



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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California Environmental Protection Agency

Opinion of Edmund G. Brown

The Honorable Marshall Rudolph, County Counsel, County of Mono, has requested an opinion on the following question:

Is the California Department of Transportation obligated to pay the fees adopted by a Certified Unified Program Agency under the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program?

Conclusion

The California Department of Transportation is obligated to pay fees adopted by a Certified Unified Program Agency under the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program.

For the full opinion, please go to: <http://ag.ca.gov/opinions.php>

Annual Summary Reports Due to the Secretary by September 30, 2009

The Unified Program Section would like to remind the Certified Unified Program Agencies (CUPAs) that Summary Reports 2 through 4 are due to the Secretary by September 30, 2009, in accordance with the California Code of Regulations, Title 27, section 15290(a)(1-3). Please note that Cal/EPA will be accepting reports ONLY in the new forms (Reports 3 and 4) which may be found on Cal/EPA's website at www.calepa.ca.gov/CUPA/Publications. Data from these reports are used by the State and Federal agencies for a variety of purposes, including CUPA evaluations.

For questions or comment, please contact Farida Islam at fislam@calepa.ca.gov.

Business Plan and California Fire Code Program Dispute Resolution

On March 30, 2009, the Department of Defense (DoD) Regional Environmental Center (REC) for U.S. EPA Region 9 submitted a formal position to Cal/EPA covering Cal/EPA's regulatory authority regarding oversight and the subsequent assessment of fees at DoD facilities for the state's Business Plan and California Fire Code programs. DoD restated its ongoing position that Executive agencies are not legally authorized to expand the scope of sovereign immunity waivers beyond that which Congress has directed, which includes payment of fees. They further stated that DoD is not able to enter into any cooperative administrative agreements that would resolve the differences between federal and state regulatory authorities to provide for hazardous materials inventory reporting and emergency response planning to address the federal and State programs.

Cal/EPA has determined the following course of action for Cal/EPA and CUPAs that currently regulate DoD facilities in which a federally owned and operated DoD facility challenges the state's and local government authority to regulate them under the Business Plan and California Fire Code programs:

1. Cal/EPA will require federal DoD facilities that contest the state's authority regarding compliance with the Business Plan and California Fire Code programs to provide the CUPA a written declaration to that fact. Cal/EPA accepts DoD's March 30, 2009, letter, subject: California Business Plan Program, as meeting this requirement.
2. Upon receiving written declaration from a federal DoD facility, the CUPA will notify the facility that they shall be removed from the program oversight for business plan activities and their UPCF permit will be modified accordingly. A written declaration may be a notice of refusal to pay fees based on the lack of a waiver of sovereign immunity.
3. The CUPA shall submit a notification in writing to Cal/EPA Unified Program Section that the CUPA is revising the scope of its local program to remove the DoD facility from the Business Plan and California Fire Code program oversight.
4. Cal/EPA will notify U.S. EPA Region IX of DoD facilities that are not covered as part of the State's hazardous material reporting and management programs and request that U.S. EPA assume responsibility for the oversight of those facilities for compliance with federal law.
5. Cal/EPA will post on the Unified Program website a list of those DoD facilities that are not covered by the Business Plan and California Fire Code programs as public information.

While this bulletin is in effect Cal/EPA will not find a CUPA deficient in program implementation for failure to collect the associated program and general oversight surcharge fees from DoD facilities that dispute the state's authority to regulate the Business Plan and California Fire Code programs and that are in accordance with the provisions above. CUPAs must continue to enforce HWM, UST, CalARP and AST programs under the Unified Program at DoD facilities and to take appropriate action to collect environmental program and surcharge fees.

To view the full bulletin, go to http://www.calepa.ca.gov/CUPA/Bulletins/2009/0809_01.pdf

Electronic Reporting Update

The conversion of Unidocs Hazardous Material Online Input Project (Unidocs HMOIP) to the California Environmental Reporting System (CERS) is almost complete. Two dozen government and business testers statewide have been testing the online application for over a week. The CERS application is expected to go live toward the end of September and all current Unidocs HMOIP Users will have their data moved into CERS at that time. Cal/EPA is working with all Unified Program Agencies (UPAs) on the three year implementation plan that will move businesses and UPAs to electronic reporting by 2013. The Electronic Reporting web page of the Unified Program site, www1.calepa.ca.gov/CUPA/EReporting/, is updated often. Be looking for Bulletin #4 in about a week and check in to see the "Support and Help Guide for UPA Implementation of CERS" in the next week also. Additionally, check back to the site in about two weeks for the results of the recent UPA Survey update.

Department of Toxic Substances Control – None

State Water Resources Control Board

Proposed Regulation for Interim Variance for UST's Storing Certain Biodiesel Blends

The State Water Board proposes to add section 2631.2 to Article 3 (commencing with sec. 2630), chapter 16, division 3, title 23 of the California Code of Regulations, which would provide a variance from specific independent testing and approval requirements for underground storage tank (UST) systems storing certain biodiesel blends. All rulemaking documents are located on the State Water Board's website at http://www.waterboards.ca.gov/water_issues/programs/ust/biodiesel_regs.shtml

The State Water Board requests comments from interested persons to present any statements, arguments, or contentions relating to the proposed regulation. The comments must be submitted in writing and received by the State Water Board before the close of the written comment period in order to be considered by the State Water Board before it adopts the proposed regulation. The written comment period begins August 14, 2009, and closes at 5:00 p.m., Pacific Daylight Time, on Monday, September 28, 2009.

Comments may be hand delivered, or submitted by U.S. mail, facsimile transmission, or electronic e-mail. Comments delivered by hand should be taken to 1001 I Street, Sacramento, California, and addressed to the attention of Ms. Laura Fisher, Division of Water Quality, 15th Floor, State Water Resources Control Board, (916) 341-5870.

Comments submitted by U.S. mail should be addressed as follows:

Ms. Laura Fisher
Division of Water Quality
State Water Resources Control Board
P.O. Box 2231
Sacramento, California 95812

Comments sent by fax should be sent to: (916) 341-5808. Comments submitted by e-mail should be sent to: lfisher@waterboards.ca.gov

California Emergency Management Agency – None

Office of the State Fire Marshal

California Code of Regulations Title 24 Rulemaking Continues

The BFO (building, fire, and other) Code Advisory Committee met on August 10 and 11, 2009, regarding proposed code changes to title 24 of the California Code of Regulations. The adoption of and amendments to the 2009 edition of International Fire Code were approved. No public comments regarding hazardous materials were received at the committee meeting.

Contact: Jennifer Lorenzo at (916) 324-0232 or Jennifer.Lorenzo@fire.ca.gov