DEFICIENCY PROGRESS REPORT – UPDATE 4

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CUPA: **SANTA CLARA COUNTY**

Evaluation Date(s): January 14 and 15, 2009
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Update 4 Submittal Due: January 10, 2010
Status: Deficiencies 1 and 3 remain outstanding.
Deficiencies corrected with Update 4: Deficiency 2

Update 5 Submittal Due: April 10, 2010
Status:
Deficiencies corrected with Update 5:

Update 6 Submittal Due: July 9, 2010
Status:
Deficiencies corrected with Update 6:

1. **Deficiency:** The CUPA and its five participating agencies (PA's) have not fully developed a single unified inspection and enforcement (I&E) program. For example, the plan does not address the responsibilities of the CUPA and the specific activities of its PA's. The inspection frequency schedule for all program elements is not identified.

   Corrective Action: By July 13, 2009, the CUPA will develop and implement an action plan for consolidating, coordinating and making consistent the inspection and enforcement program across all the Unified Program Agencies (UPAs), to the maximum extent feasible. By January 13, 2010, the CUPA, in conjunction with its PA's will revise their I&E Program Plan to reflect the specific activities of the CUPA and both its PA's.

   CUPA Update 1: Coordination between CUPA and all five Participating Agencies (PA's) has begun in regard to full development of a single unified I&E program. Table with updated inspection frequency was requested from all PA's for the programs that each jurisdiction implements. The table with inspection frequency has been updated by CUPA. Assignment of Unified Program Elements for each PA and CUPA reflecting current program implementation has also been added to the I& E Program Plan which addresses the responsibilities of the CUPA and the PA's. We are in the process of setting up a meeting, sometime in May, with our five PA's to discuss the consolidation and coordination in order to make consistent the I&E

Program. CUPA will develop and implement an action plan which will be presented in the next progress report which is due July 14, 2009.

Comments to Update 1: This deficiency remains in the process of being corrected. On the next deficiency progress report, due on July 14, 2009, please update Cal/EPA on the CUPA's status toward correcting this deficiency.

CUPA Update 2: Coordination between CUPA and all five Participating Agencies (PA's) has begun in regard to full development of a single unified I&E program. Table with updated inspection frequency was received from PA's for the programs that each jurisdiction implements. The table with inspection frequency has been updated by CUPA. Assignment of Unified Program Elements for each PA and CUPA reflecting current program implementation has also been added to the I& E Program Plan which addresses the responsibilities of the CUPA and the PA's. CUPA will develop and implement an action plan which will be presented in the next progress report.

Comments to Update 2: This deficiency remains in the process of being corrected. On the next deficiency progress report, due on October 12, 2009, please update Cal/EPA on the CUPA's status toward correcting this deficiency.

CUPA Update 3: This deficiency remains in the process of being corrected. The CUPA continues to work with its five PA's to coordinates its Inspection and Enforcement Plan. The Hazardous Materials Program Managers will be coordinating their efforts through their Fire Chiefs Hazardous Materials Subcommittee for consistency as various different PA's have different avenues for enforcement. Inspection frequencies will be standardized in compliance with the state mandated frequencies.

Corrective Action: The CUPA will try to have this deficiency corrected by July 1, 2010.

Comments to Update 3: This deficiency remains in the process of being corrected. On the next deficiency progress report, due on January 10, 2010, please update Cal/EPA on the CUPA's status toward correcting this deficiency.

CUPA Update 4:
The CUPA has completed an audit of it's I & E plan and is the process of updating the document. Meetings with individual PA's have been established and their inspection frequency information has been placed into the I & E document.

Comments to Update 4: This deficiency remains in the process of being corrected. On the next deficiency progress report, due on April 10, 2010, please update Cal/EPA on the CUPA's status toward correcting this deficiency.

2. **Deficiency:** The CUPA is not fully tracking and reporting enforcement actions taken on its Annual Enforcement Summary Report 4. For example, in the last three fiscal years, the PA's informal enforcement numbers are not accurately reported. The PA's re-inspect all their facilities to follow-up on violations in lieu of notice-to-comply self-certifications.

   Corrective Action: Any re-inspection that is conducted to follow-up on violation(s) should be reported as informal enforcement.

   By September 30, 2009, the CUPA will verify that the enforcement data on the Annual Enforcement Summary Report 4 will be complete and as accurate as possible.

   CUPA Update 1: The Participating agencies have been informed that any re-inspection that is conducted to follow-up on violation(s) is to be reported as informal enforcement. CUPA will ensure that the enforcement data on the Annual Enforcement Summary Report 4 due by September 30, 2009 will be complete and as accurate as possible.

   Comments to Update 1: This deficiency remains in the process of being corrected. On the next deficiency progress report, due on July 14, 2009, please update Cal/EPA on the CUPA's status toward correcting this deficiency.

   CUPA Update 2: The Participating agencies have been informed that any re-inspection that is conducted to follow-up on violation (s) is to be reported as informal enforcement. CUPA will ensure that the enforcement data on the Annual Enforcement Summary Report 4 due by September 30, 2009 will be complete and as accurate as possible.

   Comments to Update 2: This deficiency remains in the process of being corrected. On the next deficiency progress report, due on October 12, 2009, please update Cal/EPA on the CUPA's status toward correcting this deficiency.

   CUPA Update 3: The CUPA continues to work with its 5 Participating agencies in order to gain consistency in tracking and reporting enforcement data for its Annual Summary Report 4. The CUPA will be holding training workshops with its PA's in order to formalize enforcement tracking and reporting requirements.

   Corrective Action: The CUPA will try to have this deficiency corrected by July 1, 2010.

   Comments to Update 3: This deficiency remains in the process of being corrected. On the next deficiency progress report, due on January 10, 2010, please update Cal/EPA on the CUPA's status toward correcting this deficiency.

   CUPA Update 4:
   The Participating agencies have been informed that any re-inspection that is conducted to follow-up on violation(s) is to be reported as informal enforcement. CUPA will ensure that the enforcement data on the Annual Enforcement Summary Report will be complete and as accurate as possible.

Comments to Update 4: Based upon corrective actions taken and following a review of the submitted Fiscal Year 08-09 Annual Summary Report 4, this deficiency is considered corrected by Cal/EPA.

3. **Deficiency:** The CUPA did not ensure that its PA's have met the mandated inspection frequency for underground storage tank (UST) facility compliance inspections. Inspection frequencies for the last three fiscal years were 88% (05/06), 82% (06/07), and 80% (07/08). The CUPA has met its inspection frequencies for all of their assigned facilities; however, the PA's have not met their inspection frequency.

   Corrective Action: By April 15, 2009, the CUPA will meet with its PA's and discuss the reasons why UST inspections are not being met annually. By June 14, 2009, the CUPA, in coordination with its PA's, will develop strategies for meeting the mandated inspection frequency for all UST facilities annually. In the first deficiency progress report, the CUPA will provide the status toward correcting this deficiency. The CUPA and PA's inspection frequencies will be reflected on their Annual Inspection Summary Report 3 and Semi-Annual Report 6.

   CUPA Update 1: The City of San Jose is not meeting its mandated inspection frequency for the UST program. The other four Participating Agencies are meeting the mandated inspection frequency for all UST facilities annually. Santa Clara County CUPA completed a PA evaluation for the City of San Jose on September 17, 2008. Under a summary of findings several deficiencies were noted including failing to inspect UST facilities annually as required. The timeframe agreed on to correct the deficiency was one year. Under preliminary Corrective Action, the City of San Jose stated that they will implement inspection procedures to ensure that all UST facilities are inspected annually. They will also provide adequate resources to properly implement the Unified Program elements the PA has taken on. The City of San Jose has stated on their status report dated March 2, 2009 that a policy was developed to ensure that UST permits expiration dates are reviewed every three months and notices are sent to inspectors as reminders of upcoming expiring UST permit dates at facilities that will need to be inspected. The outcome of this new policy implementation will be closely monitored. CUPA is in contact with the City of San Jose and continues to work with them so they can achieve their goal to meet mandated inspection frequency for UST facilities. An indication of any progress will be evident once the Annual Inspection Summary Report 3 and the Semi-Annual Report 6 are received.

   Comments to Update 1: The SWRCB appreciates the efforts that the CUPA is making to ensure that the inspection frequencies are met by their PAs. The SWRCB will consider this deficiency corrected when the summary report and Report 6s show an inspection frequency of 100%.

CUPA Update 2: The City of San Jose is not meeting it's mandated inspection frequency for the UST program. The other four Participating Agencies are meeting the mandated inspection frequency for all UST facilities annually. Santa Clara County CUPA completed a PA evaluation for the City of San Jose on September 17, 2008. Under a summary of findings several deficiencies were noted including failing to inspect UST facilities annually as required. The timeframe agreed on to correct the deficiency was one year. The City of San Jose acknowledges that they lack the resources necessary to fully implement the UST and cannot meet the mandated inspection frequency. In a letter dated May 12, 2009, the City of San Jose states that they want to turn over the UST inspection and enforcement program to the County. Discussions have begun with the City and the County to coordinate for the proposed changes and transition for the implementation of the UST program. Progress will be reported in the next status report.

Comments to Update 2: The SWRCB appreciates the newest development in meeting the mandated inspection frequencies by working with the City of San Jose to meet this goal. As you have indicated in your update, please report any progress you are making in turning over the UST implementation from the City to the County in your next update.

CUPA Update 3: The CUPA continues to work with the City of San Jose on meeting the mandated inspection frequency. Currently we are negotiations on whether the County of Santa Clara or the City will implement the UST, HMBP, and the APSA programs within the City. Recent turnover in staffing in the City of San Jose has delayed the negotiations. The City of San Jose PA faces a challenge to implement the UST program due to lack of personnel resources. The CUPA will continue to monitor the City of San Jose's UST Program and provide guidance as required.

Corrective Action: The CUPA will continue to work with the City of San Jose to resolve this deficiency.

Comments to Update 3: The SWRCB appreciates the continuing efforts in meeting the mandated inspection frequencies by working with the City of San Jose to meet this goal. As you have indicated in your update, please report any progress you are making in turning over the UST implementation form the City to the County in your next update.

CUPA Update 4:
The City of San Jose is not meeting its mandated inspection frequency for the UST program. The other four Participating Agencies are meeting the mandated inspection frequency for all UST facilities. In FY09, San Jose only completed 51% of the mandated UST inspections. Discussions to transfer the program from the City to the CUPA have not progressed. The City has not determined if they will be turning over the UST implementation to the County. The CUPA will continue to monitor the City of San Jose's UST Program and provide guidance as required.

Comments to Update 4: The SWRCB would like some activity shown in the next CUPA response. Please report any meetings or discussions that the CUPA and the San Jose PA are having to try and resolve this outstanding deficiency. In the original Corrective Action the SWRCB asked for the CUPA to develop strategies for meeting the mandated inspection frequency and now asks the CUPA to identify other strategies different from taking over the UST program from San Jose that will facilitate the increase of inspections.