintaining an adequate allocation of local agency staff to fully implement all elements of the unified program.</p> <p>Due to staffing deficits in other programs, CUPA inspectors have been redirected from CUPA duties, and as a result, have been unable to meet inspection frequencies for the Business Plan, and UST program elements. In addition, they have been unable to follow up on</p>	<p>By September 18, 2014, the CUPA will review its fee accountability program. The review will include an assessment of:</p> <ul style="list-style-type: none"> • the number of staff hours needed to implement the unified program effectively across both jurisdictions; • quantity and range of services provided; • discrete billable services; • direct program expenses including durable and disposable equipment;

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<p>violations and ensure businesses' return to compliance.</p> <p>Staffing redirection has also resulted in the prioritization of facility inspections conducted in the City of Livermore over those in the City of Pleasanton. Since businesses in the City of Livermore pay CUPA fees, they are inspected more often than businesses in Pleasanton, where fees are not assessed.</p> <p>HSC, Chapter 6.11, Section 25404.4 (a)(1) [CalEPA] CCR, Title 27, Section 15170 (a)(2)(C) CCR, Title 27, Section 15220 (a)(1)(C)</p>	<ul style="list-style-type: none"> • indirect program expenses including overhead; • number of regulated businesses in each program element; • total number of regulated businesses; • account for actual amount billed and revenue collected. <p>The CUPA will discuss changes to its fee accountability program in its annual self audit, and include a discussion of the Livermore-Pleasanton Fire Department's progress towards maintaining adequate staffing.</p> <p>By September 30, 2014, the CUPA will submit the self-audit report to CalEPA.</p>
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PROGRAM OBSERVATIONS AND RECOMMENDATIONS

The observations and recommendations provided in this section address activities the CUPA are implementing and/or may include areas for continuous improvement not specifically required of the CUPA by regulation or statute.

- 1. Observation:** The Livermore City Fire Department and the Pleasanton City Fire Department have merged into a single consolidated Fire Department and a CUPA with a complex fee structure. The City of Livermore charges fees for permitting and the City of Pleasanton does not. The CUPA estimates the City of Pleasanton's CUPA fee requirements and state surcharges and clearly documents the extrapolation of Pleasanton's budget contributions in its annual Fiscal Year Fee Analysis. The CUPA also has a State Surcharge Procedure and Single Fee Policy that documents its fee structure.

Recommendation: CalEPA recommends that the CUPA continue to document its fee structure, including annotated descriptions. CalEPA also recommends that future evaluation team leads request updated copies of the State Surcharge Procedure and Single Fee Policy during the initial documentation request prior to the evaluation, in order to decipher the nuances of the dichotomous fee structure.

- 2. Observation:** The CUPA is in the process of upgrading its inspection reports to an electronic format. This change will begin in January 2014. The CUPA's Inspection and Enforcement (I&E) plan provides detailed instructions, including the incorporation of Unified Program Guidance Documents, detailing the process for filling out hard copy inspection reports and classifying violations. The I&E plan has been updated to include the statement "the state Violation Dictionary will be used, with the standard list of violations shown on the inspection report..."

Recommendation: CalEPA recommends that the CUPA continue to annually update its I&E plan. CalEPA also recommends that the CUPA ensure the electronic database supports complete and thorough inspection reports and allows the CUPA to maintain the level of reporting described in its 2013 I&E plan specifically, that:

"their reports shall always include the identity of the inspector, the date of the inspection, relevant observations made at the facility and details of the alleged violations, factual basis for alleging violations (i.e., code citations), and corrective actions that are needed (I&E plan, pg. 6)."

- 3. Observation:** In September 2011, the City of Livermore annexed Laurence Livermore and Sandia National Laboratories. This annexation subsequently resulted in a large increase to the work load of CUPA inspectors. The increased workload combined with the redirection of personnel has contributed to the CUPA's inability to meet inspection frequencies and ensure violators return to compliance.

Recommendation: CalEPA recommends that the CUPA maintain staffing levels necessary to implement the Unified Program.

- 4. Observation:** The CUPA's Fiscal Year 2012/2013 Annual Single Fee Summary Report clearly describes the amount of single fee billed, state surcharge billed, surcharge collected, and surcharge remitted to the state.

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Recommendation: CalEPA recommends that the CUPA continue to complete the Annual Single Fee Summary Report in the manner it did for the 2012/2013 fiscal year. It would be helpful to state evaluators if the CUPA would also include asterisks stating the number of facilities in each jurisdiction.

5. **Observation:** The CUPA's inspectors have different approaches when it comes to performing inspections and noting RTC for the UST program. Two out of three inspectors seem to take thorough inspection notes while the third inspector does not. When it comes to RTC, it too is documented differently among the three inspectors. Two out of three inspectors make some type of note (either on a narrative sheet, sticky, or note on inspection) indicating RTC while the third inspector does not seem to capture this in the file.

Recommendation: SWRCB recommends that the CUPA hold training meetings with all inspectors and address inspection and RTC note writing. This should help inspectors with consistency in composing inspection notes and documenting RTC within the program.

6. **Observation:** At the beginning of 2013, two of the CUPA's inspectors started to electronically manage submitted facility information on the CUPA's servers. Documents electronically managed include test results, inspection results, and emails/correspondence.

Recommendation: SWRCB recommends that the CUPA ensure that all inspectors start electronically documenting and managing tests results, inspection results and emails or other correspondence. This could save inspectors time when they need to review facility files while in the office or out in the field.

7. **Observation:** DTSC was present for two hazardous waste generator oversight inspections. During the oversight inspection at Toshiba/Bridgelux, the CUPA inspector conducted a thorough inspection. The inspector was well prepared for the inspection, established rapport with the facility, toured the entire site, checked all required documentation for tier permit and SQGs, spotted all violations, and answered questions regarding hazardous waste rules and regulations accurately. During the oversight inspection at Ocellus Inc., the CUPA inspector conducted a good inspection. The inspector established rapport with the facility, checked all required documentation for CESQGs, spotted all violations, and answered questions regarding hazardous waste rules and regulations accurately.

Recommendation: None.

8. **Observation:** Eleven hazardous waste inspection reports were reviewed. The CUPA is consistent in documenting factual basis of violations and observations, generator type, and consent in inspection reports. The inspection reports are well-organized.

Recommendation: DTSC recommends that the CUPA note EPA ID# and violation classification in the inspection reports.

9. **Observation:** The CUPA is conducting hazardous waste generator program inspections at a frequency consistent with its I&E plan (once every four years).

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The CUPA maintained a satisfactory hazardous waste generator inspection (HWG) frequency in the past three years (78%). The CUPA's Annual Summary Reports show the following:

- In FY 10/11, 151 (32%) out of the 470 HWG facilities were routinely inspected.
- In FY 11/12, 113 (24%) out of the 477 HWG facilities were routinely inspected.
- In FY 12/13, 104 (22%) out of the 479 HWG facilities were routinely inspected.

Recommendation: DTSC recommends that the CUPA dedicate more resources for the inspection of facilities to reach a three (3) year inspection frequency, which is also consistent with most programs also regulated by the CUPA.

10. Observation: The CUPA is able to demonstrate that the complaints referred by DTSC between December 2010 and December 2013 were tracked. Follow up documentation and/or written status updates were available for complaint #11-0411-0221 and 13-1113-0754, however no CUPA follow up documentation was available for complaint #11-1011-0662. In addition, DTSC referred complaint #12-0412-0219 to the Alameda County Environmental Health, but the facility named in the complaint is under the jurisdiction of the Livermore-Pleasanton Fire Department.

Recommendation: DTSC recommends that the CUPA follow up with complaint #11-1011-0662 and #12-0412-0219. Please contact Nancy Lancaster at nancy.lancaster@dtsc.ca.gov to obtain more detailed information in regards to these complaints.

11. Observation: The CUPA has an effective enforcement program. The CUPA utilizes enforcement options such as administrative enforcement orders, DA referrals and participates in statewide enforcement cases. The CUPA finalized six hazardous waste generator enforcement cases in the past three years and collected over \$12,000 in penalties. The CUPA has not sent enforcement reports to CalEPA in the last three years.

Recommendation: CalEPA requests that the CUPA send enforcement reports to CalEPA pursuant to CalEPA's request in Unified Program Guidance Letter 13-05 dated April 19, 2013.

12. Observation: The CUPA is inspecting APSA facilities and has developed a checklist for APSA inspections. The CUPA's inspection report summary details the number of violations cited, as well as whether the facility has an Spill Prevention Control and Countermeasure plan. The CUPA inspector did not appear to use the checklist during three of the inspections, conducted prior to 2012, but did use the APSA checklist in more recent inspections.

Recommendation: CalEPA recommends that the CUPA continue to utilize its rather detailed APSA inspection checklist.

13. Observation: The CUPA uses a checklist during HMBP inspections. The checklist references a requirement to maintain physical HMBP documents at the facility.

Recommendation: Cal OES recommends that the CUPA consider revising the checklist line item to rescind the requirement for maintaining physical HMBP documents at the facility. With facilities entering information into California Environmental Reporting System (CERS), facilities will be allowed to maintain electronic versions of HMBP documents to make them available upon request.

EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

1. Community Outreach

The Livermore-Pleasanton Fire Department (LPFD) has reached out to its regulated community by holding classes for the implementation of newly mandated requirements for the APSA Program and CERS. CUPA personnel are also very involved in the regulatory community within Alameda County and statewide.

APSA Classes

Three free APSA classes for businesses were jointly hosted with the Alameda County Haz Mat Group. The classes were developed and taught by Danielle Stefani (LPFD) and Chris Boykin (Union City). These were three hour classes that provided a general review of the APSA program and covered Tier I and Tier II requirements in depth. They were held March 25, April 7 and June 10, 2010.

CERS Outreach

Three free CERS classes for businesses were hosted by the CUPA. One was jointly hosted with the Alameda County Haz Mat Group. The classes were developed and taught by Danielle Stefani (LPFD). These were three-hour classes that reviewed the CERS system and included live demonstrations detailing the process for creating accounts, as well as entering and uploading data elements and documents. The classes were held November 28, 2012, May 14, 2013 and September 18, 2013. In addition, staff has been working extensively to provide hands on guidance and tutorials on a one-on-one basis to assist businesses with the CERS system.

Committee Involvement

CUPA personnel actively participate in several groups, committees and Technical Advisory Groups (TAGs) including the Alameda County Hazmat Group, DA Environmental Task Force, Hazwaste TAG, UST TAG, CUPA Forum Board, Data-Steering Committee, and the NorCal Fire Prevention Officers.