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Gavin Newsom
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October 11, 2021

To: All California Certified Unified Program Agencies and Participating Agencies

CLARIFICATION OF CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS INSPECTION FREQUENCY, STATUS OF SILVER ONLY GENERATORS, AND UNIVERSAL WASTE HANDLERS

I. Introduction

Pursuant to Title 27 section 15200(a)(3), Certified Unified Program Agencies (CUPAs) shall develop and implement an inspection frequency for all program elements. When there is no mandated inspection frequency, as is the case for hazardous waste generators, the CUPA shall establish one within their Inspection and Enforcement Plan (I&E Plan). The purpose of this letter is to clarify this requirement, and to emphasize DTSC's expectations regarding inspection frequencies for generators of less than 100 kilograms of hazardous waste per month or less than 1 kilogram per month of acutely hazardous waste, and Universal Waste Handlers.

All hazardous waste generators require a specified inspection frequency outlined in a CUPA's I&E Plan. Inspection frequencies cannot be on a complaint basis only as complaints are not regularly scheduled events. Hazardous waste generator inspection frequencies may be established based on a generator's status provided that the following are considered: local zoning requirements, population density, local ground water conditions, identified hazards of a type of business, quantity and types of hazardous materials and hazardous waste, emergency response capability, compliance history, and any other pertinent local issues pursuant to Title 27 section 15200(a)(3)(A). If the established inspection frequency for hazardous waste generators is based on a generator's status, then it must be delineated as such in the I&E Plan.

II. Inspection Frequency for Conditionally Exempt Small Quantity Generators (CESQGs)

California, as an authorized State, was not required by EPA, and has not, adopted the federal definition of CESQGs (now VSQGs) and the special requirements and counting requirements found in 40 CFR 262.13 & 262.14. As a result, generators of less than 100

kilograms of hazardous waste per month or less than 1 kilogram per month of acutely hazardous waste are regulated as Small Quantity Generators (SQGs) and not VSQGs. However, facilities that meet the federal definition of VSQGs are granted three exceptions in Hazardous Waste Control Law that differ from SQG requirements including:

- (1) The time period for calculating the 180-day or 270-day accumulation period begins when the facility has accumulated 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste [Health and Safety Code (HSC) 25123.3(c)].
- (2) CESQGs (VSQGs) may bring up to 100 kg of hazardous waste or 1 kg of acutely hazardous waste or 1kg of extremely hazardous waste, per month, to a household hazardous waste collection facility authorized by the department without DTSC transportation registration or a Uniform Hazardous Waste Manifest [HSC Ch. 6.5, Article 10.8].
- (3) CESQGs (VSQGs) may bring up to 5 gallons or 50 pounds of hazardous waste to a permitted hazardous waste facility for transfer, treatment, recycling, or disposal without DTSC transportation registration or a Uniform Hazardous Waste Manifest [HSC 25163(c)].

SQGs that generate less than 100 kg of hazardous waste or less than 1 kilogram of acutely hazardous waste per month are still otherwise regulated as SQGs and are expected to be inspected within a scheduled frequency outlined in the CUPA's I&E Plan. CUPAs may establish an alternative inspection frequency for SQGs that generate less than 100 kg of hazardous waste or less than 1 kilogram of acutely hazardous waste per month considering the criteria of Title 27 section 15200(a)(3) and document the inspection frequency in its I&E Plan. I&E Plans should not use the terms CESQG or VSQG, unless referring to the federal definition. This also applies to silver-only waste generators as discussed in Section III.

III. "Silver-Only" Waste Generators

SB 2111 mandated that, effective January 1, 1999, "silver-only" hazardous wastes are to be regulated only to the extent they are regulated under the federal Resource Conservation and Recovery Act (RCRA). This change applies to the generation, transportation, and treatment of "silver-only" hazardous wastes. Onsite treatment of photoimaging solutions and wastewaters hazardous solely due to the presence of silver are no longer subject to Tiered Permitting authorization requirements. Generators of

“silver-only” wastes continue to be considered hazardous waste generators, but they may be eligible for reduced management and transportation requirements (see below). Wastes containing silver or silver compounds that are hazardous waste solely due to the presence of silver (“silver-only”) in the waste are regulated according to the provisions of HSC 25143.13. Silver-only” hazardous wastes are identified as hazardous due to their silver content according to the federal RCRA regulatory level of 5 milligrams/liter (mg/l), using the Toxicity Characteristic Leaching Procedure (TCLP) [40 CFR 261.24]. If the waste is identified as hazardous for any other reason (i.e., exhibits the characteristic(s) of corrosivity, reactivity, ignitability, or toxicity due to a constituent other than silver) or is RCRA listed, then the waste remains subject to California hazardous waste requirements.

Most of the currently regulated “silver-only” hazardous wastes are generated by the photo processing, printing, and dental/medical clinical industries. Other industries, such as electroplating and electronics, also generate large quantities of silver-bearing wastes but these wastes are typically hazardous for constituents other than silver. Examples of wastes that are not “silver-only” wastes include:

- RCRA listed wastes, such as electroplating wastewater treatment sludges (F006 listed waste);
- dental amalgam (if it contains mercury or any other metal that would cause it to exhibit a characteristic of hazardous waste); and
- corrosive cleaning/etching solution wastes (generally hazardous due to corrosivity, as well as other metals).

“Silver-only” waste streams are usually generated in solution form and are treated onsite or shipped offsite for treatment to recover the silver. In cases where the solutions are treated onsite, the treated effluent is commonly discharged to a sewer operated by a Publicly Owned Treatment Works (POTW) and the silver-rich treatment residue or sludge is sent offsite for reclamation.

Businesses that generate no more than 100 kilograms (approximately 27 gallons) per month of RCRA “silver-only” hazardous waste may manage their silver-only waste according to Federal requirements for VSQGs [40 CFR 262.14], which are less stringent than California’s generator requirements. This is allowed because HSC 25143.13 requires “silver-only” wastes to be regulated to the extent that they are regulated under the federal act. Again, this exemption does not apply to wastes that are hazardous for any other reason (i.e., corrosivity, reactivity, ignitability, toxicity for a constituent other than silver, RCRA listed). Under Federal regulations, VSQGs are not required to obtain an EPA ID number. Therefore, in California, a “silver-only” generator following the federal requirements for VSQGs would not need to obtain an EPA ID number, unless they generate any other hazardous waste (ex: used oil).

Although subject to reduced waste management requirements, “silver-only” VSQGs must:

- (1) determine whether or not their waste is “silver-only” hazardous using tests or knowledge of the waste [40 CFR 262.14(a)(2)];
- (2) not accumulate onsite more than 1000 kilograms of waste at any time [40 CFR 262.14(a)(4)];
- (3) ensure that their “silver-only” hazardous waste is either recycled (reclaimed) or disposed at a facility that is permitted or otherwise authorized to manage that hazardous waste [40 CFR 262.14(a)(5)].

“Silver-only” VSQGs are still considered hazardous waste generators because they remain subject to some RCRA regulatory requirements [40 CFR 262.13 and 262.14] and meet the RCRA definition of “generator”. Similarly, “silver-only” waste generators, that generate greater than 100 kg of RCRA “silver-only” waste, are also considered hazardous waste generators although subject to reduced management standards due to RCRA’s precious metal recovery rule [40 CFR, 266, subpart F]. This means CUPAs should be inspecting all “silver-only” waste generators and have an inspection frequency established in their I&E Plans. “Silver-only” waste generators, that meet the VSQG requirements of 40 CFR 262.14, generate significantly less hazardous waste per month than SQGs or LQGs and have fewer requirements. These factors, among others, may be considered when establishing an inspection frequency for “silver-only” waste generators that may be different from SQGs or LQGs. During inspections of “silver-only” VSQGs, CUPAs should verify that generators are complying with the three requirements noted above.

This determination of silver-only waste generators being identified as hazardous waste generators has been previously supported by DTSC’s Regulatory Assistance Office (RAO) in a letter to the Photo Marketing Association International dated September 1, 1999 (Enclosure 1). The letter also addresses the question of whether CUPAs can impose fees on silver-only waste generators:

“In addition to the regulation of hazardous waste generators, the authorities extended to CUPAs under HSC Chapter 6.11 include the imposition of fees on regulated businesses to recover the necessary and reasonable costs incurred by the CUPA for that regulatory oversight. Pursuant to HSC section 25143.13(e), the authorities granted to CUPAs under HSC Chapter 6.11, including inspecting hazardous waste generator activities and imposing fees on hazardous waste generators, are in no way limited by SB 2111... Since CESQG photo processors are hazardous waste generators, CUPAs have the authority and obligation to regulate those photo processors...”

“Silver-only” waste generators that generate non-RCRA “silver-only” waste and meet the criteria of HSC 25143.13, are exempt from the requirements of HSC Chapter 6.5, meaning they are exempt from California’s Hazardous Waste Control Laws. However, these wastes must still be handled in accordance with all other applicable laws and regulations. For example, silver-bearing photo processing solutions and wastewaters that meet the definition of being a non-RCRA “silver-only” that are discharged to the sewer must comply with POTW discharge limits, as well as waste discharge requirements established under the federal Clean Water Act or California’s Porter-Cologne Water Quality Control Act.

IV. 2001 Dorsey Letter

Discussions of inspection frequencies have been held in the past, namely in a May 8, 2001, letter (Dorsey Letter) from Hazardous Waste Issue Coordinator, Michael Dorsey to all CUPAs and Participating Agencies (PAs) (Enclosure 2). There is a portion of the Dorsey Letter that addresses CESQGs, namely silver-only waste generators (see Section III). It relates the position, “... that the oversight of California CESQGs [VSQGs] can be accomplished by the following mechanisms:

(1) investigate complaints regarding illegal hazardous waste activities involving CESQGs,

(2) In addition to investigating complaints, each CUPA or PA responsible for regulating California CESQGs ... will dedicate 5% of their hazardous waste resources annually to ensure regulatory compliance of CESQGs... utilizing one or a combination of the following mechanisms:

- a. Spot check inspections of businesses that may handle silver waste or universal waste
- b. Piggyback inspections, e.g., inspecting for silver waste or universal waste when conducting other regulatory activities
- c. Educational outreach to industry related organizations or business groups
- d. Follow-up to an emergency response
- e. Other activities as identified by the CUPA or PA.”

As described in Section II of this memorandum, Title 27 requires that CUPA’s must establish inspection frequencies for all hazardous waste generators, which includes “silver-only” waste generators. The position of the Dorsey Letter is not consistent with Title 27 requirements for establishing an inspection frequency for “CESQGs” due to it prescribing “CESQGs” be inspected on a complaint only basis, while utilizing 5% of resources annually that do not always include inspections. CUPAs whose I&E Plans

mimic the position of the Dorsey Letter are not in compliance with Title 27 requirements and must establish an inspection frequency for all generators, including “silver-only” waste generators who are regulated under the federal requirements for VSQGs.

V. Inspections of Universal Waste Handlers

Under California’s universal waste regulations, a generator of universal waste is regulated as a Universal Waste Handler [Title 22, section 66273.9] and must comply with the applicable requirements of Title 22, Chapter 23. CUPAs must include oversight of universal wastes when encountered during all routine or complaint inspections of hazardous waste generators. In addition, CUPAs must investigate all complaints regarding the illegal disposal of universal waste, as universal waste becomes a fully regulated hazardous waste when illegally disposed.

VI. Summary

Title 27 requires that CUPAs establish inspection frequencies for hazardous waste generators. In California, the two regulatory defined categories for generators are SQGs and LQGs. “Silver-only” wastes that meet the requirements of HSC 25143.13 are regulated only to the extent that they are regulated under the federal rule. This means some “silver-only” waste generators may be able to manage their “silver-only” waste under federal VSQG standards [40 CFR 262.14]. Additionally, as described above, “silver-only” waste generators still meet the definition of “generator” and must be inspected on a routine frequency defined in a CUPA’s I&E Plan. CUPAs also have the authority to regulate those “silver-only” generators and impose fees to cover the costs for that regulatory oversight. Regarding inspections of universal waste handlers, CUPAs must include oversight of universal wastes when encountered during routine or complaint inspections of hazardous waste generators and must investigate all complaints regarding the illegal disposal of universal wastes.

Sincerely,

Original signed by Diana Peebler

Diana Peebler
Branch Chief
Policy and Program Support Branch

Enclosure(s)

- 1) September 1, 1999 DTSC Letter to Photo Marketing Association International
- 2) May 8, 2001 Dorsey Letter

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Department of Toxic Substances Control



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September 1, 1999

Mr. Ronald B. Willson, Director
Environmental Activities
Photo Marketing Association International
3000 Picture Place
Jackson, Michigan 49201

Dear Mr. Willson:

Thank you for your recent letter regarding the Department of Toxic Substances Control's (DTSC) implementation of Senate Bill 2111 (Costa, Chapter 309, Statutes of 1998), regarding the regulation of wastes that are hazardous solely due to their silver content ("silver-only" hazardous wastes). Your letter expressed concern about DTSC's interpretation of the federal Conditionally Exempt Small Quantity Generator (CESQG) requirements, as they pertain to generators of "silver-only" hazardous wastes. You also expressed concern about the imposition of generator fees on CESQG photo processors by the Certified Unified Program Agencies (CUPAs) and regulation of the CESQG photo processors according to a June 22, 1999 compliance program proposal by the California CUPA Forum which was submitted to DTSC for review and approval. A discussion of these issues is provided below.

SB 2111 Provisions

In general, you are correct in stating that SB 2111 mandates that, effective January 1, 1999, "silver-only" hazardous wastes are to be regulated in California only to the extent they are regulated under the federal Resource Conservation and Recovery Act (RCRA). The major provisions of SB 2111, codified in California Health and Safety Code (HSC) section 25143.13, are as follows:

25143.13. (a) Notwithstanding any other provision of law, except as provided in subdivision (c), wastes containing silver or silver compounds that are RCRA hazardous wastes solely due to the presence of silver in the waste are subject to regulation under this chapter solely to the extent that these wastes are subject to regulation under the federal act.

(b) Notwithstanding any other provision of law, wastes containing silver or silver compounds are exempt from regulation under this chapter if the wastes are not subject to regulation under the federal act as RCRA hazardous waste, and the wastes would otherwise be subject to regulation under this chapter solely due to the presence of silver in the waste.

(c) With respect to treatment of a hazardous waste, subdivision (a) applies only to the removal of silver from photo imaging solutions and photo imaging solution wastewaters. Any other treatment of wastes containing silver or silver compounds that are RCRA hazardous wastes is subject to all of the applicable requirements of this chapter.

(d) The department shall amend its regulations, as necessary, to conform to this section. Until the department amends these regulations, the applicable regulations adopted by the Environmental Protection Agency pursuant to the federal act pertaining to the regulation of wastes containing silver or silver compounds, which are regulated as RCRA hazardous wastes solely due to the presence of silver in the waste, shall be deemed to be the regulations of the department, except as otherwise provided in subdivision (c).

(e) This section shall not be construed to limit or abridge the powers or duties granted to any state or local agency pursuant to any law, other than this chapter, to regulate wastes containing silver or silver compounds.

Practically, these provisions mean that:

- DTSC is implementing the provisions of SB 2111 by applying the federal RCRA regulations found in Title 40 of the Code of Federal Regulations [40 CFR] to the regulation of "silver-only" wastes in California (except with respect to treatment activities other than the removal of silver from photo imaging solutions and photo imaging wastewaters).
- Some generators of "silver-only" hazardous waste may now be regulated in California according to the federal CESQG regulations.
- The federal exclusion for characteristically hazardous sludge being reclaimed now applies in California for "silver-only" characteristically hazardous sludge.
- Most onsite treatment of photographic wastes is excluded from California Tiered Permitting treatment authorization requirements, but onsite treatment of any other "silver-only" hazardous waste would still require California Tiered Permitting authorization. Likewise, most offsite treatment of photographic wastes is excluded from hazardous waste permitting requirements.

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- Regulation of "silver-only" wastes by State or local agencies under laws other than HSC Chapter 6.5, such as local ordinances, is not restricted by SB 2111.

Application of Federal Requirements to "Silver-only" Hazardous Wastes

According to your letter, photo processors typically manage their "silver-only" wastes immediately in onsite wastewater treatment units which, after treatment, yield a non-hazardous effluent and a characteristically hazardous sludge. Under the federal RCRA regulations, the non-hazardous effluent would not be regulated, while the characteristically hazardous sludge would be excluded from classification as a solid (or hazardous) waste, in accordance with 40 CFR 261.2(c)(3), as long as it is reclaimed and not accumulated speculatively, used in a manner constituting disposal, or burned for energy recovery. Under the federal quantity determination requirements [40 CFR 262.10(b) and 261.5(c) and (d)], the photo processor, in this circumstance, is deemed to have a "zero" waste count (assuming the photo processor does not generate any other hazardous waste) for the sole purpose of determining the photo processor's hazardous waste generator category, because the waste immediately entering the wastewater treatment unit is not counted in that determination, and the secondary material that is generated at the end of the wastewater treatment process is conditionally excluded from classification as a solid waste. The photo processor therefore qualifies for regulation under the CESQG requirements established in 40 CFR 261.5 for generators who generate no more than 100 kilograms (kg) of hazardous waste per month.

While CESQGs and their hazardous waste are afforded reduced management requirements, they are not exempt from regulation as generators under RCRA, as some have argued. Instead of being fully regulated according to 40 CFR Parts 262 through 266, CESQGs remain subject to regulation under RCRA according to 40 CFR 261.5 and are specifically required to meet hazardous waste generation and accumulation limitations; comply with the hazardous waste determination requirements established under 40 CFR 262.11 [40 CFR 261.5(g)(1)]; and ensure that the hazardous waste is treated or disposed at authorized facilities [40 CFR 261.5(g)(3)]. Since CESQGs and their hazardous waste remain subject to regulation under RCRA, as discussed above, the waste continues to meet the RCRA definition of a hazardous waste and the CESQGs continue to meet the RCRA definition of generator, as established in 40 CFR 260.10¹.

Given the fact that the federal regulations do not exempt CESQGs or their hazardous waste from total regulation under RCRA, the DTSC determination that CESQGs with a "zero" waste count (for the sole purpose of determining generator category) still meet the definition of hazardous waste "generator" under RCRA is valid and is consistent the requirements of both SB 2111 and the applicable federal RCRA regulations.

¹ 40 CFR 260.10 defines generator to mean any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

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Local Regulation of "Silver-only" Hazardous Wastes

As you know, CUPAs are local agencies, certified by the State under the auspices of the Unified Program (as established in California law under HSC Chapter 6.11), that are authorized to enforce regulations applicable to hazardous waste generators. In addition to the regulation of hazardous waste generators, the authorities extended to CUPAs under HSC Chapter 6.11 include the imposition of fees on regulated businesses to recover the necessary and reasonable costs incurred by the CUPA for that regulatory oversight. Pursuant to HSC section 25143.13(e), the authorities granted to CUPAs under HSC Chapter 6.11, including inspecting hazardous waste generator activities and imposing fees on hazardous waste generators, are in no way limited by SB 2111.

In your letter you expressed concern about the imposition of fees by CUPAs on CESQG photo processors. Since CESQG photo processors are hazardous waste generators, CUPAs have the authority and obligation to regulate those photo processors and impose fees to cover the costs for that regulatory oversight.

Regarding the regulation of CESQG photo processors outlined in the CUPA Forum proposal, your concerns and comments on the proposal will be taken into consideration during DTSC's review of the proposed compliance program. DTSC's review will include consideration of the appropriateness of and legal authority for the proposed program elements, consistency with the provisions of SB 2111, and public comments, such as those expressed in your letter.

Thank you again for your letter. Should you have any questions or need further assistance, please contact Ms. Paula Rasmussen, Chief of the State Regulatory Program Division, at (714) 484-5394.

Very truly yours,

Original signed by Edwin F. Lowry

Edwin F. Lowry
Director

cc: See next page.

Mr. Ronald B. Willson

September 1, 1999

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Mr. Ronald B. Willson

September 1, 1999

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May 8, 2001

**TO: ALL CERTIFIED UNIFIED PROGRAM AGENCIES
ALL PARTICIPATING AGENCIES**

**FROM: MICHAEL DORSEY, HAZARDOUS WASTE ISSUE
COORDINATOR**

**SUBJECT: CALIFORNIA HAZARDOUS WASTE CONDITIONALLY
EXEMPT SMALL QUANTITY GENERATORS/UNIVERSAL
WASTE – COMPLIANCE OPTIONS**

Purpose Statement:

The Department of Toxic Substances Control (DTSC) is developing a regulatory package that will include a mandated inspection frequency for hazardous waste generators. There is no mandated inspection frequency in current law or regulation for hazardous waste generators. The regulatory proposal by DTSC would mandate all hazardous waste generators be inspected at least once every three years. The California CUPA Forum is in support of this regulatory proposal with the additional compliance options for Conditionally Exempt Small Quantity Generators (CESQGs) and Small Quantity Handlers of Universal Waste as outlined in this position paper.

Discussion:

Under current California regulations there are two waste streams that have a CESQG category: (1) wastes containing silver or silver compounds; and (2) universal wastes.

Certain facilities that generate silver waste or silver compounds are deemed to have a "zero" waste count (assuming they do not generate any other hazardous waste) for the sole purpose of determining the facility's hazardous waste generator category. Facilities can only be deemed "zero" waste when: (1) the waste immediately entering the wastewater treatment unit is not counted in the "count" determination per 40 CFR 261.5(c); (2) the non-hazardous effluent is not regulated under RCRA; and (c) the sludge generated by the treatment of silver-rich solutions and wastewater, is not considered solid waste, and therefore not hazardous waste, when reclaimed per 40 CFR 261.2(c)(3).

Emergency regulations are in place to ensure that universal waste (i.e., hazardous waste batteries - except automotive lead acid storage batteries, mercury-containing thermostats, and lighting wastes - most fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, other hazardous waste lamps) is being properly handled. DTSC expects to promulgate permanent regulations for universal waste in early 2001. Proposed permanent regulations for universal waste will contain a CESQG category that will be phased out four years after the regulations are promulgated.

California CUPA FORUM Position:

It is the position of the California CUPA Forum that California CESQGs and Small Quantity Handlers of Universal Waste present a low risk to the environment and public health and safety when compared to other non-CESQG waste streams and Large Quantity Handlers of Universal Waste. It is further the position of the California CUPA Forum that the oversight mechanism for determining the compliance level of California CESQGs and Small Quantity Handlers of Universal Waste should be less stringent than that required of non-CESQGs and Large Quantity Handlers of Universal Waste.

Each CUPA or PA is responsible for regulating California CESQGs and Small Quantity Handlers of Universal Waste as part of their hazardous waste generator program. The California CUPA Forum takes the position that oversight of California CESQGs and Small Quantity Handlers of Universal Waste can be accomplished by the following mechanisms:

1. Each CUPA or PA responsible for regulating California CESQGs and Small Quantity Handlers of Universal Waste as part of their hazardous waste generator program will investigate complaints regarding illegal hazardous waste activities involving CESQGs and Small Quantity Handlers of Universal Waste.
2. In addition to investigating complaints, each CUPA or PA responsible for regulating California CESQGs and Small Quantity Handlers of Universal Waste will dedicate 5% of their hazardous waste resources annually to ensure regulatory compliance of CESQGs and Small Quantity Handlers of Universal Waste utilizing one or a combination of the following mechanisms:
 - a. Spot check inspections of businesses that may handle silver waste or universal waste
 - b. Piggyback inspections, e.g., inspecting for silver waste or universal waste when conducting other regulatory activities
 - c. Educational outreach to industry related organizations or business groups
 - d. Follow-up to an emergency response
 - e. Other activities as identified by the CUPA or PA
3. Each CUPA or PA responsible for regulating California CESQGs and Small Quantity Handlers of Universal Waste as part of their hazardous waste program will document for the purposes of their performance review the mechanism or mechanisms they use to ensure regulatory compliance of California CESQGs and Small Quantity Handlers of Universal Waste.
4. Each CUPA or PA responsible has the option of permitting or not permitting California CESQGs and Small Quantity Handlers of Universal Waste.

Attachment: “Conditionally Exempt Quantity Generator & Small Quantity Handlers of Universal Waste - Unified Program Resource Worksheet”