



**Final Statement Of Reasons**  
**Unified Program Single Fee System for State Agencies**  
**Department of Toxic Substances Control Reference Number: R-2005-18**  
**Office of Administrative Law Notice File Number: Z-06-0109-01**

### **Update of Initial Statement of Reasons**

As authorized by Government Code section 11346.9, subdivision (d), the California Environmental Protection Agency (Cal/EPA) incorporates by reference the Initial Statement of Reasons prepared for this rulemaking.

The following discussion augments the Initial Statement of Reasons.

Grammatical Changes: Section 15241, subdivision (c) was amended in this final rulemaking to correct grammar. This change is non-substantive.

Style Changes: Non-substantive changes were made to the following sections to conform with the California Style Manual. Section 15241, subdivision (a) adds the word “subdivision” to the citation to conform with the California Style Manual. Section 15241, subdivision (c) (1) (B) changes “subsection” to “subdivision.” Section 15242, subdivisions (c) (1), (c) (2), (d), and (h) (1) through (3) change the instances of numbers in the text.

Program Element Fee Categories: Section 15241, subdivision (c) (1) (A) was amended in this final rulemaking to insert the word “Prevention,” which had been inadvertently omitted from the emergency regulation.

Inactive Tank Fee: Section 15241, subdivision (c) (1) (B) and section 15242, subdivision (d) were amended in the readoption of the emergency regulations to eliminate the fixed fee of \$100 for each inactive tank. Section 15241, subdivision (c) (1) (B) was also amended to allow businesses that have filed the appropriate documents for the permanent closure of inactive tanks to be exempt from the program element fee beginning with the reporting period after those documents have been filed. This section was further amended to require businesses to pay only the costs to oversee the permanent tank closure activities pursuant to section 15241, subdivision (j).

Cal/EPA determined, as the Department of Toxic Substances Control (DTSC) gained more experience implementing the Unified Program, that the inactive tank fee should not be charged to businesses for at least three reasons.

- One, it would be unfair to continue to charge a fee to businesses that have filed the appropriate paperwork for closure if the State has not had sufficient resources to inspect them and approve their closures. Charging a fee to businesses that have met their obligation for permanent tank closure, but are waiting for final approval, would be an unfair expense to regulated businesses.

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Two, the \$100 fee had initially been envisioned in part as an incentive for recalcitrant tank owners to begin their closures. It has been determined, however, that any added incentive from this fee is negligible, because businesses are already subject to the underground tank regulations in Title 23 of the California Code of Regulations. Those regulations require businesses to ensure the tanks are drained and measures are taken to prevent any releases to the environment. Enforcement of these regulations would be a more meaningful tool to ensure that closure takes place.

- Three, tracking a fee this small might create a workload that might not be cost-effective.

Pro-rating Fees: Section 15241, subdivision (e) was amended in the readoption of the emergency regulations to eliminate pro-rating fees for businesses that come into the regulated universe for only a portion of a reporting period. Cal/EPA determined, as DTSC gained more experience implementing the Unified Program, that the date the businesses became part of the regulated universe would have little or no impact on the cost to implement the program, so pro-rating the fees is not required for fairness.

Underground Storage Tank Statutes: Section 15241, subdivision (c) (1) (B) was amended in this final rulemaking to change the word “materials” to “substances” to be consistent with the State Water Resources Control Board’s use of the term “hazardous substances” in its statutes regarding underground storage tanks. The implementing statutes for the Unified Program reference hazardous substances, hazardous materials, and hazardous waste. Amending the language in this section will have no affect on the Unified Program but it is more aligned with the underground storage tank statutes.

Interest Accrual: Section 15241, subdivision (f) was amended in this final rulemaking to clarify that simple interest will accrue monthly on any unpaid fee or portion thereof. This will help businesses understand that until their fees are paid in full, simple interest will continue to accrue.

Comments on Revised Fees: Section 15241, subdivision (i) was amended in this final rulemaking to clarify that the Secretary will make responses to comments on revised fees available upon request rather than posting them on Cal/EPA’s Web page. This change eliminates the cost of posting, which would have been passed on in the form of fees, but still allows the public the opportunity to receive this information; they simply need to request it.

Imputed Hourly Fee: Section 15242, subdivision (d) was amended in this final rulemaking to remove the word “imputed” since the term is ambiguous and unnecessary. “Hourly fee” is more clear and straightforward.

Tanks: Section 15242, subdivision (h) (3) was amended in this final rulemaking to clarify the definition of “small storage tank” to indicate that the program element fee is based

on total volume of storage capacity “per site.” The “per site” designation was inadvertently omitted in the previously submitted regulations. This change makes the definition of “small storage tank” consistent with the definitions for “large storage tank” and “medium storage tank.”

## **Responses to Written Comments from 45-Day Comment Period**

### ***Imperial Valley Vegetable Growers Association***

- **The initial notices for training and for general notification for the program were hard to understand and not sent to all businesses. This led to a sense of confusion as certain entities received multiple forms and others none. We are still dealing with people who don’t remember getting a notice, but who got a survey or vice versa.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **The initial training provided did not meet the needs of the agricultural community. It was a good overview of the program but did not provide the nuts and bolts information necessary for the agricultural community to comply or even to fill out the forms.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **While that training was followed with promises for agricultural specific training and the assurance that any enforcement will be delayed in order to provide training and an educational period, we have had instances of Certified Unified Program Agency (CUPA) representatives demanding forms and threatening farmers who wish to wait for the training.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **The fees associated with the programs are not equivalent to the risk or the cost of implementing the program. We believe that this is because the initial fees were set without a full understanding of the number of permits needed as the previous attempts at implementation were not complete.**

The program element fees being charged to businesses are based on the expected workload for the businesses and relative risk. The fees are tiered into small, medium and large businesses to address relative risk. The program element fees are expected to remain approximately the same because the cost associated with the business is based on actual staff effort. As new businesses

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are identified and added into the regulatory process, the flat fee is expected to be reduced due to a larger universe over which the costs are spread.

- **The flat fee is especially burdensome as the same fee is paid by the small farmer and the large power plant, without taking into account the various levels of risk.**

The flat fee was distributed equally across all businesses because it is related to the overhead cost of the program. This overhead cost reflects the indirect costs that all regulated businesses contribute to without regard to their size or the number of hours devoted individually to their regulation. The program element fees were set proportional to the amount of oversight or work needed to regulate the individual programs.

- **It is our hope that the County of Imperial will take over control of the CUPA in lieu of the current state of implementation. While we appreciate the time and energy spent by the current local and state CUPA representatives, we feel this would be beneficial to the program and to local businesses.**

Since 1996, Cal/EPA has had extensive discussions with representatives of the Imperial County Board of Supervisors and county agencies in an attempt to have the CUPA managed by local or county control. In January 2005, the Cal/EPA Secretary designated DTSC to be the CUPA because no governmental agency in Imperial County requested certification.

If Imperial County submits an application to become a CUPA, Cal/EPA will consider it at that time.

***The Coalition of Labor, Agriculture & Business (COLAB)***

- **The implementation of this program has brought about a sense of unease in the community as it has been erratic and somewhat unorganized. The first sign of this was in the mailing of the initial training notices when some businesses received notices and others did not. Advocacy groups which could have been used to disseminate the information were told of trainings the day before they occurred at sites that businesses were not accustomed to going to.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **The trainings provided were long and very tedious with an overload of information instead of hard facts on what the businesses needed to do to complete forms and comply with programs. Most businesses left the training with more questions than answers and a sense of unease about the program and its affect. When the agricultural community saw this, it immediately requested a separate training which has yet to be provided. Other industries outside of agriculture however are being held to understanding the program based on those tedious, under attended trainings.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **Surveys and questionnaires asking for the businesses to inventory their materials in order to place them in the correct programs and then to bill accordingly were sent out sporadically and without proper instructions. Some businesses received multiple copies while some received none, leading to questions on when and how to fill out the forms that largely went unanswered. Across the board, this led to forms being filled out incorrectly or not at all.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **Questionnaires and surveys that were completed have mysteriously vanished leaving businesses to re-complete the forms at a cost to themselves in time and resources. One CUPA representative when recently presented with a copy of what had been turned in prior was told that his copy must have been one of “four hundred that had gone missing.” This is unacceptable when CUPA representatives are going door-to-door asking for the forms and using threatening behavior as follows.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **We have heard many stories of CUPA personnel in the field exhibiting threatening and unprofessional behavior. One incident included a CUPA representative entering an office and demanding that the business owner fill out the survey forms. When the business owner said that he did not understand the questions and asked for assistance, the CUPA representative said that he did not know how to either and quickly left with the reminder to get them in as soon as possible. The next and much more bothersome incident occurred when a CUPA representative entered a farm office and asked why the survey had not been completed. When told they were waiting for the ag specific training, the CUPA representative stated that if the form was not completed and turned in by the next day, then he would show up unannounced and inspect their farm shop.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **The fee structure is onerous and places a huge burden on all businesses across the board. While we understand that the CUPA is solely supported by these fees, the development of them and the program could have included local input that would have given a better understanding of the number of permits needed. This factor has led to the amount of the implementation to be split over too few permittees.**

DTSC would welcome input by the permittees if they have information as to anyone who has not yet been identified. As with the implementation of any new program, there are some uncertainties associated with it. Overall, DTSC believes businesses have been identified correctly by Imperial County and DTSC staff. However, there may be more businesses identified in the future that either did not understand the program elements or knowingly tried to avoid compliance. This is no different than the start of other CUPA programs throughout the State. In the first year or two, there have always been some unknowns as the programs were being implemented. However, it is unclear whether there is a significant additional cost to the businesses identified in the program initially. While each additional business would add another fee payer to share the cost, it would also add to the expenses that by law must be recouped through the program element fees. The identification of other businesses could reduce the flat fees.

***Imperial County Farm Bureau***

- **Farm Bureau would like to express its appreciation to the DTSC for its willingness to work with our organization in order to make the process of implementing the newly enforced program as smooth as possible with the local farm community. Although there have been misunderstandings at time, we have enjoyed an amicable relationship with the DTSC staff and have been pleased with the efforts to heed to our suggestions regarding the need for agriculture specific trainings.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **There have been numerous accounts of DTSC staff including inspectors, supervisors and administrative employees not having the knowledge necessary to answer our questions. Farm Bureau understands that the staff is new to this program and environment, however, we strongly encourage you to provide them with the training and tools necessary to thoroughly understand agriculture and the regulations they are enforcing. For example, it would be extremely helpful if when asked whether a trap wagon is exempt or not, the staff understands what a trap wagon is. Farm Bureau is willing to help in this area anyway we can in educating your employees.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **According to Watson Gin, the budget for the CUPA will not be dependent upon fines. Farm Bureau appreciates this effort by DTSC to maintain the position that education will be the primary tool for the first few years and fines will be reserved for egregious violations.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **Farm Bureau encourages DTSC to remain true to the education first philosophy and refrain from fining farmers for non-egregious violations until a sufficient amount of educational time has elapsed. We also encourage DTSC to run the most efficient program possible in order to keep fees low and manageable for farmers as well as to have well trained employees that understand agriculture and can answer farmers' questions.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **It is our position that the most appropriate agency to implement the CUPA is the County of Imperial. We understand that the state has gone to great lengths to persuade the county to implement the CUPA, as other counties have been doing for some time now, and that it was only as a last resort that DTSC was appointed to the task. It is important that you know that Farm Bureau will continue to encourage the county to take over control of the CUPA as soon as possible.**

Since 1996, Cal/EPA has had extensive discussions with representatives of the Imperial County Board of Supervisors and county agencies in an attempt to have the CUPA managed by local or county control. The Imperial County Board of Supervisors made the decision not to apply for certification as the CUPA. In January 2005, the Cal/EPA Secretary designated DTSC to be the CUPA because no governmental agency in Imperial County requested certification.

If Imperial County submits an application to become a CUPA, Cal/EPA will consider it at that time.

- **We have several concerns regarding the fee structure. When compared to CUPA fee structures in other counties, the fees seem to be substantially higher in Imperial. It is difficult to understand why our fees are so costly.**

DTSC used all resources available to establish fees comparable to other CUPAs similar to Imperial County; however, DTSC is required by state law to set fees that will recover the total cost of the program. Costs to other CUPAs may be more or less than those associated with Imperial County. Other CUPAs that are run by local agencies may have other revenue sources that can be used to offset CUPA costs. DTSC has no other fund sources available or allowed by law to subsidize the CUPA program, except the Rural CUPA Reimbursement Account that is already being used in full.

- **The hazardous waste generator fee structure is as follows: \$395 for less than one ton of any hazardous waste, \$527 for one to 500 tons, and \$658 for 500 tons or more. This does not seem like a fair cost distribution. Theoretically, a farmer could have one quart of a hazardous material and only be paying \$132 less than someone with 500 tons of the material. We believe this structure should be reconsidered.**

To a large extent, most of the costs associated with inspecting hazardous waste generators apply in all cases regardless of the volume of waste generated or the size of the business. For example, preparation time for file review and research; travel time; conducting inspection and preparing inspection report. Additionally, the Imperial County CUPA will be working with businesses to educate them as to the regulatory thresholds that will keep them out of the oversight program. In the

example cited, the farmer would be educated on how to use existing small quantity generator exemptions to avoid paying fees.

- **Most farmers operate on a thin profit margin and are required by banker's loan officers to closely follow a strict budget. Many have been and will be surprised by the new CUPA fee which will be adding to their cost of doing business. It would be helpful if the CUPA could provide payment options for farmers struggling with paying the fee in its entirety at once.**

Section 15241, subdivision (f) provides flexibility in billing in that the fee can be assessed in a single billing or more than one billing. DTSC will study the feasibility of payment plans.

- **The California Health and Safety Code section 25503.5 (c) (5) exempts businesses operating a farm for purposes of cultivating the soil or raising or harvesting any agricultural or horticultural commodity from filing the required business plan as long as they meet certain requirements. We are awaiting an interpretation from DTSC on this and whether farmers exempt from filing a business plan will still have to pay the fee for the business plan. The original request for an opinion was sent February 4, 2006, and we were told that Roger Vintze received an opinion from legal staff in Sacramento on February 20, 2006, but is crafting it into a manner that can be sent to the Farm Bureau. We would appreciate an answer as soon as possible.**

The language of Health and Safety Code section 25503.5, subdivision (c) (5) makes it clear that it does not exempt otherwise-eligible farms from every business plan requirement, but only the requirements contained in Health and Safety Code sections 25504, subdivisions (b) and (c). Farms must prepare a plan containing the elements of Health and Safety Code section 25504, subdivision (a), which is identical to Health and Safety Code section 25509. This means that the farm must prepare a modified business plan and then submit the information contained in the plan to the Agriculture Commissioner. Since the farm would still be preparing a business plan, it would be subject to the program element fee for business plans provided for in section 15241, subdivision (c) of Title 27 of the California Code of Regulations.

## Responses to Verbal Comments at the Public Hearing

### ***Nicole M. Rothfleisch, Executive Director, Imperial County Farm Bureau***

- **The Farm Bureau has a positive relationship with regulators and considers education a high priority.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **There are many irresponsible dumpers in Imperial County, leaving things such as trash, used tires, used oil, and appliances next to our farms yet they go unregulated, but our farmers are regulated.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **We were told by DTSC staff that we don't need to fill out the forms until training is provided. We want to make sure forms are filled out accurately so farmers will be billed accurately.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **Yvonne Sanchez of DTSC told us that it is okay to delay payments until training is provided the third week of March (2006).**

DTSC assumes that the concern expressed by this comment is that penalty and interest will be charged for late payments. Section 15241, subdivision (f) allows penalty and interest waivers for reasonable cause and circumstances beyond the person's control. This provision will be applied on a case-by-case basis in deciding whether to waive penalties and interest.

- **Commenter read a letter from a farmer stating that he received a bill January 16 (2006) for fees and a letter February 10 (2006) regarding penalties. He called the county office (DTSC) and was told to hold off paying these until they have been reviewed by a supervisor.**

Please see the response to the comment immediately above.

***Ayron M. Schoneman, Executive Director, Imperial Valley Vegetable Growers Association and the Coalition of Labor, Agriculture, & Business***

- **Commenter reiterated comments by the Imperial County Farm Bureau and stated that her organizations have a good relationship with Yvonne Sanchez, Alan Hsu, and Roger Vintze of the DTSC CUPA. However, staff in the field have a bad attitude and have made threatening remarks to the commenter's constituents.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **The regulated community is willing to work with DTSC to have a successful CUPA program.**

This comment is beyond the scope of the regulations but has been forwarded to the Imperial County CUPA.

- **The flat fees are very high and add a huge amount for businesses to pay. The process and formula that DTSC used in determining the fees are flawed. DTSC needs to do a better job of identifying the number of businesses to spread the costs more equitably.**

DTSC would welcome input by the permittees if they have information as to anyone who has not yet been identified. As with the implementation of any new program, there are some uncertainties associated with it. Overall, DTSC believes businesses have been identified correctly by Imperial County and DTSC staff. However, there may be more businesses identified in the future that either did not understand the program elements or knowingly tried to avoid compliance. This is no different than the start of other CUPA programs throughout the State. In the first year or two, there have always been some unknowns as the programs were being implemented. However, it is unclear whether there is a significant additional cost to the businesses identified in the program initially. While each additional business would add another fee payer to share the cost, it would also add to the expenses that by law must be recouped through the program element fees. The identification of other businesses could reduce the flat fees.

### **Alternatives Determination**

DTSC has determined that no alternative would be more effective, or as effective, in carrying out the purpose for which the regulations are proposed or would be less burdensome to affected private persons than the proposed regulations.