



Alan C. Lloyd, Ph.D.
Agency Secretary
Cal/EPA



Department of Toxic Substances Control

5796 Corporate Avenue
Cypress, California 90630



Arnold Schwarzenegger
Governor

September 9, 2005

Ms. Ayron M. Schoneman
Executive Director
The Coalition of Labor, Agriculture & Business (COLAB)
1000 Broadway
El Centro, California 92243

Dear Ms. Schoneman:

Subject: Imperial County CUPA

Thank you for your comments of June 23, 2005, regarding the designation and implementation of the CUPA program in Imperial County by the Department of Toxic Substances Control (DTSC). We appreciate the importance of this program to your members and welcome your input. By holding several public workshops on this new program, we had hoped to begin the dialog with local businesses and their organizations. In your letter, you raised concerns about the proposed fee schedule presented at the workshops. As you may recall from the presentation, DTSC is required to recover all of the costs necessary to implement the program through fees from the affected businesses, subsidies from the State, and reimbursements.

Our responses to your concerns/suggestions are listed below:

Comment - Because DTSC may not have correctly identified all the businesses subject to various CUPA programs, the businesses that were identified would pay an unnecessarily high cost to fund the program while other businesses would be paying nothing towards these costs.

Response - As with the implementation of any new program, there are some uncertainties associated with it. Overall, we think businesses have been identified correctly by Imperial County and DTSC staff. However, there will 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 program gets implemented. However, we are not aware of this being a major additional cost to the businesses identified in the program initially.

Ms. Ayron M. Schoneman
September 9, 2005
Page 2

At the same time, the fees being charged to businesses are mostly based on the expected workload estimated for the businesses identified. As new businesses are identified, the overall cost of the program will increase but the fees charged to individual businesses would remain approximately the same in order to recover all costs associated with the CUPA program. In addition, businesses identified later may be subject to late fee assessments. Also, any additional moneys received above the cost of the program would be added to the program's funding base for the next year, which would cause a corresponding reduction in the amount the CUPA must collect in fees.

Concern - The fees would be much higher for Imperial than for other CUPAs that were shown in the workshop presentation. You cited the example of Cal/ARP fees for San Diego and Riverside being one seventh of the expected fee charged in Imperial County, which puts Imperial County at a competitive disadvantage with businesses in neighboring CUPAs.

Response - 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, according to Health and Safety Code 25404.5(a)(2)(A). Costs to other CUPAs may be more or less than those associated with Imperial County. Since Riverside and San Diego are run by local agencies, they may have other revenue sources that can be used to offset CUPA costs. DTSC has no other fund sources available to subsidize the CUPA program, except the subsidy from the Rural CUPA Reimbursement Account that is already being used in full.

Concern - The flat fee is unfair because it does not distribute the cost based on the amount of oversight or resources needed to regulate the businesses.

Response - In the draft fee schedule presented at the workshops, the flat fee was distributed equally across all businesses because it is related to the overhead cost of the program. This overhead 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.

Again, thank you for your comments and your offer to provide assistance in ensuring that the CUPA program is successful for both the department and the community. If you

Ms. Ayron M. Schoneman
September 9, 2005
Page 3

have any questions, please contact me at (714) 484-5350 or Juan Jimenez of my staff at (858) 637-5533 or by email ysanchez@dtsc.ca.gov or jjimene1@dtsc.ca.gov.

Sincerely,

//Original signed by//

Yvonne Sanchez
CUPA Manager

cc: Kim Wilhelm, Chief
Statewide Compliance Division
Hazardous Waste Management Program
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

Peggy Harris, Chief
Regulatory and Program Development Division
Hazardous Waste Management Program
Department of Toxic Substances Control
1001 I Street
Sacramento, California 95814

Ms. Ayrton M. Schoneman
September 9, 2005
Page 4

bcc: SCD – Charlene Williams, Chuck McLaughlin
HWMP – Sherri Lehman, Sonia Low, Gary Murchison, Mary Wilson,
Juan M. Jimenez
OLC – Dennis Mahoney
Administrative Services – Harriet Kiyon, Jo Nelson
Ca/EPA – Jim Bohon