

**CALIFORNIA CUPA FORUM BOARD
LEGISLATIVE CONCEPTS
2017**

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

CUPA FORUM BOARD CONTACTS: BILL JONES/JOEL MARTENS (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.¹

#2 H&SC CHAPTER 6.95 ARTICLE 1: REPORTING COMBUSTIBLE METALS

CUPA FORUM BOARD CONTACTS: BILL JONES

The suggested addition to HSC 25507 includes various types of combustible metals reportable under the HMBP requirements. Three categories were established to identify the various degrees of hazards associated with combustible metals. All threshold quantities were taken in reference from the California Fire Code (CFC), operational permit amounts. This suggested addition does not bring businesses into compliance with the fire code storage/use requirements for combustible metals.

HSC 25507. (a) Except as provided in this article, a business shall establish and implement a business plan for emergency response to a release or threatened release of a hazardous material in accordance with the standards prescribed in the regulations adopted pursuant to Section 25503 if the business meets any of the following conditions at any unified program facility:

SUGGESTED ADDITION:

¹ The enhancement of penalties under Article 1 are being postponed until OES promulgates release reporting regulations as required under statute.

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(8) (A) It handles a combustible metal or metal alloy that is defined as a pyrophoric or water-reactive material in the California Fire Code, in raw stock, scrap, or powder form, in any quantity at any one time during the reporting year.

(B) It handles a combustible metal, or metal alloy, that is defined as a combustible dust, flammable solid, or magnesium in the California Fire Code, in raw stock, scrap, or powder form, in a quantity at any one time during the reporting year that is equal to, or greater than, 100 pounds.

(C) It handles a combustible metal, or metal alloy, that poses an explosive potential, when in molten form, in a quantity at any one time during the reporting year that is equal to, or greater than, 500 pounds.

#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)

The State legislature clearly recognizes that CalARP facilities represent a threat to public health and safety for accidental releases of chemicals. The legislature also recognizes that these releases or explosions of hazardous materials 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 concern. As a result, proposed CalARP regulations specific to refineries have been developed and are expected to become effective in July 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 California Health and Safety Code (CHSC) section 25540(a) from \$2,000 to \$25,000 per violation per day. The second proposed legislative change would delete CHSC 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.

CHSC, 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-thousand-five~~ twenty-five thousand dollars (\$~~2,000~~ 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.~~

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#4 H&SC CHAPTERS 6.67: APSA CLEANUP LANGUAGE

CUPA FORUM BOARD CONTACT: RANDY SAWYER (APSA IC)

These amendments are to clarify what tanks are subject to this statute, specifically for tanks in underground areas with total capacity of petroleum storage less than 1320 gallons.

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

25270.2.

For purposes of this chapter, the following definitions apply:

(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

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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.

(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

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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 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.

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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.

(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.

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(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.

(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.

#5 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.

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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 RURAL COUNTY SUPPORT

CUPA FORUM BOARD CONTACT: JASON BOETZER

It appears at this point that Cal EPA believes it may be able to move this item forward as part of a budget change which would eliminate the need for legislation. More discussions to be held with the CUPA Forum Board members and Cal EPA.

#7 H&SC CHAPTERS 6.12 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).

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

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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.

(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

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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.

(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 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)~~ 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.

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#8 REQUIREMENT FOR HAZARDOUS WASTE GENERATORS TO ENTER INFORMATION INTO THE CALIFORNIA ENVIRONMENTAL REPORTING SYSTEM (CERS)

CUPA FORUM BOARD CONTACT: FRED CHUN

ISSUE

Currently, most hazardous waste generators are required to have an Environmental Protection Agency (EPA) Identification Number (either Federal or State). When referencing the existing requirement for an EPA identification number (California Code of Regulation [CCR], §66262.12, there currently no direct language that would require a generator to submit the EPA identification number and core business information into the California Environmental Reporting System (CERS). This update would capture a segment of CUPA regulated facilities that would now be required to submit into CERS that would otherwise not be required.

IMPACT

Majority of hazardous waste generators are already in CERS reporting data for other CUPA program elements, so this change would not impact a majority of generators. However, this update would close a data gap for generators that are required to have an EPA identification number, but are not regulated by any other CUPA program and not required to submit data into the CERS.

REGULATORY PROPOSAL: 22 CCR § 66262.12

§ 66262.12. Identification Numbers for the Generator.

- (a) Except as specified in (d), a generator shall not treat, store, dispose of, transport or offer for transportation, hazardous waste without having received an Identification Number.
- (b) A generator who has not received an Identification Number may obtain one by applying to the Department using EPA form 8700-12. Following receipt of the request, the generator will be assigned an Identification Number.
- (c) A generator shall not offer the hazardous waste to transporters or to transfer, treatment, storage or disposal facilities that have not received an Identification Number.
- (d) Generators who generate no more than 100 kilograms of waste per month that is hazardous solely due to the presence of silver in the waste pursuant to Health and Safety Code section 25143.13 are not required to obtain an Identification Number.
- (e) Generators who are required to have an identification number shall be required to enter this information into the California Environmental Reporting System.

#9 SURCHARGE FOR CERS UPDATES

CUPA FORUM BOARD CONTACT: DANIELLE STEFANI / AARON LABARRE

This measure would require that in addition to any other funding that becomes available, the secretary shall increase the oversight surcharge by an amount necessary to maintain and update the California Electronic Reporting System, not to exceed \$20 each year and would provide that not less than 75% of that funding shall be provided to certified unified program agencies and participating agencies through grant funds for the purposes of the maintaining and updating CERS. This measure would require a facility that is subject to the unified program and owned or operated by the federal government to pay the increased surcharge to the extent authorized by federal law.

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(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c).

(2) (A) The secretary shall establish a statewide information management system capable of receiving all data collected by the unified program agencies and reported by regulated businesses pursuant to this subdivision, in a manner that is most cost efficient and effective for both the regulated businesses and state and local agencies. The secretary shall prescribe an XML or other compatible Web-based format for the transfer of data from CUPAs and regulated businesses and make all nonconfidential data available on the Internet.

(B) The secretary shall establish milestones to measure the implementation of the statewide information management system and shall provide periodic status updates to interested parties.

(3) (A) (i) ~~Except as provided in subparagraph (B), in~~ addition to any other funding that becomes available, the secretary shall increase the oversight surcharge provided for in subdivision (b) of Section 25404.5 by an amount necessary ~~to meet the requirements of this subdivision for a period of three years, to establish the statewide information management system, consistent with paragraph (2), to fund the ongoing maintenance and upgrades to the State and local systems that are related to electronic transfer between CERS and UPAs.~~ The increase in the oversight surcharge shall not exceed twenty dollars (\$205) in any one year ~~of the three year period.~~ The secretary shall ~~thereafter maintain the statewide information management system, provide a funding mechanism to reimburse UPAs for the ongoing maintenance and upgrades of their local data management system,~~ funded by the assessment the secretary is authorized to impose pursuant to Section 25404.5.

(ii) No less than 75 percent of the ~~additional~~ funding raised pursuant to clause (i) shall be provided to CUPAs and PAs through grant funds or statewide contract services, in the amounts determined by the secretary to assist these local agencies in meeting these ongoing information management system requirements.

(B) A facility that is owned or operated by the federal government and that is subject to the unified program shall pay the surcharge required by this paragraph to the extent authorized by federal law.

(C) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) ~~No later than three years after the statewide information management system is established, each CUPA, PA, and regulated business shall report program data electronically.~~ The secretary shall work with the CUPAs to develop a mechanism to fund and reimburse the UPAs for the on-going maintenance and upgrades to their local data systems and ensure that all required data are transmitted between CERS and the local data systems. ~~phased in schedule for the electronic collection and submittal of information to be included in the statewide information management system, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary, in making this determination shall consult with the CUPAs, the California Emergency Management Agency, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency.~~

~~(5) The secretary, in collaboration with the CUPAs, shall provide technical assistance to regulated businesses to comply with the electronic reporting requirements and may expend funds identified in clause (i) of subparagraph (A) of paragraph (3) for that purpose.~~

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