



# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER  
GOVERNOR

Certified Mail: 7003 1680 0000 6167 6766

December 23, 2008

Mr. Dan Marks, Director  
City of Berkeley  
Planning and Development Department  
2120 Milvia Street  
Berkeley, California 94704

Dear Mr. Marks:

The California Environmental Protection Agency (Cal/EPA), Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of the City of Berkeley Toxics Management Division Certified Unified Program Agency (CUPA) on October 21 and 22, 2008. The evaluation was comprised of an in-office program review and field oversight inspections by State evaluators. The evaluators completed a Certified Unified Program Agency 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 City of Berkeley Toxics Management Division's program performance is satisfactory with some improvement needed. To complete the evaluation process, please submit Deficiency Progress Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Progress Reports to Jennifer Lorenzo every 90 days after the evaluation date. The first deficiency progress report is due on March 19, 2009.

Cal/EPA also noted during this evaluation that the City of Berkeley Toxics Management Division has worked to bring about a number of local program innovations, including its extensive outreach activities. In addition to having a strong inspection and enforcement program, the City of Berkeley Toxics Management Division has adopted stringent environmental codes, such as codes to regulate ozone depleting compounds from air conditioners and fire extinguishers, etiological compounds, and radioactive materials. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program Web site to help foster a sharing of such ideas statewide.

Mr. Dan Marks  
Page 2  
December 23, 2008

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, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at [jbohon@calepa.ca.gov](mailto:jbohon@calepa.ca.gov).

Sincerely,

[Original signed by Jim Bohon for]

Don Johnson  
Assistant Secretary  
California Environmental Protection Agency

Enclosure

cc: Sent via email:

Mr. Nabil Al-Hadithy, Ph.D.  
Hazardous Materials Manager (CUPA Manager)  
Berkeley City Toxics Management Division  
2118 Milvia Street, Suite 300  
Berkeley, California 94704

Ms. Jennifer Lorenzo  
Cal/EPA Unified Program  
P.O. Box 2815  
Sacramento, California 95812-2815

Mr. Terry Snyder  
State Water Resources Control Board  
P.O. Box 944212  
Sacramento, California 94244-2102

Mr. Mark Pear  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 210  
Berkeley, California 94710-2721

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Mr. Dan Marks  
Page 3  
December 23, 2008

cc: Sent via email:

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Ms. Asha Arora  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
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Mr. Ben Ho  
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P.O. Box 944246  
Sacramento, California 94244-2460



# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

Enclosure



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## **CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS**

### **CUPA: CITY OF BERKELEY TOXICS MANAGEMENT DIVISION**

**Evaluation Dates: October 21 and 22, 2008**

#### **EVALUATION TEAM**

**Cal/EPA: Jennifer Lorenzo**

**DTSC: Mark Pear**

**SWRCB: Terry Snyder**

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. Questions or comments can be directed to Jennifer Lorenzo at (916) 327-9560.

	<b><u>Deficiency</u></b>	<b><u>Corrective Action</u></b>
1	<p>The CUPA is not accurately reporting the actual total amount of surcharged billed and collected on the Annual Single Fee Summary Report. As such, the CUPA does not know if it has remitted the correct amount of surcharge collected to the state.</p> <p>Based on the Annual Single Fee Summary Reports, the following were observed:</p> <ul style="list-style-type: none"><li>• The CUPA assessed the underground storage tank (UST) state surcharge on 94 of 104 tanks in fiscal year (FY) 04/05, 81 of 91 tanks in FY 05/06, and 79 of 91 tanks in FYs 06/07 and 07/08.</li><li>• The CUPA assessed the CUPA oversight state surcharge on 403 of 434 regulated facilities in FY 04/05, 390 of 422 regulated facilities in FY 05/06, 417 of 441 regulated facilities in FY 06/07, and 437 of 470 regulated facilities in FY 07/08.</li></ul> <p><b>CCR, Title 27, Sections 15250 (a) and 15290 (a)(1)(C) [Cal/EPA]</b></p>	<p>By March 19, 2009, the CUPA will have performed an analysis of the state surcharge discrepancy and provide Cal/EPA with the results.</p> <p>Beginning March 19, 2009, if the CUPA finds a problem with the billing cycle, the CUPA will develop an action plan to remedy the situation and implement it.</p>
2	<p>The CUPA is not fully tracking and reporting violations information and enforcement actions taken on the Annual Enforcement Summary Report 4. For example, in the last three fiscal years, the CUPA has been reporting the number of violations instead of the number</p>	<p>By September 30, 2009, while the CUPA continues to update and improve their database management system, the CUPA will verify that the violations and enforcement data on the Annual</p>

Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

	of facilities that were cited for violations. In addition, the number of enforcement actions does not accurately depict all enforcements initiated in the last three fiscal years.  <b>CCR, Title 27, Section 15290 (a)(3) [Cal/EPA]</b>	Enforcement Summary Report 4 will be complete and as accurate as possible.
<b>3</b>	During the hazardous waste oversight inspection, the inspector overlooked certain requirements applicable to laboratories.  <b>HSC, Chapter 6.5, Section 25200.3.1 (c) [DTSC]</b>	The deficiency was corrected before the end of the inspection.

**CUPA Representative**

Nabil Al-Hadithy  
\_\_\_\_\_  
(Print Name)

Original signed  
\_\_\_\_\_  
(Signature)

**Evaluation Team Leader**

Jennifer L. Lorenzo  
\_\_\_\_\_  
(Print Name)

Original signed  
\_\_\_\_\_  
(Signature)

## **PROGRAM OBSERVATIONS AND RECOMMENDATIONS**

*The observations provided in this section address activities that are not specifically required of the CUPA by statute or regulation. The recommendations, if any, are provided for continuous improvement and it is the CUPA's decision whether or not to follow the recommendations.*

1. **Observation:** The CUPA has continued to experience difficulties with its current database (CUPA DMS), such as generating accurate data for Annual Summary Reports or even generating a report of facilities that require follow up on notice to comply. The CUPA has determined that a new database software is needed for its Unified Program. The CUPA is currently in the process of data conversion for the new software (Decade Envision). The CUPA expects to have the new database fully functional by the summer of 2009. The CUPA expects that many of the problems with the current database will be eliminated.

**Recommendation:** Cal/EPA recommends that the CUPA ensure that its information technology support thoroughly tests, checks, and verifies that there are no "bugs" in the new database software.

2. **Observation:** The CUPA maintains excellent coordination with other CUPAs within the county for a consistent Unified Program. The CUPA meets with the other CUPAs within Alameda County on a monthly basis.

**Recommendation:** Cal/EPA encourages the City of Berkeley Toxics Management Division CUPA to continue to meet with other CUPAs regularly for consistency within the Unified Program.

3. **Observation:** Nine of the 10 facility files reviewed contained expired permits. However, all facilities are currently permitted with the CUPA and current permits have already been issued to the regulated facilities.

**Recommendation:** Cal/EPA recommends that each facility file contains copies of current permits.

4. **Observation:** During the hazardous waste generator oversight inspection, the inspector did not consult DTSC's Hazardous Waste Tracking System for a list of manifests from the past three years.

**Recommendation:** DTSC recommends that a list of manifests may be used as a spot check for manifests that are to be kept on site as required by title 22 of the California Code of Regulations. Also, the list may be used to follow up on which manifests require exception reports to be filed.

5. **Observation:** The inspection reports of some inspectors, for example, the 2008 Bayer inspection report, are very detailed in their observations, narratives, and descriptions.

**Recommendation:** DTSC recommends that having detailed inspection reports be adopted by all of the inspectors with in the City of Berkeley Toxics Management Division for the hazardous waste program.

6. **Observation:** The CUPA was able to demonstrate that some of the complaints which were referred by DTSC from October 1, 2005, to October 1, 2008, were investigated. Follow-up documentation was found for Complaint Numbers 08-0908-0667 and 08-0708-0488, but not for complaints 08-0408-0278 and 07-1107-0625. The CUPA stated that the last two complaints were never received by fax or e-mail from DTSC.

Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

**Recommendation:** Ensure that all complaints are being received by the CUPA from DTSC by providing the e-mail address of the person who should receive complaints to the complaints coordinator, Ms. Nancy Lancaster [nlancast@dtsc.ca.gov]. Investigate and document all complaints referred. Investigation does not always entail inspection, as many issues may be resolved by other means such as a phone call. In any instance, it is suggested that all investigations be documented, either by inspection report or by “note to file” and placed in the facility file.

7. **Observation:** Underground storage tank files contained plot plans, but some plot plans lacked sufficient detail.

**Recommendation:** The SWRCB recommends that plot plans include all the required elements. The SWRCB will email an example of a model plot plan for the CUPA to use. The CUPA should ensure that the plot plans are updated during the compliance inspection.

8. **Observation:** The CUPA’s policy (SOPs) on installations is complete. However, the CUPA’s UST Installation Checklist lacked sufficient detail.

**Recommendation:** The SWRCB recommends the CUPA adopt a more comprehensive Installation Checklist and has provided the CUPA with an Installation Checklist from Alameda County CUPA to use as a model.

Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

**EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION**

1. The City of Berkeley Toxics Management Division CUPA has an excellent inspection program. In the last three fiscal years, the CUPA has either met or exceeded the triennial inspection frequency for the business plan, California Accidental Release Prevention (CalARP), hazardous waste generator, and tiered permit programs, and also met the annual inspection frequency for the UST program. The CUPA conducts a majority of its compliance inspections as “combined” inspections, such as conducting various Unified Program elements along with storm water inspections.
2. The CUPA has a group of highly dedicated professional and knowledgeable staff. The five hazardous materials specialists have been with the CUPA for at least 5 to 10 years and the CUPA Manager (Nabil Al-Hadithy) has been with the CUPA for at least 15 years. The CUPA Manager requires each staff to cross train in each program by being the lead inspector for a particular program, which enables each staff to develop deeper understanding of the specifics of the program.
3. The CUPA has an excellent self-audit report that depicts the CUPA’s program activities during the reporting year. This information is presented in a clear and concise manner.
4. The CUPA has a Web site with an extensive wealth of information for its community. The Web site contains information for residents/citizens on file reviews, household hazardous wastes, universal waste, used oil information, and other pertinent information and contacts. The Web site contains separate information for regulated businesses on summaries of the Unified Program requirements. The Web site also contains the more recent requirements in the Unified Program, such as the new Aboveground Petroleum Storage Act requirements, cyanide regulations, and enhanced vapor recovery (EVR) permitting.

The CUPA has an excellent outreach program. The CUPA spends about 20 to 30 days of outreach activities in the public community. The CUPA also meets with the Community Environmental Advisory Commission at least 10 times a year. The CUPA has developed used oil and fluorescent bulb recycling programs based on grant money received from the California Integrated Waste Management Board (CIWMB). The CUPA was also the lead for the City of Berkeley in the Cosco Busan oil spill clean up effort in November 2007. The CUPA trained about 400 citizens that volunteered to assist with the clean up efforts.

5. The CUPA has done an excellent job of taking formal enforcement over the past three fiscal years. The City of Berkeley Toxics Management Division has been considered by the local district attorney to be the most aggressive for initiating formal enforcement within the County of Alameda. In the last three fiscal years, the CUPA has initiated 12 administrative enforcement orders (AEOs) and referred 13 cases to the district attorney for civil/criminal prosecution. The CUPA has recently initiated an AEO against an UST facility in October 2008. The CUPA also engaged in its first meth lab cleanup oversight based on the meth lab clean up act of 2005 in July 2007.

A few notable cases are as follows:

- a. The City of Berkeley settled an administrative enforcement action against University Arco for \$5,000, because the facility had failed to do the following:
  - To comply will annual certification requirements of monitoring equipment,
  - To comply with annual spill bucket testing,



Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

- To update Underground Storage Tank Facility pages,
  - To submit documentation to show compliance with state and federal financial responsibility requirements,
  - To ensure that the information in the hazardous materials business plan was complete and current, and
  - To fix annular fuel alarm over a span of three months.
- b. The owner of Jetco located at 2120 Fifth Street in Berkeley was returned to jail for probation violations observed during a June 2007 inspection by the City of Berkeley. Frank Ghayaz had originally paid \$30,000 in penalties in a judgment concerning the defendant failing to store engine parts under a permanent cover and on top of pallets at all times.
- c. The owner of Monsen Plating located at 3370 Adeline in Berkeley was charged with probation violations observed during a June 2007 inspection by the City of Berkeley. A two year extension of his probation was obtained. The defendant previously pleaded to the illegal transportation of hazardous waste, illegal disposal of hazardous waste, illegal discharge of pollutants into the sanitary sewer, failure to label hazardous waste, failure to provide adequate secondary containment, and the failure to store hazardous waste in adequate containers.
6. The CUPA has adopted more stringent codes than the statutes and regulations by the state. For example, the CUPA regulates facilities that use, store and/or handle hazardous materials below the state's minimum threshold quantities. The CUPA adopted codes to regulate ozone depleting compounds from air conditioners and fire extinguishers, etiological compounds, and radioactive materials in 1986 and recently adopted a code to regulate nano-particles. The CUPA has also banned wood smoke within the city limits unless a U.S. Environmental Protection Agency-approved device is used.
7. In addition to the City of Berkeley Toxics Management Division implementing the Unified Program within the city, the CUPA is also the local implementing agency (LIA) for hazardous materials/waste remediation and investigations, oversees the storm water pollution prevention program, and is also a consultant for the city on hazardous materials/wastes. The CUPA also serves as technical support to the city's Emergency Response Team.
8. On October 14, 2008, Inspector Meridith Lear conducted the UST site inspection in a thorough and professional manner. Her pre-inspection review of the facility file and documentation of the existing conditions and paperwork was thorough. She used a facility pre-inspection guide to record this information and document things to look for during the compliance inspection. She used a detailed and complete Inspection Checklist to document the scope of the inspection and all the required elements in compliance. Her attention to detail and knowledge of code and regulations resulted in an excellent inspection. Meridith's investigation of the service technician's testing of the spill buckets resulted in the failure of two spill containers instead of one. She left a Notice of Violation with a 30-day Self Certification of Return to Compliance with the facility operator. Meridith also asked for suggestions on how to improve her inspection technique and procedure.
9. The CUPA's UST Operating Permit is excellent; it contains all the required elements including additional information on posting of the permit, monitoring plan, plot plan, and response plan at the facility; equipment construction materials; Financial Responsibility Statement; cathodic protection; Board of Equalization identification number, recording keeping, testing, and reporting requirements; and emergency contact person.

Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

- 10.** The CUPA's UST facility files were well-organized and, as a result, it was easy to find the required documentation in the files. Files were organized into multiple sections such as: 1) Tank permits and Forms A, B, and C, 2) Facility Plot Plans, Secondary Containment and Tank Testing and Monitoring Certifications, 3) Inspection reports, 4) Monitoring and Response Plans and Unauthorized Release reports, 5) Correspondence and System Modification reports and permits, and 6) Financial Responsibility forms, Cut sheets, and Blueprints.