

March 20, 2018

LOS ANGELES FIRE DEPARTMENT



RALPH M. TERRAZAS
FIRE CHIEF

February 13, 2018

BOARD OF FIRE COMMISSIONERS
FILE NO. 18-024

TO: Board of Fire Commissioners

FROM:  Ralph M. Terrazas, Fire Chief

SUBJECT: HAZARDOUS MATERIALS BUSINESS PLAN NON-COMPLIANCE FEE

FINAL ACTION:	<input type="checkbox"/> Approved	<input type="checkbox"/> Approved w/Corrections	<input type="checkbox"/> Withdrawn
	<input type="checkbox"/> Denied	<input type="checkbox"/> Received & Filed	<input type="checkbox"/> Other

SUMMARY

As the Certified Unified Program Agency (CUPA) for the Los Angeles Fire Department (LAFD), it is mandated to require reporting of an annual hazardous materials business plan (HMBP) from regulated facilities through the California Environmental Reporting System (CERS). Failure of business to submit an HMBP results in the CUPA acquiring deficiencies during its state performance evaluations. It is proposed that an ordinance is established to create a penalty fee for CUPA regulated businesses that do not submit their annual HMBP to the CUPA within the established reporting period. Establishing this proposed ordinance will increase compliance with the annual HMBP reporting requirement.

RECOMMENDATIONS

That the Board:

1. Approve that the non-compliance penalty fee shall be calculated though the established method prescribed in the Los Angeles Fire Code, Section 104.12.1.1.
2. Approve that all penalties collected by the CUPA Section from the ordinance remain with the CUPA Section in accordance with California Health and Safety Code, Chapter 6.11, Section 25404.9.
3. Request that this report be forwarded to the Mayor and City Council for consideration and approval.
4. Request the City Council to instruct the City Attorney to draft an ordinance to the Los Angeles Municipal Code (LAMC), Section 57.121, establishing a non-compliance penalty.

5. Request the City Attorney to report back to the City Council within 30 days with an ordinance amending the LAMC, Section 57.121, creating a late submittal and non-compliance penalty for failure to submit hazardous materials business plan to be paid by handlers of hazardous materials that submit their plans after the submission period.

FISCAL IMPACT

Approval of this proposed amendment will create projected additional revenue of \$900,720.00.

Current Number of regulated businesses on CERS	Current Number of regulated businesses who have failed to report on CERS	Total Projected Revenue
7,200	2,085	\$900,720.00

The penalty amount has been determined by utilizing the current noncompliance fee established in LAMC, Section 104.12.1.1. The established noncompliance fee is based on a two hour minimum at the Inspector's current hourly rate. Based on the current adopted fee schedule, the Inspector's hourly rate has been established at \$216.00. Although the CUPA Section will not utilize the inspection procedures outlined in LAMC, Section 104.12.1.1, establishing the noncompliance penalty in accordance with established noncompliance fee in LAMC, Section 104.12.1.1 will provide continuity.

Calculated revenue will fluctuate on a year to year basis based on the number of businesses that fail to report their annual HMBP on CERS.

DISCUSSION

The CUPA Section is responsible for the inspection, enforcement and permitting of those sites containing hazardous materials over reportable quantities. Per LAMC, Section 57.121.3, and California Health and Safety Code, Chapter 6.95, Sections 25508(a)(1)(A) and 25508(a)(1)(B), each business that handles hazardous materials above reportable quantities is required to submit an HMBP to the CUPA annually. The LAFD CUPA Section has established its annual submittal period to be between January 1st and March 1st of each calendar year and businesses are required to utilize CERS to electronically submit their annual HMBP.

The CUPA Section is requesting the addition of a late submittal penalty, through an ordinance, to the Los Angeles Fire Code for the purpose of increasing compliance with the annual HMBP submittal. The goal of the fee is to deter continued non-compliance and in turn, increase annual compliance with the reporting time frame set forth by the CUPA Section. The CUPA Section was issued a deficiency from its 2014 performance evaluation conducted by the State, which was also carried over to its 2017 performance evaluation, for failure of businesses to submit their annual hazardous materials business plan in CERS. The California Environmental Protection Agency (CalEPA) is the agency that oversees the implementation of the hazardous materials portion of the

program and expects a 95-100% compliance rate on CERS. Implementation of the proposed fee will assist the CUPA in maintaining its HMBP compliance rates and prevent the CUPA Section from being issued a deficiency during future performance evaluations.

The projected revenue of \$900,720.00 is anticipated to decline over time. The penalty is intended for those businesses that fail to report their annual HMBP within the determined reporting period. As businesses become compliant and report their annual HMBP in the determined reporting period, the number of businesses issued this noncompliance penalty fee will decline.

The Los Angeles County Fire Department CUPA has adopted a similar penalty and has seen an increase in compliance with their annual HMBP submittals. The CUPA Section currently utilizes an administrative process for non-compliant facilities, in conjunction with working with the City Attorney's Office, however due to the number of noncompliant businesses, this process would be overwhelmed. Adoption of a noncompliance fee would alleviate workload from the need to utilize the administrative process and allow for a more direct process to assist with HMBP noncompliance.

CONCLUSION

The CUPA Section is committed to finding new ways to increase compliance and improve public and LAFD safety. Establishing a non-compliance fee will increase compliance with the annual HMBP reporting requirements which in turn will provide the LAFD field resources with the most accurate hazardous materials information possible from regulated businesses.

Board report prepared by Royce Long, CUPA Manager, CUPA Section, Fire Prevention and Public Safety Bureau.