

CALIFORNIA CUPA FORUM BOARD
LEGISLATIVE CONCEPTS
October 26, 2018

CFB PRIORITY		TOPIC	AMENDMENT
7	1	#1 H&SC CHAPTER 6.5: HAZARDOUS WASTE COUNTING	Provides ability for DTSC to write regulations that would exclude certain HW from being counted towards their generator status.
1	2	H&SC CHAPTERS 6.11 PERMIT ISSUES	Deals 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 §374.8(b). This allows for closure of businesses or the portion of the business under permit, when a imminent hazard exists.
5	3	SURCHARGE FOR CERS	Increases the oversight surcharge 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.
6	4	CHAPTER 6.95 MAP REQUIREMENTS	Eliminates that every site map contain a comprehensive list of specific requirements.
2	5	FENTANYL OR OTHER ILLICIT DRUG LAB CLEANUP	Provides clean-up and posting authority for fentanyl or other illicit drug labs, similar to what we have for meth labs (§25400.10 - §25400.47).
4	6	UPRPI	Enabling legislation to implement an alternative inspection frequency as part of a UPRPI program.
9	7	ELECTRONIC INSPECTION RECORDS	A proposal to modify H&SC §25185(c)(1) to allow for the use of electronic inspection records while retaining the spirit of the existing statute.
10	8	PHOTOGRAPH SHARING	A proposal to modify H&SC §25185(c)(2) to allow for photograph sharing when requested while retaining the spirit of the existing statute
3	9	DISASTER ASSISTANCE	Require that the various State agencies work together to clearly specify protocols under ESF 8 and ESF 10.
11	10	BNSF Haz Mat Tiers	Proposal by BNSF to create a tiered hazardous materials program.
8	11	SURCHARGE FOR SMALL UPAs	Surcharge to support small UPAs

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#1 H&SC CHAPTER 6.5: HAZARDOUS WASTE COUNTING

CUPA FORUM BOARD CONTACT: NIC CRAIN

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.

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.

#2 H&SC CHAPTERS 6.11 PERMIT ISSUES

CUPA FORUM BOARD CONTACT: MARIO TRESIERRAS/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 §374.8(b). This allows for closure of businesses or the portion of the business under permit, when a imminent hazard exists. **Need identified to develop language to define "imminent" or substantial threat.**

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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.

(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

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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.

(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 permittee shall pay the permit fee 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.

(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

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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 SURCHARGE FOR CERS

CUPA FORUM BOARD CONTACT:

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.

(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) In addition to any other funding that becomes available, the secretary shall increase the oversight

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surchage provided for in subdivision (b) of Section 25404.5 by an amount necessary 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 (\$20) in any one year. The secretary shall 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 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) 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.

#4 CHAPTER 6.95 MAP REQUIREMENTS

CUPA FORUM BOARD CONTACT:

Many UPAs are being cited (deficiency or observation) on their State evaluations for businesses not fully complying with the site map requirement. Many UPAs will accept a less comprehensive site map based on the facilities relative off-site risk and the needs of their jurisdictions emergency responders. Obtaining a site map that contains every required element from every regulated business is an overwhelming and unreasonable burden on existing UPA staff for limited benefit. The current language provides a process for each individual CUPA to adopt a local ordinance that requires addition site map information if they choose.

Chapter 6.95, §25505(a)(2):

(2) A site map that contains north orientation, ~~loading areas, internal roads,~~ adjacent streets, ~~storm and sewer drains,~~ access and exit points, ~~emergency shutoffs, evacuation staging areas,~~ hazardous material handling and storage areas, ~~emergency response equipment,~~ and additional map requirements the governing body of the unified program agency finds necessary. Any locally required additional map requirements shall be adopted by local ordinance. This ordinance and related public processes are subject to the limitations on the disclosure of hazardous material location information specified in subdivision (b) of §25509. The unified program agency shall notify the secretary both before publishing a proposed ordinance to require additional map requirements and within 30 days after those requirements are adopted. A site map shall be updated to include the additional information required pursuant to the local ordinance no later than one year after adoption of the local ordinance.

#5 FENTANYL OR OTHER ILLICIT DRUG LAB CLEANUP

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CUPA FORUM BOARD CONTACT: GARY CANDWELL MARIO TRESIERRAS

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 we have something to post to warn folks possibly inhabiting these structures where a fentanyl lab was found.

H&SC DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

CHAPTER 6.9.2. Fentanyl Contaminated Property Cleanup Act of xxxx

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

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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, or in the case of a mobile home, 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.
- (d) The address or location of the property including the identification of any dwelling unit, room number, apartment number, or mobile home, 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.

#6 UP REGULATORY PERFORMANCE INITIATIVE PROGRAM

CUPA FORUM BOARD CONTACT: RANDY SAWYER

This proposal is to implement the UPRPI program and requires further development of legislative language.

Chapter 6.11 Section 25404.1.05. (a) Pursuant to the Underground Storage Tank program Section 25288 and in lieu of the mandated inspection frequencies for the Hazardous Materials Business Plan program pursuant to Section 25511(b), CalEPA, 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 July 1, 2020 a UPA that meets the criteria pursuant to this section may implement a UPRPI program.

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

- (1) A UPRPI program proposal consisting of an amended CUPA Inspection and Enforcement Plan that is acceptable to CalEPA;
- (2) An outreach component to affected stakeholders, including public workshops, that describe the UPRPI

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program;

(3) A method to measure the success of the alternative inspection and compliance program; and

(5) Satisfactory past performance in implementing and enforcing the Unified Program, as determined by the Secretary.

(6) Adequacy of budget resources and the ability to offset costs as inspection, compliance and enforcement priorities are shifted;

(d) The Secretary shall adopt procedures for the adoption of criteria for a UPA to implement a UPRPI pursuant to this section by December 31, 2020. 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.

Health and Safety Code, Division 20, Chapter 6.7 (UST Statute)

§ 25288.

(a) The local agency shall inspect every underground tank system within its jurisdiction as follows:

(1) At least once every year. 12 months unless the local agency has received approval from the Secretary pursuant to Section 25404.1.05.

(2) Local agencies that have received approval from the Secretary pursuant to Section 25404.1.05 shall conduct inspections at least as often as required under the inspection program developed by the board in accordance with Section 25288.1.

(b) The purpose of the inspection conducted pursuant to subdivision (a) is to determine whether the tank system complies with the applicable requirements of this chapter and the regulations adopted by the board pursuant to Section 25299.3, including the design and construction standards of Section 25290.1, 25290.2, 25291, or 25292, whichever is applicable, whether the owner or operator has monitored and tested the tank system as required by the permit, and whether the tank system is in a safe operating condition.

(c) After an inspection conducted pursuant to subdivision (a), the local agency shall prepare a compliance report detailing the inspection and shall send a copy of this report to the permit holder and the owner or operator, if the owner or operator is not the permit holder. Any report prepared pursuant to this section shall be consolidated into any other inspection reports required pursuant to Chapter 6.11 (commencing with Section 25404), the requirements listed in subdivision (c) of Section 25404, and the regulations adopted to implement the requirements listed in subdivision (c) of Section 25404.

(d) In lieu of the 12-month local agency inspections required pursuant to subdivision (a)(1), the local agency may require the permit holder to employ a special inspector to conduct the 12-month inspection. The local agency shall supply the permit holder with a list of at least three special inspectors that are qualified to conduct the inspection. The permit holder shall employ a special inspector from the list provided by the local agency. The special inspector's authority shall be the same as that of the local agency as set forth in subdivisions (a)(1) and (b).

(d) (e) Within 60 days after receiving a compliance report or special inspection report prepared in accordance with subdivision (b) or (c) or (d), respectively, the permit holder shall file with the local agency a plan to implement all recommendations contained in the compliance report or shall demonstrate, to the

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satisfaction of the local agency, why these recommendations should not be implemented. Any corrective action conducted pursuant to the recommendations in the report shall be taken pursuant to Sections 25296.10 and 25299.36.

§ 25288.1

{a) The board shall, with stakeholder input, and after considering risks to water quality and human health and regulatory compliance, develop an inspection program establishing the frequency of inspections required under subdivision (a)(2) of Section 25288 for use by local agencies that have received approval from the Secretary pursuant to Section 25404.1.05.

(1) The inspection program shall require the participating local agency to inspect every underground storage tank within its jurisdiction at least once every 24 months and shall include standardized criteria establishing when an underground storage tank must be inspected more frequently than once every 24 months.

(2) The inspection program shall include metrics for reporting by participating local agencies to the board.

(3) An underground storage tank that meets Section 25291 subdivision (a) paragraphs (1) to (6), inclusive, of subdivisions (b) through (i) shall be inspected at least once every 12 months.

(b) The development of an inspection program, including standardized criteria and reporting metrics, pursuant to this section 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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#7 ELECTRONIC INSPECTION RECORDS

CUPA FORUM BOARD CONTACT: NIC CRAIN

Currently, CUPA inspectors are required to prepare a written summary of findings prior to leaving a facility at the conclusion of an inspection to meet HSC 25185(c)(1). This statute was last updated in 1995, before the proliferation of computers, and certainly before the acquisition and use of electronic inspection report software. Now, 23 years later, UPAs are utilizing electronic inspection reporting software more and more. The necessity to provide a written report in addition to the electronic report which gets mailed in accordance with (c)(2) of the same section results in increased workload for staff and no benefit to facility operators throughout the state. This proposal maintains the spirit of the existing statute in that inspectors are still required to review a summary of violations prior to leaving a facility however, it allows for the emailing of an electronic report within 1 day (or other specified timeframe).

Current §25185(c)(1) Verbiage

At the conclusion of the inspection, the inspector shall deliver to the operator of the facility or site a written summary of all violations alleged by the inspector. The inspector shall, prior to leaving the facility or site, deliver the written summary to the operator and shall discuss any questions or observations that the operator might have concerning the inspection.

Proposed 25185(c)(1) Verbiage Option A

At the conclusion of the inspection, prior to leaving the facility or site, the inspector shall discuss all violations alleged by the inspector and any questions or observations that the operator might have concerning the inspection. The inspector shall deliver, by any means, a written or electronic summary of all violations alleged by the inspector within 48 hours from the conclusion of the inspection. An inspection report shall be prepared and delivered in accordance with (c)(2) of section 25185.

Proposed 25185(c)(1) Verbiage Option B

At the conclusion of the inspection, the inspector shall deliver to the operator of the facility or site a written **or electronic** summary of all violations alleged by the inspector. The inspector shall, prior to leaving the facility or site, deliver the written summary or **make arrangements to deliver the electronic summary** to the operator and shall discuss any questions or observations that the operator might have concerning the inspection.

#8 PHOTOGRAPH SHARING

CUPA FORUM BOARD CONTACT: NIC CRAIN

A proposal to modify CA Health and Safety Code, §25185(c)(2) to allow for photograph sharing when requested while retaining the spirit of the existing statute

This statute was last updated in 1995, before the proliferation of computers, digital cameras, and smart phones. Now, 23 years later, CUPAs utilize electronic means of capturing photographs, not just for violations observed during inspections, but to document what a facility does, where they are located, access issues, street signs, etc. The necessity to provide photographs in an inspection report that may not have anything to do with documenting a violation is not necessary. This proposal maintains the spirit of the existing statute in that any photographs taken by an inspector are available to a facility should they simply request it.

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Section 25185(c)(2)The department or the local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180 shall prepare an inspection report which shall fully detail all observations made at the facility or site, all alleged violations, the factual basis for alleging those violations, and any corrective actions that should be taken by the operator of the facility or site. The department or the local officer or agency shall provide a copy of the inspection report to the operator within five days from the date of the preparation of the inspection report, and, in any event, not later than 65 days from the date of the inspection. The inspection report shall include all pertinent information, including, but not limited to, documents, photographs, and sampling results concerning the alleged violations. The department or the local officer or agency shall provide this information to the operator with the inspection report, including all photographs taken by the department, if requested, in the course of the inspection and all laboratory results obtained as a result of the inspection. If sampling or laboratory results are not available at the time that the inspection report is prepared, that fact shall be contained in the report. Those results shall be provided to the operator within 10 working days of their receipt by the department or the local officer or agency.

#9 DISASTER ASSISTANCE

CUPA FORUM BOARD CONTACT: RANDY SAWYER / MARIO TRESIERRAS

The thought was to create a requirement that the various State agencies, in particular Cal EPA, Department of Public Health and Office of Emergency Services work together to come up with a dispatching process that would include all unified program agencies in a request to provide hazardous materials specialists for disaster assistance. At this point, there still appears to be fragmentation of the State agencies in requesting resources and a situation where requests may or may not derive its protocols from the applicable emergency services function. The ultimate goal is to ensure all “disaster” requests for hazardous materials specialists are quickly and correctly processed through the appropriate channels to include local fire and environmental health agencies to include protocols such as accountability, logistics, documentation, expectations, etc., that are acceptable to all parties. The following is to create a preamble for the legislation with specific language to follow.

Whereas, emergencies within California require the response and recovery efforts environmental health, and Whereas, CA Health and Safety Code §1797.153 outlines the duties of the Medical and Health Operational Area Coordinator (MHOAC)and establishes seventeen functions of the MHOAC of which several are environmental health related, and
Whereas, the role of environmental health has grown following recent emergencies such as wildland fire, and
Whereas, disciplines such as public health, fire, resource management, hazardous materials, and other entities can be considered a component of environmental health, and
Whereas, the environmental health writ large aspects of emergency management has not been well and fully integrated into overall emergency management in California Whereas, environmental health efforts can be required within Emergency Support Functions 4 (Fire and Rescue), 6 (Sheltering), 8 (Health and Medical), 10 (Hazardous Materials and Oil), 11 (Food and Agriculture) and Recovery Support Functions for Housing, Economics, Community Planning and Capacity Building, Infrastructure, Natural and Cultural Resources as described in the California State Emergency Plan, and
Whereas, during and following emergencies environmental resource needs often exceed those of impacted local government to provide

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Therefore, let it be enacted that:

The California Health and Welfare Agency, the Governor's Office of Emergency Services, and the California Environmental Protection Agency, in consultation with the California Conference of Directors of Environmental Health and the California Certified Unified Program Agency Forum shall ensure that environmental health mutual assistance system(s) to meet local needs are incorporated into emergency management plans and programs to effectively support needed local efforts through one or more mechanisms, as appropriate. Those State agencies shall develop the means to accomplish those goals and address identified shortfalls and submit those products to the Governor's Office of Emergency Services no later than xxx, xxx, 20xx. The Governor's Office of Emergency Services shall review, comment, and adopt those means no later than 6 months following submission.

#10 BNSF PROPOSAL

Base HMBPs on Risk – Three Tiers (suggested)

1. **Tier 1 – only single common chemicals like a propane tank**
2. **Tier 2 – only common chemicals like gasoline and diesel**
3. **Tier 3 – not Tier 1 or Tier 2 or Large Quantities– these require the full HMBP**
4. **Tier 4 – specific facilities (refineries, etc.)**

Base HMBPs on Risk – Three Tiers

1. **Tier 1 – only single common chemicals like a propane tank – First Responder Submittal (Slide 17)**
2. **Tier 2 – only common chemicals like gasoline and diesel – First Responder Submittal (Slide 17)**
3. **Tier 3 – not Tier 1 or Tier 2 – these require the full HMBP**

Risk Based HMBP's

1. **Bases the risk on known chemicals and quantities - ranks them on risk**
2. **Simplifies and improves safety for First Responders by providing them what they need to conduct scene “size up”**
3. **Reduces information not needed for response and review, freeing up resources for both CUPAs and Industry**
4. **Allows CUPAs to schedule inspections based upon risks**

SMALL UPA ISSUE

Issue under discussion.

PERFORMANCE EVALUATION ISSUE

Issue under discussion.