

# California State Auditor

B U R E A U O F S T A T E A U D I T S

## Department of Toxic Substances Control:

*The Generator Fee Structure Is Unfair,  
Recycling Efforts Require Improvement,  
and State and Local Agencies Need to  
Fully Implement the Unified Program*



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# SUMMARY

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## Audit Highlights . . .

*Our review of the Department of Toxic Substances Control (department) revealed that:*

- The generator fee structure is not equitable. As a result, some businesses pay a disproportionate share of the fees for regulation compared to the waste they generate.*
  - Laws intended to encourage recycling have limited impact on a business's decision to recycle or not.*
  - The Unified Program appears to be meeting most goals and is not duplicating services the State provides.*
  - State agencies are not meeting their oversight responsibilities in the 15 counties without CUPA certification.*
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## RESULTS IN BRIEF

Several state agencies share the responsibility for hazardous waste management in California. However, the Department of Toxic Substances Control (department) is the lead agency for protecting the public and the environment from harmful exposure to hazardous substances. To carry out its mission, the department regulates hazardous waste management activities, oversees cleanup at contaminated sites, encourages pollution prevention, and provides regulatory assistance and public education. Our review of hazardous waste management focused on the generator fee structure and the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program (Unified Program), which consolidates and coordinates six programs for regulating hazardous waste and hazardous materials.

Our review disclosed that the generator fees, which are set in statute, are not equitable and place little pressure on generators of hazardous waste (generators) to reduce the amount of waste they produce. Furthermore, some of these businesses pay a disproportionate share of the fees used to support regulation of hazardous waste when compared to their share of the waste generated in the State. Moreover, laws intended to encourage recycling have limited impact on a business's decision to either recycle or dispose of the waste it produces. Finally, the department has exerted minimal effort to encourage recycling in the State and to penalize businesses that do not recycle waste that should be recycled.

On the other hand, the recently implemented Unified Program appears to be meeting some goals while not duplicating services the State provides in managing the hazardous waste program. Specifically, the Certified Unified Program Agencies (CUPAs) do provide some coordination and consolidation of efforts. However, not all CUPAs furnish all six required program elements, and 15 of the 58 counties in the State have not attained CUPA certification. Furthermore, state agencies responsible for overseeing certain regulatory programs are not assuring that all program elements are implemented in counties that do not have CUPAs. As a result, the State cannot assure the public that

businesses that generate, treat, or store hazardous materials and hazardous waste comply with regulatory requirements in locales without CUPAs.

## **RECOMMENDATIONS**

The Legislature should consider modifying the generator fee structure to ensure that the fees generators pay to support the hazardous waste program are fair and reasonable to all levels of hazardous waste generators.

The Legislature should consider modifying the Health and Safety Code to allow the Secretary for the California Environmental Protection Agency (CalEPA) to impose penalties on those CUPAs that do not collect or remit the state service charge.

To ensure that all counties implement the Unified Program, the CalEPA should continue to work with the counties that do not yet have CUPAs to assist each in attaining CUPA certification. Additionally, the CalEPA should ensure that it completes the triennial evaluations of CUPAs and promptly issues the final reports.

To meet its statutory responsibilities to encourage recycling, the department should take the following steps:

- Complete and update annually the List of Recyclable Hazardous Wastes.
- Develop a reporting system that provides the information necessary to identify recyclable hazardous waste and allows the department to identify generators that dispose of recyclable hazardous waste.
- Implement the enforcement provisions of the law that authorize the department to penalize generators that fail to recycle hazardous waste that the department has determined to be recyclable.
- Increase its efforts to promote recycling.

To maximize the effectiveness and efficiency in managing hazardous waste through the Unified Program, the CalEPA should confirm that each CUPA implements all Unified Program elements.

To maximize the amount of funds available for oversight of the Unified Program, the CalEPA and the department should make certain that CUPAs collect and promptly remit to the department the total state service charge amounts due each fiscal quarter.

To confirm that regulated businesses in counties not currently participating in the Unified Program comply with hazardous materials and waste regulation, the department should conduct routine inspections of hazardous waste generators and on-site treatment facilities in each county without a CUPA. In addition, the Office of Emergency Services and the State Water Resources Control Board should monitor their respective local programs in the counties without CUPAs to ensure that the programs are consistently implemented and enforcement standards are consistently applied.

To ensure oversight of fire code provisions relating to hazardous materials and hazardous waste, the State Fire Marshal should fulfill its responsibilities in the Unified Program as required by statute.

## **AGENCY COMMENTS**

The department generally agrees with conclusions and recommendations reached in the report. Specifically, the department agrees with our recommendation that the list of recyclable hazardous waste should be reviewed periodically and revised when necessary, however, the department believes it is neither necessary nor practical to update the list annually. In addition, the department expresses concern that our conclusion on its efforts to educate the business community about recycling opportunities and other technologies creates an impression far worse than the facts. Further, the CalEPA and the department state that although they have been working with counties that do not have CUPAs it has not been practical or feasible for these counties to attain certification. The CalEPA and the department also believe that they do not have authority to achieve a Unified Program in all areas of the State. Finally, the CalEPA and the department acknowledge problems with collection of the service charge from CUPAs and recognize that hazardous waste generators and on-site treatment facilities in counties without a CUPA need to be inspected.

The Water Board disagrees with our finding and the recommendation related to its oversight of the Underground Storage Tanks program citing a lack of authority. However, the Water Board also states that through authority granted to the CalEPA under the Unified Program, the Water Board has increased its capability to ensure the Underground Storage Tanks program is consistently implemented and enforced in both CUPAs and counties without CUPAs.

The OES states that it has assigned emergency services coordinators whose responsibilities include coordination of hazardous material programs with local government in every county in the State. Further, the OES states that it is in the process of surveying all CUPAs and counties without CUPAs to determine the level of implementation and compliance with the California Accidental Release Prevention program. In addition, the OES stated that it currently participates in formal evaluations of CUPAs and plans to participate in evaluations of programs in counties that do not have CUPAs. These evaluations will begin in September 1999. ■



# INTRODUCTION

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## BACKGROUND

The Secretary for the California Environmental Protection Agency (CalEPA), a member of the governor’s Cabinet, manages the State’s environmental protection programs, and is responsible for overseeing operations of the Department of Toxic Substances Control (department). The department’s mission is to protect California’s public health and its environment by regulating hazardous waste management activities, monitoring cleanup activities at contaminated sites, encouraging pollution prevention, and providing regulatory assistance. The department carries out many of these responsibilities by enforcing the State’s laws for hazardous waste control, issuing permits to hazardous waste facilities, and conducting enforcement activities related to facilities handling hazardous waste.

The Health and Safety Code defines hazardous waste as a waste, or combination of wastes, which because of their nature (quantity; concentration; or physical, chemical, or infectious characteristics) may cause injury or death. More specifically, hazardous waste is waste posing a substantial present or potential danger to the public or environment when responsible entities improperly treat, store, transport, or dispose of this material. For example, a dry cleaner and a photography lab generate hazardous waste. A dry cleaner generates halogenated solvents from its cleaning process, and a photography lab’s procedures generate photochemical and photo-processing waste.

## MULTIPLE STATE AGENCIES SHARE THE RESPONSIBILITY FOR HAZARDOUS WASTE MANAGEMENT

Not only is the department accountable for hazardous waste management in California, but the CalEPA, the Office of Emergency Services (OES), the State Fire Marshal (Fire Marshal), and the State Water Resources Control Board (Water Board) also have responsibilities over certain areas of hazardous materials and hazardous waste management at state and local levels. Furthermore, the State has given local governments a role in the oversight and inspections of businesses in their respective jurisdictions.

The department's hazardous waste management program regulates hazardous waste through its issuing of permits and compliance assurance and oversight activities. As the following diagram shows, three department divisions perform these program activities.

Legislation enacted in 1993 required the CalEPA to establish the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program

(Unified Program) by January 1, 1996. The Unified Program is designed to deliver effectively a wide range of environmental services at the local level. The Unified Program is a state and local effort to consolidate and make consistent six existing programs that regulate hazardous waste management, including the inspection of 84,700 businesses in the State. The six programs are: Hazardous Waste Generators and Hazardous Waste On-Site Treatment; Underground Storage Tanks; Hazardous Materials Release Response Plans and Inventory; California Accidental Release Preven-

Activities Performed By Divisions Within the Hazardous Waste Management Program		
State Regulatory Programs Division	Permitting Division	Statewide Compliance Division
<ul style="list-style-type: none"> <li>• Develops statewide regulations, policies, and procedures</li> <li>• Promotes and encourages hazardous waste recycling</li> <li>• Oversees the Unified Program, a consolidation of six environmental programs at the local level</li> </ul>	<ul style="list-style-type: none"> <li>• Conducts reviews of full and standardized permit applications for treating, storing, or disposing of hazardous waste off-site</li> <li>• Assesses hazardous waste site closure and post-closure plans</li> <li>• Evaluates corrective action investigation reports, implementation plans, and corrective action orders for cleanup of soil or groundwater contamination</li> </ul>	<ul style="list-style-type: none"> <li>• Ensures that full and standardized permit facilities comply with hazardous waste permitting requirements</li> <li>• Responds to complaints and coordinates local agencies concerning the mishandling of hazardous waste</li> <li>• Conducts surveillance and enforcement activities related to hazardous waste facilities that have permits</li> </ul>

tion; Above-Ground Storage Tank Spill Prevention Control and Countermeasure Plan; and Uniform Fire Code Hazardous Materials Management Plans and the Hazardous Materials Inventory Statement.

To date, the CalEPA has certified 69 local agencies in 43 counties as Certified Unified Program Agencies (CUPAs). The CUPAs' responsibilities include reviewing management plans and inspecting sites of businesses that store, generate, or treat hazardous waste. The department estimates that 95 percent of California businesses are now under the CUPAs' jurisdiction, while the department retains general administrative and oversight responsibilities for CUPAs.

In addition to the functions that the CUPAs perform, the department, the OES, the Fire Marshal, and the Water Board provide administrative oversight of the local programs relating to their specific areas of responsibility. For example, the department oversees the management of hazardous waste generation and on-site treatment, and the OES monitors the Accidental Release Prevention and Hazardous Materials Release Response programs. The later two programs are intended to prevent or mitigate accidental releases of substances that potentially pose the greatest risk of immediate harm to the public and the environment. The Fire Marshal oversees local fire code enforcement, while the Water Board monitors underground storage tanks.

The Board of Equalization (board) administers various taxes and fees that provide revenue to the State as well as essential funding for local governments in the State. In cooperation with the department, the board administers five hazardous waste fees: activity fees, disposal fees, environmental fees, facility fees, and generator fees. The board has an ongoing interagency agreement with the department so that the board can collect these hazardous waste fees.

## **THE FEE SYSTEM HAS EVOLVED OVER THE PAST SEVERAL YEARS**

Since 1980, numerous law changes have affected who pays hazardous waste fees and how much the fees cost, and the changes have also introduced new fees to support the department's hazardous waste management program. Without creating a comprehensive plan for relating funding sources to activities funded, the State added to and modified hazardous waste fees throughout the 1980s and 1990s. By 1995, hazardous waste management funding in California had evolved into a complex array of 31 different fees.

In accordance with Chapter 638, Statutes of 1995, the CalEPA convened the Task Force on Fee Reform (task force) to review the existing structure for hazardous waste fees and to recommend a new fee system for the department's programs. The task force consisted of representatives from the Legislature, businesses that pay hazardous waste fees, environmental groups, and state employees.

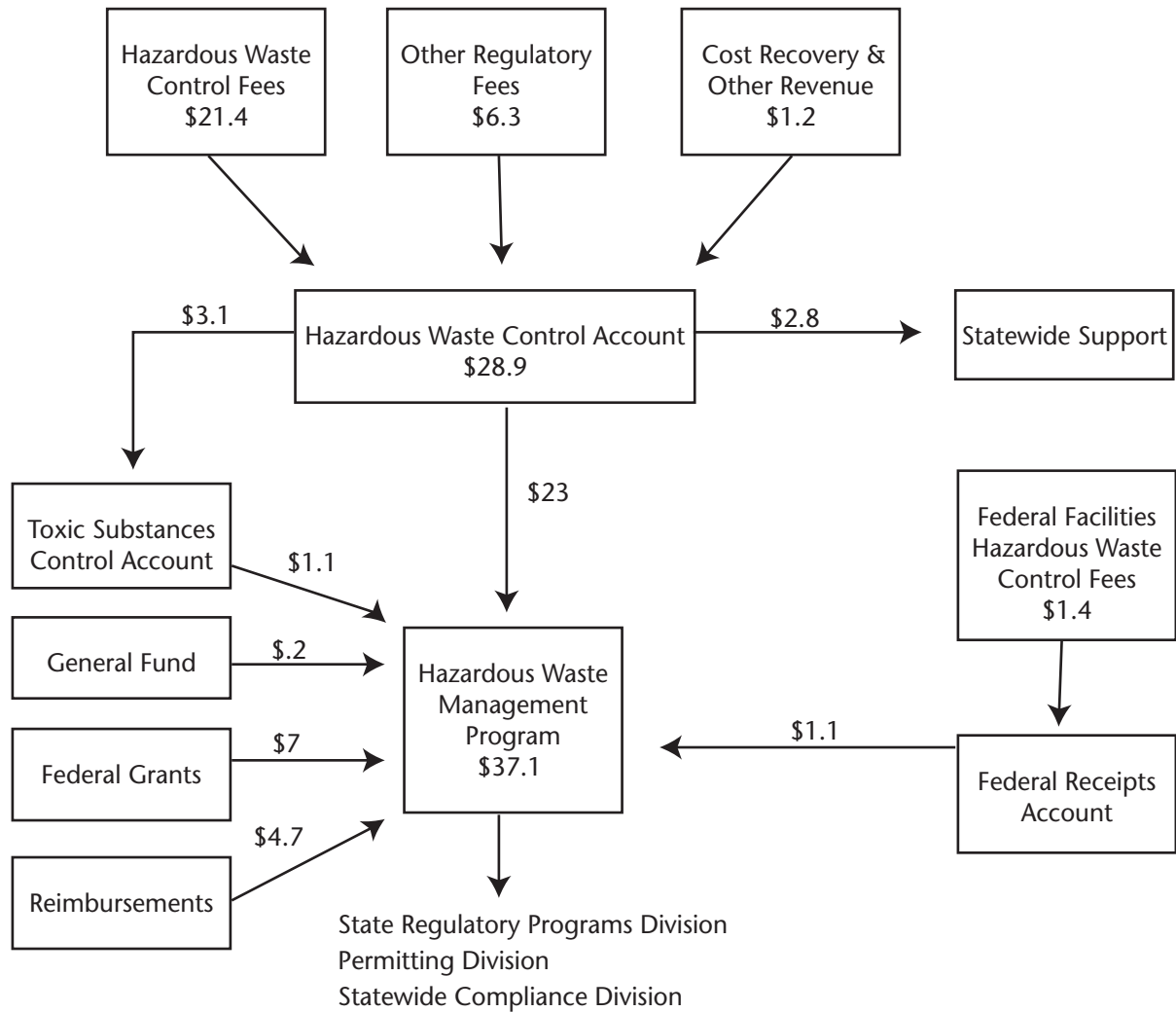
The task force identified many problems with the fee system, including its complexity. However, the task force also found that waste fees from industry appropriately fund most hazardous waste regulatory programs. In addition, the task force recommended that the Legislature should reduce some fees and eliminate others. Moreover, the task force recommended that the Site Mitigation Program, a department program for overseeing the clean up of hazardous waste sites, receive funding from broad-based fees or from the parties responsible for the contaminated sites rather than from waste industry fees.

With the passage of Chapter 870, Statutes of 1997, known as the Environmental Cleanup and Fee Reform Act of 1997 (act), the Legislature adopted many of the task force's recommendations. The act eliminated the hazardous waste industry fees as a source of funding for the Site Mitigation Program. The act also replaced the fees with a broad-based environmental fee assessed on all corporations with 50 or more employees and also with cost recoveries from parties responsible for site cleanup.

Businesses that generate, dispose of, treat, or store hazardous waste pay fees supporting the department's management and oversight of hazardous waste in the State. These hazardous waste fees, which the department estimated would generate \$21.4 million for fiscal year 1998-99, are the Hazardous Waste Control Account's main source of revenue. Other revenue sources include regulatory fees for processing required identification numbers and for shipping documents. Further, the Hazardous Waste Control Account is the Hazardous Waste Management Program's primary source of funding. The department estimated that expenditures for fiscal year 1998-99 for the Hazardous Waste Management Program would reach \$37.1 million, and the Hazardous Waste Control Account would pay for \$23 million of the total. Additionally, federal grants will fund \$7 million in program expenditures. Figure 1 displays the sources and uses of funds for the Hazardous Waste Management Program.

**FIGURE 1**

**Hazardous Waste Management Program Sources and  
Uses of Funds for Fiscal Year 1998-99  
(Dollars in Millions)**



**SCOPE AND METHODOLOGY**

Chapter 880, Statutes of 1998, requires the Bureau of State Audits (bureau) to evaluate the current generator fee structure prescribed in Section 25205.5 of the Health and Safety Code and the hazardous waste fees charged by local CUPAs pursuant to Section 25404.5 of the Health and Safety Code.

In addition, the statute requires the bureau to determine what services and benefits the department and the CUPAs provide to generators of hazardous waste (generators) and to the public for the fees the department and the CUPAs charge as well as what other activities, if any, the fees support. Furthermore, the legislation directs the bureau to determine if the department and the CUPAs are charging generators for duplicative or similar services and to evaluate and recommend ways in which the provision of services and benefits to generators and the public can be more economical and equitable. Finally, the legislation states that the bureau must evaluate the generator fees that are due and payable to the State and compare them to actual revenues collected.

To determine what services and benefits the department provides to generators and the public, we reviewed the responsibilities and activities of the three divisions under the Hazardous Waste Management Program as well as the costs related to hazardous waste management in the State. Also, we reviewed the sources and uses of funds in the Hazardous Waste Control Account.

To ascertain what services and benefits the CUPAs provide to generators and the public, we surveyed the CUPAs to learn which elements of the Unified Program they have implemented and what fees they charge to businesses under the Unified Program. In addition, we surveyed those counties that do not have CUPAs to determine what elements of the Unified Program these counties administer within their jurisdictions.

To assess whether generators pay fees for duplicative or similar services, we compared the department's responsibilities and activities for hazardous waste management to those of the CUPAs. Further, to evaluate the equity of the State's generator fee structure, we reviewed the evolution of the fee structure, reviewed the analysis and conclusions of a fee reform task force, and analyzed fee data.

To evaluate the generator fees that are due and payable to the State, we assessed the board's policies, procedures, administrative controls, and fiscal and budgetary data regarding hazardous waste fees collected on the department's behalf. We did not identify any weaknesses in the board's system for collecting these fees. The board follows the same collection procedures for these fees as it does for sales and use taxes, which are a major revenue program of the State and a major responsibility of the

board. We analyzed the revenues collected by the board for the department from fiscal years 1993-94 through 1997-98. Although we found that revenues have steadily decreased in recent years, the decrease does not reflect the board's effort to collect fees. Rather, the decline has occurred for various reasons, including the State's reduction or elimination of some fees, the decrease in waste generated and disposed of in the State, and some facilities closed. ■





# CHAPTER 1

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## ***The State Needs to Make the Generator Fee Structure Equitable to All Payers and Do More to Encourage Hazardous Waste Recycling***

### CHAPTER SUMMARY

**G**enerator fees, which are set in statute, are inequitable and do not pressure large generators of hazardous waste (generators) to reduce the amount of waste they produce. In fact, some businesses pay a disproportionate share of the fees used to support the State's regulation of hazardous waste. Further, laws intended to encourage recycling have had limited impact on businesses' decisions to dispose of rather than recycle hazardous waste. Finally, the Department of Toxic Substances Control (department) has provided little incentive for businesses to recycle because the department has not only failed to penalize generators that dispose of recyclable hazardous waste, but it has also displayed limited effort in encouraging businesses to recycle waste. Instead, the primary driving forces in a business's decision to recycle hazardous waste may be other factors, such as potential liability, cleanup costs, social pressure, and public relations.

### **THE CURRENT FEE SCHEDULE FOR DETERMINING AMOUNTS GENERATORS MUST PAY IS NEITHER FAIR NOR REASONABLE**

The current structure used to determine the fee amounts that generators must pay to help support the department's hazardous waste management program is not equitable. Specifically, the proportion of the total fees some generators pay to the program does not correspond to the proportion of waste that these generators produce. For example, businesses that produced 45 percent of the total tons generated in calendar year 1998 contributed only 20 percent of the total fees collected. Similarly, because they produce more waste, some generators pay significantly less per ton than other generators. Thus, some businesses

provide a disproportionate share of the financial support to the hazardous waste regulatory process. Moreover, because in some instances the per-ton cost decreases as the volume generated increases, little or no incentive exists for some businesses to reduce the amount of hazardous waste they generate.

As Table 1 shows, the current fee schedule established in statute has eight tiers representing ranges in the amount of tons of hazardous waste generated. Businesses that produce fewer than five tons pay no generator fees, while businesses that generate five tons or more pay a flat annual fee ranging from \$140 to \$56,160 depending upon the amount of waste they create. However, the table shows that for calendar year 1998 the proportion of total tons reported in each tier does not correspond to the proportion of revenue the generators in each respective tier paid in support of the hazardous waste program. For example, businesses that produced 2,000 or more tons of hazardous waste created 45 percent of the total tons, yet the fees these businesses paid represented only 20 percent of total revenue. In contrast, businesses producing 50 tons to 249.99 tons generated 14 percent of the total tons of hazardous waste, but they contributed 22 percent of total revenue.

**TABLE 1**

**Generators' Revenue Contributions Are Not Proportional to the Tons of Hazardous Waste the Generators Produce**

Tiers	Range of Tons	Total Tons*	Percent of Tons	Revenue†‡	Percent of Revenue
1	Less than 5	46,600	4%	-	-
2	5-24.99	84,100	6	\$ 425,500	4%
3	25-49.99	54,100	4	821,100	7
4	50-249.99	178,100	14	2,701,400	22
5	250-499.99	97,800	7	2,106,000	18
6	500-999.99	118,400	9	2,083,500	17
7	1,000-1,999.99	147,400	11	1,474,200	12
8	2,000 or more	590,300	45	2,414,900	20
<b>Totals</b>		<b>1,316,800</b>	<b>100%</b>	<b>\$12,026,600</b>	<b>100%</b>

Source: \*Department of Toxic Substances Control

†Board of Equalization

Note: ‡Revenue includes self-reported amounts; it does not include amounts received from audit and compliance billings.

In addition to causing some generators to contribute a disproportionate share of total generator fee revenue, the current fee structure creates an inequity in the per-ton rates paid by hazardous waste generators. As Table 2 shows, in most cases the largest and smallest generators pay the lowest rate per ton.

**TABLE 2**

**The Smallest and Largest Generators Generally  
Pay the Lowest Rates Per Ton**

Tiers	Range of Tons	1998 Rate	Bottom of Range	Rate Per Ton	Top of Range	Rate Per Ton
1	Less than 5 annually	-	-	-	-	-
2	5-24.99	\$ 140	5	\$28	24.99	\$ 6
3	25-49.99	1,123	25	45	49.99	22
4	50-249.99	2,808	50	56	249.99	11
5	250-499.99	14,040	250	56	499.99	28
6	500-999.99	28,080	500	56	999.99	28
7	1,000-1,999.99	42,120	1,000	42	1,999.99	21
8	2,000 or more	56,160	2,000	28	3,999.99	14

As a result of this generator fee structure, some businesses may have little or no reason to try reducing the amount of hazardous waste they generate. Moreover, businesses in the middle tiers pay a disproportionate share towards regulation of hazardous waste in the State. For example, businesses that generate either 2,000 tons or 4,000 tons of waste pay a per-ton fee ranging from \$28 to \$14 per ton. The rate per ton is even lower for a business that generates more than 4,000 tons. Meanwhile, a business that generates between 250 tons and 499.99 tons of waste pays per-ton fees ranging from \$56 per ton to \$28 per ton, which is twice the rate for the largest generators of hazardous waste.

In 1996, in response to legislation, a task force composed of legislative staff, environmental groups, state employees, and businesses that pay hazardous waste fees reviewed the existing system of fees that support site mitigation, hazardous waste management, and other department programs. In its January 1997 report, the Task Force on Fee Reform (task force) identified these same inequities in the State's fee schedule for generators. Among the options the task force considered was a suggestion to

flatten the rates so that all sizes of generators pay approximately the same amount per ton. However, subsequent fee reform legislation adopted by the Legislature did not include this proposal.

## **THE STATE HAS LIMITED INFLUENCE ON GENERATORS' DECISIONS TO DISPOSE OF RATHER THAN RECYCLE HAZARDOUS WASTE**

In addition to its fee structure that provides little or no incentive for businesses to reduce the amount of waste they generate, the State's laws intended to encourage recycling have had limited impact on businesses' decisions about whether the businesses will dispose of or recycle their waste. For example, although recently enacted legislation allows generators to receive a refund of the generator fee for recycling the hazardous waste they produce, certain provisions make it unlikely that the State will grant refunds. Similarly, although another section of the Health and Safety Code authorizes the department to penalize generators that dispose of recyclable hazardous waste, the department has never assessed this penalty. The department has also failed to fulfill its statutory responsibility to promote recycling by collecting and disseminating information regarding recycling opportunities and technologies. Instead, outside factors such as social pressure and public relations may be the primary driving forces that influence generators' decisions to recycle rather than to dispose of hazardous waste.

### **Limited Economic Incentives Exist to Encourage Generators to Recycle Rather Than Dispose of Hazardous Waste**

Beginning in January 1999, Health and Safety Code, Section 25205.5, provided the opportunity for generators shipping waste off-site for recycling to receive a full or partial refund of the generator fee. A generator must meet a number of requirements to be eligible for this refund. First, the generator must take the waste to a facility that pays a facility fee. Second, the recycled waste, when subtracted from the total waste generated, must put the generator in a lower tonnage tier. Third, the facility must not burn the waste. Since January 1999, the Board of Equalization, which collects fees on behalf of the department, notified 8,500 generators of the potential refund and approximately 1,000 submitted claims. However, it is unlikely that any refunds will be issued.

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*Likelihood that generators will receive refunds for recycling is remote.*

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Health and Safety Code, Section, 25205.5, states that refunds are paid contingent on the department's certification that sufficient funds are available to issue such refunds. The department says it does not expect to issue refunds for fiscal year 1998-99 because it has other obligations that have higher priority. For example, another section of the Health and Safety Code requires the department to establish a minimum balance of \$1 million in the Hazardous Waste Control Account to ensure that revenue shortfalls will not adversely affect all programs funded by this account. Additionally, the *1998-99 Budget Act* allows the department to transfer up to \$5 million from the Hazardous Waste Control Account to the Toxic Substances Control Account for site mitigation, which involves assessing and carrying out removal or remedial actions at sites where uncontrolled releases or potential releases of hazardous substances have occurred. Finally, the Health and Safety Code, Section 25205.9, requires the department to issue refunds to generators that paid the local generator inspection fee before the department can grant any refunds to generators that shipped waste off-site for recycling.

However, even if it considers the priorities mentioned above, the department would have money available to provide refunds. Specifically, the *1999-2000 Governor's Budget* shows that the department expects to have a fund balance of \$5.5 million at the end of fiscal year 1998-99. The fund balance is after a transfer of \$3.1 million from the Hazardous Waste Control Account to the Toxic Substances Control Account. Therefore, after deducting the \$1 million the department must reserve for revenue shortfalls and an additional \$1.9 million it could transfer to the Toxic Substances Control Account, the department still would have a fund balance of \$2.6 million that it could use to issue refunds.

Although the department may have additional expenses that would reduce the fund balance, some of these expenses are choices that the department has made, such as its transfer of funds to the Toxic Substances Control Account. Furthermore, we did not see any evidence indicating that the department included refunds in its fiscal planning. By informing generators of the possible refunds, but not including potential refunds in its fiscal planning, the State may have created a false expectation that generators will receive a partial refund of their generator fee if they ship waste off-site for recycling.

## Many Factors May Affect Whether a Generator Decides to Recycle

Even if the department carried a fund balance that would be available for refunds of generator fees, it is unlikely that the potential refund would have much influence on a business's decision about recycling because the business must consider many other factors. For instance, generators must consider the location of recycling and disposal facilities, related transportation costs, storage costs, demand for the waste, disposal facility charges, and insurance. In addition, in some cases generators that ship waste off-site will have to pay the recycler to accept the waste; in other instances the recycler may pay the generator for the waste depending on whether the recycler can use the waste for some other purpose.

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*Although there are exemptions from state fees for on-site recycling, savings may be insufficient to warrant investment in needed equipment.*

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Similarly, although there are exemptions from state fees provided for businesses recycling on-site, the savings may not be sufficient to warrant the investment in recycling equipment and related operating and storage costs. For instance, a medical laboratory prepared a cost-benefit analysis for 1996 to determine whether it was more cost-effective to recycle or dispose of its waste. The lab generates recyclable hazardous waste consisting of xylene and alcohol, which are chemicals used in the examination of tissue specimens. The lab included in its analysis the cost to operate recycling equipment and compared those costs to the amounts it would save in disposal costs as well as the cost to purchase new chemicals. However, the lab did not include in its analysis the fees it would need to pay to the department. As Table 3 shows, the lab, which generated only 1.7 tons of waste, determined that it was not cost-effective to recycle its waste on-site, because the lab would need to pay approximately \$2,400 more to recycle than to dispose of the waste. Moreover, the lab would not be able to recoup the cost of purchasing the recycling equipment.

Even if it had incorporated in its analysis the amounts it would have saved in departmental fees for calendar year 1996, the lab would not have changed its final decision. The lab would not pay generator fees even if it disposed of the waste because generators producing fewer than five tons are not subject to generator fees. However, if we assume it would ship waste once per month, the lab would incur \$174 in departmental fees, including a manifest fee that is \$12 per shipment, or \$144, and \$30 in total disposal fees. As this example shows, the departmental fees would only be a fraction of the additional \$2,200 cost for the lab to recycle its waste.

**TABLE 3****One Laboratory's Potential Cost for Recycling 1.7 Tons of Hazardous Waste in 1996**

Expenses	Disposal	Recycling On-Site	Difference
Operating new equipment	\$ 0	\$6,900	\$6,900
Purchasing new chemicals	3,350	0	(3,350)
Disposal	1,174	0	(1,174)
Subtotals	4,524	6,900	2,376
Departmental costs	174	0	(174)
<b>Total expenses</b>	<b>\$4,698</b>	<b>\$6,900</b>	<b>\$2,202</b>

Note: The lab also considered purchasing equipment costing \$17,800.

Since 1996, the Legislature has reduced fees the department charges; therefore, the departmental fees effective in 1998 would have had less influence on a business's decision about whether it should recycle hazardous waste. Specifically, as of July 1, 1998, the manifest fee was reduced to \$7.50 per shipment for generators disposing of waste. Also, the disposal fee for 1.7 tons of waste in calendar year 1998 was only \$17. Without economic incentives for businesses to recycle, social pressure and public relations may be the primary reasons that some businesses decide to recycle rather than to dispose of waste.

#### **The Department Is Not Enforcing Existing Law to Penalize Businesses That Dispose of Recyclable Hazardous Waste**

Not only does one code section supply little incentive for generators to recycle, but the department has also shown little effort to enforce another code section that penalizes generators that do not recycle certain types of waste. For example, current law gives the department the authority to double the disposal fees for businesses that dispose of recyclable hazardous waste, which is hazardous material that can be reused or reclaimed. However, because the department cannot identify recyclable waste, it has never assessed this penalty.

The department says its reporting system cannot adequately track disposal of recyclable hazardous waste; therefore, it cannot penalize businesses that do not recycle. The current system consists of data obtained from manifests that contain information from each business transporting hazardous waste, including the types and quantities of wastes transported as well as the related waste classifications. Because there are ambiguities among the waste classifications and also inconsistent or incorrect uses of the classifications by generators, the department has not used manifest data to identify recyclable hazardous wastes of which businesses disposed. Consequently, the department has neither identified nor imposed a penalty on generators that dispose of recyclable hazardous waste.

### **The Department's Efforts to Educate the Business Community About Recycling Opportunities Are Minimal**

The Health and Safety Code requires the department to identify wastes that are economically and technologically feasible to recycle and to make a list of those wastes available to the public. However, with the exception of a minor revision in 1985, the department has not amended the list since its initial adoption in 1979. The department's efforts to fulfill the requirement to educate the business community regarding recycling opportunities and technologies are minimal. As a result, businesses may be disposing of waste that they could otherwise recycle. In contrast, the department's efforts to encourage businesses to minimize the amounts of waste they produce appears adequate.

The department educated the business community in the early 1990s by collecting and disseminating information on recycling opportunities and technologies; however, in recent years the department has reduced its required efforts in this area. For example, the department has not updated since 1994 its Directory of Industrial Recyclers, which is a directory of known and permitted commercial hazardous waste recyclers in the State. Meanwhile, the department has shifted its recycling work from the dissemination of information to providing technical assistance and support services. Although it provides these services through its participation in the Environmental Recycling Hotline and by responding to letters from businesses, the department's overall efforts to promote recycling have diminished in recent years. According to the department, reduced funding in the last few years has made it difficult to promote recycling fully.

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*The department has not updated its list of recyclable hazardous waste since 1985.*

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Through the enforcement of source-reduction laws, the department does encourage businesses to reduce the total amount of waste they generate. Source-reduction is preventing the generation of hazardous waste at the source, or point of generation. Current law requires generators to submit a plan addressing their source-reduction opportunities and efforts. The department reviews the plans for compliance but mainly identifies successful source-reduction technologies and strategies that similar businesses can employ. The department uses this information from the plans to issue public reports that encourage waste minimization. Additionally, the department conducts workshops and presentations regarding waste minimization regulation and practices. Overall, the department's efforts to encourage businesses to reduce the amounts of waste they produce exceed its efforts to promote recycling of hazardous waste.

## RECOMMENDATIONS

The Legislature should consider modifying the generator fee structure to ensure that the fees are fair and reasonable for all hazardous waste generators, regardless of the amount of waste the generators produce.

To meet its statutory responsibilities and to encourage recycling, the department should take the following actions:

- Complete and update annually the List of Recyclable Hazardous Wastes.
- Develop a reporting system that provides the department with the information necessary to identify recyclable hazardous waste as well as generators that dispose of recyclable hazardous waste.
- Implement the enforcement provisions of the law that authorize the department to penalize generators that fail to recycle hazardous waste that it has determined is recyclable.
- Increase its efforts to promote recycling of hazardous waste. ■



# CHAPTER 2

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## ***Although Local Programs Do Not Duplicate State Activities, Some Aspects of the Unified Program Are Not Being Met***

### CHAPTER SUMMARY

**S**ervices provided by local agencies, known as Certified Unified Program Agencies (CUPAs), to implement the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program (Unified Program), do not duplicate the functions state agencies perform as part of the Unified Program. However, even though state and local program activities do not overlap, some CUPAs do not implement all aspects of the Unified Program. Furthermore, 15 counties are not participating in the Unified Program. Finally, state agencies, responsible for overseeing certain regulatory program elements, are not ensuring that the elements are implemented in those counties without a CUPA. As a result, there is less assurance that businesses that generate, treat, or store hazardous material are complying with regulatory requirements.

### BACKGROUND

Prior to 1996, more than 300 state and local agencies administered hazardous material and hazardous waste generation programs throughout California. In 1993, legislation was enacted to require the Secretary for the California Environmental Protection Agency (CalEPA) to develop and implement the Unified Program. In addition, the legislation required all counties to apply to the CalEPA to become certified as a Unified Program agency by January 1, 1996. Further, any city or local agency could also apply for certification as a Unified Program agency if it had been designated by the Office of Emergency Services (OES) as an administering agency or had responsibility for the Underground Storage Tanks program.

The Unified Program’s intent is to coordinate, consolidate, and make consistent portions of the following six hazardous materials and hazardous waste programs that, prior to 1996, were administered by both local and various state agencies:

- Hazardous Waste Generators and Hazardous Waste On-site Treatment
- Underground Storage Tanks
- Hazardous Materials Release Response Plans and Inventory
- California Accidental Release Prevention
- Above-Ground Storage Tank Spill Prevention Control and Countermeasure Plan
- Uniform Fire Code Hazardous Materials Management Plans and the Hazardous Materials Inventory Statement

To achieve this goal, the Legislature created a program that coordinates the administration, permitting, fee structure, inspections, and enforcement activities of these six programs. Local government agencies that met the requirements for becoming CUPAs were given the authority to implement the program. Besides implementing the six elements previously described, the Unified Program requires CUPAs to consolidate the on-site permit process, which allows a business to obtain all necessary permits at once instead of traveling to different agencies for all the different permits required; to coordinate the required inspections of a business instead of having multiple inspections by different agencies; and to send out a single bill that replaces the multiple billings that businesses had received from the various agencies responsible for individual programs. The state agencies that had been administering certain aspects of the programs—the Department of Toxic Substances Control (department), the OES, the State Water Resources Control Board (Water Board), and the State Fire Marshal (Fire Marshal)—retained oversight for their respective elements of the Unified Program.

CalEPA began certifying CUPAs in 1996, and by January 1997 had certified 32 CUPAs. In total, CalEPA received 97 applications; of those, 43 counties, 25 cities, and 1 joint powers authority received CUPA certification by January 1998. Although the law required all counties to apply for certification by 1996,

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*The Unified Program coordinates the administration, permitting, fee structure, inspections, and enforcement activities of six hazardous waste programs at the local level.*

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15 counties have not yet been certified and therefore have not implemented the Unified Program. We discuss these counties later in the report.

### **ALTHOUGH SERVICES THE CUPAs AND THE STATE PROVIDE DO NOT OVERLAP, SOME ASPECTS OF THE UNIFIED PROGRAM ARE NOT IN PLACE**

When we surveyed all the CUPAs, some indicated that the Unified Program results in more inspections of hazardous waste generators and on-site treatment facilities and that it has improved communication between businesses and the regulatory agencies. We noted additionally that, under the Unified Program, services the CUPAs perform do not overlap the functions the State furnishes. However, some CUPAs reported that they have not implemented all six of the mandatory program elements. As a result, although the Unified Program has improved the process of regulating hazardous materials and hazardous waste in the State, certain aspects of the program are not being enforced.

#### **Some CUPAs Have Not Implemented All Six of the Mandatory Programs Within the Unified Program**

As stated previously, the Unified Program’s goal is to reorganize regulation of hazardous materials and hazardous waste programs. By dividing the Unified Program’s responsibilities and accountability between local CUPAs and state agencies, the State could achieve its goal of improving environmental protection while decreasing program bureaucracy, duplication, and inconsistency of services.

We surveyed the 69 CUPAs to determine their progress in implementing the Unified Program. The CUPAs generally report that the Unified Program results in more inspections of hazardous waste generators and on-site treatment facilities than when those programs were the State’s responsibility. Some of the CUPAs also believe that the Unified Program improves communication between both the CUPAs and the businesses they monitor and also between the CUPAs and the state agencies responsible for overseeing these programs. For example, one CUPA stated that this increased communication has assisted it in applying more consistent program and enforcement standards to the businesses that generate, treat, store, and dispose of hazardous waste.

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*CUPAs report that the Unified Program results in more inspections of generators and on-site treatment facilities than before.*

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However, the survey also reveals that some CUPAs have not implemented all 6 programs, as the law requires. Table 4 shows that of the 67 CUPAs responding to our survey, 60 reported that they are implementing all 6 of the Unified Program elements, and 5 additional CUPAs reported that they are implementing 5 of the 6 elements. Further, all 67 CUPAs have implemented the Hazardous Materials Release Response Plans and Inventory and the Underground Storage Tanks programs. (Appendix A lists the CUPAs and the elements they reported they implement.) Because all CUPAs have not implemented all six programs, the State cannot be assured that the regulations regarding hazardous materials and waste, designed to protect public health and safety, are being enforced.

**TABLE 4**  
**Some CUPAs Have Not Implemented All Six Programs**

Program Elements Implemented	Number of CUPAs	Percent of CUPAs
6	60	89.5%
5	5	7.5
4	1	1.5
3	0	0.0
2	1	1.5
<b>Totals</b>	<b>67</b>	<b>100.0%</b>

Another concern we noted is that although CUPAs reported that they had implemented certain program elements, some did not report any hours spent for those elements. Most of these CUPAs stated in the survey that the reason they did not report hours for certain elements was that the CUPAs were unable to track individual program hours. Thus, it remains unclear whether the CUPAs are actually carrying out programs they claim to be implementing.

To attain CUPA certification, local agencies had to demonstrate that they could carry out the new authority to implement the Unified Program. Because some CUPAs cannot confirm that they are implementing all program elements, violations of hazardous waste control laws may go undetected. Moreover, there is

insufficient assurance that appropriate agencies are enforcing regulatory requirements for properly storing, treating, or disposing of hazardous waste in these jurisdictions.

In our survey, CUPAs also indicated that they could improve implementation of the Unified Program. Some CUPAs noted their lack of trained staff and need for improved data-management abilities. The draft reports of triennial evaluations that the department prepares echo the CUPAs need for improvement in these areas. State regulations require the CalEPA to evaluate the performance of each CUPA at least once every three years. The CalEPA coordinates these triennial evaluations with the department and the other state agencies with Unified Program oversight responsibilities. These triennial evaluations aim to identify areas of the Unified Program that each CUPA needs to improve. These areas include how well the CUPAs apply permitting, training, inspection, and enforcement standards, and how the CUPAs implement the single fee for the Unified Program. In addition, each CUPA receives an evaluation on the ability of its staff to ensure that regulated businesses within the CUPA's jurisdiction comply with Unified Program requirements.

Each final report that the CalEPA must approve, discusses the evaluation results, including any proposed plans for improving each CUPA's implementation of the Unified Program. In January 1998, the department conducted a pilot program using 2 CUPAs to establish procedures for conducting the evaluations. As of June 1999, the department reported that it has conducted additional triennial evaluations of 27 CUPAs. For these 29, the department has drafted 16 reports that the respective CUPAs are currently reviewing, and the department is still drafting the remaining reports. However, the CalEPA has not released a final report for any evaluations conducted thus far. Without issuing final reports, the CalEPA cannot hold the CUPAs accountable for implementing any corrective actions it recommends.

*Although evaluations of 29 CUPAs have been completed, the CalEPA has not yet issued any final reports.*

### **Services the CUPAs Provide Do Not Duplicate Services the State Furnishes**

We also reviewed the services the State and the CUPAs provide under the Unified Program to determine if any overlap or duplication exists. The CUPAs focus on ensuring that regulated businesses in their respective communities comply with state laws and regulations through inspections, the review of hazardous materials and hazardous waste management plans, and community outreach. In our survey, the CUPAs reported that,

on average, they spend 53 percent of their time performing inspections of hazardous waste generators, on-site treatment facilities, and underground storage tanks. In addition, they invest an additional 29 percent of their time evaluating hazardous materials management plans.

On the other hand, the State oversees the various programs throughout California by monitoring legislative activity, developing program standards, conducting periodic evaluations of CUPAs, and providing technical assistance and training for the CUPAs. Before the Legislature established the Unified Program, the department inspected hazardous waste generators and on-site treatment facilities. However, those responsibilities now rest with the CUPAs. Appendix B summarizes the responsibilities of the CUPAs and those of the State.

### **STATE AND LOCAL AGENCIES CHARGE FEES ONLY FOR SERVICES THEY PROVIDE**

The fees that state and local agencies charge do not overlap. The fees hazardous waste generators and on-site treatment facilities pay to the State help fund the issuing of permits and the compliance and regulatory activities related to the department's oversight of hazardous waste management. In contrast, the local fees that hazardous waste generators and treatment facilities pay to the CUPAs support the costs for inspections and reviews of local businesses' hazardous waste management plans.

The Unified Program authorizes CUPAs to set their own fees to support these services, provided the fees are reasonable and cover only the costs of implementing the Unified Program. In our survey, 42 of the CUPAs reported that their expenditures for carrying out their Unified Program responsibilities during fiscal year 1997-98 exceeded the revenues generated by the fees. Thirty-five of the 42 CUPAs funded their shortfalls by using money from their respective counties' or cities' general funds, while the remaining CUPAs funded the shortfall by using money from other programs. Conversely, 9 CUPAs indicated that revenues they received from the Unified Program during fiscal year 1997-98 exceeded expenditures. Of those CUPAs, 7 stated that they set aside the excess revenue for future Unified Program costs. However, the remaining 2 CUPAs reported that they used the excess revenue to support other county programs.

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*Forty-two CUPAs report that fees do not cover program costs.*

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CUPAs base their fees on a wide range of factors, including the weight of the hazardous waste, the number of chemicals stored, and the number of employees handling the waste. Because the CUPAs use different factors to calculate the fees they charge businesses in their respective jurisdictions, we developed two fictitious businesses—a family-owned dry cleaner and a mid-sized manufacturing plant—to compare the fees that different CUPAs charge. We then asked each CUPA in our survey to calculate how much these businesses would pay in local fees if they were located in that CUPA. Table 5 displays the results of our survey.

**TABLE 5**

**Different CUPAs Charge a Wide Range of Fees**

Range of Total Fees Charged	Family-Owned Dry Cleaners	Mid-Size Manufacturing Inc.
none	4	0
\$1 - \$249	22	3
\$250 - \$499	27	6
\$500 - \$749	13	5
\$750 - \$999	0	10
\$1,000 - \$1,499	1	23
\$1,500 - \$1,999	0	5
\$2,000 - \$2,499	0	5
\$2,500 or more	0	8
No answer	0	2
<b>Total</b>	<b>67</b>	<b>67</b>

Local fees for the family-owned dry cleaner ranged from \$40 to \$1,043. However, as Table 5 shows, the largest segment of the CUPAs would charge between \$250 and \$499, and some CUPAs would charge nothing. For the manufacturing plant that disposed of its hazardous waste, local fees ranged from \$95 to \$10,287, with the largest segment of the CUPAs charging between \$1,000 and \$1,499. Even though we cannot conclude whether the fees for a particular CUPA are reasonable, we can point out the great disparity in the fees the CUPAs would charge each business. Appendix C lists the amounts each CUPA reported it would charge for the two fictitious businesses.

## **THE DEPARTMENT DOES NOT ENSURE THAT CUPAs PROMPTLY REMIT THE STATE SERVICE CHARGE**

Each year CalEPA determines the amount that CUPAs should collect in service charges on behalf of the State. The department is responsible for receiving the service charges from the CUPAs. Although the department has indicated that the majority of CUPAs are remitting the State's service charge, the department does not properly track receipts or follow up with those CUPAs that do not remit the service charges. As a result, the amount of funds available to support state agencies' efforts to monitor implementation of the Unified Program at the local level is less than expected.

The Health and Safety Code, Section 25404.5(b), requires each CUPA to assess, collect, and remit a service charge to the State. The Unified Program requires the CUPAs to send the service charges they collect to the department within 30 days after the end of each fiscal quarter. The service charge, determined each year by CalEPA, is used to support the administrative costs that state agencies incur to oversee the various Unified Program elements. Specifically, the OES, the Fire Marshal, and the Water Board have administrative oversight for the local programs, including accidental-release prevention, fire code enforcement, and underground storage tank inspections, respectively. Within one year of CUPA certification or in the first CUPA billing cycle, whichever comes first, each CUPA must begin collecting the state service charge from each regulated business that pays local fees to that CUPA.

Although most CUPAs remit service charges they collect on behalf of the State, the department does not properly track the remittances nor promptly follow up with those CUPAs that do not submit the service charges. Specifically, the department's records show that as of February 1999, 13 CUPAs had not remitted the state service charges for fiscal year 1997-98. Four of the CUPAs just recently sent in their collections, and 2 other CUPAs informed us that they had already remitted their collections to the department. Moreover, 1 of the 2 CUPAs, the City of Los Angeles, informed us that it sent a remittance totaling \$190,000 to the department in January 1999. After we brought this to the department's attention, it determined that it included this remittance in the fiscal year 1998-99 collections rather than in those for fiscal year 1997-98.

One other CUPA indicated that it does not collect any fees in its local jurisdiction; therefore, as allowed by law, it does not collect the state service charge. In contrast, we identified six CUPAs that had not remitted the service charges even though they did collect fees to support activities they perform under the Unified Program. Although CalEPA sent letters to these six CUPAs, instructing them to remit the service charges, the department could not tell us the total amount that the six CUPAs should have collected and sent to the State.

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*Because some CUPAs have not collected and remitted the State's service charge, oversight activities by certain state agencies may be affected.*

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Because some CUPAs are not collecting and remitting the service charge, funds to support the efforts of the state agencies responsible for monitoring local agencies' administration of the Unified Program are lower than expected. Consequently, oversight activities by these state agencies may be affected adversely. For example, the OES stated that because it lacks service charge funds, the OES redirected funds from its other programs to support the California Accidental Release Prevention program, and other state emergency service programs may now receive fewer funds.

Currently, the State has no statutory penalties to levy on CUPAs that do not collect or remit the state service charge to the department. In addition to sending a letter to the CUPAs instructing them to remit the service charge, the CalEPA stated that it is exploring possible legal and administrative actions. In the meantime, businesses that currently pay the service charge to CUPAs that do collect the charge are subsidizing the State's oversight of the Unified Program for businesses in CUPAs that do not collect it.

### **THE FIRE MARSHAL HAS NOT FULFILLED ITS RESPONSIBILITIES UNDER THE UNIFIED PROGRAM**

While the other state agencies are participating in Unified Program activities, the Fire Marshal has not participated in the Unified Program since fiscal year 1996-97. Health and Safety Code, Section 25404 (c)(6), requires the Fire Marshal to participate in the Unified Program by providing administrative oversight of the Uniform Fire Code Hazardous Materials Management Plans and the Hazardous Materials Inventory Statement program. However, the Fire Marshal stated it could not participate because it did not receive needed funds from the Unified Program Account that contains the service charge the CUPAs collect on the State's behalf. The service charge fees

CUPAs collect and remit to the State are available to state agencies with Unified Program oversight responsibilities. Each of these state agencies may withdraw amounts from the account based on the agency's program expenditures and up to the limit of each agency's appropriation.

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*Although \$200,000 was available to support its oversight activities, the State Fire Marshal has not participated in the Unified Program.*

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The Fire Marshal informed the department that because it had not received funding in fiscal year 1997-98, it would not participate in the Unified Program until it received funding. However, the department has indicated that during fiscal year 1997-98, more than \$200,000 was available to the Fire Marshal. In fact, the department sent a letter, dated November 20, 1997, informing the Fire Marshal that funds would be available in fiscal year 1997-98. The Fire Marshal nonetheless contends it was unaware these funds were available. Recently, the Fire Marshal indicated that it intends to participate in the Unified Program during fiscal year 1999-2000.

Because it has not participated in the Unified Program, the Fire Marshal cannot assure the public that it is supplying adequate oversight of Fire Code provisions dealing with collection of information for the design and construction of buildings that handle or store hazardous materials and with emergency response planning by local fire departments.

### **SOME COUNTIES DO NOT HAVE CUPAs AND STATE AGENCIES ARE NOT ENFORCING CERTAIN ELEMENTS OF THE UNIFIED PROGRAM IN THOSE COUNTIES**

Fifteen counties do not have a CUPA to implement the Unified Program. In the absence of a CUPA within a given county, the department and local agencies implement various elements of the Unified Program for the county. In addition, the OES and the Water Board oversee local agencies that implement their respective elements of the Unified Program in the 15 counties. However, the department is not fulfilling its responsibilities to the 15 counties, and the OES and the Water Board are not adequately reviewing local agencies in the counties without CUPAs to ensure that these counties consistently implement and enforce other aspects of the program. As a result, the State cannot ensure that businesses that generate, treat, store, or dispose of hazardous waste in these counties comply with state regulations designed to protect public health and safety. Furthermore, although the CalEPA estimates that these counties contain only 5 percent of the regulated businesses in California, the State



agencies still need to ensure compliance with hazardous materials and hazardous waste control laws.

Even though the Health and Safety Code, Section 25404.1, required all counties to apply to become CUPAs by January 1, 1996, 10 counties did not apply for certification, and 5 other counties' applications were rejected because their applications were incomplete or did not meet the certification requirements. The CalEPA, charged with developing and implementing the Unified Program, stated that having every county included in the Unified Program continues to be

a program goal. However, since January 1998, the CalEPA has certified no additional counties to become CUPAs. The CalEPA stated that 1 county recently submitted an application for certification that is currently being reviewed.

**The OES and the Water Board Do Not Ensure That Certain Local Programs Are Consistently Implemented and Enforced**

We surveyed the 15 counties that do not have a CUPA and found that all 15 carry out the Underground Storage Tank program. However, only 12 implement the Hazardous Materials Release Response Plans and Inventory program as required by state law. In addition, 9 counties report that they are executing the California Accidental Release Prevention program. The California Accidental Release Prevention program is only required if there is a significant likelihood that the use of certain hazardous materials pose a risk of an accidental release. While the OES and the Water Board monitor and review each of these

three programs in the CUPAs, these state agencies are not evaluating the implementation of these programs by local agencies in the 15 counties that do not have CUPAs.

Both the Water Board and the OES report that they provide technical assistance and training to the 15 counties. However, the Water Board stated that between 1994 and 1998 it reviewed only informally the local programs in the counties without CUPAs, and the OES indicated that it does not visit the local agencies that implement its programs. Without sufficient monitoring of these programs, neither the Water Board nor the OES can assure the public that counties consistently carry out and enforce regulations designed to protect the State from hazardous leaks and releases.

### **The Department Does Not Regulate Businesses in Counties That Have Not Implemented the Unified Program**

According to the department, none of the counties without CUPAs has an inspection program for local hazardous waste generators. Even though a county may respond to emergency hazardous waste spills, the department is responsible for inspecting on-site treatment facilities. However, according to the department, for counties without CUPAs, it inspects on-site treatment facilities only in response to local complaints. The department stated that it maintains this practice because it lacks sufficient resources to carry out its oversight of the Unified Program and also continue its responsibilities in the non-CUPA counties.

In 1997, the department conducted a study of hazardous waste generators. The study compared 6 counties that had agreements with the department authorizing local agencies to conduct hazardous waste generator inspection programs with 10 counties that had no such agreements and therefore had no local hazardous waste generator inspection program. The department found that in counties with local hazardous waste generator inspection programs, 93 percent of hazardous waste generators complied with hazardous waste control laws. For counties without local inspection programs, only 70 percent of the generators complied with the law. The department concluded that the data demonstrates a need for the department to increase generator inspection activities in counties that do not have CUPAs. However, to date, this effort has not occurred.

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*Although a study indicates that inspections lead to increased compliance, the department is not fulfilling its responsibilities in counties without CUPAs.*

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According to the department, it is not performing routine inspections or enforcement activities of hazardous waste generators or on-site treatment facilities in counties without CUPAs because it lacks the resources to do so. As a result, in counties without CUPAs, no adequate programs exist to identify, inspect, and enforce corrective action for hazardous waste generators and for on-site treatment facilities to ensure these entities' compliance with laws and regulations.

### **THE CalEPA IS CURRENTLY WORKING WITH THE 15 COUNTIES WITHOUT CUPAs TO ESTABLISH A REGIONAL CUPA**

Because 15 counties do not have a CUPA to carry out the Unified Program, the CalEPA has authorized local agencies within these counties to implement certain Unified Program elements. On June 30, 1999, the CalEPA's authorization expires. The CalEPA has proposed that, at that time, the various state agencies overseeing the Unified Program elements assume responsibility for executing those elements in counties that are not actively moving toward CUPA certification. In effect, the counties would no longer have local control of these elements. Rather, state agencies would be responsible for implementing their respective program elements.

The CalEPA also stated that it is considering possible alternatives to the original certification process in order to assist the 15 counties in becoming CUPAs. These alternatives include a proposal by the Environmental Services Joint Powers Authority (ESJPA) of the Regional Council of Rural Counties that would create a regional CUPA with interested ESJPA member-counties acting as participating agencies. This alternative would allow the counties to continue to carry out Unified Program elements already in place while assigning to the regional CUPA the responsibility for the remaining Unified Program elements, particularly the hazardous waste generator and on-site treatment inspection elements. At least 4 member-counties are interested in this proposal, and it is possible this proposal could include as many as 12 of the 15 counties.

However, even if the CalEPA accepts this proposal, three counties may still be without a CUPA to implement the Unified Program. As a result, the state agencies—the OES, the Water Board, and the department—would be responsible for carrying out the hazardous waste management programs in the three

counties. Therefore, the state agencies need to focus on ensuring that the counties without CUPAs consistently implement and enforce the programs, and the CalEPA must continue to explore methods to achieve implementation of the Unified Program in every county.

## RECOMMENDATIONS

The Legislature should consider modifying the Health and Safety Code to allow the CalEPA to impose penalties on those CUPAs that do not collect or remit the state service charge.

To ensure that state and local agencies implement the Unified Program throughout California, the CalEPA should continue to work with the counties that do not have CUPAs to assist each in attaining CUPA certification. Additionally, the CalEPA should ensure that it completes the triennial evaluations of CUPAs and promptly issues the final reports.

To maximize the effectiveness and efficiency in managing hazardous waste through the Unified Program, the CalEPA should confirm that each CUPA implements all Unified Program elements.

To maximize the amount of funds available for oversight of the Unified Program, the CalEPA and the department should make certain that CUPAs collect and promptly remit to the department the total state service charge amounts due each fiscal quarter.

To ensure that hazardous waste generators and on-site treatment facilities in counties not currently participating in the Unified Program comply with hazardous materials and hazardous waste regulation, the department should conduct routine inspections of these businesses in those counties. In addition, the OES and the Water Board should monitor their respective local programs in the counties without CUPAs to ensure consistent implementation and enforcement of program elements.

To ensure oversight of Fire Code provisions relating to hazardous materials and hazardous waste, the Fire Marshal should fulfill its responsibilities in the Unified Program as required by statute. ■



We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



KURT R. SJOBERG  
State Auditor

Date: June 30, 1999

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# APPENDIX A

## List of Certified Unified Program Agencies and the Elements They Implement

CUPA	Haz Waste Gen/Treat <sup>1</sup>	HMRRP <sup>2</sup>	UST <sup>3</sup>	AST <sup>4</sup>	HMMP <sup>5</sup>	CalARP <sup>6</sup>	Comments
Alameda	●	●	●		●	●	
Alpine	●	●	●	●	●	●	
Amador		●	●		●	●	
Bakersfield, City	●	●	●	●	●	●	
Berkeley, City	●	●	●	●	●	●	
Contra Costa	●	●	●	●	●	●	
Del Norte	●	●	●	●	●	●	
El Dorado	●	●	●	●	●	●	
El Segundo, City	●	●	●	●	●	●	
Fremont, City	●	●	●	●	●	●	
Fresno, City	●	●	●	●	●	●	
Gilroy, City	●	●	●	●	●		
Glendale, City	●	●	●	●	●	●	
Hayward, City	●	●	●	●	●	●	
Healdsburg/ Sebastopol, Cities of	●	●	●	●	●	●	
Hesperia, City	●	●	●	●	●	●	
Humboldt	●	●	●	●	●	●	
Kern	●	●	●	●	●	●	
Kings	●	●	●	●	●	●	
Lake	●	●	●	●	●	●	
Livermore/ Pleasanton, Cities of	●	●	●	●	●	●	
Long Beach/ Signal Hill JPA	●	●	●	●	●	●	
Los Angeles, City	●	●	●	●	●	●	
Los Angeles	●	●	●	●	●	●	
Madera	●	●	●	●	●	●	
Marin	●	●	●	●	●	●	
Mendocino	●	●	●	●	●	●	
Merced	●	●	●	●	●	●	
Mono	●	●	●	●	●	●	

CUPA	Haz Waste Gen/Treat <sup>1</sup>	HMRRP <sup>2</sup>	UST <sup>3</sup>	AST <sup>4</sup>	HMMP <sup>5</sup>	CalARP <sup>6</sup>	Comments
Monterey	●	●	●		●	●	
Napa	●	●	●	●	●	●	
Nevada	●	●	●	●	●	●	
Newark, City							Did not respond to survey
Oakland, City	●	●	●	●	●	●	
Orange	●	●	●	●	●	●	
Oxnard, City	●	●	●	●	●	●	
Petaluma, City	●	●	●	●	●	●	
Placer							Did not respond to survey
Riverside	●	●	●	●	●	●	
Roseville, City	●	●	●	●	●	●	
Sacramento	●	●	●	●	●	●	
San Benito	●	●	●	●	●	●	
San Bernardino	●	●	●	●	●	●	
San Diego	●	●	●	●	●	●	
San Francisco, City/County	●	●	●	●	●	●	
San Joaquin	●	●	●	●	●	●	
San Leandro, City	●	●	●	●	●	●	
San Luis Obispo	●	●	●	●	●		
San Mateo	●	●	●	●	●	●	
San Rafael, City	●	●	●	●	●	●	
Santa Barbara	●	●	●	●	●	●	
Santa Clara, City	●	●	●	●	●	●	
Santa Clara	●	●	●	●	●	●	
Santa Cruz	●	●	●	●	●	●	
Santa Fe Springs, City	●	●	●	●	●	●	
Santa Monica, City	●	●	●	●	●	●	
Santa Rosa, City	●	●	●	●	●	●	
Shasta	●	●	●	●	●	●	
Siskiyou	●	●	●	●	●		
Solano	●	●	●	●	●	●	
Sonoma	●	●	●	●	●	●	
Stanislaus	●	●	●	●	●	●	

CUPA	Haz Waste Gen/Treat <sup>1</sup>	HMRRP <sup>2</sup>	UST <sup>3</sup>	AST <sup>4</sup>	HMMP <sup>5</sup>	CalARP <sup>6</sup>	Comments
Tulare	●	●	●	●	●	●	
Tuolumne	●	●	●	●	●	●	
Union, City	●	●	●	●	●	●	
Ventura	●	●	●	●	●	●	
Vernon City	●	●	●	●	●	●	
Victorville, City	●	●	●	●	●	●	
Yolo		●	●				
<b>Total implemented</b>	<b>65</b>	<b>67</b>	<b>67</b>	<b>63</b>	<b>66</b>	<b>63</b>	

<sup>1</sup> Hazardous Waste Generators and On-Site Treatment Facilities

<sup>2</sup> Hazardous Materials Release Response Plans and Inventory (Business Plan)

<sup>3</sup> Underground Storage Tanks Program

<sup>4</sup> Above-Ground Storage Tanks Program

<sup>5</sup> Hazardous Materials Management Plans and Inventory Statement (Fire Code)

<sup>6</sup> California Accidental Release Prevention Program



# APPENDIX B

## ***Summary of Responsibilities of Certified Unified Program Agencies and State Agencies Under the Unified Program***

Unified Program Element	CUPA Responsibility	State Responsibility
Hazardous Waste Generators and Hazardous Waste On-Site Treatment	<ul style="list-style-type: none"> <li>• Inspect hazardous waste generators</li> <li>• Issue permits for on-site treatment facilities</li> <li>• Inspect on-site hazardous waste treatment facilities</li> <li>• Assess fines and penalties as a result of enforcement activities</li> <li>• Provide technical assistance to the regulated community</li> </ul>	<p>(Oversight by Department of Toxic Substances Control)</p> <ul style="list-style-type: none"> <li>• Coordinate program implementation and enforcement</li> <li>• Provide training and technical assistance to the CUPAs as needed</li> <li>• Develop pertinent standards and regulations, including coordination with the Legislature</li> <li>• Process required inspection and enforcement reports</li> <li>• Participate in the CUPA triennial audit</li> </ul>
Hazardous Materials Management Plans and Inventory Statement (Fire Code)	<ul style="list-style-type: none"> <li>• Forward data collected on the hazardous materials inventory report to local fire department</li> <li>• Provide access to information if the fire district needs such data</li> <li>• Provide technical assistance to the regulated community</li> </ul>	<p>(Oversight by State Fire Marshal)</p> <ul style="list-style-type: none"> <li>• Develop California Fire Code regulations pertaining to Unified Program elements</li> <li>• Coordinate implementation of the program with the local fire departments</li> <li>• Participate in the CUPA triennial audit</li> <li>• Provide training and technical assistance for CUPA inspectors</li> </ul>
Underground Storage Tanks	<ul style="list-style-type: none"> <li>• Issue permits for underground storage tanks</li> <li>• Inspect tank(s)</li> <li>• Oversee abatement of unauthorized release</li> <li>• Send quarterly inspection activity report to Water Board</li> <li>• Provide technical assistance to the regulated community</li> </ul>	<p>(Oversight by State Water Resources Control Board)</p> <ul style="list-style-type: none"> <li>• Review and participate in regulation and rule making</li> <li>• Provide training and technical assistance for CUPA inspectors</li> <li>• License tank testers</li> <li>• Participate in the CUPA triennial audit</li> </ul>

Unified Program Element	CUPA Responsibility	State Responsibility
Hazardous Materials Release Response Plans and Inventory (Business Plan)	<ul style="list-style-type: none"> <li>Establish procedures for acceptance tracking and maintenance of a business plan</li> <li>Integrate information into area plan</li> <li>Coordinate emergency response plans</li> <li>Provide technical assistance to the regulated community</li> <li>Make plan available for public inspection by the community and businesses</li> <li>Provide a forum for community comments</li> </ul>	<p>(Oversight by Office of Emergency Services)</p> <ul style="list-style-type: none"> <li>Coordinate with the CUPA to implement the business and area plan program, ensuring consistency throughout the State</li> <li>Provide training and technical assistance to the CUPAs as needed</li> <li>Participate in the CUPA triennial audit</li> </ul>
Above-Ground Storage Tank Spill Prevention Control and Countermeasure Plan	<ul style="list-style-type: none"> <li>Determine if a spill prevention control and countermeasure plan is required</li> <li>Send the business to the regional water board if a plan is needed</li> <li>Verify that the plan is on-site</li> </ul>	<p>(Oversight by State Water Resources Control Board)</p> <ul style="list-style-type: none"> <li>Process the biennial Storage Statement and fee</li> <li>Provide information/guidance to the CUPAs as needed</li> </ul>
California Accidental Release Prevention Program (CalARP)	<ul style="list-style-type: none"> <li>Review/approve risk analysis done by businesses and make it available to the public</li> <li>Ensure that emergency response personnel have full access to information collected and maintained in CalARP plan</li> </ul>	<p>(Oversight by Office of Emergency Services)</p> <ul style="list-style-type: none"> <li>Coordinate implementation of the program</li> <li>Develop a regulated substance list</li> <li>Provide training and technical assistance to the CUPAs as needed</li> <li>Participate in the CUPA triennial audit</li> </ul>
Additional responsibilities for agencies	<ul style="list-style-type: none"> <li>Provide information, training and assistance to businesses regarding the Unified Program</li> <li>Assess and collect fees for the program elements that are appropriate for each business</li> <li>Conduct an annual self-audit</li> <li>Compile and transmit required reports to the various agencies</li> <li>Enforce state regulations with the appropriate penalties</li> <li>Collect and remit the state service charge</li> </ul>	<p>(California Environmental Protection Agency)</p> <ul style="list-style-type: none"> <li>Oversee the Unified Program (consolidate, coordinate and make consistent)</li> <li>Review applications to determine if an entity is qualified to become a CUPA</li> <li>Conduct the CUPA triennial audit</li> <li>Oversee communication, coordination, and training among CUPAs</li> <li>Determine state service charge</li> <li>Develop and manage Program Improvement Agreements as required</li> <li>Resolve state service charge disputes that cannot be resolved by the CUPAs</li> <li>Resolve situations for which no CUPA has jurisdiction</li> </ul>



# APPENDIX C

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## ***Certified Unified Program Agencies Varied Widely in Their Assessments of Fees for Fictitious Businesses***

The Certified Unified Program Agencies (CUPAs) use different factors to calculate the fees they charge businesses in their respective jurisdictions. Therefore, to compare the fees that the different CUPAs charge, we developed two fictitious examples for our survey: a family-owned dry cleaner and a mid-size manufacturing plant. We asked each CUPA to calculate the amount each business would pay in local fees during fiscal year 1997-98 if the business was located in that CUPA. Below are descriptions of the fictitious businesses and a table showing the fees each CUPA reported for each business.

### **EXAMPLE 1: FAMILY-OWNED DRY CLEANER**

The dry cleaner occupies 1,200 square feet, has been in business for 20 years, and employs 5 people. The cleaning process requires perchloro-ethylene (maximum storage at any one time is 250 gallons), a chemical that is subject to regulation under Title 19, Hazardous Materials Release Response Plans and Inventory (HMRRP), which takes the CUPA one-half hour to review, and the Uniform Fire Code Hazardous Materials Management Plans and Hazardous Materials Inventory Statement (HMMP). The residue from the cleaning process is considered hazardous waste, and the business generates 100 gallons per month. The dry cleaner has no storage tanks either above or below ground and does not treat or store the hazardous waste; instead the dry cleaner ships the waste to a disposal facility.

### **EXAMPLE 2: MID-SIZE MANUFACTURING INC.**

Mid-Size Manufacturing Inc. occupies a 51,000 square-foot warehouse, has been in business for 7 years, and employs 51 people. The manufacturing process requires sulfuric acid, methyl-ethyl ketone, and nitric acid, which are stored at a maximum quantity of 1,000 gallons each at any one time.

These chemicals are subject to regulation under Title 19, which requires the HMRRP and the HMMP as well as the California Accidental Release Prevention Program plan (CalARP). The HMRRP takes one hour to review and the CalARP takes six hours per chemical to review. One of the chemicals is stored in the company's two underground storage tanks, which hold 600 gallons each. The company has no above-ground storage tanks. The manufacturing process generates 35 tons of hazardous waste per year, which the business ships to a disposal facility.

CUPA	Family-Owned Dry Cleaner	Mid-Size Manufacturing, Inc.	Comments
Alameda	\$382	\$932	
Alpine	0	95	
Amador	-	-	No generator fee structure in place
Bakersfield, City	158	1,409	
Berkeley, City	1,043	3,850	
Contra Costa	315	2,777	
Del Norte	125	352	
El Dorado	50	1,286	
El Segundo, City	524	2,075	
Fremont, City	403	1,061	
Fresno, City	293	416	
Gilroy, City	321	1,071	
Glendale, City	700	1,413	
Hayward City	471	771	
Healdsburg/ Sebastopol, Cities	446	1,254	
Hesperia City	209	1,343	
Humboldt	252	489	
Kern	40	790	
Kings	78	1,214	
Lake	218	218	
Livermore/ Pleasanton, Cities	309	1,408	
Long Beach/ Signal Hill JPA	601	1,390	
Los Angeles, City	640	2,676	
Los Angeles	618	1,163	
Madera	110	610	
Marin	500	1,175	

CUPA	Family-Owned Dry Cleaner	Mid-Size Manufacturing, Inc.	Comments
Mendocino	296	879	
Merced	105	842	
Mono	0	170	
Monterey	245	788	
Napa	197	1,485	No fee structure was in place for fiscal year 1997-98; therefore, answers are based on fiscal year 1998-99 fee structure
Nevada	517	1,154	
Newark, City	-	-	Did not respond to survey
Oakland, City	470	1,569	
Orange	483	1,520	
Oxnard, City	192	1,997	
Petaluma, City	280	1,060	
Placer	-	-	Did not respond to survey
Riverside	670	1,981	
Roseville, City	125	650	
Sacramento	523	1,691	
San Benito	218	1,276	
San Bernardino	331	2,341	
San Diego	275	805	
San Francisco, City/County	415	1,228	
San Joaquin	255	2,591	
San Leandro, City	180	570	
San Luis Obispo	186	655	
San Mateo	402	10,287	
San Rafael, City	383	1,317	
Santa Barbara	635	2,210	
Santa Clara, City	200	1,000	
Santa Clara	394	3,121	
Santa Cruz	291	3,213	
Santa Fe Springs, City	495	939	
Santa Monica, City	708	2,169	
Santa Rosa, City	604	1,041	
Shasta	260	805	
Siskiyou	150	300	
Solano	286	1,438	
Sonoma	543	1,389	

CUPA	Family-Owned Dry Cleaner	Mid-Size Manufacturing, Inc.	Comments
Stanislaus	120	-	No response to second example
Tulare	387	387	
Tuolumne	44	365	
Union, City	191	2,631	
Ventura	182	1,124	
Vernon, City	422	542	
Victorville, City	265	2,140	
Yolo	0	945	

*Agency's response provided as text only.*

June 29, 1999

Winston H. Hickox  
Secretary for Environmental Protection  
California Environmental Protection Agency  
555 Capitol Mall, Suite 525  
Sacramento, California 95814  
(916)445-3846 Fax: (916)445-6401

Kurt R. Sjoberg, State Auditor  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, California 95814

Dear Mr. Sjoberg:

AUDIT REPORT NO. 98027

We appreciate the opportunity to comment on your audit report entitled "Department of Toxic Substances Control: The Generator Fee Structure Is Unfair, Recycling Efforts Need Improvement, and State and Local Agencies Need to Improve Their Administration of the Unified Program." Enclosed are responses from the Department of Toxic Substances Control (DTSC) and the State Water Resources Control Board (SWRCB) to your specific recommendations. The Office of the Secretary's comments are included with the response from DTSC.

The Office of the Secretary is very supportive of the efforts undertaken by DTSC and SWRCB to administer their respective components of the Unified Program on behalf of the California Environmental Protection Agency. We are encouraged by the way DTSC has managed the ever expanding program demands particularly in light of the decreasing and competing fiscal resources. Further, we are in agreement with both departments' comments. I hope that readers will consider their comments in conjunction with your report recommendations.

Thank you for your attention to this matter and again we appreciate the opportunity to comment. Should you have any questions or need additional information, please feel free to contact me at 445-3846.

Sincerely,

*(Signed by: Winston H. Hickox)*

Winston H. Hickox

cc: Edwin F. Lowry, Director  
Department of Toxic Substances Control  
400 P Street, P.O. Box 806  
Sacramento, California 95812-0806

Walt Pettit, Executive Director  
State Water Resources Control Board  
901 P Street  
Sacramento, California 95814

*Agency's response provided as text only.*

Department of Toxic Substances Control  
400 P Street, 4th Floor  
Sacramento, California 95812-0806

June 29, 1999

Kurt R. Sjoberg, State Auditor  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, California 95814

Dear Mr. Sjoberg:

Thank you for the opportunity to respond to the Bureau of State Audits (bureau) report no. 98027 entitled "Department of Toxic Substances Control: The Generator Fee Structure Is Unfair, Recycling Efforts Need Improvement, and State And Local Agencies Need to Improve Their Administration of the Unified Program." The following response addresses most of the bureau's recommendations. Further, where appropriate, comments are provided to clarify other issues raised by the bureau as an attachment to this letter.

## **CHAPTER 1**

**Recommendation: The Legislature should consider modifying the generator fee structure to ensure that fees are fair and reasonable for all levels of hazardous waste generators.**

We would be pleased to work with the Legislature on implementation of this recommendation.

**Recommendation: The department should meet its statutory responsibilities and encourage recycling by completing and annually updating the List of Recyclable Hazardous Wastes; developing a reporting system that provides the information necessary to distinguish hazardous waste that is recyclable and allows the department to identify generators who are disposing of recyclable hazardous waste; implementing the enforcement provisions of the law that authorizes the department to penalize generators that fail to recycle hazardous waste that it has determined is recyclable; and increasing its efforts to promote recycling.**

The decision to recycle or dispose of hazardous waste is based on many factors. Existing law provides incentives for generators to recycle hazardous wastes, but does not require generators to recycle their wastes. A generator's decision to recycle or dispose of hazardous waste may be based on several factors, including factors not listed in the report (e.g., long-term liability concerns, corporate image concerns, and associated permit fees).

\*California State Auditor's comments on this response begin on page R-11.

The report is correct in indicating that existing hazardous waste codes do not lend themselves to the identification of recyclable hazardous wastes. However, recently enacted legislation, Chapter 361, Statutes of 1997 (AB 256), requires the department to revise the hazardous waste codes, and currently pending legislation (SB 606) would require the department to revise the list of recyclable hazardous waste types and implement procedures to assure the disposal of recyclable hazardous waste is detected. The department agrees that the list of recyclable hazardous waste types should be reviewed periodically, and revised when necessary, but believes it is not necessary nor practical to update the list annually.

Although the "Directory of Industrial Recyclers" has not been updated since 1994, the report concludes that the department has reduced its efforts to educate the business community about recycling opportunities and other technologies, and creates an impression far worse than the facts. The department has engaged in a number of efforts to educate the business community about recycling opportunities and other technologies. For example, since 1994, the department has published and distributed fact sheets regarding used oil and used oil filters, and the recycling of silver-bearing wastes from photo processing and related industries; and revised, published, and distributed a guide on the recycling of appliances. The department annually publishes "Excerpts from California's Hazardous Waste Recycling Laws and Regulations," has conducted or helped deliver numerous training classes on various aspects of hazardous waste recycling, has developed a training video and manual on used oil recycling that is available upon demand, and continuously educates industry on recycling through several presentations and seminars at conferences and on special requests. In addition, the department responds, in writing or verbally, to numerous recycling related issues and questions raised by industry. Also, as noted in the audit report the department has conducted an extensive waste minimization program to reduce the quantities of both recycled and non-recycled waste.

## CHAPTER 2

**Recommendation: The Legislature should consider modifying the Health and Safety Code to allow the Cal/EPA to impose penalties on those CUPAs that do not collect or remit the State service charge.**

We would be pleased to work with the Legislature on implementation of this recommendation.

**Recommendation: To ensure that the Unified Program is implemented statewide, the Cal/EPA should continue to work with the non-CUPA counties to assist each in attaining CUPA certification. Additionally, the Cal/EPA should ensure that it completes the triennial evaluations of CUPAs and promptly issues the final reports.**



The State has been working with the non-CUPA counties for the past couple of years to assist and encourage them in attaining CUPA certification without much success. For some of the smaller rural counties, implementing a Unified Program has not been practical or feasible to date, although they are implementing individual components. The State does not have the authority to deal with each of the 15 non-CUPA counties in a realistic and equitable manner. Without a legislative solution, the State will continue to have limited success in its efforts to achieve a Unified Program in all areas of the state. Current statutes do not allow the State to take action against a county for not applying or becoming certified as a CUPA nor do they provide for alternatives to the existing CUPA structure.

It needs to be recognized that the CUPA evaluation process is new, and has some unique aspects to it. Whereas many programs are routinely evaluated by an oversight agency, it is a relatively new concept to bring together several independent agencies to conduct oversight evaluations of multiple programs at the same time. In this case, all state agencies involved in the delivery of the Unified Program also have oversight responsibilities. Just as the Unified Program requires consolidation, coordination, and consistency in delivery of the Unified Program, so must the state agencies be consolidated, coordinated, and consistent in their oversight of the CUPAs. It was recognized during the development of the evaluation process that changes to the process initially implemented would be required. These areas included consistency of evaluation, coordination among agencies, report format and streamlining, report drafting and review process, to name a few. Consensus was reached to initiate an evaluation 'moratorium' in March 1999, to address these concerns. As a result of that moratorium, a new streamlined report format was developed that is expected to result in faster throughput of evaluation findings. It is anticipated that the backlog of reports from the original process should be resolved and the final reports issued within the next several months. As a new program, there have been many issues identified that needed resolution, often at a policy level. This is not unexpected in a new program. In fact, it is quite remarkable that this process was developed and implemented with as few problems as it has experienced in such a short time (the development of the evaluation process began in late June/early July 1997, with full implementation in August/September 1998).

**Recommendation: To maximize the effectiveness and efficiency of managing hazardous waste through the Unified Program, the Cal/EPA should confirm that each CUPA implements all Unified Program elements; and to maximize the amount of funds available for oversight of the Unified Program, the Cal/EPA and the department should make certain that CUPAs collect and promptly remit to the department the total State service charge amounts due each fiscal quarter.**

The report states that it is unclear whether some CUPAs are actually implementing all the program elements that they report to be. Cal/EPA recognizes that the degree to which the Unified Program elements are implemented is an issue of concern. However, it should be

recognized that some elements, such as the Cal-ARP program, are newly developed, while other elements such as the AST, are extremely limited in scope.

The triennial evaluation process is designed to assess whether Unified Program elements are being implemented and the degree to which these various elements are implemented, as well as the quality of implementation. As deficiencies are identified, they are brought to the attention of the CUPA. The CUPA will be given the opportunity to correct these deficiencies, and if necessary, a Program Improvement Agreement will be developed to ensure that the CUPA does correct these deficiencies. It should be noted that one of the goals of the CUPA evaluation process is to continuously improve the delivery of the Unified Program.

The department performs a number of activities to ensure that the Service Charge is properly collected and is remitted to the state by the CUPAs as required by law and regulations. Following are some of these activities:

- CUPAs that submitted no Service Charge collections for FY 1997/98 were informed in writing that they were not meeting their responsibilities as a CUPA.
- The department raised the issue of Service Charge collection problems with the California CUPA Forum Board.
- CUPA Service Charge collection procedures are reviewed as part of the triennial review.
- CUPA Service Charge collections are compared to Service Charge billings as part of the triennial review.
- Detailed Service Charge collections data is provided to CUPAs.
- The department developed an issue memo exploring the options available to encourage uncooperative CUPAs to collect the Service Charge.

The problems the department encountered in obtaining full cooperation from all CUPAs for Service Charge collection are basically twofold. First, as noted in the report, short of decertification, the department has very limited options for penalizing CUPAs that do not meet their Service Charge collection responsibilities. The report provides one possible solution which is the recommendation that the Legislature consider providing penalties for CUPAs that are not meeting their Service Charge collection responsibilities. The second problem is that just as some CUPAs have failed to meet their Service Charge collection responsibilities they have also failed to provide accurate data on the number of businesses they regulate. A recent review of business data submitted by the CUPAs found that much of the required information was missing and that the accuracy of the information that was provided is questionable. Although the department is working with the CUPAs to improve the quality of the business data they submit, problems with the existing data have prevented the department from calculating the theoretical maximum amount of Service Charge each CUPA should be collecting.

**Recommendation: To ensure that counties not currently participating in the Unified Program comply with hazardous materials and hazardous waste regulation, the department should conduct routine inspections of hazardous waste generators and on-site treatment facilities in counties without a CUPA. . . . [The remainder of this recommendation is being addressed by SWRCB and OES].**

The department recognizes that hazardous waste generators and on-site treatment facilities in counties without a CUPA need to be inspected. The department's Statewide Compliance Division recently began conducting generator inspections in three of the non-CUPA jurisdictions, and additional inspections are planned for fiscal year 1999-00. In addition, the department has been inspecting onsite treatment facilities in non-CUPA jurisdictions in response to complaints. The department intends to work with Cal/EPA, SWRCB, OES and the SFM to coordinate our efforts in this area.

Although the department does not have a dedicated generator inspection program, it is important to acknowledge the department's past and present efforts in this area. In 1997, the department conducted a generator compliance survey which concluded that if the non-CUPA jurisdictions cannot establish a generator program, the department may have to take the lead in establishing a generator program in these counties. Several attempts to initiate a fee supported compliance program for non-CUPA jurisdictions were proposed; however, a self funding revenue source has not yet been identified. Beginning in September 1999, the non-CUPA jurisdictions will be included in the schedule for CUPA Triennial Evaluations, starting with Imperial County. One non-CUPA jurisdiction will be evaluated every other month thereafter.

The department has a firm commitment to promote public health and environmental protection for all of California. In our continuing efforts to improve and implement Unified Program policies, the department will take appropriate actions to address the issues presented in the report.

If you need further information or assistance on this issue, please call me at (916) 322-0504.

Very truly yours,

*(Signed by: Edwin F. Lowry)*

Edwin F. Lowry  
Director

Attachment

## ATTACHMENT

### OTHER ISSUES AND COMMENTS REGARDING BSA REPORT NUMBER 98027

#### **Table 1:**

Although the department was able to isolate and subtract some of the exempt tonnage from the Table 1 data, the information available at the time of the audit did not allow for the removal of all types of exempt tonnage. Had it been possible to fully adjust Table 1 to exclude all exempt tonnage (many of the adjustments could only be made as rough estimates) the relative distribution of tonnage among the tiers might change. While there is no evidence that these changes would be significant it is still possible that they could change the relationships presented in the table and in the report between the proportion of waste generated by a tier and the amount of fees paid by the tier. Thus any proposal to adjust generator fee rates on a tier by tier basis using the data in Table 1 could result in unexpected changes up or down in generator fee revenue depending on how much exempt (non-fee paying waste) is in each tier of Table 1.

#### **Chapter 1: Limited Economic Incentives Exist to Encourage Generators to Recycle Rather Than Dispose of Hazardous Waste**

The audit report states that the department could have made refunds to generators based on its expected fund condition of \$5.5 million at June 30, 1999. However, the report does not recognize that this fund balance is needed to maintain the department's environmental programs at their existing levels during the coming year. The projected fund balance at the end of the coming year, June 30, 2000, as shown in the Governor's Budget for 1999-00 is \$2.7 million, before adjustments for salary increases and the required minimum reserve of \$1 million. These adjustments reduce the expected fund balance to near zero at the end of June 2000. Thus the department is dependent on the \$5.5 million fund balance expected at the end of this year to finance its programs in the coming year. Any significant reduction in the amount of this balance would require either program cuts or the development of alternative funding sources. Program cuts would contradict the requirements of Health and Safety Code section 25174(k) which states "The department shall establish, within the Hazardous Waste Control Account, a reserve of at least one million dollars (\$1,000,000) each year to ensure that all programs funded by the Hazardous Waste Control Account will not be adversely affected by any revenue shortfalls."

**Table 4 and Appendix A:**

Information that Cal/EPA has assembled from its triennial evaluations and telephone discussions with the CUPAs differs from the data shown in the report on Appendix A and summarized on Table 4. Based on our data, we offer the following information on each of the CUPAs identified as not implementing all program elements.

**HAZARDOUS WASTE GENERATORS/ONSITE TREATMENT:**

- Amador County is implementing this element.
- Yolo County is in the process of developing an implementation plan for the hazardous waste generator/onsite treatment program.

**ABOVE STORAGE TANK PROGRAM (AST):**

- Alameda is not implementing this element because they only have one staff person doing inspections and have not added this to the inspection checklist.
- Amador is implementing this element
- Monterey is implementing this element
- Oakland City is implementing this element and has been doing it for several years as part of the storm water inspections that require them to ask for an SPCC plan.
- San Mateo is implementing this element
- Yolo County is in the process of developing an implementation plan for the AST program.

**HAZARDOUS MATERIAL MANAGEMENT PLAN (HMMP):**

- San Mateo County is implementing this element as part of the business plan program element. This is supported by the evaluation findings.
- Yolo County is implementing this element (Business plan).

**California Accidental Release Prevention Program (CalARP):**

- Napa is implementing this element. They began implementation of the Risk Management and Prevention Plan 1996, and subsequently began implementation of CalARP when it became effective in 1997. This is supported by the evaluation findings.
- Oakland City is implementing this element; they have received CalARP plans from businesses and will be reviewing them; the surcharge has not been billed yet but they will begin to bill for this in July.
- Siskiyou is in the process of implementing this element.
- Yolo's participating agency (local OES) is in the process of obtaining inventory information for the CalARP program.



# COMMENTS

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## ***California State Auditor's Comments on the Response From the Department of Toxic Substances Control***

To provide clarity and perspective, we are commenting on the California Environmental Protection Agency's (CalEPA) and the Department of Toxic Substances Control's (department) response to our audit report. The number corresponds to the number we have placed in the response.

- The department missed the point. While it is true that existing law does not require generators to recycle their wastes, there is a provision in the Health and Safety Code that allows the department to penalize businesses that dispose of recyclable hazardous waste. As we stated on pages 19 and 20 of our report, the department has shown little effort to enforce this code section; therefore, businesses have less incentive to recycle their waste.
- While we are pleased that the department agrees with our recommendation that the list of recyclable hazardous waste should be reviewed periodically, we are concerned that it believes it is neither necessary nor practical to update the list annually. As we discuss on page 20 of the report, with the exception of a minor revision in 1985, the department has not amended the list of wastes that are recyclable since its initial adoption in 1979. Therefore, to ensure that the list serves as a useful resource, we firmly believe that the department needs to complete and update the list. Furthermore, after updating the list, the department should review the list annually to determine if it needs to be modified.
- Contrary to the department's assertion, the report does not create an impression far worse than the facts on its recycling efforts. As stated on page 20 of our report, the department has not updated its Directory of Industrial Recyclers since 1994. Furthermore, during our audit, the department informed us that it has shifted its recycling work from the dissemination of information to providing technical assistance and support services. Finally, as

we state on page 20, the department told us that because of reduced funding in the last few years it has been difficult to promote recycling fully.

- We agree with the department that the activities it outlined are useful in determining if Certified Unified Program Agencies (CUPAs) procedures for collecting and remitting the service charge are adequate. However, reviewing these procedures as part of the triennial evaluation, every three years, does not ensure that CUPAs will promptly collect or remit the service charges. Moreover, a review every three years does not ensure prompt follow-up on amounts that CUPAs must remit to the department every quarter. Finally, other than the letters CalEPA sent to the CUPAs in March 1999, we found no evidence that CalEPA or the department attempted to collect the amounts due for the state service charge for fiscal year 1997-98.
- The department is mistaken in stating that the report does not recognize that the estimated fund balance of \$5.5 million at June 30, 1999, is needed to maintain the department's environmental programs at their existing levels during the coming year. In fact, on page 17 we acknowledged that the department may have additional expenses that would reduce the fund balance. More importantly, the department had no evidence indicating that it had considered the potential for refunds in its fiscal planning process. For example, although 1,000 generators submitted claims for refunds in 1999, the department does not know how many of the generators may meet the requirements to receive a refund or the amount of refund the generators would be requesting. In addition, some of the additional expenses that will reduce the fund balance reflect choices the department has made. For example, in its budget, the department chose to reserve \$3.1 million for transfer to its site mitigation program. Finally, as stated on page 17, by informing generators of the possible refunds, but not including potential refunds in its fiscal planning, the State may have created a false expectation that generators will receive a partial refund of their generator fee if they ship waste off-site for recycling.
- On its survey response, Amador reported that the hazardous waste generator and on-site treatment program will not be implemented until the middle of calendar year 2000. In addition, Amador indicated that it does not currently implement the Above-Ground Storage Tanks (AST) program.



- Monterey reported on its survey that the AST program would be implemented in fiscal year 1999-2000.
- Based on our recent contact with Oakland, we modified Appendix A.
- Based on our recent contact with San Mateo, we modified Appendix A.
- Yolo reported on its survey that it has not implemented the Hazardous Materials Management Plans and the Hazardous Materials Inventory Statement or the California Accidental Release Prevention program elements. Furthermore, Yolo confirmed that what it reported on the survey was accurate.



*Agency's response provided as text only.*

State Water Resources Control Board  
901 P Street  
Sacramento, California 95814

TO: Mr. Kurt. R. Sjobert  
State Auditor  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

FROM: Walt Pettit  
Executive Director  
**EXECUTIVE OFFICE**

DATE: June 28, 1999

SUBJECT: RESPONSE TO EXCERPTS OF THE BUREAU OF STATE AUDITS'  
REPORT ENTITLED: "DEPARTMENT OF TOXICS SUBSTANCES  
CONTROL: THE GENERATOR FEE STRUCTURE IS UNFAIR ..."

State Water Resources Control Board (SWRCB) staff have reviewed excerpts from the confidential draft Bureau of State Audits report entitled "Department of Toxic Substances Control: The Generator Fee Structure is Unfair, Recycling Efforts Need Improvement, and State and Local Agencies Need to Improve Their Administration of the Unified Program," received June 22, 1999, and suggest the following comment and response:

(We have repeated the relative draft text (bold) for ease of reference:)

**THE STATE WATER BOARD DOES NOT ENSURE THAT CERTAIN LOCAL PROGRAMS IS CONSISTENTLY IMPLEMENTED AND ENFORCED**

**We surveyed the 15 counties that do not have a CUPA and found that all 15 implement the underground Storage Tank (UST) program. As stated earlier, the State Water Board monitors and reviews each of these two programs in the CUPAs. In contrast, it is not evaluating implementation of these programs by local agencies in the 15 counties that do not have a CUPA.**

**The State Water Board reports that it provides technical assistance and training to these counties. However, the State Water Board stated that it only informally reviewed local programs in the non-CUPA counties between 1994-98. Without sufficient monitoring of these programs, the State Water Board cannot be assured that counties consistently**

**implement and enforce regulations designed to protect the State from hazardous leaks and releases.**

**However, even if CalEPA accepts this proposal, at least two counties may still be without a CUPA to implement the Unified program. As a result, the state agencies (State Water Board x and x) would be responsible for implementing the hazardous waste management programs in these counties. Therefore, these agencies need to focus on ensuring that these programs are consistently implemented and enforced in the non-CUPA counties.**

#### **RECOMMENDATIONS:**

**The State Water Resources Control Board should monitor it's respective local programs in the non-CUPA counties to ensure that the programs are consistently implemented and enforcement standards are consistently applied.**

#### **RESPONSE:**

\* The State Water Resources Control Board (SWRCB) disagrees with this finding and recommendation to the extent that it alleges that we have not taken appropriate actions within our existing authority to ensure that local programs are consistently implemented. The SWRCB does not have statutory authority to approve or deny approval of, or otherwise require changes or improvements in, local UST programs. However, through the authority granted to the Secretary for Environmental Protection under the Unified Program, the SWRCB now has increased capability to ensure programs are consistently implemented and enforced in both CUPA and designated non-CUPA counties.

Since 1983, the SWRCB has worked directly with local agencies to improve the quality and consistency of the program. Our past periodic visits to these agencies to observe administrative and facility inspection practices and to make recommendations for improvements in the program have been termed "informal" because any response by the agency was voluntary. We also want to re-state that our local assistance program promotes consistency. Examples of efforts in this regard include: we provide outreach and compliance assistance materials such as a program implementation guidebook, over 150 local administrative and technical guidance letters, and free copies of an inspector training video developed specifically for the California UST program; we also provide an ongoing low-cost classroom training program; an active program Internet site; and same-day response to telephone technical assistance inquiries.

Since the inception of the Unified Program in the mid-1990s, the SWRCB has worked with Cal/EPA, the Department of Toxic Substances Control, the State Office of Emergency Services and local agency groups, such as the Cal CUPA Forum, to improve the quality of the programs. Beginning Summer 1998, we have participated in joint evaluations of approximately one third of

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\*California State Auditor's comments on this response begin on page R-19.

the CUPA agencies, and starting September 1999, we will begin evaluation of designated non-CUPA agencies. This evaluation process was developed through a local/state cooperative effort, and includes an analysis of all statutory and regulatory requirements imposed on the local agency. Agencies with a deficient program can enter into a program improvement agreement or face decertification.

If you have any questions, you may call Mr. Allan Patton of the Division of Clean Water Programs at (916) 227-4351.

cc: Edward C. Anton, Chief  
Division of Clean Water Programs

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# COMMENTS

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## ***California State Auditor's Comments on the Response From the State Water Resources Control Board***

To provide clarity and perspective, we are commenting on the State Water Resources Control Board's (Water Board) response to our audit report. The number corresponds to the number we have placed in the response.

- The Water Board's basis for disagreeing with this recommendation conflicts with other information it has provided in the response. While the Water Board contends that it does not have statutory authority over local Underground Storage Tanks programs, it also states that through authority granted to the California Environmental Protection Agency under the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, it now has increased its capability to ensure programs are consistently implemented and enforced in all counties including those with a Certified Unified Program Agency (CUPA) as well as those in counties without a CUPA. Therefore, it seems clear to us that the Water Board can implement our recommendation to ensure that programs are consistently implemented in counties without a CUPA. In fact, the Water Board acknowledges that it has authority over local Underground Storage Tanks programs because starting in September 1999 it plans to begin evaluating local agencies in counties without CUPAs.





*Agency's response provided as textonly.*

Governor's Office of Emergency Services  
P.O. Box 419047  
Rancho Cordova, California 95741-9047

Mr. Kurt R. Sjoberg, State Auditor  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Dear Mr. Sjoberg:

Subject: DRAFT AUDIT REPORT ENTITLED:-"DEPARTMENT OF TOXIC SUBSTANCES CONTROL: THE GENERATOR FEE STRUCTURE IS UNFAIR, RECYCLING EFFORTS NEED IMPROVEMENT, AND STATE AND LOCAL AGENCIES NEED TO IMPROVE THEIR ADMINISTRATION OF THE UNIFIED PROGRAM"

Thank you for providing the Office of Emergency Services (OES) with the opportunity to comment on the subject report. Please accept the following observations and comments as OES's formal written response to the subject report which are intended to enhance the report, and are therefore offered for your consideration.

General Comment:

The primary concern raised in the draft report is that OES has provided limited oversight and guidance to ensure program compliance in those areas of the state that are not supported by a Certified Unified Program Agency (CUPA). The report also acknowledges the challenges that OES faces with an unreliable and insufficient funding source (i.e. Unified Account).

It should be noted that protection of public health and safety is the primary mandate of OES. To evaluate local emergency management programs and to ensure that provisions are in place to support the Standardized Emergency Management System (SEMS), OES has assigned Emergency Services Coordinators for every county in the state. Their responsibilities include coordination of hazardous material programs with local government. This is not reflected in your draft report.

Due to resource constraints OES has been forced to allocate available resources based on greatest need for the protection of public health and safety.

In the allocation of state resources applied to the various hazardous material programs an issue of "equity" exists that is also of concern. The program review, evaluation, enforcement and oversight activities performed by OES in the CUPA jurisdictions,

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\*California State Auditor's comments on this response begin on page R-23.

Mr. Kurt R. Sjoberg, State Auditor  
Page Two

there is no mechanism for collection of a state administration fee. At this time, the only alternative funding would be from the General Fund. This places the state in a precarious situation of subsidizing local government and regulated businesses in areas without a CUPA. Such subsidization provides a disincentive for non-CUPA counties to seek becoming a CUPA. It would also be an incentive for businesses in CUPA counties to pressure the governor and legislature for general fund support for their jurisdictions.

Specific Comments:

- “SOME COUNTIES ARE NOT CUPAs, AND CERTAIN ELEMENTS OF THE UNIFIED PROGRAM ARE NOT ENFORCED IN THOSE COUNTIES”. (Page 2 to Page 3)

Please revise the last sentence in this element that implies that OES is responsible for all six Unified Programs.

- “THE OES DOES NOT ENSURE THAT LOCAL PROGRAMS ARE CONSISTENTLY IMPLEMENTED AND ENFORCED.” (Page 3)

The CalARP program is in the initial phase of implementation. As such, it is difficult to ascertain the level of local government implementation and regulated business compliance. The first major milestone in the CalARP program comes with the June 21, 1999 submittal of facility Risk Management Plans. OES is in the process of surveying all CUPAs and other designated agencies to determine the level of implementation and compliance. During the initial phases of implementation, OES conducted several dozen workshops and focused meetings to assist local governments in implementing the CalARP program. These workshops have been conducted free of charge and have been held in CUPA and non-CUPA jurisdictions. Finally, OES participates in the formal CUPA program evaluations. Beginning in September, the non-CUPA counties will be included in the program evaluation schedule.

If you need additional information, please contact Steven DeMello, Hazardous Materials Unit Manager at (916) 464-3281.

Sincerely,

*(Signed by: Dallas Jones)*

DALLAS JONES  
Director

# COMMENTS

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## ***California State Auditor's Comments on the Response From the Office of Emergency Services***

To provide clarity and perspective, we are commenting on the Office of Emergency Services' (OES) response to our audit report. The number corresponds to the number we have placed in the response.

- The OES is incorrect. Appendix B, on pages 43 and 44 of the report summarizes the responsibilities that state agencies have for certain program elements under the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program. Further, among the responsibilities shown for the OES is the coordination of hazardous material programs with local agencies; specifically, Certified Unified Program Agencies (CUPAs).
- The report does not imply that that the OES is responsible for all six program elements. Rather, on page 32, we clearly state that the Department of Toxic Substances Control, the State Water Resources Control Board, and the OES are responsible for ensuring that all counties without a CUPA implement various aspects of the hazardous waste and hazardous materials programs.