



# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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EDMUND G. BROWN JR.  
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February 15, 2011

Charles Mosher, M.D.  
Mariposa County Health Officer  
Mariposa County Public Health Department  
5100 Bullion Street  
Mariposa, California 95338

Dear Dr. Mosher:

The California Environmental Protection Agency (Cal/EPA), California Emergency Management Agency, Office of the State Fire Marshal, Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of the Mariposa County Public Health Department Certified Unified Program Agency (CUPA) on December 7 and 8, 2010. 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 Mariposa County Public Health Department 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 Ernie Genter every 90 days after the evaluation date; the first report is due on April 7, 2011.

Cal/EPA also noted during this evaluation that Mariposa County Public Health Department has worked to bring about a number of local program innovations, including outstanding multi-program coordination and a comprehensive and helpful website. We will be sharing these innovations with the larger CUPA community through the Cal/EPA 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, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or email [jbohon@calepa.ca.gov](mailto:jbohon@calepa.ca.gov).

Sincerely,

[Original signed by Don Johnson]

Don Johnson  
Assistant Secretary  
California Environmental Protection Agency

Enclosure

cc: Sent via email:

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Charles Mosher, M.D.

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Enclosure



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

**CUPA: Mariposa County Health Department**

**Evaluation Date: December 7 and 8, 2010**

### **EVALUATION TEAM**

**Cal/EPA: Ernie Genter**  
**SWRCB: Terry Snyder**  
**Cal EMA: Jack Harrah**  
**DTSC: Asha Arora**  
**OSFM: Jennifer Lorenzo**

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 preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Ernie Genter at (916) 327-9560.

<u>Deficiency</u>		<u>Preliminary Corrective</u>
		<u>Action</u>
1	<p>The CUPA did not conduct a complete hazardous waste generator (HWG) facility compliance inspection on 12-6-10 and did not demonstrate that its staff had been adequately trained in the identification of hazardous waste violations and small quantity generator (SQG) requirements. In addition, the CUPA inspector missed the hazardous waste generator violations observed:</p> <ul style="list-style-type: none"><li>• The CUPA inspectors did not ask if weekly inspections were conducted for containers and if routine inspections were conducted for the emergency equipment.</li><li>• Failure to ask if the eye wash/shower and emergency equipment, such as fire extinguishers, are tested and maintained by the generators.</li><li>• Also, the CUPA staff has not received hazardous waste training except two-hour Used Oil training.</li></ul> <p>CCR, Title 22, Sections 66262.34 (f), 66262.34 (d)(2) which refers to 40CFR, subpart I, 265.174; 40CFR, subpart C, 265.32 and 265.33 via 40CFR, 262.34(d)(4); and CCR, Title 22, Section</p>	<p>Immediately, the CUPA will ensure that inspections are conducted in a manner consistent with state statute or regulation for businesses subject to HWG program.</p> <p>By March 8, 2011, the CUPA will provide hazardous waste training to staff regarding the identification and citation of hazardous waste violations. The CUPA will also submit to Cal/EPA a list of other trainings received.</p>

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	<b>66265.16(d) [DTSC]</b> <b>CCR, Title 27, Section 15260 (a)(1)(B) [DTSC]</b>	
<b>2</b>	<p>The CUPA is not always classifying violations for the hazardous waste generator program. Of all the files reviewed, the CUPA did not classify violations as minor, Class I and Class II.</p> <p>In addition, the CUPA staff has not received hazardous waste classification training.</p> <p><b>CCR, Title 22, Sections 66260.10, 25110.8.5, 25116.5, and 66265.16(d) [DTSC]</b></p>	<p>By March 8, 2011, the CUPA will provide hazardous waste training to staff regarding the classification of hazardous waste violations and ensure that all violations are appropriately classified.</p>
<b>3</b>	<p>The CUPA has not met the three-year inspection frequency for HMRRP (business plan) handlers. Over the past three summary reports, the CUPA has inspected 103 out of an average of 139 handlers, or just under 75%.</p> <p><b>HSC, Chapter 6.95, Section 25508(b) [Cal EMA]</b></p>	<p>As noted in the 2009-10 self-audit, implementation of a corrective action plan has been undertaken.</p> <p>With each quarterly update, the CUPA will report its progress on correction of this deficiency.</p> <p>By December 31, 2011, the CUPA will inspect at least 1/3 of its handlers.</p>
<b>4</b>	<p>The CUPA is not requiring business plans from all handlers subject to HSC, Chapter 6.95, Article 1. Specifically, the CUPA is neither regulating nor properly exempting all agricultural handlers.</p> <p><b>HSC, Chapter 6.95, Section 25503.5(a)(1) [Cal EMA]</b></p>	<p>By June 8, 2011, the CUPA will submit an action plan to ensure that each agricultural handler subject to Article 1 is either regulated under the business plan program, or exempted from the program under one of the provisions of HSC section 25503.5(c).</p>
<b>5</b>	<p>The underground storage tanks (UST) plot plans did not contain all the required elements. The plot plans were missing the location(s) of where the monitoring will be performed. Examples of missing locations include the sensors for under-dispenser containments (UDCs) and turbine sumps, also not shown were line leak detectors.</p> <p><b>CCR, Title 23, Sections 2632(d)(1)(C) and 2641(h) [SWRCB]</b></p>	<p>Immediately, UST plot plan requirements will be modified to include location of all leak detection monitoring equipment. The CUPA will request updated plot plans to be submitted by the time the UST facility is annually inspected. In addition, the CUPA will ensure that new permit application materials also contain completed plot plans. By December 8, 2011, the CUPA will ensure that all UST plot plans contain all the required elements.</p>
<b>6</b>	<p>The CUPA has not met the mandated inspection frequency for UST facility compliance inspections the last three fiscal years. The CUPA completed UST compliance inspections at 82, 72, and 86 percent of the regulated UST facilities during the last 3 years. The</p>	<p>Immediately, the CUPA will develop and implement a plan to inspect all UST facilities annually.</p> <p>By December 31, 2011, perform routine</p>

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	<p>CUPA's goal is to meet the inspection frequencies and conduct the compliance inspection during the annual monitoring certification. The CUPA stated that they are using a risk-based evaluation process to first inspect the facilities with the highest potential for environmental impacts or are recalcitrant in returning to compliance after Notice of Violation. This provides maximum protection for the environment yet may reduce compliance frequencies.</p> <p><b>Chapter 6.7 HSC Section 25288 (a) [SWRCB]</b></p>	<p>inspections on all UST facilities in Mariposa County for 2011. Completion of UST inspections should be reflected in the CUPA's Annual Summary Report 3 and Semiannual Report 6.</p>
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**CUPA Representative**

David Conway  
(Print Name)

*Original Signed*  
(Signature)

**Evaluation Team Leader**

Ernest S. Genter  
(Print Name)

*Original Signed*  
(Signature)

Certified Unified Program Agency (CUPA)  
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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 CUPA's I&E Plan contains outdated information on the following:

- Regarding the Aboveground Petroleum Storage Act (APSA) program, the I&E Plan states that the CUPA makes referrals to the State Water Board and Regional Boards. However, implementation of the program has been transferred to the CUPAs since the passage of AB 1130, which became effective January 1, 2008.
- The CUPA refers to the Uniform Fire Code. The state has adopted a new model code as the minimum fire code requirements along with California amendments; therefore, any reference to the Uniform Fire Code (particularly Article 80) is obsolete. The 2010 California Fire Code becomes effective January 1, 2011.
- The I&E Plan does not discuss red tags as an enforcement option for the UST program and the CUPA has not utilized Red Tags to date. However, Red Tags should be described as an option if they may be used in the future.
- The Universal Waste program is not discussed.
- Some of the statutes and regulations references are outdated.
- Violation classification is only discussed in reference to the hazardous waste generator programs. However, violation classification now applies to all CUPA program elements.

**Recommendation:** Cal/EPA, DTSC, and OSFM recommend that the CUPA update the I&E Plan to reflect current information.

**2. Observation:** All the required elements of the Annual CUPA Self-audit Report are present, but several items are lacking sufficient detail. The items include: the narrative summary discussing the effectiveness of the permitting, inspection and enforcement programs.

**Recommendation:** Cal/EPA recommends that the CUPA provide additional detail in the Annual Self-audit Report in the narrative summary discussing the effectiveness of the permitting, inspection and enforcement program elements. This detail can make the self-audit report a more useful document by assisting the CUPA in identifying goals and implementing actions to improve the program and by providing the state agency evaluators with better information for evaluating the program.

The Enforcement Component, Section N. Annual Review of the Inspection and Enforcement Plan, of the CUPA's I&E Plan covers much of what the self-audit summary could include, such as: the number of regulated businesses within each program element

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and the number of inspections completed in each program (much of this is in the annual summary reports, but are required frequencies being met); the type of violations, and the number of businesses that had violations (provide a summary, do not repeat information in the annual summary reports); the number of businesses that returned to compliance; the number of new businesses added to any program element; number of enforcement actions, and the results of the enforcement actions taken by the CUPA and/or legal counsel (provide a summary, do not repeat info in the annual summary reports); consistency and inconsistency among inspection staff inspecting the six program elements; and the overall “effectiveness” of the inspection and enforcement program. The annual self-audit and annual review of the I&E Plan can and should overlap and be conducted at the same time.

3. **Observation:** While informal enforcement is being reported on Report 4, it appears that informal enforcement is being under-reported.

**Recommendation:** Cal/EPA recommends that the CUPA track and include all compliance and enforcement re-inspections, letters, phone calls, and any other enforcement activities that do not impose a penalty as informal enforcement on the Report 4.

4. **Observation:** Once the CUPA receives a hazardous materials business plan for a facility, the CUPA scans and submits an electronic copy within 15 days to Mariposa County Fire Department. The County Fire Department then distributes them to the appropriate fire district within the county.

**Recommendation:** OSFM recommends that the CUPA continue to keep up the good work. Once the CUPA transitions to CERS, the CUPA is encouraged to allow its emergency responders read-only access to the business plan information. The CUPA should also invite its emergency responders to be trained in CERS.

5. **Observation:** The CUPA has begun its initial implementation of the APSA program. The CUPA has notified potential APSA facilities about the program through letters. Tank facilities have been given aboveground tank facility statements. In addition, last month, the CUPA sent letters letting APSA facilities know of the new compliance date to prepare and implement a Spill Prevention Control and Countermeasure (SPCC) Plan. The CUPA has also begun inspecting its APSA facilities; however, the CUPA has not yet developed an inspection checklist.

**Recommendation:** OSFM recommends that the CUPA continue to inspect more APSA facilities at least once every three years as required by Health and Safety Code Chapter 6.67, section 25270.5 and may prioritize those with greater than or equal to 10,000 gallons of petroleum. The CUPA may model its APSA inspection checklist based on those that are readily available on the Cal-CUPA Forum’s Web site.

6. **Observation:** The CUPA’s Web site is informative. However, some information needs to be updated for the following:

- The CUPA’s application package states: “Any business which stores petroleum



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products (gasoline, oil, etc.) in a single aboveground storage tank with a capacity greater than 1,320 gallons or in multiple storage tanks with a cumulative storage capacity greater than 1,320 gallons is required to complete [an] SPCC Plan. The plan is approved by the Regional Water Quality Control Board and is maintained at the tank location.” Any tank facility with a cumulative storage shell capacity of greater than or equal to 1,320 gallons is required to prepare and implement an SPCC Plan. In addition, the State Water Board/Regional Board no longer implements the APSA program.

- The compliance date for the preparation and implementation of the SPCC plan has been extended to November 10, 2011, for several facilities, while certain facilities follow the compliance date of November 10, 2010. The Tier I SPCC Plan template originally developed by U.S. Environmental Protection Agency is also available on the CUPA’s Web site, but the “old” template may not have all the correct information. U.S. EPA has developed an updated version of the template. In addition, the CUPA provides the original APSA FAQ; the revised APSA FAQ is available on the Cal-CUPA Forum’s Web site.
- The CUPA’s application package references the Uniform Fire Code. Also, there is no 1994 California Fire Code.
- The Consolidated Permit Application contains old documents, such as the tiered permitting forms that need to be updated for public use.

**Recommendation:** OSFM recommends that the CUPA update the Web site with current information. Although the CUPA does not have any tiered permitting facilities, DTSC recommends that the CUPA updates its documents. The updated documents are available on the Cal/EPA’s Web site.

7. **Observation:** The CUPA’s self-audits also reference the old Uniform Fire Code.

**Recommendation:** OSFM recommends that on the next self-audit, the CUPA refer to the current fire code (California Fire Code).

8. **Observation:** Of 12 files reviewed, 4 had out-of-date inventories or certifications. Of these, 2 certifications were from 2009, so they were actually only one year out-of-date. Two files had not had the entire business plan reviewed in the past three years.

**Recommendation:** Cal EMA recommends that the CUPA more closely track inventories and certifications in the future, to ensure that inventory information is current.

9. **Observation:** The CUPA is not reporting Significant Operational Compliance (SOC) violations as the condition of the UST facility at the start of the annual compliance inspection. A SOC reporting violation is still reported even if the violation is corrected during the inspection. The UST facility may be in operational compliance at the end of the inspection but there may be SOC violations to report to the SWRCB with the semiannual Report 6.

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**Recommendation:** The SWRCB recommends that the CUPA report SOC violations dependent upon the condition of the facility at the start of the inspection.

10. **Observation:** On the Facility Information form (Form A) the Board of Equalization (BOE) number was missing or incorrect on 3 of 6 files reviewed.

**Recommendation:** The SWRCB recommends that the CUPA ensure that the BOE number be entered into the form which is the first line check that this facility has the number and is paying the BOE fee. This fee goes into the Cleanup Fund. Also if the facility does not have a BOE number the CUPA after notice of violation should take appropriate enforcement. The CUPA should not accept ,for the Mechanism Type (Item C) of the Financial Responsibility submittal, the State Cleanup Fund as the insurance coverage.

11. **Observation:** The CUPA is not documenting EPA ID# on most of the hazardous waste generator (HWG) inspection reports.

**Recommendation:** DTSC recommends that the CUPA include EPA ID# for all HWG inspections.

12. **Observation:** The CUPA's field inspection report and checklist does not contain a section for an inspector to check off which hazardous waste program the facility is regulated as (ex. RCRA LQG, LQG, SQG, or CESQG). While this information is not required, it is important to note so that the inspectors can determine which regulations are applicable at the beginning of inspections.

**Recommendation:** DTSC recommends that the CUPA modify its hazardous waste inspection report to include check boxes for marking the type of hazardous waste facility

13. **Observation:** The CUPA was not able to demonstrate that the two complaints which were referred by DTSC between 11/29/07 to 11/29/10 were investigated. Minimal or no follow-up documentation could be found for the following complaint numbers: 07-1007-0592 and 08-0508-0403.

**Recommendation:** DTSC recommends that the CUPA ensure that all complaints from DTSC are being received by the CUPA by providing the e-mail address of the person who should receive complaints to the DTSC complaint coordinator [nlancast@dtsc.ca.gov](mailto: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 an inspection report or by "note to file" and placed in the facility file.

14. **Observation:** Although the CUPA conducts announced HWG inspections, the CUPA staff did not obtain consent during an oversight inspection of a HWG conducted on 12/6/10.

**Recommendation:** DTSC recommends that the CUPA staff should obtain consent on its HWG inspections even if the inspections are announced.

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- 15. Observation:** Inspection reports issued by the CUPA do not include observations or other information in enough detail to determine if those items are violations, observations, or suggestions.

**Recommendation:** DTSC recommends including observations or other information to determine if those items are violations or observations.

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**EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION**

1. **Website:** The CUPA's Web site on the APSA program provides various resources. For example, the CUPA provides an excellent and colorful flowchart that assists businesses on whether or not, and in what way they are regulated under APSA. With consent obtained from San Diego County CUPA, the CUPA provided a link on their Web site to San Diego County CUPA's "How to Prepare an SPCC Plan" for businesses. The CUPA also has a very comprehensive regulated business permit application package.
2. **Area Plan:** The CUPA's area plan is well organized, well written and appears easy to use. The 2009 document is SB 391 (pesticide drift bill) compliant. The CUPA coordinated the development of the Area Plan with numerous local and state responding and responsible agencies.
3. **Coordination:** In addition to performing its CUPA responsibilities, the CUPA staff are also responsible for numerous Mariposa County environmental health programs. The CUPA attempts to consolidate and coordinate CUPA inspections and enforcement activities with inspection and enforcement activities of the other environmental health programs. The CUPAs files are well organized and information is easily obtained. The facility files are divided into several sections and well labeled. The CUPA has an education and assistance approach to environmental compliance. This approach maintains a good working relationship with the regulated community and effective compliance.