

IRP Questions of DTSC Enforcement Program Related to Certified Unified Program Agencies (CUPAs) and CalEPA

**By DTSC Independent Review Panel Vice Chair Mike Vizzier
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At least four questions asked by Panel members at the June 8, 2016 IRP meeting were related to Certified Unified Program Agencies (CUPAs) or the California Environmental Protection Agency (CalEPA) and are not directly related to DTSC. It would have been inappropriate for DTSC to answer the questions on behalf of other agencies. However, finding the answers was relatively easy for me, due to my past experience and as a CUPA manager and member of the CUPA Forum Board. The information below is not intended to be comprehensive. It is simply intended to provide some background and address Panel members' questions.

The paragraphs immediately below on CUPAs were adapted from Wikipedia. I am comfortable using this as a source because I wrote the initial Wikipedia entry.

CUPAs are local agencies that are certified by the Secretary of CalEPA to implement the CalEPA Unified Program elements in their jurisdiction. The CalEPA Unified Program consolidates, coordinates, and makes consistent the administrative requirements, permits, inspections, and enforcement activities of six environmental and emergency response programs in California. These six programs and their corresponding state oversight agencies are:

- Hazardous Materials Release Response Plans and Inventories (Business Plans) – Governor's Office of Emergency Services (Cal OES)
- California Accidental Release Prevention (CalARP) Program – (Cal OES)
- Underground Storage Tank (UST) Program – State Water Resources Control Board (SWRCB)
- Aboveground Petroleum Storage Act (APSA) – Office of the State Fire Marshall (Cal Fire OSFM)
- Hazardous Waste Generator and Onsite Hazardous Waste Treatment (tiered permitting) Programs – DTSC
- California Uniform Fire Code: Hazardous Material Management Plans and Hazardous Material Inventory Statements – Cal Fire (OSFM)

The mission of the Unified Program is to protect public health and safety, restore and environmental quality, and sustain economic vitality through effective and efficient implementation of the program.

The Unified Program was established by Senate Bill 1082 (Calderon) in 1993. Regulations were written to implement and enforce this law, and the first CUPAs were certified in 1996. There are now 83 CUPAs in California. CalEPA regularly evaluates them for compliance with established statutory and regulatory standards. DTSC was also certified, effective January 1, 2005, to be the CUPA for Imperial and Trinity Counties.

Under CalEPA Secretary Matthew Rodriguez, Assistant Secretary for Local Program Coordination and Emergency Response Jim Bohon is head of the Unified Program (since 2012). Previous to Assistant Secretary Bohon, Assistant Secretary Don Johnson was the head of the Unified Program since its inception in 1994.

CUPAs have statutory authority to require permits, inspect facilities, issue violations, and perform enforcement actions – including the authority to photograph any hazardous material or hazardous waste, container, container label, vehicle, waste treatment process, waste disposal site, or condition constituting a violation of law found during an inspection [California Health and Safety Code, Chapter 6.95, Section 25511(a) and Chapter 6.5, Section 25185(a)(5)].

Participating Agencies (PAs) are state or local agencies that have a written agreement with the CUPA to implement or enforce one or more of the Unified Program elements. The agreement must have provisions to ensure that the PA meets or exceeds the standards for CUPAs. A PA is approved by CalEPA, and its performance is evaluated in conjunction with the CUPA's triennial evaluation.

Cal/EPA (<http://www.calepa.ca.gov/About/History01/>) has led California in creating and implementing some of the most progressive environmental policies in America, from negotiating the Global Warming Solutions Act (AB 32) to launching the Green Chemistry Initiative. CalEPA has also established Environmental Justice programs, adopted a Tribal Policy, and expanded enforcement efforts. CalEPA was formally established on July 17, 1991, although its foundation was laid decades earlier through the hard work of multiple administrations.

In 1961, Governor Edmund G. "Pat" Brown oversaw a comprehensive reorganization of the executive branch, which established state agencies and placed most of the state's environmental quality programs within the Resources Agency. When Governor Edmund G. "Jerry" Brown, Jr. took office in 1975, one of his first actions was to propose establishing a separate agency dedicated to the environment. While the plan was not adopted by the Legislature, Governor Brown was able to successfully establish a new Cabinet-level position – Secretary of Environmental Affairs – tasked with advising the Governor and broadening environmental protections.

While this cabinet-level role continued under Governor George Deukmejian, it was not until 1991, when Governor Pete Wilson took office, that CalEPA as we now know it was established.

Today's CalEPA consists of the Air Resources Board (ARB), the Department of Pesticide Regulation (DPR), the Department of Resources Recycling and Recovery (Cal Recycle), the Department of Toxic Substances Control (DTSC), the Office of Environmental Health Hazard Assessment (OEHHA), and the State Water Resources Control Board (SWRCB).

- ARB works to reduce air pollution and diesel exhaust so all Californians can breathe cleaner air and leads the nation in fighting climate change with integrated programs to cut greenhouse gases under AB 32.
- DPR protects workers and consumers by ensuring the safe use of pesticides through registration, permitting, and training.
- Cal Recycle helps the state achieve the highest waste reduction, recycling, and reuse goals in the nation through programs that improve economic vitality and environmental sustainability.
- DTSC cleans up hazardous waste sites to put them back into productive use and reduce blight and contamination to the neighborhoods and surrounding environments.
- OEHHA serves as the scientific foundation for Cal EPA's environmental regulations and provides valuable information to consumers, policy makers, and manufacturers on the safety of chemicals in our environment.
- SWRCB ensures that the quality of our waterways is safe and that we balance its use to meet the needs of all Californians.

PANEL MEMBER QUESTIONS FOR JUNE 8, 2016 IRP MEETING

Question 12. What is the status of the City of Los Angeles CUPA review?

The City of Los Angeles CUPA was last evaluated on July 29, 30, and 31 of 2014. Nineteen deficiencies were noted. Eight deficiencies (1 – 8) were noted for the UST Program. Three deficiencies (9, 11, and 13) were noted for the Hazardous Material Business Plan Program. One deficiency (12) was noted for the Aboveground Petroleum Storage Act Program. Two deficiencies (10 and 16) were directly related to the Hazardous Waste Program. Four deficiencies (14, 15, 17, and 18) were noted for not adequately overseeing the PA (Los Angeles County Fire) that implemented the Hazardous Waste Program. One deficiency (15) was noted for health and safety training. One deficiency (19) was noted for reporting.

The most recent correspondence posted for the CUPA evaluation is dated June 15, 2016. It indicates that eight deficiencies (4, 10, 12, 13, 15, 16, 17, and 18) have been corrected. Eleven (1, 2, 3, 5, 6, 7, 8, 9, 11, 14, and 19) are still not resolved. The most serious of these deficiencies are in the underground storage tank program. Like many CUPAs and PAs in California, the resources required to report – using California Environmental Reporting System (CERS) – was underestimated, and the extra workload resulted in a decrease in inspections. Hiring and training additional personnel takes several months, as does completing a backlog of inspections. The City of Los Angeles CUPA appears to be on track to correct all of these deficiencies this calendar year.

Question 42. Will CUPAs enter 90 percent of large quantity generator information by September 2016?

The CUPAs are on track to meet this goal. The agreement was as follows: “The CUPAs will have entered 90% of all the LQGs in their jurisdictions by September 2016. This goal was agreed to between the CUPA Forum Board, CalEPA and US EPA at the 2015 CUPA Conference Executive Leadership meeting.” (I was one of the CUPA representatives at this meeting.) Entered means entered into CERS. This data is then transferred into RCRA information. Because the universe of RCRA large quantity generators (LQGs) is continually changing, it was estimated that at any time 10% would be in the process of being added to or removed from CERS. As an example, in May of 2016 there were 179,831 facilities in CERS, and 12,968 facilities made submittals. The subset of these facilities that are RCRA LQGs is considerably smaller. In 1999 there were 1,850 RCRA LQGs in California. In June 22, 2016 there were 3,553.

Question 48 (in part). Provide more detail on multi-agency collaboration and how it is measured. Does DTSC considers it a useful metric? Could collaborating with other environmental enforcement agencies, response to complaints, and feedback to the complainant and the general public, e.g. via press releases, web page, etc. be subsets of public outreach metrics?

Question 50. How does DTSC respond to folks who say OCI should be taken out of the department and given to CalEPA to make it more multimedia?

The Office of the Secretary heads CalEPA and is responsible for overseeing and coordinating the activities of ARB, DPR, Cal Recycle, DTSC, OEHHA and the SWRCB. These Boards, departments, and offices are dedicated to improving California’s environment. The Secretary of CalEPA is also directly responsible for coordinating the administration of the Unified Program and certifying Unified Program Agencies. CalEPA is essentially an umbrella. A criminal investigation unit would not fit in the agency’s current model. Nevertheless, the Secretary has significant responsibility for enforcement of environmental law.

Among other CalEPA responsibilities, Section 12812.2 of the Government Code requires that the CalEPA Deputy Secretary for Law Enforcement and Counsel develop a program to ensure that the boards, departments, offices, and other entities that implement laws or regulations within the jurisdiction of the agency take consistent, effective, and coordinated compliance and enforcement actions to protect public health and the environment. It also requires that that the Deputy Secretary, in consultation with the Attorney General, establish a cross-media enforcement unit to assist a board, department, office, or other entity that implements a law or regulation within the jurisdiction of the CalEPA, to investigate and prepare matters for enforcement action in order to protect public health and the environment. The unit may inspect and investigate a violation of a law or regulation within the jurisdiction of the board, department, office, or other entity, including a violation involving more than one environmental medium and a violation involving the jurisdiction of more than one board, department, office, or entity. It also requires that CalEPA post on its website, updated no later than December 1 of each year, the status of the implementation of this section.

Section 251797 of the Health & Safety Code apparently predates CalEPA and tasks DTSC with responsibilities that are similar to CalEPA’s set forth in Government Code Section 12812.2. The former code section could be deleted or rewritten to require DTSC to participate in CalEPA’s Environmental Justice Compliance and Enforcement Working Group and local environmental enforcement task forces. Currently DTSC does participate in the group, but it is not an explicit requirement, and it may not be possible in all cases due to limited resources.

