

**Cal/EPA Unified Hazardous Materials Program**

**Cal/EPA Environmental Enforcement Report**

**2009**

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## UNIFIED HAZARDOUS MATERIALS PROGRAM

### I. EXECUTIVE SUMMARY

California law consolidates several, but not all, hazardous material environmental programs in California into one regulatory program referred to as the Unified Hazardous Materials Program (Unified Program). Under the Unified Program, the California Environmental Protection Agency (Cal/EPA) delegates the bulk of inspection and enforcement activities for these programs to certified local agencies, called Certified Unified Program Agencies (CUPAs). A CUPA is a local agency, generally a local fire department, environmental health agency, or a designated state agency, that is responsible for the implementation of all the unified program elements within the local jurisdiction. The Secretary of Cal/EPA is directly responsible for the implementation of the Unified Program. The Secretary certifies CUPAs and has oversight of state agency partners who set program element standards and ensure program consistency.

The Unified Program consolidates the administration, permits, inspections, and enforcement activities of the following environmental and emergency management programs. The state agencies, departments and boards are responsible for each of the following program elements:

- Hazardous Materials Release Response Plans and Inventories (Business Plans) – California Emergency Management Agency (CAL EMA)
- California Accidental Release Prevention (CalARP) Program - (CAL EMA)
- Underground Storage Tank Program – State Water Resources Control Board (SWRCB)
- Aboveground Petroleum Storage Act (APSA) Program - (Cal/EPA)
- Hazardous Waste Generator and Onsite Hazardous Waste Treatment (tiered permitting) Programs – Department of Toxic Substances Control (DTSC)
- California Uniform Fire Code: Hazardous Material Management Plans and Hazardous Material Inventory Statements – Office of the State Fire Marshal (OSFM)

A number of CUPAs also work with other local governments that implement only one or more of the regulatory program elements. These other local governments are referred to as Participating Agencies.



There are 83 CUPAs and 34 Participating Agencies (PAs) for a total of 117 reporting entities, known collectively as Unified Program Agencies (UPA). In 2009, the City of Newark CUPA was absorbed by Alameda County CUPA. Imperial and Trinity Counties CUPA programs have previously been turned over to the Department of Toxic Substances Control because, for various reasons, they could not be effectively implemented at a local level.

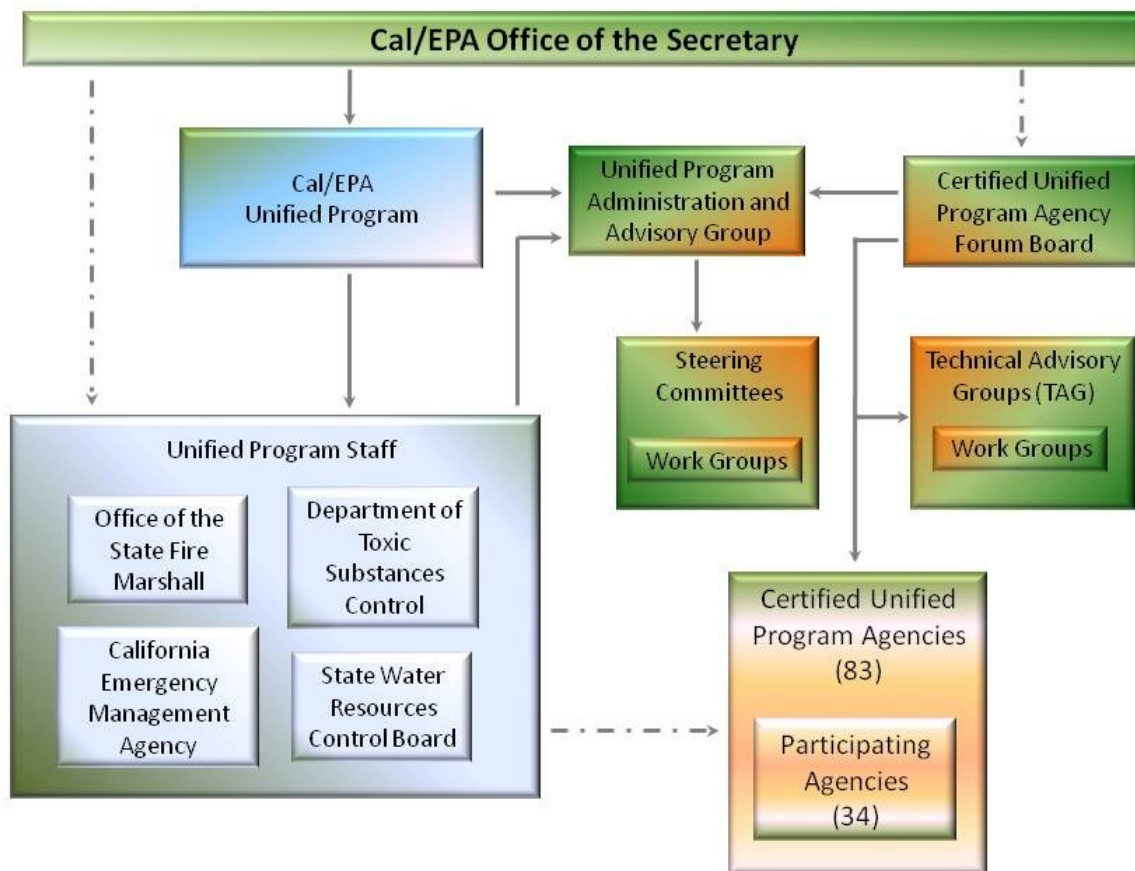
*Photo of UST port inspection courtesy of Orange County CUPA*

**Cal-CUPA Forum**

The California CUPA Forum was formed by the CUPAs to represent all CUPAs or Participating Agencies with a single voice. The Cal-CUPA Forum strives to achieve statewide consistency, consolidation, and coordination in the implementation of the Unified Program. The Cal-CUPA Forum has established Technical Advisory Groups and Work Groups, to further aid the statewide management of the program. (See <http://www.calcupa.net> for information on the California CUPA Forum).

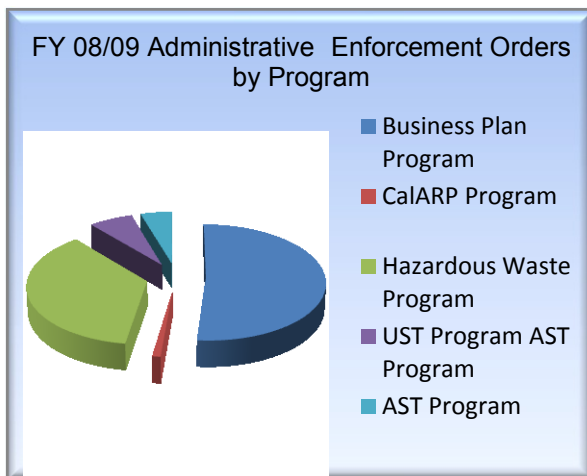
**Unified Program Administration and Advisory Group**

The Unified Program Administration and Advisory Group, commonly referred to as UPAAG, was created to foster effective working partnerships between CUPAs, state and federal agencies. The purpose of the UPAAG is to provide a forum to gather, process, discuss, refine, and develop policy concerning implementation of the state-wide Unified Program. In the UPAAG, members of the Cal-CUPA Forum work with state and federal agencies on policy decisions, education and problem-solving. UPAAG has formed various Steering Committees and Work Groups to aid in its purpose.



## A) Major Program Highlights

Assembly Bill 2286 (2008) requires Unified Program electronic reporting. It requires the electronic submittal of Unified Program data from regulated businesses to CUPAs and the state by 2013. The web based reporting programs will allow the regulated community to submit data directly to their local UPA who will share it with Cal/EPA. Alternatively, multi-jurisdictional businesses will be able to exchange data with Cal/EPA, who will in turn share the data with the UPA. Cal/EPA will serve as a virtual data warehouse and have the ability to exchange data with US EPA and create a public access website. These efforts have resulted in the development of the California Environmental Reporting System (CERS). CERS was launched in September 2009. Selected UPAs and businesses began using CERS as the first step of a three-year transition plan to ensure all UPAs and regulated businesses meet the reporting requirements of AB 2286.



In state fiscal year 2008/2009 (July 1, 2008 thru June 30, 2009), the CUPAs initiated a total of 483 administrative enforcement orders (AEOs) against regulated entities or individuals that were in violation of environmental laws. This is significant because the law that provides authority to CUPAs for taking such action was enacted only six years ago. The use of this enforcement tool has increased from less than 200 actions the first year to over 500 actions in 2008. While the total number of AEOs dipped in 2009, the total amount of fines collected has increased. Total fines collected in fiscal year 2009 rose to \$9.2 million, an increase of over \$1.6 million from the \$7.6 million that was collected in 2008.

In 2009, the California CUPA Forum Board established the CUPA Forum Environmental Protection Trust Fund. This Trust Fund was established to manage and disburse monies from enforcement case settlements to enhance the investigation, inspection and enforcement of Unified Programs throughout the State of California. There is \$500,000 available for use in 2010. These monies will be disbursed through a grant process and must be submitted by March 30, 2010. Successful grant applications are to be awarded for the following fiscal year beginning July 1.

In 2009, Cal/EPA coordinated with the California Emergency Management Agency's California Specialized Training Institute to develop a training program for CUPA staff and inspectors. The purpose of the training program is to meet the training requirements of the Aboveground Petroleum Storage Act. The training was provided throughout the state.

## B) What the Reported Data Tells Us

Statewide there are about 875 full time CUPA staff working on the Unified Program, including over 500 full time field inspectors. The year 2008 was the first time that the staffing level of the CUPAs had been measured. Having 500 local field inspectors is a major increase and a stable presence for these local programs. It is expected that another staffing poll will be conducted in 2010.

The implementation of an Administrative Enforcement Order Process for the Unified Program in the 2003 (AB 2481) added a formal administrative enforcement tool directly usable by CUPAs to their other referral based formal enforcement options. That means, instead of having to choose between issuing minor violations or convincing a local prosecutor to pursue a case, the CUPA can pursue its own administrative

cases. The number of Administrative Enforcement Orders has steadily risen as more CUPAs use this enforcement option. In 2009, 43 CUPAs took over 800 formal enforcement actions against persons and regulated entities. The use of formal enforcement by CUPAs is growing as more CUPAs become knowledgeable about these processes.

In 2009, local field inspectors conducted inspections of over 55,000 facilities, up over 15 percent since 2000. They also pursued over 43,000 informal enforcement actions in 2009, up by 40 percent since 2000, and there were over 3874 formal local enforcement actions (administrative, civil and/or criminal), doubling what was reported in 2007, resulting in the collection of \$9,197,778 in penalties and \$531,980 in Supplemental Environmental Projects.

- Formal enforcement actions are actions that mandate compliance and initiate a civil, criminal, or administrative process which results in an enforceable agreement or order for what are determined to be the most serious types of environmental violations.
- Informal Enforcement is an action other than a formal enforcement action that notifies the regulated business of its non-compliance and establishes a date by which that non-compliance is to be corrected. Examples include letter, notices of violation and verbal warnings or notices. Informal actions do not impose sanctions.



*Photo of storage drum inspection courtesy of Orange County CUPA*

### **C) How the Program Will Use This Information**

The Unified Program Administration and Advisory Group met for two days in mid-March 2008 to review and revise the Unified Program Strategic Plan using the information summarized above. The results of that meeting are included in this report in the form of the new prioritized “Ten Strategic Directions” that are included in Section II (B) (1) (e) of this chapter.

Data in 2008 showed that 13 CUPAs had never done formal enforcement, and other CUPAs had done only one (1) or two (2) formal enforcement actions. Cal/EPA is looking to help those local CUPAs improve their enforcement programs. In most cases, these CUPAs were smaller rural jurisdictions with a small number of businesses. However, there were a few medium CUPAs that may need technical training and others that might require more effort to educate local elected officials as to the importance of consistent local enforcement in their jurisdiction.

When the summary enforcement data was analyzed, it became apparent that some larger CUPAs were not taking any formal enforcement action in specific media programs where a significant number of violations were identified. CUPAs that have not taken formal enforcement action will be divided into 3 categories that

will take into account their size and risks to the public. Depending on each CUPAs individual underlying reasons Cal/EPA developed an action plan that will formally address the issue by following defined processes as outlined below:

1. Set meetings with program directors to identify barriers and actions to reduce them.
2. Work with CUPAs, potential mentors and the CUPA Forum Board to broker arrangements and training.
3. The Unified Program manager will report to the Assistant Secretary for Local Programs on a monthly basis on progress on this action plan

At the end of 2009, there remained 6 small rural CUPAs (Amador County, Lassen County, Inyo County, Trinity County, Modoc County, and Alpine County), covering about 0.5 percent of the regulated businesses, that historically have never used any type of formal enforcement against regulated businesses in the history of their program.

Another concern is that most analysis of the inspection data indicates that significant program activity is focused on compliant facilities and does not look at the facilities that operate illegally without government regulation. In 2009, the UPAAG's Enforcement Steering Committee moved a project forward to identify a model program that would use standardized indicators, other than just inspection activities and the results, to help focus local resources. This work plan includes the ten Strategic Goals to be discussed below.

## **II. CAL/EPA UNIFIED PROGRAM'S ENFORCEMENT PROGRAM**

### **A) Overview**

The Unified Program's mission is to protect public health and safety, and to restore and enhance environmental quality, and sustain economic vitality through effective and efficient implementation of the hazardous material and waste programs within the Unified Program. The Unified Program's vision is that all participants of the program at the federal, state, and local level will continue to play an active role in policy oversight and implementation of the Unified Program. The vision includes that all Unified Program participants at the federal, state and local level will engage in a quality of communication, to enhance mutual trust, and more effective implementation.

The Unified Program takes its fundamental enforcement structure from the implementing statutes of the six unified program elements. However, the 83 CUPAs introduce a significant level of complexity. Not only is each CUPA's enforcement program governed by the federal and state statutes and regulations, but also by local ordinances and codes. Section II of this chapter focuses on the federal and state requirements as implemented in the Unified Program, but not included are any reviews of the local ordinances that might augment these requirements.

Cal/EPA and the CUPAs, working together, finalized a Guidance Document for Inspections and Enforcement that covers the fundamentals of a complete and sound local inspection and enforcement program. The document is an update and expansion of a 2000 version and is intended to establish a broad framework for UPA's inspection and enforcement programs. In addition, this document has included many resources and links to other training, guidance, protocols, and tools. The guidance document is published on the Cal/EPA Unified Program web site at <http://www.calepa.ca.gov/CUPA/Resources/>. CUPAs determine or verify compliance utilizing a variety of tools such as inspections, investigations, service requests, complaints, record reviews, and/or surveillance.

Cal/EPA and the CUPAs have also developed guidance on penalties and supplemental environmental programs that is published on the Cal/EPA Unified Program web site ([www.calepa.ca.gov/CUPA/Resources](http://www.calepa.ca.gov/CUPA/Resources)). CUPAs use an array of methods for enforcement response, both informal and formal, including but not limited to notices of violation, administrative enforcement orders, civil and criminal case referrals to the city or district attorney.

CUPA programs are evaluated at least once every three years by Cal/EPA and authorized state agencies. In 2009, the Unified Program conducted program evaluations at 23 of the 83 CUPAs. The CUPA evaluation process consists of: 1) on-site records review for completeness and implementation of their Inspection and Enforcement Plans; 2) a review of facility enforcement and compliance files, field oversight inspections to evaluate their actual field inspection process; and 3) reviews of self-audit reports and annual summary report submissions. At the end of the evaluations, which are generally a total of 2 days, a final report is prepared summarizing the findings of the evaluation, and the CUPA program receives a rating as either “meets or exceeds program standards,” “satisfactory, with some improvement needed,” or “unsatisfactory, with improvement needed.” Results of CUPA evaluations conducted in 2009 show that 1 met or exceeded program standards, 18 were considered satisfactory with improvements needed, and 4 were unsatisfactory with improvements needed. At the end of 2009, 4 of the 83 CUPAs were still rated as unsatisfactory with improvements needed.

California’s CUPA programs are in a unique position to provide for direct interface with a majority of California’s regulated businesses because of their local ties to the community. They have the advantage of being locally based in comparison to state and federal agencies, and according to surveys, businesses state they feel the most comfortable when dealing with local enforcement agencies for answers to their questions. A requirement of Unified Program’s Inspection and Enforcement Plan provides for public participation procedures that ensure receipt and consideration of comments from regulated businesses.

The Unified Program and the CUPA Forum Board annually evaluate deficiency trends from the data gathered from the CUPA Evaluation reports and use the information to develop and prioritize training courses that are offered at the Annual CUPA Conference. The Annual CUPA Conference is a four day event that has in attendance over 1,000 participants from local, state and federal agencies, businesses, industry representatives, and a growing number of college students who are sponsored through scholarships by the CUPA Forum Board. In addition, outstanding program implementations that are noted in the CUPA Evaluation Reports are used in training courses at the conference to provide examples of innovative projects or resources that individual programs have developed that address key program elements within the CUPA program.

In 2009, over 65% of the 23 CUPAs evaluations that were conducted by the Unified Program identified enforcement activities as part of their outstanding program implementations. Examples of outstanding enforcement activities include streamlining the process; adding provisions to local ordinances; increased number of enforcement orders; and increased referrals to District Attorneys.

In addition to outstanding enforcement activities, approximately half of the 23 CUPAs evaluated had identified outreach activities as part of their outstanding program implementations. Examples of outstanding outreach include: Waste management classes for the regulated community; E-Waste events; award recognition for facilities that have excelled in waste reduction, solid waste minimization, and recycling; web portals for businesses to report electronically, including training on how to use the portal; greatly improved informational websites with electronically downloadable forms; and up-to-date information on Facebook and Twitter on events, emergencies, and publically available workshops. In 2009, CAL/EPA began compiling evaluation data on outreach activities provided by CUPAs throughout the state in an effort to quantify the type and availability of outreach activities that are provided.

Many CUPAs have started Green Business Programs that recognize businesses that have implemented pollution prevention practices as well as meeting and/or exceeding environmental compliance standards. Generally, the businesses involved in the program are in automotive body and repair, printing, hospitals, or businesses that are specific to certain regions such as wineries or metal plating shops. Businesses that participate in the program receive public recognition, marketing resources, and in some cases qualify for fee reductions for their CUPA fees. There are currently fourteen (14) counties in California with active Green Business Programs. The expansion of Green Business Programs is one of the six key initiatives outlined in Cal/EPA's Green Chemistry Initiative.

## **B) Enforcement Program Components**

**1. Description:** Cal/EPA requires that each of the 83 CUPAs develop and maintain an Inspection and Enforcement Plan, which allows each CUPA to operate within its own local enforcement program structure developed in accordance with the guidelines established by Cal/EPA. CUPAs must review the plan annually and update the plan as necessary. Evaluation of each CUPA's program has been measured against these guidelines for the past ten years. The recently published Guidance Document for Inspection and Enforcement includes the following preface, which more specifically describes the requirements.

“Unified Program Agencies (UPA's) are charged under the California Health and Safety Code (Health & Saf. Code) with responsibility for enforcement of the legal requirements of the six underlying environmental and public safety programs. To “...ensure coordinated, efficient, and effective enforcement ...” of these six programs (Health & Saf. Code, § 25404.2), each UPA is required to develop and implement a single unified inspection and enforcement program meeting the specific requirements in both statute and regulation.”

### **a. Basic responsibilities**

The responsibilities are laid out in each program element's statute and regulation and more specifically in the Unified Program statutes and regulations. The Unified Program statute specifies:

- All aspects of the Unified Program related to the adoption and interpretation of statewide standards and requirements are the responsibility of the state agency which is charged with that responsibility under existing law.
- Those aspects of the Unified Program related to the application of statewide standards to particular facilities, including the issuance of Unified Program facility permits, the review of reports and plans, environmental assessment, compliance and correction, and the enforcement of those standards and requirements against particular facilities, shall be the responsibility of the CUPAS and PAs.

### Specific Programs

- Hazardous Materials Release Response Plans and Inventories (Business Plans) - California Emergency Management Agency is responsible for providing technical assistance and evaluation of the Hazardous Material Release Response Plan (Business Plan).
- California Accidental Release Prevention (CalARP) Program - California Emergency Management Agency is responsible for providing technical assistance and evaluation of the California Accidental Release Response Plan Programs.

- Underground Storage Tank (UST) Program - The State Water Resources Control Board provides technical assistance and evaluation for the underground storage tank program in addition to handling the oversight and enforcement for the aboveground storage tank program.
- Aboveground Petroleum Storage Act (APSA) Program – There is currently no state agency assigned for technical oversight of this program. Cal/EPA has general oversight, and the CUPAs have the CUPA Forum and APSA Steering Committee that are active in setting standards.
- Hazardous Waste Generator (HWG) and Onsite Hazardous Waste Treatment (tiered permitting) Programs - The Department of Toxic Substances Control provides technical assistance and evaluation for the hazardous waste generator program including onsite treatment (tiered permitting).
- California Uniform Fire Code Program: Hazardous Material Management Plans and Hazardous Material Inventory Statements - The Office of the State Fire Marshal is responsible for ensuring the implementation of the Hazardous Material Management Plans and the Hazardous Material Inventory Statement Programs. These requirements are covered by the Hazardous Materials Release Response Plans and Inventories program element.

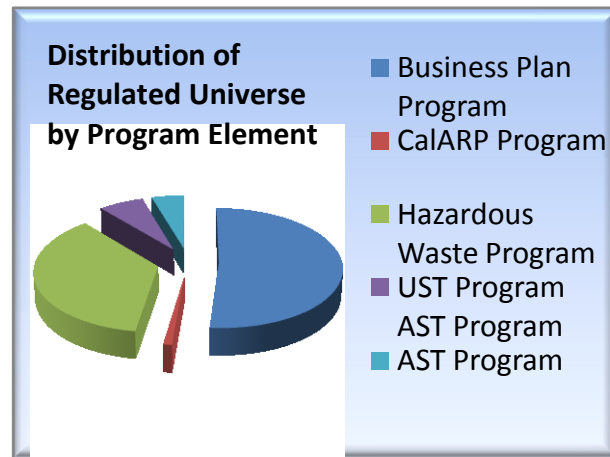
**b. Relationship to local partners**

The Unified Program takes its fundamental enforcement structure from the implementing statutes of the six unified program elements. However, the 83 CUPAs introduce a significant level of complexity. Not only is each CUPA’s enforcement program governed by the federal and state statutes and regulations but also by local ordinances and codes.

**c. Size of the regulated “universe”**

The number of regulated businesses reported by the CUPAs in fiscal year 2008/2009 by program element are:

- Total Regulated Businesses – 143,988
- Business Plan Program – 119,533
- CalARP Program – 2,337
- Hazardous Waste Program – 84,832
- UST Program – 15,104
- AST Program – 10,807



Note: the figures above other than the number of total regulated businesses include overlapping program elements, for example, businesses with more than one program element.

**d. Relationship to Federal programs**

The federal hazardous waste generator program is delegated to DTSC. Through the Unified Program, a large portion of program requirements are further delegated to the CUPAs. There are however, significant portions of this program that remain under DTSC’s control such as hazardous waste Treatment, Storage and Disposal facilities, transportable treatment units, hazardous waste transporters, the Brownfields Cleanup programs, the schools sites program, and site cleanup. No other federal programs under the Unified

Program are formally delegated to the state. The Unified Program statutes delegate the implementation of the six noted programs to the CUPAs.

### 1. Extent of Unified Program

The six programs implemented by the CUPA are significantly larger in scope than the related federal program. A short description of each follows.

- Hazardous Materials Release Response Plans and Inventories (Business Plans) – This program meets the requirements of the federal Emergency Planning and Community Right-To-Know Act (EPCRA) for disclosure of inventories of hazardous materials. The federal program uses a specific listing of hazardous substances and reporting quantities generally higher than those required by the state. Unlike the federal program, the state program uses characteristics to define a hazardous material. In addition, the state reporting quantities are much lower, which together result in a far larger universe of regulated substances and more regulated businesses.
- California Accidental Release Prevention (CalARP) Program - This program meets the requirements of the federal Risk Management and Prevention Program (RMPP) for manufacturing processes that involve the use of toxic and flammable chemicals on the federal list of Regulated Substances. The state program uses a different list of regulated substances that includes the federal list and more, resulting in a larger regulated business universe.



*Photo of UST removal courtesy of Orange County CUPA*

- Underground Storage Tank (UST) Program – The state program covers about the same universe of regulated businesses as the federal program. The state program has far more stringent requirements for tank monitoring, cleaning up leaking tanks, and requires more information be reported on tanks. In California, all USTs are mandated to be inspected annually.
- Aboveground Petroleum Storage Act (APSA) Program – The state program covers about the same universe of regulated businesses as the federal program.
- Hazardous Waste Generator (HWG) and Onsite Hazardous Waste Treatment (Tiered Permitting) Programs – The state HWG program regulates far more hazardous waste generators than the federal program. The federal program accounts for about 18,000 of the 85,200 reported HWGs. There is no federal equivalent to the Tiered Permitting program. The Tiered Permitting program regulates about

6,000 hazardous waste generators that treat onsite small quantities of specific hazardous wastes using specific technologies.

- California Fire Code Program - The Office of the State Fire Marshall is responsible for ensuring the implementation of the Hazardous Materials Management Plans and the Hazardous Material Inventory Statements by regulated businesses meet the California Fire Code requirements. This program ties in closely with the Hazardous Materials Release Response Plans and Inventories program element.

### 2. Federal Grant funding /reporting

Environmental Data Exchange: Cal/EPA was awarded a US EPA grant to expand the use of an existing internal cross BDO Environmental Data Exchange Pilot project into a more robust search tool that will make the information from 18 environmental data bases available to CUPAs and other local governments.

Project planning started in late 2008. Programming work, originally expected to be completed in late 2009, has been deferred to 2010. This unique project will support components of Cal/EPA's Enforcement Initiative Data Projects to ensure consistency of standards, ease of cross-organizational data exchange, and expand public access to environmental performance information, including information about U.S. EPA and state regulatory activities.

### 3. Comparison of State mandated inspection frequencies and federal standards.

State inspection mandates require much more frequent inspections than their corresponding federal counterparts. A comparison of the two follows.

- Hazardous Materials Release Response Plans and Inventories (Business Plans) – There is no federal standard. The state standard is once every three years.
- California Accidental Release Prevention (CalARP) Program - There is no federal standard. The state standard is once every three years.
- Underground Storage Tank (UST) Program – The new federal standard is once every three years. The state standard is once every year.
- Aboveground Petroleum Storage Act (APSA) Program – There is no federal standard. The state standard is once every three years.
- Hazardous Waste Generator (HWG) and Onsite Hazardous Waste Treatment (Tiered Permitting) Programs – There is no federal standard or state standard. State guidelines suggest once every three years.

### 4. Federal oversight and evaluation

The federal government recently reviewed our state program and found it to be strong. US EPA Region 9 completed the Federal Enforcement Evaluation of the RCRA Hazardous Waste Generator program in California in August 2007, also called the [State Review Framework](#). The next State Review Framework evaluation is scheduled in 2011 for California.

#### **e. Program goals/desired outcomes:**

In 2008, the Cal-CUPA Forum and the state agencies, working through the Unified Program Administrative and Advisory Group, developed a Unified Program Strategic Plan to guide efforts over the next few years (July 1, 2009 to June 30, 2013) to develop and improve the Unified Program. This Plan contained ten strategic directions that, in 2009, were consolidated into eight by combining similar or redundant goals. These projects are as follows:

1. Fully implement electronic reporting systems and e-government. The benefits of electronic reporting systems to all Unified Program stakeholders are enormous and impact all aspects of the Unified Program.
2. Create a level playing field through full implementation by all CUPAs and streamlining compliance. Unified Program success can only be fully realized when a high level of compliance is achieved in all parts of the state.
3. Develop new and effective performance measures. Performance measures are critical to identifying areas of program success and opportunities for program improvement. They are also necessary to communicate program value to policy makers.
4. Improve training delivery. Training is a cornerstone of successful programs, and significant opportunity exists to improve this aspect of the Unified Program.

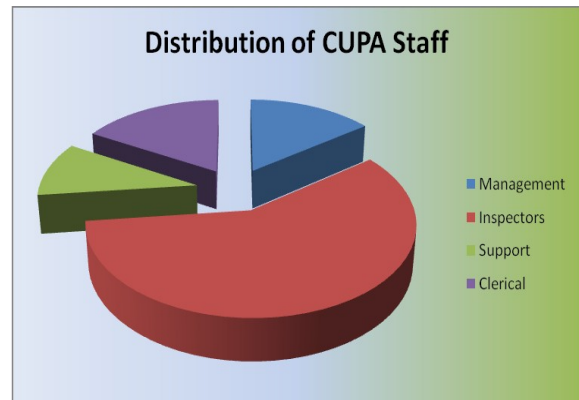
5. Plan for succession. Program demographics clearly demonstrate that Unified Program agencies are facing a significant amount of attrition in the near future due to retirements. Continued program success relies upon the availability of qualified and interested job applicants.
6. Eliminate single-wall underground storage tanks. Single walled tanks present the highest risk of all underground tanks. It is critical to take into account the challenges faced by tank owners, especially in rural low through put areas, who deal with the cost of tank system replacement.
7. Establish disaster strike teams. Recent incidents, such as the Southern California wildfires, have illustrated the need to have readily available, trained and equipped environmental resources to deal with hazardous materials issues during the recovery phase of these events.
8. Integrate green chemistry into the program. Green chemistry will certainly have a significant impact on the use of chemicals, but it is unclear at this time how it will affect the Unified Program.

## 2. Program Component Metrics

### a. Resources

Based on data collected in 2008, the approximately 873 local staff in the 83 CUPAs and 34 Participating Agencies is broken down as follows:

- **Enforcement Staff** – There are 510 field inspectors.
- **Supervisors and Management** – There are 129 managers or supervisors that are not field staff.
- **Technical Support Staff** - There are 88 technical support staff that are not field staff.
- **Non-Technical Support Staff (Clerical)** – There are 146 non-technical support staff.



New data is expected to be collected in 2010.

### b. Program Component Outputs

#### Data Characteristics

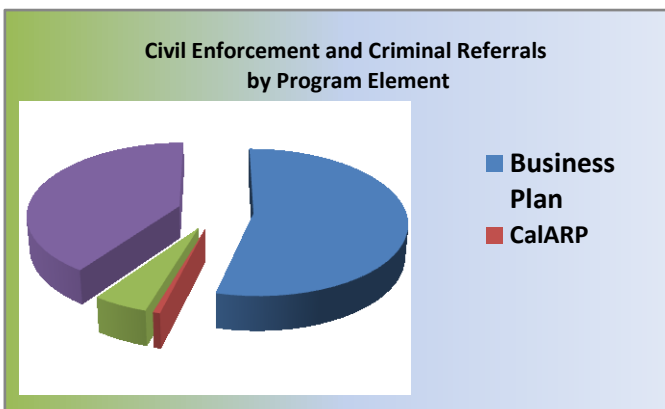
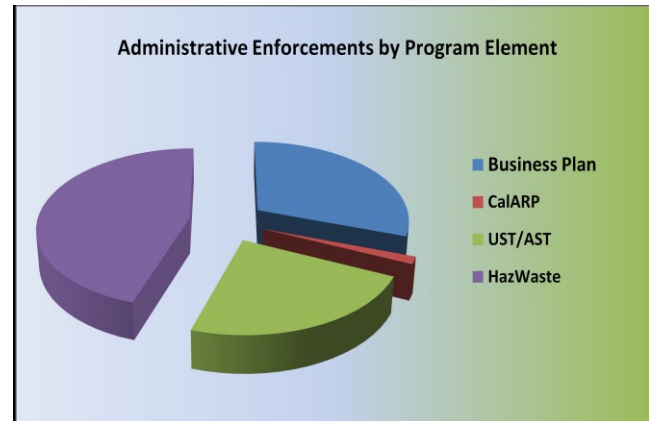
CUPAs conduct inspections of all the programs noted earlier in the report. The number of inspections mentioned in the executive summary is over 65,000 for all programs per year. Many of these inspections are multimedia and are combined for efficiency in a consolidated inspection process. When possible, a CUPA's goal is to perform a single inspection that covers the combined program compliance requirements for regulated businesses in an attempt to incorporate all of the numerous statutes and regulations.

Outputs measure activities and the following outputs indicate an active and robust program.

- Business Plan facility routine inspections and other inspections – 65,370
- CalARP facility routine inspections and other inspections – 1,673
- UST facility routine inspections and other inspections – 23,186
- AST facility routine inspections and other inspections – 2,813
- Hazardous Waste Generator routine and other inspections – 51,733

Administrative enforcement actions –  
Total of 679 actions

- Business Plan facility - 206
- CalARP facility - 10
- UST/AST facility – 152
- AST facility – 5
- Hazardous Waste Generator facility –306



Civil enforcement and Criminal Referrals –  
Total of 747 actions

- Business Plan facility - 403
- CalARP facility - 5
- UST facility – 35
- AST facility – 3
- Hazardous Waste Generator facility – 301

*Continue to next page to view Inspection, Violation, and Enforcement Summary Data Table...*

Inspection, Violation, and Enforcement Summary Data Fiscal Year 2008/2009
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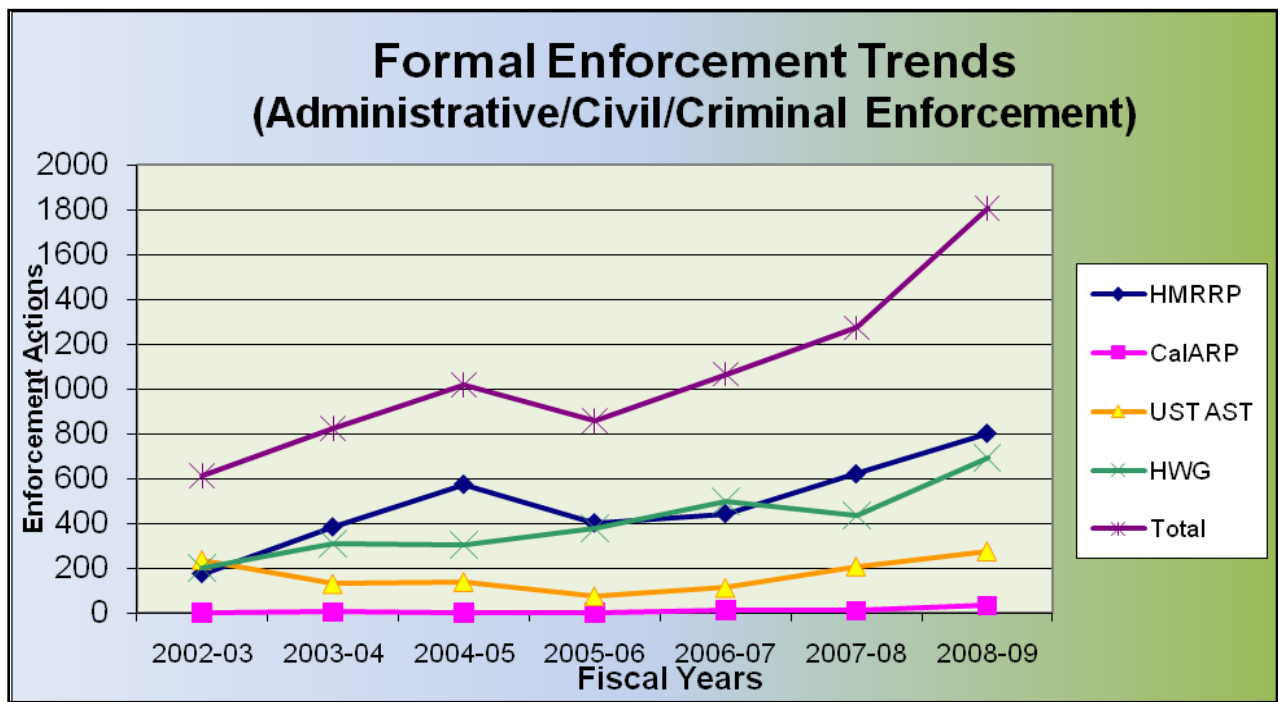
Total Count	HMRRP	CalARP	UST	AST	HWG(All)	LQG	HWT	HHW	Recyclers
No. of Regulated Business	119533	2337	15104	10807	84382	1963	1769	278	N/A
No. of Regulated Businesses Inspected	55351	1097	13447	2911	39732	806	714	200	N/A
*No. of Routine Inspections	52175	1018	14193	1734	38608	823	728	166	N/A
% of Routine Inspections w/Class I or II violation that RTC w/in 90 Days	54.82	45.51	62.08	30.59	60.33	45.27	39.46	24.44	N/A
*No. of Other Inspections	13195	655	8993	1079	13125	225	304	14	N/A
No. of facilities w/Class I Violation	231	82	523	9	307	20	9	1	1
No. of facilities w/Class II Violation	2212	107	1366	43	5177	159	122	8	25
No. of facilities w/Minor Violation	15699	213	6437	285	14193	286	193	62	59
No. of Informal Actions	17845	327	8266	215	15654	383	268	65	50
No. of Formal Actions	803	32	266	9	694	26	14	0	1
No. of Local AEOs	206	10	152	5	306	12	7	0	1
Total Number of AEOs	183	26	141	5	186	23	15	0	1
AEOs Issued within 240 Days	159	26	105	4	155	19	14	0	1
Total No. of Civil/Criminal Referrals	403	5	35	3	301	2	0	0	1
Total No. of Civil/Criminal Referrals Referred within 360 Days	402	5	30	3	293	2	0	0	1
Cash Fines/Penalties	\$786,153.00	\$287,276.00	\$3,636,123.00	\$60,067.00	\$4,336,057.00	\$57,676.00	\$29,426.00	\$0.00	\$5,000.00
Value of SEP Penalties	\$300,000.00	\$18,000.00	\$50,680.00	\$0.00	\$110,400.00	\$52,900.00	\$0.00	\$0.00	\$0.00

Output Trends

1. Formal Enforcement

The chart below shows an overall increase in formal enforcement actions with a slight drop in FY 2005-06. Between FY 2005-06 and present, there has been a steady increase in formal enforcement. The increases have been created by the enforcement specific to the HMRRP, or Business Plan, program. In 2009, there is a continuing rise in formal enforcement action due to a ongoing increase in the use of local AEO's as enforcement in the Business Plan program, in addition to increased efforts to identify farming facilities that are or should be in the Business Plan Program.

This increased trend in the use of formal enforcement actions by the CUPAs is consistent with the Unified Program goal to increase compliance through the increased use of appropriate enforcement actions.



2. Enforcement Actions as a Percentage of Inspections

The percentage of inspections that result in an enforcement action (informal and formal) showed an increase over the fiscal years 2004/2005 through 2006/2007 in all of the four program elements. This shows that CUPAs were active in finding violations, documenting those violations and taking some type of enforcement. More recently, all programs either flattened out or showed a slight decrease that may be a result of escalating enforcement numbers from the previous years. Of note is the significantly larger percentage of enforcements for the UST program over past years that have recently normalized to a ratio similar to other program elements.

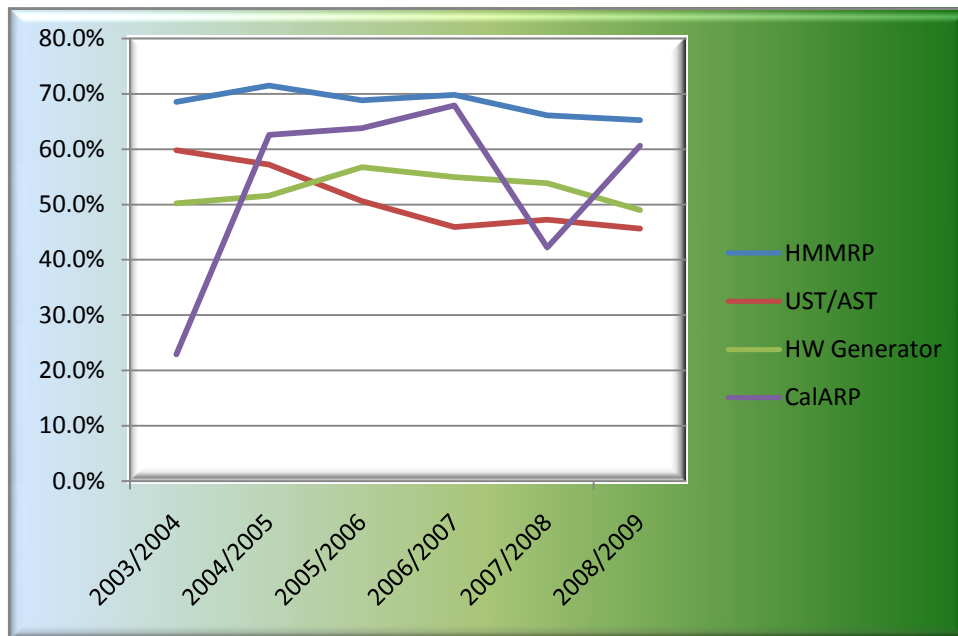
Formal enforcement actions are actions that mandate compliance and initiate a civil, criminal, or administrative process which results in an enforceable agreement or order for what are determined to be the most serious types of environmental violations. Informal Enforcement is an action other than a formal enforcement action that notifies the regulated business of its non-compliance and establishes a date by which that non-compliance is to be corrected. Examples include a letter, notices of violation and verbal warnings or notices. Informal actions do not impose sanctions and are used to address minor violations.

### 3. Facilities Inspected Without Violations

Cal/EPA collects information on the number of facilities that are inspected each fiscal year and the number of facilities with violations. One measure of program success could be the percent of facilities inspected that did not have any violations. These facilities would be deemed to be fully in compliance with all applicable laws. Since CUPAs track violations that are minor as well as serious violations, there is good reason to believe that this could be a reasonable indicator.

The compliance rate graph below shows that there has been a generally stable trend for the HMRRP, HW Generator, and UST programs. The initial rise in the CalARP is consistent with program implementation.

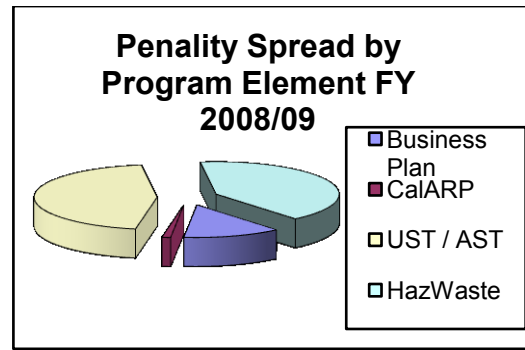
Percent of Facilities Inspected without Violations



#### 4. Penalty Information

In fiscal year 2008/2009, the Unified Program began accounting separately for the monetary value of supplemental environmental projects (SEPs). The total amount of penalties assessed across all program elements for fiscal year 2008/09 was \$9,729,758. By program element they were:

- Business Plan facilities - \$786,153
  - CalARP facilities - \$287,276
  - UST/AST facilities – \$3,696,190
  - Hazardous Waste Generator facilities - \$4,428,159
  - Value of SEP penalties - \$531,980
5. Major Cases for 2009



**K-Mart Corporation** (K-Mart) - A civil law enforcement action was filed and settled against the Kmart Corporation, who own and operate over 100 retail stores in California. Investigations conducted by Riverside, Ventura, and San Joaquin County District Attorneys and by the Ventura County Environmental Health Division determined that hazardous wastes had been disposed of in storm drains and compactors.

The complaint alleged that Kmart stored, managed, transported and disposed of hazardous waste items at and from its California stores in violation of California laws. Without admitting or denying liability, Kmart agreed to the final judgment settling the complaint and imposing a permanent injunction prohibiting future violations of California's environmental protection laws. Under the final judgment, Kmart also agreed to commit funds totaling \$8,650,000 ([http://da.countyofventura.org/09-047\\_000.htm](http://da.countyofventura.org/09-047_000.htm)).

**U-Haul Company of CA** (U-Haul)– A civil law enforcement action was settled against U-Haul, who own and operate 179 regulated facilities across the state. U-Haul's hazardous materials practices first came under scrutiny in November 2004 following an explosion and two-alarm fire at a Santa Rosa facility, which resulted in flash burns to an employee. The emergency response team that arrived on the scene had difficulty assessing the situation due to the lack of information about stored hazardous materials. The facility had no site map indicating where hazardous materials were stored as required by law, and employees had failed to properly label flammable materials including gasoline. The building was damaged in the fire and ultimately closed.

Subsequently, the CA Attorney General's Office, joined by the District Attorneys of Sonoma, Alameda, Sacramento, San Joaquin, Solano, San Francisco, Santa Clara and Riverside, launched a 2-year statewide investigation into U-Haul's handling of hazardous materials and training of employees. The investigation revealed violations at almost all of U-Haul's California regulated facilities. Despite being repeatedly notified of the violations, U-Haul did not address them. A suit was filed in 2006 seeking penalties and a permanent injunction to enforce compliance with hazardous materials and hazardous waste laws. The agreement reached in 2009 resolved the lawsuit and required U-Haul to complete and maintain statutorily mandated hazardous materials business plans and emergency response plans for regulated facilities; train its employees how to properly handle hazardous materials; retain an environmental coordinator who will oversee, monitor, and submit annual reports on the companies compliance; inspect hazardous waste storage areas at regulated facilities on a weekly basis; properly transport hazardous waste; and pay \$2,000,000 in costs and penalties ([http://ag.ca.gov/newsalerts/print\\_release.php?id1787](http://ag.ca.gov/newsalerts/print_release.php?id1787)).

### c. Program Component Outcomes

In 2009, the Unified Program Administration and Advisory Group worked on developing a set of outcome measures (metrics) for the Unified Program. Since there are no outcome metrics defined across the Unified Program, this limits the state's ability to only measuring outputs, such as the number of facility inspections and the types of violations, rather than compliance improvement across the Unified Program. In February 2009, a process was formalized that compares the number of businesses *without* violations from year to year, using the percentage as an outcome measurement. This percentage assumes that the compliance rate is equivalent for all businesses as it is for businesses inspected during each reporting year. In 2010, Cal/EPA will continue meetings of its' performance measures team/steering committee as an effort to develop additional enforcement program outcome measures that relate program activities of Cal/EPA, state agencies, and local partner's progress toward program strategic plans.

#### FY 2008/2009 Compliance Percentage

Sector, facility type, or program focus	Total number of regulated facilities	Number of regulated facilities inspected	Number of inspected facilities with no violations	% of total facilities in compliance*
HMRRP	119533	55351	37209	67
CalARP	2337	1097	695	63
UST	15104	13447	5121	38
AST	10807	2911	2574	88
HWG	84382	38608	18931	49
LQG	1963	823	358	43
HWT	1769	728	404	55
HHW	278	166	95	57

\*This percentage assumes that the compliance rate is equivalent for the total number of regulated facilities as it is for facilities inspected during the reporting year.

### C) Enforcement Program Data Characteristics

The CUPAs' interpretation of reporting requirements continues to be unclear for a number of elements. Varied interpretations by the CUPAs lead to data quality issues with the summary data when all CUPA reports are compiled by Cal/EPA.

Cal/EPA is currently building an information exchange system that will ultimately make detailed activity data available to assist in evaluating program effectiveness, and in the development of meaningful performance measures. In 2008, the passage of AB 2286 (Unified Hazardous Waste and Hazardous Materials) provided resources to the Unified Program to develop an automated electronic reporting database for reporting of program information by businesses to the CUPAs, and to relay that information from CUPAs to the state. The three-year project will receive funds starting Fiscal Year 2009/10 to Fiscal Year 2012/13, and the online reporting shall occur in 2013. The added flexibility of the new reporting system will significantly help to provide the detailed data necessary to better measure Unified Program impacts. The project began in 2009 and is on track for completion in 2013.

## **D) Enforcement Program Limitations**

Regulatory resources within the CUPAs are slow to keep pace with the overall concept of establishing and implementing a uniform and consistent enforcement model among all the programs within the Unified Program. Based upon the data, enforcement and compliance rates vary among CUPAs within California. Consistency among compliance rates and formal enforcement actions as linked to facility inspections, continue to be issues that the program will address.

1. What we do not know.
  - Data – The Unified Program currently has only one identified performance outcome indicator. It will continue to use activity counts and facilities without violations.
  - Program – The effects enforcement has on public health and the environment is not measured. It is inferred that the programs are succeeding because of the activity outputs discussed above.
2. What is not being done?
  - CUPA Evaluation Deficiencies – While Cal/EPA is now identifying and grouping specific deficiencies during the evaluation of CUPAs, it is not currently publishing the specific deficiencies.
  - CUPA Evaluation Outstanding Practices – During the evaluation of a CUPA, Cal/EPA identifies what are considered unique and outstanding practices by a CUPA, however, Cal/EPA is not yet publishing the outstanding program portions of the evaluation. The publishing of this information is expected to begin in late 2010.
  - CUPAs Not Doing Formal Enforcement – While the number of formal enforcement actions is steadily increasing, there continue to be a number of CUPAs that are not using formal enforcement actions as a normal part of their program. As noted in Section I.B., these CUPAs are generally the smaller more rural CUPAs that have the smallest business densities, presenting less overall risk. Cal/EPA has implemented a formal approach to address this issue, aside from formal correspondence and meetings.

## **E) Enforcement Program Progress on Key Initiatives**

In March 2008, the Unified Program Administration and Advisory Group met to develop a revised strategic plan for the next three to five years, July 1, 2009 to June 30, 2013. In late May 2008, they met to finalize the strategic plan. Out of those meetings came eight specific prioritized strategic directions. They are listed here in priority order.

1. Fully implement an electronic reporting capability that provides for easy efficient data reporting, electronic field-based reporting support, access to data for analysis, access for planning and strategic direction development, and provides for public access.

Cal/EPA's project to move the business to government electronic reporting program called Unidocs to Cal/EPA's control was approved in 2008. The transition from Unidocs to the California Environmental Reporting System (CERS), was completed and launched in 2009. The overall project plan is to use the resulting state system for business plan, inventory, underground storage tanks, and hazardous waste onsite treatment reporting, and to expand the existing UP Data System Inspection and Enforcement reporting capability to include all program elements.

2. Work with the CUPAs so that CUPAs consistently implement all program elements with an evaluation rating of “meets program requirements.”

The UPAAG established an Evaluation Workgroup comprised of state agency and CUPA representatives to address consistency concerns with the statewide evaluation process. In December 2008, the work group completed its analysis and presented its findings and recommendations to Unified Program Administration and Advisory Group. The recommendations include:

- Cal/EPA lead the development and implementation of a Unified Program Evaluation Training Program for all state evaluators. Development of this training program is expected to begin in June 2010.
  - Cal/EPA lead the development and promulgation of a Unified Program CUPA Evaluation Guidance Manual, which documents all aspects of the CUPA Evaluations. The development of this guidance manual is expected to commence in early 2010.
  - Each Unified Program State Agency be requested to review and analyze the specific program element requirements and standards for CUPA implementation, as identified by the workgroup, to document and confirm their applicability based on state law.
  - Cal/EPA, as the lead state agency, ensure that:
    - o “Observations/Recommendations” in the Evaluation Summary of Findings are outlined by functional categories established for CUPA performance standards (i.e., data management, reporting, inspections, enforcement, permitting, etc.). This recommendation will be implemented beginning in 2010.
    - o Examples of outstanding CUPA implementation should be documented in the “Examples of Outstanding CUPA Performance” section, these examples should reflect actions that are clearly above and beyond the minimum standards of performance measures expected of CUPAs. Beginning in 2009, the examples of outstanding implementation have begun to be compiled into one comprehensive data document and outlined in functional categories suitable for posting on the web for all CUPAs to access. It is anticipated the information will be made available in a searchable format on the web in late 2010.
3. Develop effective Performance Measures to measure the impact of the Unified Program on public health and the environment.

The Unified Program has developed a new set of enforcement program review criteria to be used by the evaluation teams to determine the scope and effectiveness of each CUPA’s enforcement program. The criteria identify state and federal regulatory requirements of CUPA program elements, in addition to state and federal enforcement policies. The criterion was incorporated into the existing evaluation process in the beginning of April 2009. Its purpose is to identify key criteria and assure a consistent assessment from one evaluation to the next. The evaluation criteria will provide the Unified Program with specific enforcement metrics that are currently not available from the existing CUPA evaluation reports.

4. Improve training delivery by creating a variety of training venue alternatives that meet state and local staff development and program needs.

In 2009, UPAAG tried a number of different ways to move the strategic goals forward. However, due to a smaller volunteer base and no dedicated resources because of budget cuts, they were unable to accomplish this goal. Work towards implementing this strategic goal will continue in 2010.

5. Plan for succession so as to provide continuity with a new diverse and knowledgeable work force.

The CUPA Forum developed a work group to identify short term and long term action items needed for succession planning at the local CUPA level. The work group is currently reviewing the below action items for appropriateness in the existing economic climate in addition to those which may have overlap with other strategic goals such as "Training Delivery."

Short Term (6-24 months):

- Knowledge Transfer
- Recruitment
- Coaching and Mentoring

Long Term (2-5 years)

- Statewide Outreach for Diversity
- Develop a Succession Planning Template
- Implement a Training Track for Supervisors and Managers

6. Eliminate single walled underground storage tanks to reduce releases and enhance environmental protection.

Cal/EPA and the SWRCB continue to work towards resolving issues that have delayed passage of legislation to eliminate single walled tanks.

7. Establish disaster strike teams to increase assets available for mutual aid.

This has been forwarded to the UPAAG Hazmat Technical Advisory Group for discussion; a formal policy recommendation has yet to be formalized to present to the CUPA Forum Board and Unified Program Administration and Advisory Group for approval.

8. Understand the impact of green chemistry on the local program and take advantage of emerging opportunities to integrate green chemistry into all programs.

The California Green Chemistry Initiative identifies six policy recommendations in a report that builds upon present environmental protection laws, shift the focus from end-of-pipe cleanup to up-front design and prevention. Of the six policy recommendations made in the California Green Chemistry Initiative, only the "Expansion of Pollution Prevention" element references CUPA activities. Two activities specifically within the "Expansion of Pollution Prevention" that cross-over with the CUPA program are:

- Expansion of the statewide Green Business Programs
- Improvement of pollution prevention planning at CAL/ARP facilities

The Unified Program Agency has an active presence at Green Chemistry Workshops, in addition to discussions with DTSC to outline how CUPA programs can utilize their resources to complement the above Green Chemistry goals. Currently, many of the California Green Chemistry Initiative policy recommendations remain in the early planning phase.

### III. FUTURE DIRECTION OF THE UNIFIED PROGRAM

- Develop a risk-based regulatory program plan that outlines actions to be included in a risk-based inspection and enforcement plan. The plan would allow local agencies to develop regulatory programs that most effectively meet the needs of their individual jurisdictions, rather than being strictly required to meet standardized inspection criteria. The UPA is interested in a cooperative effort between expansion of Green Chemistry's Green Business Programs and a risk-based compliance model as a component of this goal.
- Analyze legislation to sunset single walled underground storage tank systems. Single walled tank systems present a more significant environmental threat than do double walled systems. About 10% of the underground storage tank systems in California are partially or entirely single walled. The Unified Program Administration and Advisory Group continue to explore possible avenues for requiring the removal of single walled systems. It is a complex issue, especially in rural areas with few gas stations and small throughputs.
- California Environmental Reporting System (CERS) – Cal/EPA's project to move the Unidocs system to the state began in December 2008 and was launched in September 2009. The overall project plan is to use CERS for Business Plan, inventory, underground storage tanks, hazardous waste onsite treatment reporting, and to expand the existing Unified Program data system Inspection and Enforcement reporting capability to include all program elements. CERS launched on September 30, 2009. Selected Unified Program Agencies (UPAs) and businesses began using CERS immediately. All UPAs and business will begin using CERS during the three year transition to electronic reporting as required by AB 2286. These UPAs and businesses will provide valuable input to Cal/EPA in the continued development of this system. CERS' development is being coordinated with Cal/EPA's Enforcement Initiative Data Projects to allow the exchange of environmental databases between all Cal/EPA environmental programs.
- Unified Program Data System - There are 25 CUPAs using the web based hazardous waste Large Quantity Generator reporting system to some degree and Cal/EPA continues to enter the paper Large Quantity Generator reports into the system for the other CUPAs. We are now working on expanding the Unified Program Data System to include underground storage tank, and business plan inspections and enforcement. The design work is now complete, and modifying the application will happen late summer 2010.
- Identify and secure other funding sources, such as US EPA grants.
- Resolve electronic signature issues, both for inspection reports and submission of electronic documents for Underground Storage tank programs.

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