Alameda County Department of Environmental Health

CUPA Evaluation Status Report

December 13, 2006

1	**Deficiency**: *On the Annual Enforcement Summary Reports (Summary Report 4) for fiscal years (Fys0 02/03, 03/04, and 04/05, the CUPA did not correctly report facility violation types, enforcement actions, and fine / penalty information. Examples include the following:* • *According to the Annual Enforcement Summary Reports reviewed, the CUPA implemented informal enforcement in the HMRRP and UST program elements, but failed to record violations in the "other " violations column.* • *In the "no. of informal enforcement actions" column, the CUPA recorded the total number of informal enforcement actions taken for each program element instead of the number of businesses that received informal enforcement actions.* • *In the Annual Enforcement Summary Reports reviewed, the CUPA did report the number of businesses that received formal enforcement; however, penalty amounts assessed and /or collected from businesses was not reported.* **Status:** As of September 30, 2006, the following information were correctly reported in the FY 05/06 Annual Enforcement Summary Report: • In the "other" column, the number of businesses with violations. • In the "no. of informal enforcement actions" columns, the number of businesses that received informal enforcement actions. • In the fines/ penalties assessed and collected columns, the amount of penalties assessed and collected by CUPA. The correct information for reporting on the Annual Enforcement Summary Report was discussed and explained by Cal EPA during the evaluation. Correct information is now reported in the Annual Enforcement Summary Reports and all future reports.
2	**Deficiency**: *The self–audit reports for FY 03/04 and 04/05 did not contain all of the required elements.The self audit reports were missing a narrative summary of the CUPA's inspection and enforcement activities. The narratives for the single fee activities and the fee accountability program need to be more descriptive.* **Status:** As of September 30, 2006, CUPA's FY 05/06 self–audit report to Cal EPA included descriptive narrative summaries of the inspection and enforcement activities, single fee activities and the fee accountability program. Self audit reports now include all required elements listed in Title 27 regulations.
3	**Deficiency**: *The CUPA does not have a Cal ARP dispute resolution procedure.* **Status:** As of November 30, 2006, CUPA had developed a Cal ARP dispute resolution procedure that addressed all the elements of Title 19, 2780.1. (See attached copy of – Dispute Resolution and Flowchart)

4	**Deficiency**: *The CUPA has not met the inspection frequency for the Business Plan Program. The CUPA is not inspecting all HMRRP facilities once every three years as required by law.* *In FY 02/03, the CUPA performed 62 routine inspections out of 522 HMRRP facilities. The CUPA's inspection rate for FY 02/03 is 12 %.* • *In FY 03/04, the CUPA performed 199 routine inspections out of 585 HMRRP facilities. The CUPA's inspection rate for FY 03/04 is 33%.* • *In FY 04/05, the CUPA performed 125 routine inspections out of 654 HMRRP facilities. The CUPA's inspection rate for FY 04/05 is 19 %.* *percentage of inspection for the three year period of 02 –05 was 65 %.* **Status:** CUPA is prioritizing inspection of current inventoried facilities. Prioritization is based on last inspection dates. HMRRP facilities that have not been inspected in the last three years are inspected first. In early February 2006, CUPA staff were allowed to work overtime to inspect inventoried sites to catch up with inspection frequency for HMBP. CUPA is hiring a Senior HMS position Senior HMS) to work as enforcement officer. The position will help with the inspection needs of CUPA. By next fiscal year 07/08, CUPA plans to hire another Hazardous Materials Specialist to perform inspections. Hiring the Senior HMS and HMS positions will help with CUPA inspection's needs. With the two new positions, CUPA will at least be able to inspect 33 % of the facilities in the business plan program per year. By September 1, 2007, and annually thereafter, the CUPA will inspect at least one third (33% per year) of the businesses subject to the Business Plan Program.
5	**Deficiency**: *The CUPA's Area Plan has not been revised in the past three years.* *CUPA's latest Area Plan is dated March 2002.* **Status:** As discussed during the evaluation, CUPA is in the process of updating the Area Plan. CUPA has received a proposal for the Area Plan Update from Boykin Consulting, the same consultant who prepared the March 2002 Area Plan. The proposal is being reviewed. By March 30, 2007, CUPA will have an approved contract. If County Board of Supervisors approval is required, it may take at least a month longer. Based on the consultant's proposal, it will take approximately six to nine months from the date of the contract approval to complete the Area Plan. If problems are encountered with obtaining needed information, this time frame may be extended. (See attached copy of the Area Plan Update Proposal). The goal is to have the Area Plan updated by the end of fiscal year 06/07 if possible and no later than end of December 2007.
6	**Deficiency**: *The CUPA is not forwarding the data (Business Plan) collected, within 15 days of receipt and confirmation, to other local agencies in a format easily interpreted by those agencies with shared responsibilities for protection of the public health and safety and the environment.* *The CUPA forwards the portions of the Business Plan data collected bi-annually to the fire departments. According to the CUPA, the CUPA and the fire agencies have a verbal agreement on what and how often information is forwarded.* **Status:** CUPA has a verbal agreement with the fire agencies on the format for submitting business plan data and the frequency the data is forwarded. A letter was sent to the fire agencies to confirm that the data submitted and frequency the data is forwarded remains the same. CUPA sent copies of these letters dated December 11, 2006 to OES. CUPA will send complete copies of HMBP on file if requested by the fire agencies. CUPA requested to meet with each fire agencies between January and February 2007 to discuss the CUPA Programs including the Area Plan update. CUPA is planning to scan all HMBPs on file so that information is available electronically.

7	**Deficiency**: *The CUPA is not providing all information contained from completed inventory forms, upon request, to emergency rescue personnel on a 24-hour basis.* *After normal working hours, not all on–call personnel, for responding to hazardous material incidents, have access to business plan data. Alameda County has developed new provisions for who perform on-call duties for hazardous materials incidents; some of these on-call personnel are not part of the CUPA staff and do not have immediate access to business plan information.* **Status:** As discussed during the audit, CUPA explained to evaluators that all information in the business plan inventory forms on file are always available 24 hours to emergency response / rescue personnel. After normal working hours, Alameda County on –call personnel have access to business plan data. Although some of the personnel who performs on-call are not part of the CUPA staff, they were trained on what is the business plan program, the types of information in the business plan, the location of the business plan files and the type of information emergency response / rescue personnel may request. CUPA program manager is the main contact for all hazardous materials incidents during normal working hours and after working hours. After normal working hours, CUPA program manager is called by Alameda County DEH on-call personnel to handle hazardous materials incidents. CUPA Program manager handles hazardous materials incidents on a 24 - hour basis.
8	**Deficiency**: *The self-audits FY 03/04 , 05/06 did not include Cal ARP Program self –audit elements.* *A Cal ARP audit report shall be compiled annually based upon the previous fiscal year's activities and shall contain an executive summary and a brief description of how the CUPA is meeting the requirements of the program as listed in Section 2780.3. The audit shall include but is not limited to the following information:* 1. *a listing of stationary sources which have been audited.* 2. *a listing of stationary sources which have been requested to develop RMPs.* 3. *a listing of stationary sources which have been inspected.* 4. *a listing of stationary sources which have received public comments on the RMP.* 5. *a list of new or modified stationary sources.* 6. *a summary of enforcement actions initiated by the AA identifying each stationary source* 7. *a summary of the personnel and personnel years necessary to directly implement, administer, and operate the Cal ARP Program* 8. *a list of those stationary sources determined by the AA to be exempt from the chapter pursuant to Section 25534(b)(2).* **Status:** CUPA conducted an audit of activities to implement the Cal ARP Program. The audit was completed on November 1, 2006 by the consultant working for the CUPA and assigned on the Cal ARP Program. (Attached are copies of the result of the audit).
9	**Deficiency**: *The CUPA is not conducting inspections with a frequency that is consistent with its Inspection and Enforcement Plan and with the inspection of other program elements. The CUPA has not inspected all 550 hazardous waste generators (HWGs) that have been identified by the CUPA. The last three annual inspection summary reports indicate the following:* • *515 hazardous waste generators were identified in Fiscal Year 02/03 of which 64 were inspected.* • *582 hazardous waste generators were identified in Fiscal Year 03/04 of which 192 were inspected.* • *550 hazardous waste generators were identified in Fiscal Year 04/05 of which 127 were inspected.* *The CUPA has inspected approximately 70% of all known facilities generating hazardous waste over the past three fiscal years. Further improvement maybe made.* **Status:** CUPA is hiring additional staff, a Senior Hazardous Materials Specialist as Enforcement Officer for CUPA and CWP programs. Position will be filled approximately within 4 to 6 months, as early as April 2007 and no later than end of June 2007. CUPA plans to fill a Hazardous Materials Specialist position in FY 07/08. CUPA's goal for FY 07/08 is to allocate additional staff resources to the hazardous waste

	generator program and conduct routine inspections of at least one-third (33%) of the facilities in the hazardous waste generator program.
10	**Deficiency**: *The CUPA does not have in its written policy and procedures a written acknowledgement of the receipt of Tiered Permitting notifications and a method to handle incomplete / inaccurate forms. Title 22, Section 67450.2(b)(4) states that the Department (CUPA), within forty-five (45) calendar days of receipt of a notification submitted pursuant to subsection (b)(2) of this section, shall acknowledge, in writing , receipt of the notification. The Department shall, in conjunction with the acknowledgement, authorize operation of the FTU subject to the requirement and conditions specified in Sections 67450.3, 67450.7,and 67450.9 (b) and 67450.9(c), deny authorization to operate under permit by rule pursuant to section 67450.9 (a) or notify the owner or operator that the notification is incomplete or inaccurate. If notification is incomplete or inaccurate, the Department shall authorize or deny authorization to operate as specified in this subsection within forty five (45) days of receipt of the requested information or corrected notification. The Department shall reject the notification of any owner or operator who fails to provide the information or correction requested in the acknowledgement within (10) days of receipt of the acknowledgement. Upon good cause shown by the owner or operator, the Department shall grant the owner or operator additional time to provide the information or correction requested. An owner or operator whose notification is rejected may submit a new initial notification.* **Status:** CUPA has a written policy and procedures on management of Tiered Permitting Notification that includes written acknowledgement of PBR notifications along with identifying any corrections of inaccurate or incomplete forms from businesses. (See attached copy of the Tiered Permitting Notification).
11	**Deficiency**: *The failed to take formal enforcement for the following Class I violations noted:* • *The illegal disposal of hazardous waste paint into the trash drum, which was observed during the August 11, 2003 inspection conducted at Container Care located at 1523 Buena Vista Avenue in Alameda, CA.* • *The failure to provide secondary containment certified by a professional engineer for a treatment tank, which was observed during the April 25, 2003 inspection conducted at Metalco located at 1475 67th Street in Emeryville, CA.* • *The failure to provide manifests or receipts for the disposal of sludge from the operation of a waste water treatment unit noted during the June 24, 2005 inspection at Mariner Boat Yard located at 2021 Alaska Packer Place in Alameda, CA. In addition, it was observed that paint chips determined to be hazardous by lab analysis were allowed to migrate off site as determined by the April 28, 2006 inspection.* **Status:** CUPA will implement the Administrative Enforcement Order and Class I violations will be addressed through this formal enforcement action. CUPA is hiring an enforcement officer who will be the lead in enforcement cases and will coordinate enforcement action with DEH staff and other regulatory agencies.