



**Department of Toxic Substances Control
Certified Unified Program Agency
Responses to the Questions and Comments
From the May 12, 2005, Workshop in El Centro, CA**

1. Comment: What is local control? Will we have it here?

Response: Local control can be described as implementation of the six hazardous waste and hazardous materials programs by a local agency certified by the California Environmental Protection Agency (Cal/EPA). Instead of a certified local agency, DTSC has been designated to implement the Unified Program in Imperial County. DTSC will continue working together with county agencies in coordinating the day-to-day activities of the program.

2. Comment: Will DTSC work with local agencies?

Response: DTSC will continue working with city, county and local governmental agencies to administer and enforce the six hazardous waste and hazardous materials programs within Imperial County.

3. Comment: Can the county still take back the CUPA role if they change their mind?

Response: It would not be possible at this time for a local agency to be certified to implement the Unified Program in Imperial County. 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.

4. Comment: Why is the DTSC taking over the Underground Storage Tank (UST) program? Why not let the county continue?

Response: The UST program is one of the six program elements for the Unified Program that DTSC regulates as the CUPA for Imperial County. The CUPA must assume responsibility for underground storage tanks because it is required to do so by Health and Safety Code section 25404, subdivision (c)(3)(A). Also, see the response to comment 3.

5. Comment: Why was there no advance notice of the start of the comment period?

Response: DTSC mailed an informational letter to stakeholders prior to the workshops to discuss the fee regulations and CUPA program implementation. Because Cal/EPA and DTSC received numerous requests to extend the comment period, and in order to ensure that the public had an adequate opportunity to comment, the comment period was extended until June 30, 2005.

6. Comment: Why did the county decline to be the CUPA?

Response: The Imperial County Board of Supervisors made the decision not to apply for certification as the CUPA and it would be the appropriate body to explain its decision.

7. Comment: Is it too late for the county to change its mind?

Response: The county could submit an application to become a CUPA. Cal/EPA would decide whether to approve the application after considering all relevant factors.

8. Comment: Will the county turn over its records (of currently regulated businesses) to DTSC?

Response: DTSC has been and will continue working closely with the county to obtain information on regulated businesses.

9. Comment: Does the Aboveground Storage Tank (AST) program include trap wagons?

Response: No, trap wagons do not meet the definition of aboveground tanks and are mobile. The AST program only includes stationary tanks.

10. Comment: Do vehicle repair services include forklifts, etc.?

Response: No, vehicle repair services do not include forklifts.

11. Comment: Will the overall fees increase, decrease, or stay the same (compared to what people are paying currently)?

Response: Fees will increase for most businesses because not all program elements were being implemented by Imperial County. In addition, the new fees will be based on DTSC's cost to implement the CUPA program. These costs are not related to the fees previously charged by Imperial County.

12. Comment: Is the \$1 million (budget amount set by DTSC) just for Imperial County?

Response: Yes, the \$1.4 million cost of the program is just for Imperial County. The other state-operated CUPA, Trinity County, has a separate budget.

13. Comment: Is a small generator (e.g., one who has just a single 55-gallon tank) charged the same as a large generator?

Response: No. Small generators of hazardous waste will be charged less than large generators since the program element fees are based on the volume of hazardous waste generated. However, both small and large generators will be charged the same flat fee since it applies to all regulated businesses in the CUPA program.

14. Comment: Are the fees dependent on the amount of hazardous waste?

Response: Yes, the fee categories (small, medium, and large) are based on the amount of hazardous waste generated. Small generators are less than 1 ton of hazardous waste generated per year, medium are between 1 and 500 tons, and large generators are 500 tons or more per year.

15. Comment: Is DTSC's budget open to public review (scrutiny)?

Response: Yes, all of DTSC's records for the Unified Program are subject to disclosure under the provisions of the California Public Records Act (Government Code Sections 6250-6260) and are open to inspection by the public during the normal office hours of the office where those records are located. Certain records are confidential and by statute may not be released to the public, but it is unlikely these records would appear in the budget.

16. Comment: Are the UST fees listed in the workshop presentation per tank?

Response: Yes. The UST program element fee structure is divided into three categories based on the capacity of the tank: 34,000 gallons or more; 19,000 gallons to less than 34,000 gallons; and less than 19,000 gallons. The state surcharge for USTs is \$15 per tank as set in statute.

17. Comment: Do you only need to meet one of the listed requirements to have to file a Business Plan?

Response: No, all requirements must be met. The Business Plan requirements for hazardous material release reporting, inventory, and response plans are found in the California Code of Regulations, Title 19, section 2729.1.

18. Comment: Shouldn't DTSC have found out how many businesses would be involved and other pertinent information before setting a budget and fees?

Response: When implementing any new program, there are some uncertainties associated with it. Overall, we believe businesses have been identified correctly through existing databases compiled by DTSC and Imperial County agencies. We also looked at other CUPA's similar to Imperial County to compare costs associated with running a program. In addition, we are conducting outreach to generators by sending letters with questionnaires, and plan to pursue identifying non responders. This process is similar to what other CUPAs experienced when starting their programs.

19. Comment: Couldn't the \$60,000 grant have been used to gather that data (list of affected businesses)?

Response: In creating the grant program, the Legislature intended the funds to be used to offset program costs in rural counties. The law has no provision to use these funds to do research.

20. Comment: Were the previous fees adjusted up or down (in setting the new ones)?

Response: The fees for the CUPA program are not related to the fees that Imperial County was charging. Also, see the response to comment 11.

21. Comment: If fees are based on the cost of running the program, how will fines be set?

Response: The fines or penalties will be based on the nature of the violation. The legal requirements for setting penalties are set forth in Health and Safety Code section 25404.1.1. In addition, Cal/EPA has issued guidelines that include suggestions as to how penalties should be calculated, within the bounds allowable by law, to ensure they will be assessed as equitably as possible. The guidelines are titled "Guidance for Administrative Enforcement Order and Hearing Procedures", and the penalty portion of this document is on pages 37 through 43. This document is available on the Cal/EPA website at <http://www.calepa.ca.gov/CUPA/Documents/2003/AEOGuidance.pdf>.

22. Comment: Will fines be treated as extra money, above and beyond what's needed to run the program? What happens to any such surplus? Can the money be taken by the State for other programs?

Response: Health and Safety Code section 25404.1.1, subdivision (i), states: "All administrative penalties collected from actions brought by an UPA pursuant to this section shall be paid to the UPA that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the activities of the UPA in enforcing this chapter." Thus, money collected from fines will not be treated as extra money above what is needed to run the program. The money cannot be taken by the State for other programs. It is possible that the collection of fines will cause a surplus in any one particular year. If that happens, the surplus will be added to the program's funding base for the next year, which will cause a corresponding reduction in the amount the CUPA must collect in fees.

23. Comment: What happens to any surplus?

Response: At the end of each year, the books are balanced. If there is a surplus, the money goes to reduce the fees charged to businesses the next year. At the same time, if not enough money is collected, the fees charged to businesses the next year are increased to recover that cost.

24. Comment: Does Arizona or New Mexico have CUPAs?

Response: No. Because of California's large population and geographical size, the Legislature delegated these environmental programs to local agencies and designated Cal/EPA to run the Unified Program.

25. Comment: How do we educate the regulators that small businesses have to be competitive and that we cannot compete (with other states, other countries) when we have to pay all these fees and taxes?

Response: DTSC, or any CUPA, is required to charge fees to support the Unified Program according to Health and Safety Code section 25404.5. Small businesses that believe there should be a different method of funding CUPA activities should contact their elected representatives.

All CUPA programs throughout the State are fee funded and the fees vary depending on operating costs and other sources to subsidize the program. Except as stated below, DTSC has no other fund sources to subsidize the CUPA program, so it must recover all program costs by charging fees to the regulated businesses. We are working diligently to ensure that operating costs are kept as low as possible, which in turn will keep the fees as low as possible.

Additionally, Imperial County is taking advantage of the rural county reimbursement by using \$60,000 for the program, which has resulted in lower fees.

26. Comment: People illegally dump hazardous materials on our property (ranches etc.) to avoid paying disposal fees. How can we catch these illegal dumpers?

Response: Anyone who observes illegal disposal of solid waste or hazardous waste should contact their local law enforcement agencies, the CUPA hotline at (866) 357-3990 or DTSC's hotline at (800) 69Toxics.

27. Comment: This sucks.

Response: Comment noted.

28. Comment: What is the purpose of the upcoming workshops?

Response: The workshops were to inform the public and regulated community of the proposed draft fee regulations and the fee schedules that will be used to implement the CUPA program in Imperial County.

29. Comment: If contamination is found, do we go through the public notification process?

Response: Any designated government employee who obtains information during his or her official duties, revealing the illegal or threatened illegal discharge of a hazardous waste that is likely to cause substantial injury to the public health or safety, must disclose such information within 72 hours to the local Board of Supervisors and the local Health Officer. This is required by Health and Safety Code section 25180.7, as added by Proposition 65.