

FINAL REGULATIONS

UPA Corrective Action Qualification Regulations – R-97-11 Changes in this version reflect changes from the existing California Code of Regulations (Cal. Code Regs.)

Key to changes:

Underline: New text to Title 22, Cal. Code Regs.
Strikeout: Text deleted from Title 22, Cal. Code Regs.

The Table of Contents for Title 22, Division 4.5, is amended as follows:

Division 4.5, Environmental Health Standards for the Management of Hazardous Waste

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Chapter 50. Corrective Action

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Appendix I

Article 2. Corrective Action Approach

Amend CCR Title 22 Chapter 45, section 67450.7:

§ 67450.7. Corrective Action Requirements for Facilities Operating Under Permit by Rule.

(a) An owner or operator of a facility who operates a transportable treatment unit (TTU) or fixed treatment unit (FTU) under a permit by rule pursuant to section 67450.2(a) or section 67450.2(b) shall complete a corrective action program at the facility. ~~The corrective action program shall consist of a phase I environmental assessment developed pursuant to Health and Safety Code Section 25200.14 and an environmental investigation to determine the existence, source, nature and extent of any releases of hazardous waste or constituents from a solid waste management unit or a hazardous waste management unit at the facility, and the cleanup of any such releases, abatement of the effects thereof and any other necessary remedial action subsequent corrective action conducted in accordance with the requirements in section 68400.16 as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid or hazardous waste management unit at the facility, regardless of the time at which waste was placed in the unit.~~

(1) For purposes of this section, a "facility" shall include the entire site that is under the control of the owner or operator of the facility who is operating or proposing to operate a TTU or FTU under a permit by rule.

(2) For purposes of this section, a phase I environmental assessment means a preliminary site assessment based on reasonably available knowledge of the facility, including, but not limited to, historical use of the property, prior releases, visual and other surveys, records, consultant reports, and regulatory agency correspondence. The phase 1 environmental assessment shall consist of completion of the Phase 1 Environmental Assessment Checklist developed by DTSC pursuant to HSC Section 25200.14.

(3) The phase 1 environmental assessment shall be conducted and submitted to ~~DTSC~~ the Department or the UPA authorized by the Department ~~no later than January 1, 1997, or within one year of the initial notification submitted to the Department or authorized UPA pursuant to section 67450.2(b)(2), whichever date is later.~~

(4) ~~An environmental investigation shall consist of a preliminary site assessment comprised of monitoring, surveys, testing or other means of collecting information to identify the existence, source and nature of contamination resulting from a release. If the results of the preliminary site assessment indicate that a release has occurred, the environmental investigation shall include a detailed site assessment to determine the extent of the contamination resulting from the release and the extent of danger to public health and the environment resulting from the release. The environmental investigation shall be completed within one year of the date of the~~

~~notifications submitted pursuant to sections 67450.2(b)(2) and 67450.3(a)(3), and within one (1) year of the date of any subsequent annual or amended notification submitted pursuant to sections 67450.2(a)(4), 67450.3(c)(1) or 67450.3(c)(2), which addresses new releases as required by subsection (f) of this section.~~

(b) ~~The notifications required pursuant to sections 67450.2(b)(2) and 67450.3(a)(3), and any subsequent notifications required by sections 67450.3(a)(4), 67450.3(c)(1) or 67450.3(c)(2) shall specify whether a phase I environmental assessment has been completed. The owner or operator of the FTU(s) or TTUs shall submit the Phase I Environmental Assessment Checklist to the Department at the address specified on form DTSC 1772 (1/96) or to the authorized UPA. The certification shall be signed as required by Health and Safety Code section 25200.14(d)(e). The notifications required pursuant to sections 67450.2(b)(2) and 67450.3(a)(3), and any subsequent notifications required by sections 67450.3(a)(4), 67450.3(c)(1) or 67450.3(c)(2) which first addresses new releases as required by subsection (f) of this section shall specify whether an environmental investigation has been completed. If an environmental investigation has been completed the notification shall include a certification, signed by both the owner, and operator if different, of the facility and a professional engineer, geologist or environmental assessor registered in California, that an environmental investigation of the facility has been completed. The certification shall include a statement that:~~

~~(1) — No evidence of a release of hazardous waste or hazardous substances has been found and none of the signatories has any knowledge of any release of hazardous waste or hazardous constituents at the facility, or~~

~~(2) — Evidence of a release of hazardous waste or hazardous constituents has been found. If evidence of a release of hazardous waste or hazardous constituents has been found, the certification shall include a description of the release and a description of the nature and extent of any contamination resulting from the release.~~

~~(c) — If the results of the phase I environmental assessment conducted pursuant to Health and Safety Code 25200.14 indicate that further investigation is needed in order to determine the existence or extent of a release from a solid waste management unit or hazardous waste management unit, the facility owner or operator or the generator shall submit a schedule to the department at the address specified on form DTSC 1772 (1/96), within 90 days of submission of the phase I environmental assessment, for that further investigation to the department. If the department determines, based upon a review of the phase I environmental assessment or other site-specific information in its possession, that further investigation is needed to determine the existence or extent of a release from a solid waste management unit or hazardous waste management unit, in addition to any further action proposed by the facility owner or operator or the generator, or determines that a different schedule is~~

~~necessary to prevent harm to human health and safety or to the environment, the department shall inform the facility owner or operator or the generator of this determination and shall set a reasonable time period in which to accomplish that further environmental investigation. If a release of hazardous waste or hazardous constituents has been found during the environmental investigation, the notifications required by sections 67450.2(b)(2), 67450.3(a)(3), 67450.3(a)(4), 67450.3(c)(1) and 67450.3(c)(2) shall include one of the following certifications:~~

~~(1) — If a release was found and cleanup, abatement or other necessary remedial action has been completed at the time of the notification, the notification shall include a certification signed by the owner, and operator if different, stating that the cleanup, abatement or other necessary remedial action has been completed. The certification shall include a description of the release, the nature and extent of any resulting contamination and cleanup, abatement or other necessary remedial action taken.~~

~~(2) — If a release was found and cleanup, abatement or other necessary remedial action has not been completed at the time of the notification, the notification shall include a certification signed by the owner, and operator if different, stating that the cleanup, abatement or other necessary remedial action has not been completed. The certification shall include a description of the release, a description of the nature and extent of any contamination resulting from the release and the extent of danger to public health and the environment resulting from the release, a description of the proposed or ongoing cleanup, abatement or other necessary remedial action, a schedule for completion of the cleanup, abatement or other necessary remedial action, and an assurance of financial responsibility for completing the cleanup, abatement or other necessary remedial action.~~

~~(d) — If a release of hazardous waste or hazardous constituents has been found, the Department shall order a different schedule for completion of corrective action from that provided by the owner or operator pursuant to this section if the Department determines that a different schedule is necessary to adequately protect human health and safety, livestock, wildlife, or the environment.~~

~~(e) — If a release of hazardous waste or hazardous constituents has been found, the owner or operator of a FTU or TTU, if applicable, operating pursuant to a permit by rule shall report on or before January 1 of each year after the year that the letter required by subsection (c) of this section was submitted to the Department on progress made towards cleanup, abatement, or other remedial action. The report shall be made to the Department by certified mail, return receipt requested, at the address specified on form DTSC 1772 (1/96). If an environmental investigation has not been completed at the time of the notifications required by sections 67450.2(b)(2) and 67450.3(a)(3), or at the time of any subsequent notification required by sections 67450.3(a)(4), 67450.3(c)(1) and 67450.3(c)(2) which first addresses new releases as~~

~~required by subsection (f) of this section, the notification shall include a certification signed by the owner, and operator if different, of the facility that an environmental investigation will be completed within one year of the date of the notification. The next annual or amended notification required by sections 67450.3(a)(4), 67450.3(c)(1) and 67450.3(c)(2) which is submitted on or after the scheduled date of completion shall include the certification specified in subsection (b) of this section and one or more of the certifications specified in subsection (c) of this section.~~

~~(f) — Each annual and amended notification required by sections 67450.3(a)(4), 67450.3(c)(1) and 67450.3(c)(2) shall address new releases detected since the filing of the last notification required by sections 67450.2 and 67450.3 and, if a preceding notification contained a schedule for completion made pursuant to subsection (b)(4) of this section, shall include a description of progress toward completion of the cleanup, abatement or other necessary remedial action.~~

~~(g) — If no new release has been detected at the time of a subsequent notification required by sections 67450.3(a)(4), 67450.3(c)(1) and 67450.3(c)(2), the notification shall include a certification signed by the owner, and operator if different stating that no evidence of a release of hazardous waste or hazardous constituents has been found and none of the signatories has any knowledge of any release of hazardous waste or hazardous constituents at the facility which was not previously described in a certification required by this section.~~

NOTE: Authority cited: Sections 25150, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25187, 25200, and 25200.10 and 25404.1, Health and Safety Code.

Adopt new CCR Title 22 Chapter 50, article 1.5, sections 68400.11 - 68400.16:

Article 1.5. Unified Program Agency Qualification.

§ 68400.11. Applicability.

(a) The provisions of this chapter establish criteria and procedures for determining whether or not a unified program agency is qualified to implement environmental assessment and corrective action pursuant to Health and Safety Code sections 25187, 25187.1, and 25404.1. Except as otherwise specified in this chapter, the provisions of this chapter are not intended to, and shall not be construed to, preclude any other state or local agency from exercising its enforcement or regulatory authority.

(b) The corrective action authority granted to a unified program agency (UPA) pursuant to this chapter is limited to a release or threatened release of a hazardous waste or hazardous constituent occurring at a facility within the jurisdiction of a qualified UPA.

(c) A qualified UPA shall comply with all applicable state laws and regulations and local ordinances pertaining to environmental assessment and corrective action.

(d) The authority granted pursuant to this chapter does not limit an UPA's authority to take enforcement action authorized by or in accordance with local ordinances or resolutions, to the extent that local ordinances or resolutions are not inconsistent with the provisions of this chapter.

(e) Upon discovering a release or threatened release at a hazardous waste facility that is, or was, required to obtain a hazardous waste facility permit, standardized permit or interim status, a qualified UPA shall immediately notify the Department. If a release occurs at such a facility and the facility also contains units that are or were subject to generator requirements, or Permit By Rule or Conditional Authorization or Conditionally Exempt requirements, a qualified UPA shall notify and coordinate with the Department.

(f) The Department and a qualified UPA are the only agencies authorized to implement and enforce the environmental assessment and corrective action requirements of Health and Safety Code section 25404.1.

(1) If the Department determines that a qualified UPA has not adequately implemented or enforced environmental assessment or corrective action requirements in accordance with this chapter, the Department may issue an order pursuant to Health and Safety Code section 25187 or section 25187.1.

(2) A qualified UPA may refer sites for corrective action to the Department.

(g) If at any time, an UPA determines that a site requires corrective action that is beyond the activities delegated to the agency or the expertise of the agency, the UPA shall refer the site to the Department.

(h) A qualified UPA shall comply with the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq, whenever any activity or action required by this chapter is a project subject to CEQA.

(i) A qualified UPA shall not implement and enforce environmental assessment or corrective action requirements when any of the following applies:

(1) Environmental assessment or corrective action is required at any hazardous waste facility that is or was required to obtain a permit or other forms of authorization pursuant to the Resource Conservation and Recovery Act (RCRA).

(2) The Department has issued an order or agreement for corrective action at the site pursuant to Health and Safety Code section 25187 or section 25187.1.

(3) The site has been determined to be the responsibility of the Department pursuant to an agreement entered into between the Department and the UPA.

(4) The source of the release or threatened release is a facility or hazardous waste management unit or an activity that is, or was, regulated by the Department pursuant to Health and Safety Code, Division 20, Chapter 6.5 (commencing with section 25100), unless the source meets the conditions of paragraph (b) of this section.

(5) The Department is conducting, or has conducted, oversight of the corrective action at the site at the request of the responsible party.

(6) A site is subject to a Cease and Desist Order issued pursuant to Water Code section 13301 or a Cleanup and Abatement Order issued pursuant to Water Code section 13304.

(7) The Site Designation Committee has determined the administering agency for a site to be either the Department, a Regional Water Quality Control Board, or the Department of Fish and Game, pursuant to Health and Safety Code section 25262.

(j) The Department, qualified UPA, or responsible party conducting or requiring corrective action shall ensure that all engineering and geological interpretations, conclusions and recommendations are developed in accordance with applicable state law, including, but not limited to, Business and Professions Code sections 6735 and 7835. The Department, qualified UPA, or responsible party shall ensure that all risk assessment and toxicological interpretations, conclusions and recommendations are conducted by a professional with one of the following:

(1) Certification as a Diplomat of the American Board of Toxicology, or

(2) Possession of a Master's Degree in Toxicology, Biochemistry, Pharmacology or a closely related specialty from an accredited college or university and three years of experience following the receipt of the Master's Degree in designing and managing toxicological studies, interpreting results, and conducting hazard and safety evaluations; or

(3) Possession of a Doctoral Degree in Toxicology, Biochemistry or Pharmacology, or a closely related specialty, and one year of experience following the receipt of the Doctoral Degree in designing and managing toxicological studies, interpreting results, and conducting hazard and safety evaluations.

NOTE: Authority cited: Sections 25150, 25404.1, and 58012, Health and Safety Code.
Reference: Section 25187, 25187.1, 25200.3, 25200.10, 25200.14, 25356.1, and 25404.1, Health and Safety Code.

§ 68400.12. Definitions Applicable to this Chapter.

Unless otherwise defined herein, the definitions of terms used in this chapter shall be those in Division 20 of the Health and Safety Code and section 66260.10 of this division. For the purposes of this chapter, the following definitions apply:

“Administrative enforcement order” means an order or consent agreement issued pursuant to Health and Safety Code section 25187.

“Administrative record file” means a record maintained by the UPA that consists of all documents the UPA relied upon or considered when selecting, taking or requiring corrective action pursuant to this chapter.

“Application” means a request submitted by a Unified Program Agency to the Department for a determination of qualification to implement the environmental assessment and corrective action portions of the unified program pursuant to Health and Safety Code section 25404.1.

“Certified Unified Program Agency” or “CUPA” means an agency as defined in Title 27, California Code of Regulations, subsection 15110(a), that has been certified by the secretary to implement the Unified Program.

“Corrective action” means activities taken to investigate, characterize, evaluate, correct, remove, or remediate a release or threatened release of a hazardous waste or constituent, as necessary to protect public health and/or the environment.

“Department” means the Department of Toxic Substances Control.

“Hazardous constituent” has the meaning set forth in section 66260.10 of this division.

“Hazardous waste” has the meaning set forth in Health and Safety Code section 25117.

“Less complex site” means a site at which all of the following conditions apply:

(1) the site characterization, performed as part of the site investigation required pursuant to subsection 68400.16(d)(3), indicates the presence of only those chemicals listed in Appendix I of this chapter. The chemicals listed in Appendix I are among the chemicals for which advisory screening numbers have been developed by the California Environmental Protection Agency pursuant to Health and Safety Code section 57008;

(2) the selected remediation alternative at the site consists only of removal of no more than 60 cubic yards of contaminated soil, as measured *in situ*;

(3) the human health screening evaluation, performed as part of the preliminary endangerment assessment required pursuant to subsection 68400.16(d)(2), indicates that the remaining contamination at the site does not pose a significant threat to human health, as determined by a risk estimation greater than or equal to 10^{-6} or a hazard index greater than one resulting from the summation of risk/hazard for all media, and

(4) the release has been adequately characterized as determined by the Department or qualified UPA.

“Local oversight program” means the program in which local agencies oversee corrective actions at underground storage tank sites through a contract with the State Water Resources Control Board pursuant to Health and Safety Code section 25297.1.

“Phase I environmental assessment” has the meaning set forth in Health and Safety Code section 25200.14.

“Preliminary endangerment assessment” has the meaning set forth in Health and Safety Code section 25319.5.

“Qualified UPA” means an agency delegated by the Department to implement and enforce the environmental assessment and corrective action pursuant to Health and Safety Code section 25404.1.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous waste, hazardous constituents, hazardous substances or hazardous materials.

“Risk assessment” means a risk-based system of analysis used to characterize the current and potential threats to human health and the environment that may be posed by contaminants migrating to groundwater or surface water, releasing to air, leaching through soil, remaining in the soil and bioaccumulating in the food chain.

“Site” means any site, area or facility, including, but not limited to, any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, where any hazardous waste, hazardous constituent, hazardous substance or hazardous material has been treated, stored, transferred, disposed of, deposited, placed, released, or has otherwise come to be located.

“Technical staff” means staff assigned to oversee environmental assessments and corrective action.

“Unified Program Agency” or “UPA” means the agency as defined in Health and Safety Code subsection 25404(a)(1)(C).

NOTE: Authority cited: Sections 25150, 25404.1, and 58012, Health and Safety Code. Reference: Sections 25187, 25187.1, 25200.3, 25200.10, 25200.14, 25356.1 and 25404.1, Health and Safety Code.

§ 68400.13. Qualification Tiers.

Except as provided in section 68400.11(i) of this chapter, a qualified UPA may implement and enforce only those parts of the environmental assessment and corrective action program that have been delegated by the Department pursuant to Health and Safety Code section 25404.1, as described below:

(a) A qualified UPA with a Tier 1 level of qualification, as defined in section 68400.14, shall be qualified to do the following at a facility within the jurisdiction of the UPA:

(1) Review phase I environmental assessments, as defined in Health and Safety Code section 25200.14 (Phase I) for completeness and accuracy;

(2) Inspect permit-by-rule facilities and facilities with conditional authorization for Phase I compliance;

(3) Enforce compliance with Phase I requirements;

(4) Review further investigation schedule, as defined in Health and Safety Code section 25200.14, to determine if a release from solid waste management unit or hazardous waste management unit requires corrective action;

(5) Implement and enforce the corrective action program at applicable less complex sites, as defined in subsection 68400.12 of this chapter;

(6) Issue an order specifying corrective action pursuant to Health and Safety Code section 25187 only for less complex sites to be conducted in accordance with applicable state laws and regulations and section 68400.16 of this chapter;

(b) A qualified UPA with a Tier 2 level of qualification, as defined in section 68400.14, is qualified to conduct the following activities at a facility within the jurisdiction of the UPA:

(1) All of Tier I activities;

(2) Implement and enforce corrective action at applicable sites in addition to less complex sites, except as provided in subsection 68400.11(i);

(3) Issue an order under Health and Safety Code section 25187 for corrective action in accordance with applicable state laws and regulations and section 68400.16 of this chapter.

NOTE: Authority cited: Sections 25150, 25404.1, and 58012, Health and Safety Code. Reference: Sections 25187, 25187.1, 25200.3, 25200.10, 25200.14, 25356.1 and 25404.1, Health and Safety Code.

§ 68400.14. Unified Program Agency Qualification Criteria.

(a) A qualified UPA with Tier 1 level of qualification shall meet the following Tier 1 criteria:

(1) Personnel Expertise Requirements.

(A) UPA personnel designated to perform the activities of Tier 1 as described in subsection 68400.13(a) and section 68400.16 shall have educational background and technical expertise sufficient to perform the activities of Tier 1 as described in subsection 68400.13(a) and section 68400.16 in accordance with all applicable state laws and regulations, including the requirements of either subparagraph 1 or subparagraph 2, and subparagraph 3 and subparagraph 4 below:

1. Educational background shall consist of a degree from a college or university with a minimum of 60 semester units in the following areas of study:

a. environmental, biological, chemical, physical, or soil science;

b. environmental or public health;

c. environmental, civil or chemical engineering; or

d. directly related scientific field;

2. As an alternative to the requirements of subparagraph 1 above, the UPA personnel may satisfy the educational background requirements by possessing qualifications, knowledge and abilities that are equivalent to those for the Hazardous Substances Scientist, Hazardous Substances Engineer, or Engineering Geologist Classes defined by the California State Personnel Board in the following documents, incorporated herein by reference:

a. Hazardous Substances Scientist, Series Specification, established July 1, 1994;

b. Hazardous Substances Engineer, Series Specification, established June 21, 1994 and revised January 19, 2000;

c. Engineering Geologist, Series Specification, established September 24, 2002.

3. Technical expertise shall include two consecutive years of experience in hazardous materials management, regulation, analysis, or research, environmental research, monitoring, surveillance or enforcement, or resource recovery.

4. Technical expertise shall also consist of documented training or proficiency in the fields of hydrogeology, fate and transport, environmental chemistry, toxicology, preliminary endangerment assessment, quality assurance and quality control for analytical results, and statistics. Additional training in other technical disciplines related to site characterization and cleanup activities will be considered for its applicability to this requirement. This training shall be sponsored by a credible program, including, but not limited to a state or federal agency, university extension, community college, or qualified UPA.

(B) Documentation of UPA Personnel Expertise. An UPA shall submit with its application documentation demonstrating that UPA personnel meet the educational and technical expertise requirements as described in subsection (a)(1)(A).

(2) UPA Past Experience.

(A) An UPA qualified in Tier 1 shall have the ability to issue administrative enforcement orders, and at least two years of experience conducting hazardous waste generator inspections. The required experience shall have been acquired in the two years prior to the date the application is submitted to the Department. A Tier 1 UPA shall also have one of the following:

1. Participation in a Site Designation program pursuant to Health and Safety Code section 25262;

2. At least three years of experience participating in a Local Oversight Program;

or

3. At least three years of experience conducting response actions.

(B) Documentation of Past Experience. An UPA shall submit with its application documentation demonstrating that it has experience, as described in paragraph (2)(A) as follows:

1. Most recent UPA triennial final Evaluation Report as required by California Code of Regulations, title 27, section 15530.

2. A certification that indicates an UPA has the ability to issue an administrative enforcement order, if not included in the most recent UPA triennial final Evaluation Report; and

3. Narrative descriptions of three relevant projects completed in the last three years or in progress that most clearly demonstrate the UPA's experience, specifying responsible staff and their expertise, a description of relevant project tasks and methods for overcoming technical obstacles.

(3) A qualified UPA shall have the ability to implement environmental assessment and corrective action for the tier delegated, pursuant to Health and Safety Code section 25404.1 in accordance with this chapter.

(A) An UPA shall submit with its application a narrative description of how it shall implement and enforce the environmental assessment and corrective action program and delegated responsibilities in accordance with all applicable state laws and regulations. This description shall specify the following:

1. The policies, procedures, approach and process the UPA will use to conduct environmental assessment and corrective action and the guidance documents the UPA relied upon to develop and implement the policies, procedures, approach and process.

2. If the description of relevant projects provided pursuant to subparagraph (2)(B)3. includes cleanup activities, include in the description details of the process used to conduct the cleanup. Include details regarding public participation, CEQA compliance, site characterization, remedy evaluation and selection, selection of cleanup objectives, remedy implementation, and any long-term activities, such as operation and maintenance.

(4) Adequacy of Staff Resources.

(A) If additional staff resources are needed to implement corrective action, beyond the resources described in the original CUPA application, an UPA shall submit with its application documentation demonstrating that it has the personnel resources needed to conduct the following activities:

1. File reviews;
2. Ongoing training of personnel;
3. Non-technical support for personnel; and
4. Management of any other applicable daily operations needed to support environmental assessment activities or corrective action.

(5) Recordkeeping and accounting systems. If additional recordkeeping and accounting systems are needed to implement corrective action, beyond the systems described in the original CUPA application, the UPA shall submit the following:

(A) An UPA shall submit with its application a description of its budget and accounting processes. Such processes shall include an accounting of expenditures made and revenues received for environmental assessment activities and corrective action at all unified program facilities.

(B) An UPA shall submit with its application a description of tracking systems to be used for monitoring the progress of environmental assessment activities and corrective action at all unified program facilities.

(C) An UPA shall submit with its application a description of how files will be maintained for environmental assessment and corrective action activities associated with unified program facilities within its jurisdiction. These files shall include, but not be limited to, all documents that comprise the administrative record file as defined in section 68400.12.

(6) An UPA shall submit with its application a copy of a local ordinance that shall be enacted that authorizes the UPA to recover the costs of implementing and enforcing the environmental assessment and corrective action program within its jurisdiction. An UPA may be determined to be qualified if it demonstrates to the Department that such an ordinance will be adopted within 60 days of the determination.

(b) A qualified UPA with Tier 2 level of qualifications shall meet all of the following Tier 2 criteria:

(1) An applicant UPA shall submit in its application all the required information as specified in subsection (a) of this section, which shall demonstrate that the applicant meets the Tier 1 qualifications.

(2) Personnel Expertise Requirements. UPA personnel designated to perform the activities of Tier 2 as described in subsection 68400.13(b) and section 68400.16 shall have educational and technical expertise sufficient to perform the activities of Tier 2 as described in subsection 68400.13(b) and section 68400.16 in accordance with all applicable state laws and regulations. In addition to the requirements for personnel expertise in Tier 1, an UPA qualified in Tier 2 shall also demonstrate documented training or proficiency in the fields of risk assessment, introduction to groundwater and remedy selection. Additional training in other technical disciplines related to site characterization, cleanup activities and health risk assessment will be considered for its applicability to this requirement. This training shall be sponsored by a credible program, including, but not limited to a state or federal agency, university extension, community college or qualified UPA.

(3) Specialized Personnel Expertise. An UPA qualified in Tier 2 shall demonstrate that it has the following specialized expertise:

(A) technical expertise necessary for the review and approval of engineering and geological interpretations, conclusions and recommendations that are conducted by registered professionals in conformance with applicable state law, including, but not limited to, Business and Professions Code sections 6735 and 7835 as required by subsection 68400.11(j). This specialized expertise may be provided by UPA personnel, a contractor, or otherwise pursuant to an agreement with a state or local agency; and

(B) technical expertise necessary to review, comprehend and implement all toxicological interpretations, conclusions and recommendations conducted by a professional with the qualifications as required by subsection 68400.11(j). This specialized expertise may be provided by UPA personnel, a contractor, or otherwise pursuant to an agreement with a state or local agency.

(4) Documentation of UPA Personnel Expertise. In addition to the documentation provided for Tier 1, an UPA shall submit with its application documentation specifying detailed information regarding the specialized technical expertise outlined in subparagraphs (b)(2) and (b)(3) of this section, including the following:

1. If an UPA staff member or other personnel working under an agreement with a state or local agency is providing specialized expertise, specify the names of persons with specialized technical expertise; a summary of education, technical training and related experience; and time availability or commitment to Tier 2 activities.

2. If a contractor is providing the specialized expertise, specify the qualifications of the contractor, related experience, time availability or commitment to Tier 2 activities, and the terms and duration of the contract.

(5) UPA Past Experience.

(A) A Tier 2 UPA shall have the past experience of a Tier 1 UPA and one of the following:

1. At least five years of total experience participating in a Local Oversight Program and documentation of experience overseeing 10 tank removals with full-time participation of two staff members, including one supervisor; or

2. At least five years of experience conducting response actions.

(B) Documentation of Past Experience. An UPA shall submit with its application documentation demonstrating that it has the experience required for Tier 1 and the experience described in subparagraph (b)(5)(A) of this section as follows:

1. Demonstration of UPA past experience required for Tier 1, as described in subparagraph (a)(2)(B) of this section;

2. Narrative descriptions of five relevant projects completed in the last five years or in progress that most clearly demonstrate the UPA's experience, specifying responsible staff and their expertise, a description of relevant project tasks, methods for overcoming technical obstacles, and the process used to conduct cleanups or tank removals. Include details regarding public participation, CEQA compliance, site characterization, remedy evaluation and selection, selection of cleanup objectives, remedy implementation, and any long-term activities, such as operation and maintenance.

NOTE: Authority cited: Sections 25150, 25404.1, and 58012, Health and Safety Code. Reference: Sections 25187, 25187.1, 25200.3, 25200.10, 25200.14, 25356.1 and 25404.1, Health and Safety Code.

§ 68400.15. Determination of Qualification.

(a) To be considered for determination of qualification, an UPA shall submit an application to the Department pursuant to this section. An UPA shall indicate in its application the Tier for which it seeks qualification.

(b) The Department, within 60 days of receipt of the application, shall inform the UPA, in writing, that either the application is complete and accepted for determination of qualification, or that the application is deficient and identify the information that is required to complete the application pursuant to this section.

(c) The Department shall complete the review, within 90 days from the receipt of a completed application, to determine whether the UPA is qualified to implement and enforce the requirements for environmental assessments and corrective action portions of the unified program under Health and Safety Code section 25404.1(a)(3)(C).

(d) The Department, upon completion of the review of the application, shall in writing either approve or disapprove the application for qualification. Within 30 days of approving the application, the Department shall issue a letter of qualification to the UPA (Notice of Approval). Within 45 days of disapproving the application, the Department shall issue a denial letter identifying the areas of deficiency pursuant to this section (Notice of Denial).

(e) Qualification Decision Appeal Process.

(1) The UPA, within 60 days of receipt of the Notice of Denial, may comment to the Department on the deficiencies and provide additional information to address the deficiencies.

(2) The Department, within 60 days of the receipt of the UPA's comments on the Notice of Denial, shall respond, in writing, to approve or disapprove the application based on the review of the information provided by the UPA in subparagraph (e)(1). The UPA, within 45 days of receipt of this decision, may appeal in writing to the Director. Within 45 days of receipt of the appeal, the Director shall, in writing, issue a final decision.

(f) Withdrawal of Determination of Qualification.

(1) The Department may periodically review its determination of any UPA's qualification. The UPA shall make available to the Department all documents and records the Department deems necessary to conduct its review. The Department may withdraw its determination of qualification if an UPA fails to maintain compliance with this chapter.

(A) If the Department determines an UPA is no longer qualified, it will issue a Notice of Withdrawal to the UPA. Within 45 days of receipt of a Notice of Withdrawal, the UPA may comment to the Department in writing on the reasons for withdrawal and may correct the deficiencies and/or provide additional information for consideration by the Department.

(B) Within 60 days of the receipt of the UPA's comments, the Department will respond, in writing, with a decision on withdrawal.

(C) Pursuant to subparagraph (f)(1)(B) of this section, if the Department's decision is to withdraw the determination of qualification, the UPA within 45 days of receipt of this decision, may appeal to the Director. Within 45 days of receipt of the appeal, the Director shall, in writing, issue a final decision to confirm or rescind the withdrawal.

(2) Following a determination of qualification, if resources available to a UPA changed such that the UPA can no longer conduct or oversee environmental assessment and/or corrective action, the UPA shall notify the Department within 15 days of the change. Following receipt of the notice or upon its own determination that the UPA can no longer conduct or oversee environmental assessment and/or corrective action, the Department shall:

(A) Withdraw its determination of qualification; or

(B) If the Department determines that adequate resources will be in place within six months of the date of notice or determination, the UPA may maintain its determination of qualification as long as the UPA otherwise maintains the minimum qualifications for authorization and can continue to conduct or oversee environmental assessment and/or corrective action during the six month period.

NOTE: Authority cited: Sections 25150, 25404.1, and 58012, Health and Safety Code. Reference: Sections 25187, 25187.1, 25200.3, 25200.10, 25200.14, 25356.1 and 25404.1, Health and Safety Code.

§ 68400.16. General Provisions.

(a) Any corrective action taken pursuant to this chapter shall be consistent with the corrective action provisions of Health and Safety Code, division 20, chapter 6.5 and its implementing regulations.

(b) The nature, extent and scope of corrective action taken or required by this chapter shall be based upon the conditions at the site, the current and reasonably anticipated future land uses of the site and impacts and threatened impacts to waters of the state.

(c) The responsible party shall implement corrective action beyond property boundaries, as necessary to address the breadth and depth of contamination caused by the release.

(d) An UPA shall establish a corrective action process that fulfills all of the following conditions. A description of this process, and a list of all guidance documents the UPA used to develop this process, shall be submitted to the Department pursuant to section 68400.14(a)(3)(A). A qualified UPA's corrective action process shall provide:

(1) opportunities for full and meaningful public involvement.

(A) For a less complex site, public involvement shall include, but not be limited to, providing the public with an agency contact's name, address, email, and phone number; distribution of fact sheets or other information regarding conditions at the site, if warranted given the level of interest expressed in the site; notification before decisions are made regarding corrective action at the site; and the opportunity to participate in decisions, submit comments and receive responses to comments before final UPA approval of activities at the site, such as a final corrective action plan or a certification of corrective action completion.

(B) For all other corrective action, public involvement shall include, but not be limited to an assessment of community interest and preparation of a community profile; based on the level of community interest, distribution of fact sheets regarding conditions at the site; placement of a public notice in a local newspaper of general circulation announcing a 30-day comment period on a proposed corrective action plan; based on the level of community interest, a public meeting, if appropriate, to collect public comment on the proposed corrective action; a written response to public comments; and providing the public with an agency contact's name, address, email, and phone number.

(2) a requirement for site screening using a preliminary endangerment assessment, performed as defined in Health and Safety Code section 25319.5.

(3) a requirement for a site investigation that adequately evaluates and characterizes a release or threat of release at the site of hazardous waste or constituents and determines whether the release or threatened release poses an

unreasonable risk to human health and safety or the environment. This investigation shall include, but not be limited to:

(A) adequate characterization and documentation of the release or threat of release;

(B) a risk assessment, where appropriate, that evaluates the risk posed by the release or threatened release;

(C) if the release has affected groundwater, a reasonable characterization of underlying groundwater, including present and anticipated beneficial uses of that water; and

(D) if volatile organic compounds are present, a reasonable characterization and evaluation of risk associated with exposure to indoor air.

(4) specification of corrective action that is protective of human health and the environment. Such corrective action shall attain final cleanup levels determined using a site-wide cumulative carcinogenic risk range of 10^{-4} to 10^{-6} and a site-wide cumulative systemic toxicity, including sensitive subgroups, health hazard index of <1 , unless lower concentrations are necessary to protect ecological receptors or meet applicable water quality objectives in applicable water quality control plans, as determined by a water quality assessment that evaluates whether constituents are migrating to waters of the state and meet state policies for water quality adopted pursuant to Article 3 (commencing with section 13140) of Chapter 3 of Division 7 of the Water Code. The 10^{-6} carcinogenic risk level shall be used as a point of departure in establishing cleanup levels for known or suspected carcinogens. Under these conditions, final cleanup levels shall be based upon the following:

(A) Background or non-detectable concentrations, or

(B) Site-specific cleanup levels based on a risk assessment(s), which may include a human health risk assessment and/or an ecological risk assessment, as needed, if the following requirements are met:

1. the risk assessment approach is approved by the Department. To be approved, the risk assessment approach shall meet the following criteria: evaluate exposure to all chemicals present at the site from all sources at the site, and evaluate that exposure for all affected and potentially affected human populations, considering all affected media at the site and all pathways appropriate for the site. The pathways shall be approved by the UPA and shall be based on the contaminants present at the site, the media contaminated, fate and transport of the contaminants through the environment, the routes of exposure and the receptors.

2. The ecological risk assessment shall consider species representing the ecosystems present or potentially present at the site. It shall consider the fate and transport of the contaminants present at the site, including movement through the food web.

(5) adequate resources and oversight to ensure that corrective action is conducted in an appropriate and timely manner and that technical assistance and streamlined procedures, when appropriate, are available.

(6) mechanisms for written documentation of screening, investigation, and selection of corrective action, the written approval of corrective action plans; and a certification of similar documentation indicating that corrective action is complete.

(7) enforcement of the completion of corrective action if the responsible party fails to complete the necessary corrective action, including operation and maintenance or long-term monitoring.

(8) a requirement for financial assurance for corrective action implementation, operation, maintenance and monitoring, if implementation of corrective action is scheduled to take more than one year or if long-term maintenance or monitoring of corrective action is required.

(A) Financial assurance mechanisms shall be consistent with the provisions in section 66264.143, and shall be reviewed and approved by the UPA.

(B) Financial assurance mechanisms that may be used to fulfill this section include a trust fund; a surety bond guaranteeing payment into a trust fund; a surety bond guaranteeing performance of corrective action implementation, operation, maintenance and monitoring; a letter of credit; insurance; or a financial test and guarantee.

(9) a requirement for a land use control that imposes appropriate conditions, restrictions and obligations on land use or activities if, after completion of the corrective action, a hazardous waste or constituents remain at the site at a level that is not suitable for unrestricted land use.

(A) The UPA shall notify the local land use planning authority in which any site is located that corrective action has been proposed. The UPA shall provide the local land use planning authority with notice of the time, date, and place of all public meetings regarding the corrective action and shall involve the local land use planning authority in any deliberation concerning land use conditions or actions. The UPA shall request the local land use planning authority to provide the UPA with the local land use planning authority's assessment of the planned use of the site, including the current and future zoning and general plan designations for the site and the local land use planning authority's determination regarding the appropriate planned use designation in the corrective action plan prepared for the site.

(B) Any land use condition shall be executed by the owner of the land, shall run with the land, and is binding upon all of the owners of the land, their heirs, successors and assignees, and their agents, employees or lessees. All executed land use conditions shall be recorded by the site owner in the county in which the site is located within ten days of execution. The site owner shall provide the UPA with a copy of the land use conditions, which have been appropriately recorded.

(C) If a corrective action plan requires the use of a land use control, the UPA shall not certify that the corrective action is complete until the UPA receives a certified copy of the recorded land use control.

(e) Any corrective action taken pursuant to this chapter shall be consistent with all applicable regulations adopted by the State Water Resources Control Board, all applicable water quality control plans adopted pursuant to section 13170 of the Water Code and Article 3 (commencing with section 13240) of Chapter 4 of Division 7 of the Water Code, and all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with section 13140) of Chapter 3 of Division 7 of the Water Code, to the extent the administering agency determines that those regulations, plans, and policies are not less stringent than this chapter.

NOTE: Authority cited: Sections 25150, 25404.1, and 58012, Health and Safety Code. Reference: Sections 25187, 25187.1, 25200.3, 25200.10, 25200.14, 25356.1 and 25404.1, Health and Safety Code.

Appendix I

Chemicals for Less Complex Sites

Organic Acidic Chemicals

2,4-D

2,4,5-T

Pentachlorophenol

Organic Neutral Chemicals

Aldrin

Benzo(a)pyrene

Chlordane

DDD

DDE

DDT

Dieldrin

1,4-Dioxane

Dioxin (2,3,7,8-TCDD)

Endrin

Heptachlor

Lindane

Kepone

Methoxychlor

Mirex

PCBs

Toxaphene

Inorganic Chemicals

Antimony and compounds

Arsenic

Barium and compounds

Beryllium and compounds

Cadmium and compounds

Chromium III

Chromium VI

Cobalt

Copper and compounds

Fluoride

Lead and lead compounds

Mercury and compounds

Molybdenum

Nickel and compounds

Selenium

Silver and compounds

Thallium and compounds

Vanadium and compounds

Zinc

Volatile Chemicals

Benzene

Carbon Tetrachloride

1,2-Dichloroethane

cis-1,2-Dichloroethylene

trans-1,2-Dichloroethylene

Mercury (elemental)

Methyl tert-Butyl Ether

Naphthalene

Tetrachloroethylene

Tetraethyl Lead

Toluene

1,1,1-Trichloroethane

Trichloroethylene

Vinyl Chloride

m-Xylene

o-Xylene

p-Xylene