

**CALIFORNIA CUPA FORUM BOARD
LEGISLATIVE CONCEPTS
2018**

CFB Priority	H&SC Chapter	Topic	Amendment
#1	H&SC Ch 6.67	APSA Cleanup Language	Clarification of AST's in underground areas <1320 gal
#2	H&SC Ch 6.11	Permits	Allows for closure of businesses or the portion of the business under permit, for failure to operate with a valid permit
#3	H&SC Ch 6.95 Article 2	Enhanced CAL ARP Enforcement	Raise penalties from \$2K to \$25K and remove requirement that notice be given prior to assessing a higher penalty.
#4	H&SC Ch 6.7	UST Cleanup	Several amendments to UST statutes via UST workgroup.
#5	H&SC Ch 6.11 et al	UP Regulatory Performance Initiative	Allows UPAs to establish different inspection frequencies in their I&E Plan to allow flexibility in focusing on higher priorities and risks.
#6	H&SC Ch 6.5	Haz Waste Counting	Provides ability for DTSC to write regulations that would exclude certain HW from being counted towards their generator status.
#7	H&SC Ch 6.9.1	Fentanyl Drug Cleanup	Creates cleanup requirements by copying provisions found in the current meth lab cleanup requirements.
#8	H&SC Ch 6.95 Article 1 Sec 25500	GDC	To add GDC provision to Art 1.

#1 H&SC CHAPTER 6.67 APSA CLEANUP LANGUAGE

CUPA FORUM BOARD CONTACT: RANDY SAWYER (APSA IC)

What are we trying to accomplish?

The purpose of the proposed legislation is to clear up confusion with the definition of “aboveground storage tank” in APSA, resolve the unintended consequences of SB612 related to Tanks in Underground Areas (TIUGAs), modify the definition of a TIUGA to provide clarification consistent with the new OSFM piping regulations, help establish a clear path for compliance for aboveground petroleum tanks that qualify as TIUGAs as they transition from the UST program to APSA, and provide compliance assistance to small facilities with less than 1,320 gallons of petroleum that are now subject to APSA solely because they have a TIUGA.

Why do we need amendments to APSA?

There is confusion and unintended consequences identified since SB 612 passed and we need to ensure clarity when the OSFM piping regulations for TIUGAs become effective in July 2018.

HEALTH AND SAFETY CODE, CHAPTER 6.67. Aboveground Storage of Petroleum

25270.2.
For purposes of this chapter, the following definitions apply:

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(a) "Aboveground storage tank" or "storage tank" means a tank or container that has the capacity to store 55 gallons or more of petroleum that is substantially or totally above the surface of the ground, except that, for purposes of this chapter, "aboveground storage tank" or "storage tank" includes a tank in an underground area. "Aboveground storage tank" does not include any of the following:

(1) A pressure vessel or boiler that is subject to Part 6 (commencing with Section 7620) of Division 5 of the Labor Code.

(2) A tank containing hazardous waste or extremely hazardous waste, as respectively defined in Sections 25117 and 25115, if the ~~Department of Toxic Substances Control has issued the person owning or operating the tank~~ owner or operator has a hazardous waste facilities permit from the Department of Toxic Substances Control or a permit by rule authorization from the Unified Program Agency for the storage tank.

(3) An aboveground oil production tank that is subject to Section 3106 of the Public Resources Code.

(4) Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers, or capacitors, if the oil-filled electrical equipment meets either of the following conditions:

(A) The equipment contains less than 10,000 gallons of dielectric fluid.

(B) The equipment contains 10,000 gallons or more of dielectric fluid with PCB levels less than 50 parts per million, appropriate containment or diversionary structures or equipment are employed to prevent discharged oil from reaching a navigable water course, and the electrical equipment is visually inspected in accordance with the usual routine maintenance procedures of the owner or operator.

(5) A tank regulated as an underground storage tank under Chapter 6.7 (commencing with Section 25280) of this division and Chapter 16 (commencing with Section 2610) of Division 3 of Title 23 of the California Code of Regulations and that does not meet the definition of a tank in an underground area.

(6) A transportation-related tank facility, subject to the authority and control of the United States Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the United States Environmental Protection Agency, as set forth in Appendix A to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(7) A tank or tank facility located on and operated by a farm that is exempt from the federal spill prevention, control, and countermeasure rule requirements pursuant to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(b) "Board" means the State Water Resources Control Board.

(c) (1) "Certified Unified Program Agency" or "CUPA" means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) "Participating Agency" or "PA" means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement and enforce the unified program element specified in paragraph (2) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) (A) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent that each PA has been designated by the CUPA, pursuant to a written agreement, to implement and enforce the unified program element specified in paragraph (2) of subdivision (c) of Section 25404. The UPAs have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 to 25404.2, inclusive, to implement and enforce the requirements of this chapter.

(B) After a CUPA has been certified by the secretary, the unified program agency shall be the only agency authorized to enforce the requirements of this chapter.

(C) This paragraph does not limit the authority or responsibility granted to the office, the board, and the regional boards by this chapter.

(d) "Office" means the Office of the State Fire Marshal.

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- (e) "Operator" means the person responsible for the overall operation of a tank facility.
- (f) "Owner" means the person who owns the tank facility or part of the tank facility.
- (g) "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. "Person" also includes any city, county, district, the University of California, the California State University, the state, any department or agency thereof, and the United States, to the extent authorized by federal law.
- (h) "Petroleum" means crude oil, or a fraction thereof, that is liquid at 60 degrees Fahrenheit temperature and 14.7 pounds per square inch absolute pressure.
- (i) "Regional board" means a California regional water quality control board.
- (j) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, or disposing into the environment.
- (k) "Secretary" means the Secretary for Environmental Protection.
- (l) "Storage" or "store" means the containment, handling, or treatment of petroleum, for a period of time, including on a temporary basis.
- (m) "Storage capacity" means the aggregate capacity of all aboveground storage tanks at a tank facility.
- (n) "Tank facility" means one or more aboveground storage tanks, including any piping that is integral to the tanks, that contain petroleum and that are used by an owner or operator at a single location or site. For purposes of this chapter, a pipe is integrally related to an aboveground storage tank if the pipe is connected to the tank and meets any of the following:
- (1) The pipe is within the dike or containment area.
 - (2) The pipe is between the containment area and the first flange or valve outside the containment area.
 - (3) The pipe is connected to the first flange or valve on the exterior of the tank, if state or federal law does not require a containment area.
 - (4) The pipe is connected to a tank in an underground area.
- (o) (1) "Tank in an underground area" means a stationary storage tank to which all of the following apply:
- (A) The storage tank is located in a structure that is at least 10 percent below the ground surface, including, but not limited to, a basement, cellar, shaft, pit, or vault.
 - (B) The structure in which the storage tank is located, at a minimum, provides for secondary containment of the contents of the tank, piping, and ancillary equipment, until cleanup occurs. A shop-fabricated double-walled storage tank with a mechanical or electronic device used to detect leaks in the interstitial space meets the requirement for secondary containment of the contents of the tank.
 - (C) The storage tank meets one or more of the following conditions:
 - (i) The storage tank contains petroleum to be used or previously used as a lubricant or coolant in a motor engine or transmission, oil-filled operational equipment, or oil-filled manufacturing equipment, is situated on or above the surface of the floor, and the structure in which the tank is located provides enough space for direct viewing of the exterior of the tank except for the part of the tank in contact with the surface of the floor.
 - (ii) The storage tank only contains petroleum that is determined to be a hazardous waste, complies with the hazardous waste tank standards pursuant to Article 10 (commencing with Section 66265.190) of Chapter 15 of Title 22 of the California Code of Regulations as it may be amended, and the tank facility has been issued a unified program facility permit pursuant to Section 25404.2 for generation, treatment, accumulation, or storage of hazardous waste.
 - (iii) The storage tank contains petroleum and is used solely in connection with a fire pump or an emergency system, legally required standby system, or optional standby system as defined in the most recent version of the California Electrical Code (Section 700.2 of Article 700, Section 701.2 of Article 701, and Section 702.2 of Article 702, of Chapter 7 of Part 3 of Title 24 of the California Code of Regulations), is situated on or above the surface of the floor, and the structure in which the tank is located provides enough space for

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direct viewing of the exterior of the tank except for the part of the tank in contact with the surface of the floor.

(iv) The storage tank does not meet the conditions in clauses (i), (ii), or (iii), but meets all of the following conditions:

(I) It contains petroleum.

(II) It is situated on or above the surface of the floor.

(III) The structure in which the storage tank is located provides enough space for direct viewing of the exterior of the tank, except for the part of the tank in contact with the surface of the floor, . If the structure in which the tank is located cannot provide enough space for direct viewing of the exterior of the tank, then the containment structure shall be monitored to detect a release from the storage tank.

(IV) and Except for an emergency vent that is solely designed to relieve excessive internal pressure, all piping connected to the tank, including any portion of a vent line, vapor recovery line, or fill pipe that is beneath the surface of the ground, and all ancillary equipment that are designed and constructed to contain petroleum, can either be visually inspected by direct viewing or has both secondary containment and leak detection that meet the requirements of the regulations adopted by the office pursuant to Section 25270.4.1.

(2) For a shop-fabricated double-walled storage tank, direct viewing of the exterior of the tank is not required under paragraph (1) if inspections of the interstitial space are performed or if it has a mechanical or electronic device that will detect leaks in the interstitial space.

(3) (A) A storage tank in an underground area is not subject to Chapter 6.7 (commencing with Section 25280) if the storage tank meets the definition of a tank in an underground area, as provided in paragraph (1) and, except as specified in subparagraph (B), the regulations that apply to all new and existing tanks in underground areas and buried piping connected to tanks in underground areas have been adopted by the office pursuant to Section 25270.4.1.

(B) A storage tank meeting the description of clause (i) of subparagraph (C) of paragraph (1) shall continue to be subject to this chapter, and excluded from the definition of an underground storage tank in Chapter 6.7 (commencing with Section 25280), before and after the date the regulations specific to tanks in underground areas have been adopted by the office.

(p) "Viewing" means visual inspection, and "direct viewing" means, in regard to a storage tank, direct visual inspection of the exterior of the tank, except for the part of the tank in contact with the surface of the floor, and, where applicable, the entire length of all piping and ancillary equipment, including all exterior surfaces, by a person or through the use of visual aids, including, but not limited to, mirrors, cameras, or video equipment.

25270.3.

A tank facility is subject to this chapter if any of the following apply:

(a) The tank facility is subject to the oil pollution prevention regulations specified in Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(b) The tank facility has a storage capacity of 1,320 gallons or more of petroleum.

(c) The tank facility has a storage capacity of less than 1,320 gallons of petroleum and has one or more tanks in an underground area meeting the conditions specified in paragraph (1) of subdivision (o) of Section 25270.2.

(1) If this subdivision is applicable, only tanks meeting the conditions specified in paragraph (1) of subdivision (o) of Section 25270.2 shall be included as storage tanks and subject to this chapter.

(2) For purposes of subdivision (c), the following tanks in underground areas are not subject to this chapter:

(A) A tank holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

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(B) A heating oil tank.

25270.4.

This chapter shall be implemented by the Unified Program Agency, in accordance with the regulations adopted by the office pursuant to Section 25270.4.1.

25270.4.1.

(a) The office shall adopt regulations implementing this chapter. The office shall also provide interpretation of this chapter to the UPAs, and oversee the implementation of this chapter by the UPAs.

(b) The office shall establish an advisory committee that includes representatives from regulated entities, appropriate trade associations, fire service organizations, federal, state, and local organizations, including UPAs, and other interested parties. The advisory committee shall act in an advisory capacity to the office in conducting its responsibilities.

(c) The office shall, in addition to any other requirements imposed pursuant to this chapter, train UPAs, ensure consistency with state law, to the maximum extent feasible, ensure consistency with federal enforcement guidance issued by federal agencies pursuant to subdivision (d), and support the UPAs in providing outreach to regulated persons regarding compliance with current local, state, and federal regulations relevant to the office's obligations under this chapter.

(d) Any regulation adopted by the office pursuant to this section shall ensure consistency with the requirements for spill prevention, control, and countermeasure plans under Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations, and shall include any more stringent requirements necessary to implement this chapter.

25270.4.5.

(a) Except as provided in subdivision (b), each owner or operator of a storage tank at a tank facility subject to this chapter shall prepare a spill prevention control and countermeasure plan applying good engineering practices to prevent petroleum releases using the same format required by Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations, including owners and operators of tank facilities not subject to the general provisions in Section 112.1 of those regulations. Each owner or operator specified in this subdivision shall conduct periodic inspections of the storage tank to ensure compliance with Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations. In implementing the spill prevention control and countermeasure plan, each owner or operator specified in this subdivision shall fully comply with the latest version of the regulations contained in Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(b) A tank facility located on and operated by a farm, nursery, logging site, or construction site is not subject to subdivision (a) if no storage tank at the location exceeds 20,000 gallons and the cumulative storage capacity of the tank facility does not exceed 100,000 gallons. Unless excluded from the definition of an "aboveground storage tank" in Section 25270.2, the owner or operator of a tank facility exempt pursuant to this subdivision shall take the following actions:

(1) Conduct a daily visual inspection of any storage tank storing petroleum. For purposes of this section, "daily" means every day that contents are added to or withdrawn from the tank, but no less than five days per week. The number of days may be reduced by the number of state or federal holidays that occur during the week if there is no addition to, or withdrawal from, the tank on the holiday. The unified program agency may reduce the frequency of inspections to not less than once every three days at a tank facility that is exempt pursuant to this section if the tank facility is not staffed on a regular basis, provided that the inspection is performed every day the facility is staffed.

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- (2) Allow the UPA to conduct a periodic inspection of the tank facility.
- (3) If the UPA determines installation of secondary containment is necessary for the protection of the waters of the state, install a secondary means of containment for each tank or group of tanks where the secondary containment will, at a minimum, contain the entire contents of the largest tank protected by the secondary containment plus precipitation.
- (c) In meeting the requirement to prepare a spill prevention, control, and countermeasure plan as specified in subdivision (a), each owner or operator of a tank in an underground area that is subject to this chapter pursuant to Section 25270.3(c) may use the format adopted by the office.

#2 H&SC CHAPTERS 6.11 PERMIT ISSUES

CUPA FORUM BOARD CONTACT: BILL JONES/RANDY SAWYER

This measure is to deal with businesses that operate without a permit and other specific situations where permit revocations apply. This also includes provisions to allow a UPA to administratively penalize businesses that discharge a hazardous substance using the penal code definition under section 374.8(b). Finally, this measure includes an ability to close a facility (or portion of the facility) that is causing an imminent and substantial endangerment to public health and safety or the environment.

- 25404.1.1. Unified program violations.** (a) If the unified program agency determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that the UPA is authorized to enforce or implement pursuant to this chapter, the UPA may issue an administrative enforcement order requiring that the violation be corrected and imposing an administrative penalty, in accordance with the following:
- (1) Except as provided in paragraph (5), if the order is for a violation of Chapter 6.5 (commencing with Section 25100), the violator shall be subject to the applicable administrative penalties provided by that chapter.
- (2) If the order is for a violation of Chapter 6.7 (commencing with Section 25280), the violator shall be subject to the applicable civil penalties provided in subdivisions (a), (b), (c), and (e) of Section 25299.
- (3) If the order is for a violation of Article 1 (commencing with Section 25500) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25514.5.
- (4) If the order is for a violation of Article 2 (commencing with Section 25531) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25540 or 25540.5.
- (5) If the order is for a violation of Section 25270.4.5, the violator shall be liable for a penalty of not more than five thousand dollars (\$5,000) for each day on which the violation continues. If the violator commits a second or subsequent violation, a penalty of not more than ten thousand dollars (\$10,000) for each day on which the violation continues may be imposed.
- (b) In establishing a penalty amount and ordering that the violation be corrected pursuant to this section, the UPA shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the penalty, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.
- (c) Any order issued pursuant to this section shall be served by personal service or certified mail and shall inform the person served of the right to a hearing. If the UPA issues an order pursuant to this section, the order shall state whether the hearing procedure specified in paragraph (2) of subdivision (e) may be requested by the person receiving the order.

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(d) Any person served with an order pursuant to this section who has been unable to resolve any violation with the UPA, may within 15 days after service of the order, request a hearing pursuant to subdivision (e) by filing with the UPA a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(e) Except as provided in subparagraph (B) of paragraph (2), a person requesting a hearing on an order issued by the UPA under this section may select the hearing officer specified in either paragraph (1) or (2) in the notice of defense filed with the UPA pursuant to subdivision (d). If a notice of defense is filed but no hearing officer is selected, the UPA may select the hearing officer. Within 90 days of receipt of the notice of defense by the UPA, the hearing shall be scheduled using one of the following:

(1) An administrative law judge of the Office of Administrative Hearings of the Department of General Services, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions.

(2) (A) A hearing officer designated by the UPA, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions. When a hearing is conducted by a UPA hearing officer pursuant to this paragraph, the UPA shall issue a decision within 60 days after the hearing is conducted. Each hearing officer designated by a UPA shall meet the requirements of Section 11425.30 of the Government Code and any other applicable restriction.

(B) A UPA, or a person requesting a hearing on an order issued by a UPA may select the hearing process specified in this paragraph in a notice of defense filed pursuant to subdivision (d) only if the UPA has, as of the date the order is issued pursuant to subdivision (c), selected a designated hearing officer and established a program for conducting a hearing in accordance with this paragraph.

(f) The hearing decision issued pursuant to paragraph (2) of subdivision (e) shall be effective and final upon issuance by the UPA. A copy of the decision shall be served by personal service or by certified mail upon the party served with the order, or their representative, if any.

(g) Any provision of an order issued under this section, except the imposition of an administrative penalty, shall take effect upon issuance by the UPA if the UPA finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment. A request for a hearing shall not stay the effect of that provision of the order pending a hearing decision. However, if the UPA determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, the order as a whole, except the imposition of an administrative penalty, shall take effect upon issuance by the UPA. A request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.

(h) A decision issued pursuant to paragraph (2) of subdivision (e) may be reviewed by a court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this section, the court shall uphold the decision of the UPA if the decision is based upon substantial evidence in the record as a whole. The filing of a petition for writ of mandate shall not stay any action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(i) All administrative penalties collected from actions brought by a UPA pursuant to this section shall be paid to the UPA that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the activities of the UPA in enforcing this chapter.

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(j) The UPA shall consult with the district attorney, county counsel, or city attorney on the development of policies to be followed in exercising the authority delegated pursuant to this section as it relates to the authority of the UPA to issue orders.

(k) (1) ~~A unified program agency may suspend or revoke any unified program facility permit, or an element of a unified program facility permit, for not paying permittee shall pay~~ the permit fee ~~or and~~ a fine or penalty associated with the permit in accordance with the procedures specified in this subdivision.

(2) If a permittee does not comply with a written notice from the unified program agency to the permittee to make the payments specified in paragraph (1) by the required date provided in the notice, the unified program agency may **withhold**, suspend, or revoke the permit or permit element. ~~If the permit or permit element is suspended or revoked, the permittee shall immediately discontinue operating that facility or function of the facility to which the permit element applies until the permit is reinstated or reissued.~~

~~(3) A permittee may request a hearing to appeal the suspension or revocation of a permit or element of a permit pursuant to this subdivision by requesting a hearing using the procedures provided in subdivision (d).~~

~~(l)(1) If the permittee does not have a valid unified program facility permit or if the permit or permit element is suspended or revoked, the permittee shall immediately discontinue operating that facility or function of the facility to which the permit element applies until the permit is issued, reinstated, or reissued.~~

~~(2) A permittee may request a hearing to appeal the withholding or suspension or revocation of a permit or element of a permit pursuant to this subdivision by requesting a hearing using the procedures provided in subdivision (d).~~

~~(m) Any owner or operator of a unified program facility shall be liable for a civil or administrative penalty of not less than \$500 or more than \$5,000 for each day for failure to obtain or keep a permit as specified in this chapter.~~

~~(n) A unified program agency may suspend, revoke or withhold any unified program facility permit, if conditions exist that the unified program agency considers an imminent or substantial threat to public health, safety or the environment. The permittee shall immediately discontinue operating that facility or function of the facility to which the permit element applies until abated and the permit issued, reinstated or reissued.~~

~~(o)~~ This section does not do any of the following:

(1) Otherwise affect the authority of a UPA to take any other action authorized by any other provision of law, except the UPA shall not require a person to pay a penalty pursuant to this section and pursuant to a local ordinance for the same violation.

(2) Restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

(3) Prevent the UPA from cooperating with, or participating in, a proceeding specified in paragraph (2).

~~(4) Prevent the UPA from issuing an administrative enforcement order for the release of hazardous substance, as used in the California Penal Code 374.8(b), for any violation of HSC Chapter 6.95.~~

25510 Except as provided in subdivision (b), the handler or an employee, authorized representative, agent, or designee of a handler, shall, upon discovery, immediately report any release or threatened release of a hazardous material or the actual release of a hazardous substance as used in California penal code section 374.8(b) by any person when the release results in an emergency response to the unified program agency, and to the office, in accordance with the regulations adopted pursuant to this section. The handler or an employee, authorized representative, agent, or designee of the handler shall provide all state, city, or county fire or public health or safety personnel and emergency.

#3 H&SC CHAPTER 6.95 ARTICLE 2: ENHANCED CAL ARP ENFORCEMENT

CUPA FORUM BOARD CONTACT: BILL JONES (INSP & ENF IC)/ RANDY SAWYER (CAL ARP IC)

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The State legislature clearly recognizes that CalARP facilities represent a threat to public health, safety and environment from accidental releases of applicable regulated chemicals and are of statewide concern. In response to these threats and concerns legislation for the program was enacted into State law. Recent accidents at CalARP facilities have generated a great deal of public outcry and community concern. As a result, proposed CalARP regulations specific to refineries have been developed and are effective in October 2017. Unfortunately, stricter regulations without adequate penalties for non-compliance will result in less effective enforcement of the requirements. A maximum daily penalty of \$2,000 per violation per day does not adequately penalize violators for serious violations or provide an adequate deterrent effect on the violator. If the legislature recognizes that CalARP facilities represent a threat to public health/safety and are of statewide concern then the maximum daily penalties for violations of the CalARP program should be increased to adequately reflect it.

Proposal:

The first legislative proposal would change the maximum daily penalty for CalARP program violations in H&SC section 25540(a) from \$2,000 to \$25,000 per violation per day. The second proposed change would delete H&SC section 25540(b) that contains the penalty language for knowing violations after reasonable notice of the violation. These changes would allow for all violations to be adequately calculated based on their severity and increase the deterrent effect on both the violators and the regulated community.

H&SC, Chapter 6.95, Article 2, Section 25540

(a) Any person or stationary source that violates this article shall be civilly or administratively liable to the unified program agency in an amount of not more than ~~two~~twenty-five thousand dollars (\$~~2~~25,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

~~(b) Any person or stationary source that knowingly violates this article after reasonable notice of the violation shall be civilly or administratively liable to the unified program agency in an amount not to exceed twenty five thousand dollars (\$25,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of any hazardous materials.~~

#4 UST Cleanup

CUPA FORUM BOARD CONTACT: Eric Scott / Nicholas Crain

Proposed Changes to California Health and Safety Code Chapter 6.7 / As of October 12, 2017

1. Modify "Pipe" Defined; Exclusions for Emergency Generator Tank System (EGTS)

HSC §25281.5(c):

For purposes of this chapter, "emergency generator tank system" means an underground storage tank system that provides power supply in the event of a commercial power failure, stores diesel or kerosene fuel, and is used solely in connection with an emergency system, legally required standby system, or optional standby system, as defined in Articles 700, 701, and 702 of the National Electrical Code of the National Fire Protection Association.

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Justification:

Some emergency and standby generator systems are fueled by kerosene and there is no significant difference in hazard between diesel and kerosene storage.

2. Modify Conditions for Permit Issuance:

HSC §25285(b):

(a) Except as provided in Section 25285.1, a permit to operate issued by the local agency pursuant to Section 25284 shall be effective for five years. This subdivision does not apply to unified program facility permits.

(b) A local agency shall not issue or renew a permit to operate an underground storage tank [to which a red tag has been affixed in accordance Section 25292.3](#) if the local agency inspects the tank and determines that the tank does not comply with this chapter.

(c) Except as provided in Section 25404.5, a local agency shall not issue or renew a permit to operate an underground storage tank to any person who has not paid the fee and surcharge required by Section 25287.

Justification:

- *Issuance or renewal of an operating permit should be prohibited for any UST to which is affixed a red tag.*
- *Permit conditions are a useful enforcement and compliance tool. Local agencies may maintain specific permit conditions. Issuance or renewal of an operating permit allows such permit conditions to remain in effect and be enforced.*
- *Annual inspections are already mandated by Section 25288(a).*
- *Section 25285.1 already authorizes permit revocation for violation of any terms or conditions of the permit, misrepresentation, changes in condition that require modification or termination of operation of the UST, and for failure to comply with petroleum UST financial responsibility requirements.*

3. Modify Red Tag Authority to Allow the SWRCB To Issue Red Tags:

HSC §25292.3:

(a) Upon the discovery of a significant violation of any requirement in this chapter that poses an imminent threat to human health or safety or the environment or of any regulation adopted pursuant to this chapter, the local agency [or the board, after consultation with the local agency,](#) may [do the following:](#)

[\(1\) Affix a red tag, in plain view, to the fill pipe of a the noncompliant underground storage tank system in plain view, in order to provide notice that delivery of hazardous substances petroleum into the system is prohibited and continued operation of the system is prohibited.](#)

[\(2\) Direct the underground storage tank owner or operator to remove the contents of a noncompliant underground storage tank if the continued storage of hazardous substances poses an imminent threat to human health or safety or an unauthorized release.](#)

(b) Upon the discovery of a significant violation of any requirement in this chapter or of any regulation adopted pursuant to this chapter, the local agency [or the board, after consultation with the local agency,](#) may issue a notice of significant violation to the owner or operator. [If the board issues a notice of significant violation, the board shall provide a copy of the notice of significant violation to the local agency within two working days of the notice being issued to the owner or operator.](#) The owner or operator who

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receives a notice of significant violation shall, within seven days from receipt of the notice, correct the violation to the satisfaction of the local agency or the board, after consultation with the local agency. If the owner or operator does not correct the violation within seven days, the local agency or the board, after consultation with the local agency, may affix a red tag, in plain view, or direct the tank to be emptied in accordance with subdivision (a) to the fill pipe of the noncompliant underground storage tank system to provide notice that delivery of petroleum into the system is prohibited.

(c) No owner or operator of a facility may deposit or allow the deposit of hazardous substances ~~petroleum~~ into an underground storage tank system that has a red tag affixed to the system's fill pipe or continue to operate an underground storage tank that has a red tag affixed to the fill pipe.

(d) No person may deposit hazardous substances ~~petroleum~~ into an underground storage tank system that has a red tag affixed to ~~its~~ the fill pipe or continue to operate an underground storage tank system that has a red tag affixed to the fill pipe.

(e) No person shall remove, deface, alter, or otherwise tamper with a red tag so that the information contained on the tag is not legible.

(f) An owner or operator directed to remove the contents of a tank in accordance with subdivision (a) shall comply with the directive as soon as possible, but no later than 48 hours after receiving such a directive.

(fg) Upon notification by the owner or operator that the violation has been corrected, the local agency or the board after consultation with the local agency, shall inspect the underground storage tank system within five days to determine whether the system continues to be in significant violation. If the local agency or the board after consultation with the local agency, determines that the system is no longer in significant violation, the local agency or the board after consultation with the local agency shall immediately remove the red tag or release the owner or operator from the directive requiring the tank to be kept empty.

(gh) The board shall adopt regulations to define significant violations for purposes of this section.

Justification:

- *The SWRCB should have the authority to red tag.*
- *Red tagging should apply to systems that store any hazardous substances, not just petroleum.*
- *In addition to prohibiting deliveries, red tagging should prevent the operation of the tank system.*
- *The SWRCB and local agency should have the authority to direct that a non-compliant UST system be emptied in cases where there exists an imminent threat to health and safety.*

C. Proposals to Hold In Reserve (Pending Title 23 CCR Update) and Other Proposed Changes

Add to Definitions HSC §25281:

"Annual" or "Annually" means during the same calendar month each year. For the purposes of this chapter, inspections, tests, certifications, and other similar activities required within a specified number of years are considered to be in compliance with the required frequency if the activity takes place within the same calendar month in the specified year as the prior occurrences of that activity were due based on the original occurrence.

Justification:

- *This allows predictability in scheduling periodic testing and inspections and eliminates "deadline creep" to the benefit of regulators, testing contractors, and the regulated community.*

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#5 UNIFIED PROGRAM REGULATORY PERFORMANCE INITIATIVE (UPRPI)

CUPA FORUM BOARD CONTACT: Randy Sawyer/Bill Jones

These amendments will allow for the establishment of a “UP Regulatory Performance Initiative” which gives authority to specified CUPAs to implement an alternative regulatory inspection and compliance program. The idea is to allow for consideration of a number of different factors such as risk, age of the business, compliance history, types and relative toxicity of hazardous materials used, industry specific concerns, etc. in modifying the CUPA Inspection and Enforcement Plan.

The proposal below incorporates criteria from each responsible BDO and a proposal by the UPA that is approved by Cal EPA. It did not seem practical to implement changes within the program element’s specific body of law. It is anticipated that the CFB will develop approved implementation proposals and seek prior approval from Cal EPA prior to the formal proposal/acceptance process.

NOTE: This legislative proposal may need further work and will hopefully be completed by early January.

Chapter 6.11

Section 25404.1.05. (a) In lieu of the mandated inspection frequencies for the Hazardous Materials Business Plan program pursuant to Section 25511(b), and the Underground Storage Tank program pursuant to Section 25288(a), Cal EPA, working with the State Water Resources Control Board, Department of Toxic Substances, Office of the State Fire Marshal, and Governor’s Office of Emergency Services shall develop qualifying criteria for a UPA to implement a *Unified Program Regulatory Performance Initiative (UPRPI)* program within their respective program elements referenced in Section 25404.1. The Secretary will ensure these criteria are consistent with and not additional to current UPA requirements.

(b) On or after January 1, 2019 a UPA that meets the criteria pursuant to this section may implement a UPRPI.

(c) The Secretary shall approve UPA’s to implement an UPRPI within their jurisdiction using criteria developed pursuant subsection (a) and the following:

- (1) Adequacy of budget resources and the ability to offset costs as inspection priorities are shifted;
- (2) An outreach program to the affected business community;
- (3) A method to measure the success of the alternative inspection and compliance program;
- (4) An RPI proposal consisting of an amended CUPA Inspection and Enforcement Plan that is acceptable to Cal EPA; and
- (5) Past performance in implementing and enforcing the Unified Program.

(d) The Secretary shall adopt procedures to develop the criteria and proposal requirements for a UPA to implement a UPRPI pursuant to this section. The adoption of these procedures and criteria shall not be considered as regulations subject to, and shall be exempt from, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

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#6 H&SC CHAPTER 6.5: HAZARDOUS WASTE COUNTING

CUPA FORUM BOARD CONTACT: MARIA WOODIN (HW IC)

The amount of hazardous waste generated by a business determines their generator status. The generator status determines the requirements for a business. Businesses that generate more waste have additional requirements for emergency preparedness, employee training, inspection frequency, disposal frequency, state/federal reporting and more. Larger generators are expected to pay for their disposal through pickup by a registered transporter and may be subject to professional engineer's assessments of tank systems. Smaller generators have less training and documentation requirements, and may be allowed to take small quantities of their own waste to a collection event.

There is no clear law or regulation that explains how to count hazardous waste to determine generator status. 40 CFR 261.5 lists what wastes are subject to counting and what wastes are not to be counted. Several wastes are not counted because they are not subject to substantive regulation nor have an alternative set of requirements. California laws and regulation has many wastes that have reduced regulation or have alternative sets of requirements to encourage recycling or proper disposal. A survey of the CUPA's showed they generally do not count wastes that have an alternative set of management standards towards the hazardous waste generator standards, such as universal wastes, treated wood wastes and automotive batteries. Many recyclable wastes are not counted, especially if they end up being reused or are scrap metal. UPA's do count used oil and hazardous wastes that are sent offsite on hazardous waste manifests for treatment or disposal. DTSC has said to count all wastes, however there are some wastes that are excluded from regulation that clearly should not be counted (certain excluded recyclable materials) and there are wastes that have alternative management standards, some even include accumulation limits for those wastes and may conflict with other generator requirements.

***DTSC believes this is necessary to move regulations forward.*

25158.1. (a) When making the quantity determinations for purposes of Section 66262.34 of Title 22 of Division 4.5 of the California Code of Regulations, as it may be amended consistent with this code, a generator shall include all hazardous waste that it has generated in any month, except for universal wastes managed pursuant to the requirements of Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(b) The Department may, by regulation, exclude any other hazardous wastes from the quantity determinations specified in the instructions to hazardous waste generators in subdivision (a), provided that the hazardous waste is either excluded from regulation or is subject to an alternative management standard set forth in this Chapter or Title 22 California Code of Regulations.

#6 FENTANYL DRUG LAB CLEANUP

CUPA FORUM BOARD CONTACT: Nicholas Crain / Bill Jones

Most local agencies could benefit from a statute providing clean-up and posting authority for fentanyl drug labs, similar to what we have for meth labs (25400.10 -25400.47). Desire is to get posting authority for county health officers, that way posting will warn the public considering inhabiting these structures where a fentanyl lab or operation was found. *NOTE: this proposal is still under development and may be modified with further language amendments.*

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H&SC DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

CHAPTER 6.9.1. Fentanyl Contaminated Property Cleanup Act of

ARTICLE 1. Findings and Definitions

Propose Chapter 6.9.2 Fentanyl or other Illicit Drug Contaminated Property Posting Act of 2017
25401.10

(a) The Legislature finds and declares all of the following:

(1) Fentanyl or other illicit drug use and production are growing throughout the state. Properties may be contaminated by hazardous chemicals used or produced in the manufacture of fentanyl or other illicit drugs where those chemicals remain and where the contamination has not been remediated.

(2) Initial cleanup actions may be limited to the removal of bulk hazardous materials and associated glassware that pose an immediate threat to public health and the environment. Where fentanyl or other illicit drug production has occurred, significant levels of contamination may be found throughout residential properties if the contamination is not remediated.

(3) Once fentanyl or other illicit drug laboratories have been closed, the public may be harmed by the materials and residues that remain. Skin absorption is a possible route of exposure, and therefore elevates the risk to public health even higher.

(4) There is no statewide standardization of standards for determining when a site of a closed fentanyl or other illicit drug laboratory has been successfully remediated.

(b) This chapter shall be known, and may be cited as, the "Fentanyl or other Illicit Drug Contaminated Property Posting Act of 2017."

25401.11 For purposes of this chapter, the definitions as stated in Chapter 6.9.1, section 25400.11 apply. Any reference to 'methamphetamine' should be replaced with 'fentanyl or other illicit drug'.

(i) "Illegal methamphetamine manufacturing or storage site" or "site" means property where a person manufactures methamphetamine or stores a hazardous chemical used in connection with the manufacture of methamphetamine in violation of Section 11383.

(l) "Methamphetamine laboratory activity" means the illegal manufacturing or storage of methamphetamine. This shall include the pill pressing, distribution, cutting /diluting, synthesis, or any other activity that has the potential to contaminate the property with fentanyl or other illicit drugs or any of their precursors.

25401.17. (a) Notwithstanding any other provision of law, a city, county, or city and county shall comply with the uniform regulations and standards established pursuant to this chapter.

(b) A local health officer may delegate all or part of the duties specified in this chapter to a designated local agency.

(c) If a fentanyl or other illicit drug laboratory activity has taken place at a property, the local health officer shall assume that the fentanyl or other illicit drug manufacturing process has led to some degree of chemical contamination and shall take action pursuant to this chapter.

25401.18. Within 48 hours after receiving notification from a law enforcement agency of potential contamination of property by a fentanyl or other illicit drug laboratory activity, the local health officer shall post a written notice in a prominent location on the premises of the property. At a minimum, the notice shall include all of the following information:

(a) The word "WARNING" in large bold type at the top and bottom of the notice.

(b) A statement that a fentanyl or other illicit drug laboratory was seized on or inside the property or, in the case of a mobilehome, manufactured home, or recreational vehicle, a statement that a fentanyl or other illicit drug lab was seized on the property, inside the property, or both of those statements.

(c) The date of the seizure.

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(d) The address or location of the property including the identification of any dwelling unit, room number, apartment number, or mobilehome, manufactured home, or recreational vehicle space number or address, or recreational vehicle identification number.

(e) The name and contact telephone number of the agency posting the notice on the property.

(f) A statement specifying that hazardous substances, toxic chemicals, or other hazardous waste products may have been present and may remain on or inside the property.

(g) A statement that it is unlawful for an unauthorized person to enter the contaminated portion of the property until advised that it is safe to do so by the local health officer or designated local agency.

(h) A statement that a person disturbing or destroying the posted notice is subject to a civil penalty in an amount of up to five thousand dollars (\$5,000).

(i) A statement that a person violating the posted notice is subject to a civil penalty in an amount of up to five thousand dollars (\$5,000).

25402 Within 1 year, the Department of Toxic Substances Control or California Department of Public Health or the Office of Environmental Health Hazard Assessment shall prescribe cleanup guidelines for fentanyl drug laboratories comparable to those outlined in 25400 et. seq. for methamphetamine contaminated property cleanup.

#8 H&SC CHAPTER 6.95 ARTICLE 1: GENERAL DUTY CLAUSE

CUPA FORUM BOARD CONTACTS: BILL JONES/DARWIN CHENG (HAZ MAT IC)

The CUPA Forum originally attempted to add the GDC to Chapter 6.95 in SB 612 (Hana-Beth Jackson-2015). However, the GDC was only introduced (and passed) for Article 2. Industry representatives questioned why it was needed in Article 1 and was successful in taking it out of the bill. In retrospect, with the Southern California Gas Company methane release, a GDC component would have added charges to the case filed by the Los Angeles County District Attorney's Office, given that the site was preempted from being defined as a stationary source because of DOT regulations. This inclusion was further changed from standard GDC language because of CUPA Forum Board concerns that lacking standards, inspectors could apply general requirements (in the absence of specific requirements) for how they implemented Chapter 6.95, Article 1. The remaining language would only allow implementation of the GDC in the event of a significant spill or release with public health and environmental impacts because the facility did not conform to generally recognized industrial standards or practices.

HSC Ch 6.95, Article 1 [append to 25500]

25500. (c) The Legislature further finds and declares that the owners and operators of a business producing, processing, or handling hazardous materials, have a general duty in the same manner and to the same extent as section 654 of title 29 of the United States Code to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. This section will be applicable in the event of a significant spill or release of hazardous materials where public health or the environment has been significantly impacted if it is determined that the facility failed to conform to generally recognized industrial standards or practices.

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