CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

1001 I STREET, SACRAMENTO, CALIFORNIA 95814 • P.O. BOX 2815, SACRAMENTO, CALIFORNIA 95812-2815
(916) 323-2514 • (916) 324-0908 FAX • WWW.CALEPA.CA.GOV

LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER
GOVERNOR

Certified Mail: 7000 0600 0027 1155 2802

February 11, 2009

Mr. Daniel D. Farrell
Fire Chief
Oakland City Fire Department
150 Frank H. Ogawa Plaza, Suite 3354
Oakland, California 94612

Dear Mr. Farrell:

The California Environmental Protection Agency (Cal/EPA), Office of Emergency Services, Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of the Oakland City Fire Department Certified Unified Program Agency (CUPA) on December 9 and 10, 2008. The evaluation was comprised of an in-office program review, and field oversight inspections, by State evaluators. The evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of preliminary corrective actions, program observations, program recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that Oakland City Fire Department's program performance is unsatisfactory with improvement needed. To complete the evaluation process, please submit Deficiency Progress Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Progress Reports to Kareem Taylor every 90 days after the evaluation date. The first deficiency progress report is due on April 10, 2009.

Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at jbohon@calepa.ca.gov.

Sincerely,

[Original Signed by Don Johnson]

Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosure

cc: Sent via email:

Mr. LeRoy Griffin
Assistant Fire Marshal
Oakland City Fire Department
150 Frank H. Ogawa Plaza, Suite 3354
Oakland, California 94612

Ms. Marci Christofferson
State Water Resources Control Board
P.O. Box 944212
Sacramento, California 94244-2102

Mr. Jeff Tkach
Governor's Office of Emergency Services
3650 Schriever Avenue
Mather, California 95655

Mr. Kevin Graves
State Water Resources Control Board
P.O. Box 944212
Sacramento, California 94244-2102

Ms. Terry Brazell
State Water Resources Control Board
P.O. Box 944212
Sacramento, California 94244-2102

Mr. Charles McLaughlin
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

Ms. Asha Arora
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

Mr. Ben Ho
Office of the State Fire Marshal
P.O. Box 944246
Sacramento, California 94244-2460

Mr. Brian Abeel
Governor's Office of Emergency Services
3650 Schriever Avenue
Mather, California 95655

Enclosure

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CERTIFIED UNIFIED PROGRAM AGENCY
EVALUATION SUMMARY OF FINDINGS

CUPA: Oakland City Fire Department

Evaluation Date: December 9 and 10, 2008

EVALUATION TEAM
Cal/EPA: Kareem Taylor
Cal/EPA: Tyrone Smith
SWRCB: Sean Farrow
OES: Radhika Majhail
OES: Jack Harrah
DTSC: Asha Arora

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Kareem Taylor at (916) 327-9557.

	Deficiency	Preliminary Corrective Action
1	The CUPA did not submit the state surcharge collected for fiscal years (FYs) 2005/2006 and 2007/2008 to the Secretary. In the CUPA's Annual Single Fee Summary Reports (Report 2s), the CUPA reported that it submitted $24,816 in 2005/2006 and $24,474 in FY 2007/2008, but neither amount was received by the Secretary. A FY 2007/2008 surcharge transmittal reviewed did not contain a check number or a copy of the check submitted. The CUPA should be transmitting all collected state surcharge revenues to the Secretary quarterly, within 30 days of the end of each state fiscal quarter. **CCR, Title 27, Section 15250 (b)(1) (Cal/EPA)**	By February 10, 2009, the CUPA will meet and confer with the City fiscal staff to develop a process to ensure the surcharge amounts collected in each fiscal quarter are remitted to the Secretary within 30 days of the end of each fiscal quarter. Also, the CUPA will remit the FY 2005/2006 and 2007/2008 surcharge checks and completed surcharge transmittals to the Secretary. Along with the 1st progress report, the CUPA will submit to Cal/EPA a copy of the remitted FY 2005/2006 and 2007/2008 surcharge checks and surcharge transmittals.
2	The CUPA's FY 2007/2008 Annual Summary Reports contained some incorrect information. • Report 2 shows that the CUPA's total regulated businesses is 1503. Upon discussion with the CUPA manager, it was discovered that the	By February 10, 2009, the CUPA will submit its revised FY 2007/2008 Annual Summary Reports to Cal/EPA that contains the correct information.

	CUPA's total regulated businesses is approximately 1400. • The Annual Inspection Summary Report (Report 3) does not contain the percent of routine inspections with Class 1 or Class 2 violations that returned to compliance (RTC) within 90 days. Instead, it contains the <u>number</u> of routine inspections that RTC (the CUPA entered information that was required in the old Report 3 format). • The Annual Enforcement Summary Report (Report 4) does not contain the correct violation classification information for the business plan, underground storage tank, and CalARP program elements. **CCR, Title 27, Section 15290 (Cal/EPA)**	
3	In some cases, the CUPA is not following-up and/or documenting RTC for businesses cited for violations in Notices to Comply and inspection reports/Notices of Violation. Out of 10 files reviewed by Cal/EPA and 20 files reviewed by DTSC, 7 files did not contain evidence of RTC or CUPA follow-up documentation. Below are some businesses that were cited for violations, but documentation of RTC or CUPA follow-up was not found: • Frank's Auto Work – inspected 8-23-07 • Hund Welding and Machining – inspected 3-9-02 • CA Waste Solutions – inspected 7-26-08 • Pacific Galvanizing - inspected 7-18-06 • BART - inspected 6-25-07 Documenting facility RTC and CUPA follow-up actions is required as part of the CUPA's implementation of its Inspection and Enforcement (I and E) plan. In addition, this information is required for the CUPA's Annual Summary Reports. **HSC, Chapter 6.11, Section 25404.1.2 (c) (Cal/EPA and DTSC)** **HSC, Chapter 6.5, Section 25187.8 (h)** **CCR, Title 27, Section 15200 (a)** **CCR, Title 27, Section 15185 (a) and (c)**	By April 10, 2009, the CUPA will follow-up with businesses cited for violations and document RTC actions. In the absence of RTC documentation from businesses, the CUPA will document follow-up actions like reinspections, enforcement letters, etc. On the 1st progress report, the CUPA will submit to Cal/EPA an action plan as to how it will follow-up with businesses with violations on a more consistent basis.
4	The CUPA's I and E plan does not contain its schedule of inspection frequency for the Hazardous Waste Generator program element. **CCR, Title 27, Section 15200 (a)(3) (Cal/EPA)**	By March 10, 2009, the CUPA will submit to Cal/EPA the portion of its I and E plan that contains the CUPA's scheduled inspection frequencies for all program elements.
5	The CUPA is not requiring businesses, subject to the	By March 10, 2009, the CUPA will

	hazardous materials reporting requirements to annually submit their hazardous materials inventory or certification statement. Out of the 9 files reviewed only 1 had its annual inventories up-to-date with either certifications or updated inventory forms. **HSC, Chapter 6.95, Section 25505 (c) (OES)**	submit an action plan outlining how CUPA will ensure that each business annually submits either the inventory certification or the inventory itself.
6	The CUPA is not requiring businesses, subject to the hazardous materials reporting requirements, to certify that they have reviewed and if necessary updated the entire business plan every three years. In 7 out of the 9 files, no certification for 3 year review was found. **HSC, Chapter 6.95, Section 25508 (c) (OES)**	By March 10, 2009, the CUPA will develop a mechanism to ensure that each business reviews their business plan every three years and make necessary changes if required.
7	The CUPA has not performed an annual CalARP performance audit. **CCR, Title 19, Section 2780.5 (OES)**	By March 10, 2009, the CUPA will perform an annual CalARP performance audit. At the CUPA's option, this information may subsequently be included with the annual Title 27 self audit.
8	The CUPA has not established a dispute resolution procedure for CalARP. **CCR, Title 19, Section 2780.1 (OES)**	By March 10, 2009, the CUPA will establish a dispute resolution procedure for CalARP that satisfies all elements of 19CCR 2780.1.
9	The CUPA is not ensuring that the owners/operators of stationary sources are revising and updating their risk management plans (RMPs) once every five years. Out of the 3 RMPs reviewed only 1 was current. The others were dated May 2001 and April 2003. **CCR, Title 19, Section 2745.10 (a)(1) (OES)**	The CUPA will immediately request updated RMPs from the owners/operators of stationary sources that have not filed a five year update of their RMPs.
10	A file review by the SWRCB indicates that some UST facilities have not been inspected annually. A few examples are: • Olympian Oil CO, 8515 San Leandro BLVD- latest inspection report found in the file was dated 2005. • Chevron, 2142 E. 12th Street- latest inspection report found in the file was dated 2003. • Gordon Gas, 6600 Foothill BLVD- last inspection report found in file was dated 2006. • M&S Shell, 9750 Golflinks Rd- latest inspection report found in the file was dated January 2007.	By June 10, 2009, the CUPA will identify and inspect all UST facilities that have not been inspected annually. Inspection priority will be given to those facilities that have not been inspected for the longest period of time. On the 1st progress report, the CUPA will report the total number of UST facilities that have not been inspected annually.

	HSC, Chapter 6.7, Section 25288 (a) (SWRCB)	
11	UST facility files reviewed either lacked plot plans, or the plot plans did not contain all the required elements. The plot plans were missing the location of ATG, sump, UDC, monitoring panel, sensor(s), etc. **CCR , Title 23, Section, 2711 (a)(8), Monitoring System Certification, Appendix 6 of Title 23 Chapter 16 (SWRCB)**	By December 1, 2009, the CUPA will ensure that all facilities have complete and accurate plot plans. As inspections come up, check for file completeness and update as necessary.
12	The CUPA is allowing UST facilities to operate with expired operating permits. The SWRCB found two facilities with expired operating permits. • Quik Stop- permit expired October 2008 and • Gordon Gas- permit expired April 2004. **HSC, Chapter 6.7, Section 25284 (a)(1) (SWRCB)**	By March 10, 2009, the CUPA will identify UST facilities that have expired permits and bring them into compliance.
13	The CUPA did not provide health and safety training and initial hazardous waste training to the staff conducting hazardous waste inspections in accordance with their I and E Plan. The CUPA staff is scheduled to take the 40 hour HAZWOPER training in January 2009. **CCR, Title 27, Section 15200 (b) (DTSC)** **CCR, Title 22, Section 66265.16 (d)**	The CUPA will ensure that staff do not conduct hazardous waste inspections until they have received 40 hour HAZWOPER and on the job training the field. By March 10, 2009, the CUPA will submit to Cal/EPA a copy of the HAZWOPER certificate(s) and a list of other trainings received.
14	The CUPA did not conduct a complete oversight inspection on 12/3/08. During the oversight inspection of Gold Seal Plating, 3125 E. 7th Street, the CUPA inspector missed many components of the hazardous waste generator and tiered permitting (TP) regulations, including the following violations observed: • Failure to have a daily inspection schedule for tanks and for the emergency equipment, as well as, a log of those inspections, • Failure to have a written waste analysis plan and records, • Failure to have tank reassessment (1 page tank assessment from 1995 was in the CUPA's file), • Failure to submit excluded recyclable materials report, and • Failure to conduct a TP inspection for PBR units, including cyanide treatment. **CCR, Title 22, Sections 66262.12, 66265.13, 66265.15, 66265.192 to 666265.195 (DTSC)** **HSC, Chapter 6.5, Section 25143.10**	By March 10, 2009, the CUPA will provide hazardous waste/TP training to staff regarding the identification and citation of hazardous waste violations. Immediately, the CUPA will ensure that inspections are conducted in a manner consistent with state statute or regulation for businesses subject to the TP program.

	CCR, Title 27, Section 15200 (b)	
15	The CUPA has not fully developed and implemented the hazardous waste TP program. The CUPA manager believed that TP was the responsibility of DTSC and not the CUPA. The following are instances observed by DTSC where the TP program was not implemented: • The consolidated permit application lists "Do you have a Tiered Permit from DTSC?" • For the emergency response/contingency plan – page 12, section VII, d. "Notify the Cal/EPA's Department of Toxic Substances Control and the Livermore-Pleasanton Fire Department that the facility is in compliance with requirements …" • The CUPA does not have a written acknowledgment of TP notification and a method to handle incomplete forms. • The CUPA does not have a procedure for the receipt of contingency plan activation reports. • The CUPA does not have a procedure for the receipt of reports documenting releases of reportable quantities from tank systems or secondary containment • The CUPA does not request that facilities submit a PBR notification for cyanide treatment after being notified by DTSC to do so in August 2008. • The CUPA has not inspected its TP facilities at least once every three years. The file review showed that the Alameda County Household Hazardous Waste (HHW) Collection Facility was last inspected on 8/5/03. The FY 2006/2007 self audit states that procedures are in place to implement the TP program; however, during this CUPA evaluation, CUPA staff stated that TP procedures were not in place. **HSC, Chapter 6.11, Sections 25404.2 (a)(1)(A) (DTSC)** **CCR, Title 27, Sections 15100 (b)(2)(H), 15190 (a)(2)(B), and 15200 (a)(3)(A)** **CCR Title 22, Section 67450.2 (b)(4)**	By March 10, 2009, the CUPA will develop and implement procedures for the hazardous waste TP program. Also, the CUPA will revise its consolidated permit application and TP forms to reflect the CUPA's new TP procedures. By March 10, 2009, the CUPA will inspect one HHW facility and submit the inspection report to Cal/EPA. Along with the 1st progress report, the CUPA will submit to Cal/EPA a copy of the new TP procedures, the HHW inspection report, the revised permit application and TP forms.
16	The CUPA has not submitted quarterly inspection or enforcement reports for RCRA LQGs since January 2005. Reports must be submitted to DTSC on a quarterly basis (February 1, May 1, August 1, and October 15).	The CUPA will submit RCRA LQGs quarterly reports to DTSC by February 1, 2009. If the CUPA did not perform any inspections or take any enforcement actions at a RCRA LQG facility, it should submit a notice to DTSC stating that the CUPA did not perform any activities at RCRA LQG facilities. The

	CCR, Title 27, Sections 15290 (e) (g) (DTSC)	CUPA may send this notice or the quarterly RCRA LQG report to Asha Arora at aarora@dtsc.ca.gov. The CUPA may chose to submit the RCRA LQG information online using Cal/EPA's Unified Program Data System (UPDS). Here is the website link for UPDS: https://securecupa.calepa.ca.gov /UPDS/Web/Forms/Public/Login.aspx
17	Inspection reports issued by the CUPA do not include observations or other information in enough detail to determine if those items are violations, observations, or suggestions. During the file review the following files were noted as having violations which were not adequately or properly documented: • The 10-31-08 inspection report for ED-Coat, 714 4th Street, stated "Needs improvement." It was unclear what needed improvement. The inspection report dated 8-16-06 stated that the business was exempt from the TP program; however, the inspection report dated 5-10-01 listed "no violations" and stated that the business should potentially be in the PBR unit because metals are removed from rinse waters by pH adjustment using NaOH. • The 8-8-08 inspection report for Scientific Platers of No Cal, 9809 Kitty Lane, listed "tank inspection, SB14, incompatibles, used oil filters N/A." The observations are unclear since "No violations" was written on the inspection report. The inspection reports dated 5-31-07, 8-16-06, 7-6-06, and 10-7-03 listed "No violations" and reported the business exempt from the TP program as per the consultant, but did not include information to support an exemption. • The 7-16-06 inspection report for Pacific Galvanizing, 715 46th Avenue listed sulfuric acid to storm drain and inadequate secondary containment but did not include other details to support a violation. • The 6-29-06 inspection report for Johnson Plating Works, 2526 Telegraph Avenue, listed "Evaporate concentrate, employees not trained within 6 months" without any details to classify	Effective immediately, the CUPA will ensure that inspections are conducted in a manner consistent with state statute or regulation. By March 10, 2009, the CUPA will ensure that all violations cited in inspection reports are clearly documented as violations and include the factual basis for violations, as well as, the corrective actions to be taken. By March 10, 2009, the CUPA will provide refresher hazardous waste/tiered permitting training to staff regarding the identification and citation of hazardous waste violations.

	the minor violations. A reinspection dated 8-29-06 indicated that violations were corrected; however, both the inspection and reinspection reports did not include a violation for treatment without authorization. • The1-9-06 inspection report for Hazel Auto, 456 23rd Street, listed "Antifreeze needs sec containment and HW labels" without enough details to classify the violations as minor. These violations were noted as corrected on a reinspection dated 2-14-06. **HSC, Chapter 6.5, Section 25185 (c)(2)(A) (DTSC)**	
18	The CUPA is not allocating five percent of its hazardous waste-related resources to the oversight of universal waste handlers and silver-only generators. **CCR, Title 27, Section 15200,** **CCR, Title 22, Section 25201.4 (c)**	By March 10, 2009, the CUPA will amend their I and E plan to include a discussion of how the CUPA will expend five percent of its hazardous waste related resources to the oversight of universal waste handlers and silver–only generators.

CUPA Representative Leroy Griffin (Print Name) Original Signed (Signature)

Evaluation Team Leader Kareem Taylor (Print Name) Original Signed (Signature)

PROGRAM OBSERVATIONS AND RECOMMENDATIONS

The observations and recommendations provided in this section address activities the CUPA are implementing and/or may include areas for continuous improvement not specifically required of the CUPA by regulation or statute.

1. **Observation:** The CUPA has been without an administrative staff person for approximately 9 months. Because of this, the CUPA's facility file management has been severely hampered. Unified Program Consolidated Forms (UPCFs), inspection reports, RTC certifications, and follow-up documents have not been placed in the facility files on a consistent basis. Many documents that are ready for filing have not been filed. The CUPA has recently hired a new administrative staff person to manage the facility files.

   Recommendation: Ensure that facility documents are placed in the proper facility files in a consistent and timely manner.

2. **Observation:** The CUPA only classifies Hazardous Waste Generator violations as Class 1, Class 2, or minor in their data management system. The CUPA is in the process of modifying the CUPA DMS so that violations for all program elements will be classified as Class 1, Class 2, or minor. During the file review, Cal/EPA found one inspection report with violation classifications; however, the other inspection reports did not contain any violation classifications.

   Recommendation: Cal/EPA recommends that the CUPA begin classifying violations as Class 1, Class 2, or minor on its inspection reports. The classification information may then be transferred to the CUPA's data management system so that completion of future Annual Summary Reports can be more efficient.

3. **Observation**: During the evaluation, it was observed that the area plan had the old 916 area code contact number for OES notification for the State Warning Center. The 800 number was correct.

   Recommendation: We recommend the CUPA to use the current 916 area code number for the State Warning Center: 916-845-8911.

4. **Observation:** During the hazardous material business plan file review, a few files were missing signatures and/or dates on business owner/operator identification page.

   Recommendation: OES recommends the CUPA to verify that the business plan forms are complete and accurate.

5. **Observation:** On December 8, 2009, OES accompanied an inspector from the Oakland City Fire Department CUPA for a hazardous material business plan inspection. It was a thorough inspection and the inspector took his time in covering all the aspects of the business plan, hazardous waste generator, and universal waste programs.

   Recommendation: none

6. **Observation:** The CUPA's UST inspection form does not identify Significant Operational Compliance (SOC) items or provide for a summary of these items for tracking purposes during annual compliance inspections.

Recommendation: The SWRCB recommends that the CUPA provide a means for determining SOC during UST inspections.

An inspection "Draft" form has been given to the CUPA. This form is not required to be used by the CUPA. It is an example/tool to help the CUPA identify the SOC items that need to be reported to the SWRCB.

7. **Observation:** The CUPA has access to and routinely use a camera to document violations at UST facilities.

   Recommendation: Photographs are useful to document violations and the conditions at facilities. Photographs could help strengthen your case should enforcement become necessary. Always remember to date stamp photographs.

8. **Observation:** The CUPA inspector conducted the UST site inspection in a thorough and professional manner. His attention to detail and knowledge of code and regulations resulted in an excellent inspection. The inspector reviewed all applicable documents and built a good rapport with the new facility owner. The CUPA inspector seemed to have a good working relationship with the technician performing the monitoring certification. Also noted during the UST inspection, the CUPA inspector evaluate other program elements, took pictures of the site and its conditions, and explained to the new owner what needed to be done to correct the violations found during the overall inspection.

   Recommendation: none

9. **Observation:**The CUPA is doing a good job of following up on and documenting the findings of complaints referred by DTSC.

   Recommendation: none

10. **Observation:** The CUPA's field inspection report and checklist does not contain a section for an inspector to check off which hazardous waste program the facility is regulated as (ex. RCRA LQG, LQG, SQG, or CESQG). While this information is not required, it is important to note so that the inspectors can determine which regulations are applicable at the beginning of inspections. It will also assist in reporting RCRA LQG information.

    Recommendation: The CUPA may want to modify its hazardous waste inspection report to include check boxes for marking the type of hazardous waste facility.

11. **Observation:** The CUPA's enforcement files contain both supplemental environmental projects (SEPs) and penalty documentation; however, the files do not include any documentation of how the penalties were determined. If this information is shared with counsel, it is subject to Attorney-Client Privilege.

    Recommendation: The CUPA may want to include documentation of how penalties were determined its enforcement files.

EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

1. Oakland City Fire Department has an outstanding business education program. Emergency response calls for severe hazardous materials incidents have greatly declined over the last several years.