

LOS ANGELES FIRE DEPARTMENT



FEB 17 2009

DOUGLAS L. BARRY
FIRE CHIEF

February 9, 2009

BOARD OF FIRE COMMISSIONERS
FILE NO. 09-017

TO: Board of Fire Commissioners

FROM: Douglas L. Barry, Fire Chief *DLB*

SUBJECT: **ACCEPTANCE OF GRANT FUNDS TO ALLOCATE MONIES FROM THE ENVIRONMENTAL PROTECTION TRUST FUND TO THE CERTIFIED UNIFIED PROGRAM AGENCY TO EXPEND FOR THE PURPOSE OF IMPLEMENTING THE ABOVE GROUND PETROLEUM STORAGE ACT**

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 Withdrawn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

Recommendations: That the Board:

1. Approve this report for the acceptance of grants funds to allocate monies from the Environmental Protection Trust Fund to the Certified Unified Program Agency to expend for the purpose of implementing the Above Ground Petroleum Storage Act.
2. Instruct the Commission Executive Assistant to forward this report to the Mayor and City Council for review and approval in accordance with Executive Directive No. 3.
3. Request the Mayor and City Council to authorize the Fire Chief to accept the grant award from the California Environmental Protection Agency (Cal/EPA) for the purpose of implementing the Aboveground Petroleum Storage Act (APSA) in the amount of \$64,929.33, the term of the Agreement beginning on January 1, 2008 and ending on March 1, 2010.
4. Request the Mayor and City Council to authorize the Fire Chief, or his designee, to deposit the received Cal/EPA grant funds into Los Angeles Fire Department (LAFD) Grant Fund No. 335, Department 38.
5. Request the Mayor and City Council to authorize the transfer of funds between Fund No. 100 to Salary Account Nos. 1098 (Variable Staff Overtime) and 1090 (Overtime General) based on LAFD of actual costs incurred from the continued development and maintenance of the APSA Program through December 31, 2009.
6. Request the Mayor and City Council to authorize the CAO to make any necessary technical corrections and to revise any Controller Instructions consisted with this action.

Summary:

In December 2007, the LAFD received notification from the Cal/EPA that Assembly Bill (AB) 1130, included as Attachment 1, was approved and signed by Governor Arnold Schwarzenegger. Effective January 1, 2008, the bill establishes the APSA and identifies whether tank facilities are subject to or exempt from the APSA. As a result of the bill's approval, Certified Unified Program Agencies (CUPA's) are now vested with the responsibility and authority to implement the APSA Program.

The previous law required the State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards (RWQCB's) to administer the program, as specified in the federal regulations. CUPA's were responsible for conducting routine compliance inspections and verifying a Spill Prevention Control and Countermeasure (SPCC) was in place. If the SPCC had not been prepared, the CUPA's were required to submit a referral to the State Water Quality Control Board for enforcement.

As a result of AB 1130, the State notified the City of Los Angeles of a grant application for the disbursement of funds for the purpose of local CUPA's implementing the APSA program. (See Attachment 2) CUPA's are now responsible for the implementation, enforcement, and administration of the APSA Program, to the extent provided in Chapter 6.67, Sections 25404.1 and 25404.2 of the California Health and Safety Code. AB 1130 authorizes allocation of a portion of the monies in the Environmental Protection Trust Fund (EPTF) to the CUPA's for implementation and training purposes. The grant allocation amount for each CUPA was determined by the Cal/EPA Secretary, using a fund distribution formula.

On April 21, 2008, the Los Angeles Fire Department notified Cal/EPA of its acknowledgement that AB 1130 transfers the responsibility for implementation, enforcement, and administration of the APSA program to the local CUPA Agencies and information on the available grant funding to assume these responsibilities. (See Attachment 3) The grant covers direct and indirect costs of implementing the APSA Program. Direct costs include personnel services, operating expenses (including travel expenses), equipment and professional or consultant services. Indirect costs include overhead, pro rata, and redistribution costs.

The implementation of the APSA Program will be conducted on overtime basis to minimize the impact to the daily operations of the existing CUPA Program. The addition of the APSA Program to the existing CUPA Program will increase the current workload by an estimated 570 aboveground petroleum storage tanks. The monies set aside for Personnel Services totals \$36,415, which includes 35% allowed for Fringe Benefits.

Some of the duties necessary to implement the program include: notification of facilities of the change in law, database system modification, revisions to and review of tank facility business plans and chemical inventory, responding to public inquiries, data entry; billing, enforcement, reporting, and management of the APSA Program. There will also be provisions for monitoring and evaluating the APSA Program on an annual basis.

LAFD's Data Management Unit will be responsible for ensuring that all Aboveground Storage Tank (AST) facilities submit business plans and chemical inventories, entering all required information in the LAFD database (Envision) system, and preparing the billing for all AST sites. The Accounting Clerks will process all invoices associated with the AST facilities, verifying that

the billing corresponds with the fee schedule. The Engineering Geologist Associate will act as program manager and lead liaison with Cal/EPA, and along with the Management Analyst and Management Assistant will perform such duties as APSA Program administration (including monitoring the grant budget) and managing the implementation process. The projected cost estimates for this grant program are included as Attachment 4.

LAFD's total allocation amount is \$64,929.33. Eighty percent of the allocation will be disbursed, pending approval by the Mayor and City Council for receipt of the funds. The remaining 20 percent will become available once the initial 80 percent has been expended. See Table A.

Table A

PROJECTED EXPENSES	
Category	Amount
Personnel Services	\$ 26,974
Operating Expenses	\$ 12,015
Software	
Printing/Binding (outreach)	
Training/Travel	
Supplies/Materials (less than \$5,000 per item)	
Equipment	\$ 16,500
Indirect Cost (35% allowable rate per Personnel Services)	\$ 9,441
Total:	\$ 64,929

AB 1130 also requires the establishment of a fee, as part of the single fee system, for the APSA Program and implemented pursuant to Section 25404.5, at a level sufficient to cover necessary and reasonable costs incurred by the LAFD to administer the APSA Program, including but not limited to inspections, enforcement, and administrative costs. Facilities falling under the APSA Program will be inspected at least once every three years. The results of the inspection will determine whether the owner or operator is in compliance with the SPCC Plan requirements of the APSA. The LAFD may develop an alternative inspection and compliance plan, subject to approval by the Secretary.

The LAFD will incorporate the APSA Program into the existing Unified Program (UP) Fee Accountability System. Collection of fees will become effective January 1, 2010. CUPA's are allowed to waive the single fee for a state or local government agency that submits a tank facility statement.

Cal/EPA will develop a free, comprehensive three-day training class for the APSA Inspectors. The class will be offered during the first quarter of 2009 and will be available throughout California. A test will be administered at the end of the class, and an Inspector is required to achieve a passing grade in order to inspect aboveground storage tank facilities.

Additionally, AB 1130 establishes civil penalties. Where penalties are assessed and recovered in a civil action by a city attorney or a district attorney, 50 percent would go to the CUPA and 50 percent would go to the City Attorney or District Attorney.

Fiscal Impact:

The State, through AB 1130, gives CUPA the ability to charge fees to sustain the APSA's. The Department is in the process of developing an ordinance and a fee structure to capture the costs associated with the program. We have the authority to charge fees for APSA services beginning January 2010. This is a fee-supported program.

Conclusion:

The City is required to adhere to the conditions set forth in AB1130. Cal/EPA received and approved the LAFD's grant application. The purpose of the grant is to implement the APSA Program from January 1, 2008 through December 31, 2009. The funds must be encumbered and expended within this period.

Upon approval by the Los Angeles Mayor and City Council to receive \$64,929 to implement the APSA program, Cal/EPA will disburse the initial \$51,943 (80 percent) advance allocation to the City. After the initial 80 percent has been expended, the remaining \$12,986 (20 percent) of the total allocation will be available on a reimbursement basis.

Board report prepared by Judy Ung, Management Analyst II, Technical Section; and Eloy Luna, Interim CUPA Manager, CUPA Section.

Attachments

- 1 AB 1130 (Laird)
- 2 Correspondence to Valerie Toney with AB 1130 Summary from Cal/EPA
- 3 Signed Grant Application and Proposed Agreement
- 4 Expenditure Plan

Assembly Bill No. 1130

CHAPTER 626

An act to amend Sections 25270.2, 25270.3, 25270.6, 25270.8, 25270.12, 25270.13, 25404, 25404.1.1, 25404.5, and 25503.4 of, to add Section 25270.4.5 to, to repeal Sections 25270.1, 25270.7, and 25270.10 of, to repeal and add Sections 25270, 25270.4, 25270.5, and 25270.9 of, and to repeal, add, and repeal Section 25270.11 of, the Health and Safety Code, relating to aboveground storage tanks.

[Approved by Governor October 13, 2007. Filed with
Secretary of State October 13, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1130, Laird. Aboveground storage tanks.

(1) Existing law requires the Secretary for Environmental Protection to implement a unified hazardous waste and hazardous materials management regulatory program. A city or local agency that meets specified requirements is authorized to apply to the secretary to implement the unified program, and every county is required to apply to the secretary to be certified to implement the unified program.

The Aboveground Petroleum Storage Act (Act) defines, for purposes of the act, a "storage tank" as any aboveground tank or container used for the storage of petroleum, except as specified. Existing law requires the State Water Resources Control Board and the California regional water quality control boards to administer the act with regard to a tank facility that is subject to specified federal regulations and requires a certified unified program agency to enforce the requirements of the act regarding a spill prevention control and countermeasure plan. Existing law imposes specified inspection and monitoring requirements upon the board and the regional boards with regard to these tanks and requires a tank facility owner or operator to file a storage statement with the board. Existing law establishes the Environmental Protection Trust Fund in the State Treasury and provides that the money in the fund is available for expenditure by the board, upon appropriation by the Legislature, for specified purposes.

This bill would instead require the unified program agencies (UPAs) to implement that act, and would make conforming changes.

The bill would define the term "aboveground storage tank" and would revise the types of storage tanks subject to the act. A storage tank at a tank facility subject to specified federal regulations would be required to prepare a spill prevention control and countermeasure plan and a tank facility located on a farm, nursery, logging site, or construction site that is less than a specified capacity would be required to be subject to inspections and, if the UPA makes a certain determination, secondary containment requirements.

The bill would require the UPA to inspect, at least once every 3 years, each storage tank within its jurisdiction that has a storage capacity of 10,000 gallons or more of petroleum, except as specified. The owner or operator of a tank facility would be required to file an annual tank facility statement with the local agency, with an exception, accompanied by a fee established by the UPA.

The board and the regional board would be authorized to oversee the cleanup or abatement efforts, or to cause cleanup or abatement efforts, with regard to a release from a storage tank at a tank facility.

Any expenses recovered by the board or a regional board in overseeing, or contracting for, a cleanup or abatement would be required to be deposited in the Waste Discharge Permit Fund, for expenditure by the board, upon appropriation by the Legislature, to assist the regional boards and other public agencies in cleaning up or abating the effects of waste on water and other specified purposes. The bill would require the deposited money to be separately accounted for.

The bill would impose a state-mandated local program by imposing new duties upon local agencies with regard to the regulation of aboveground storage tanks.

The bill would authorize the expenditure of a portion of the moneys in the Environmental Protection Trust Fund, upon appropriation by the Legislature, in an amount determined by the Secretary for Environmental Protection in consultation with the UPAs, to a training account established and maintained by the secretary to be used for purposes of training UPA personnel in the requirements of the act. The bill would allocate all remaining funds to the UPAs for expenditure to implement the act, but limit to 80% or less the allocation to a UPA in advance of actual expenditure by the UPA. Any funds remaining in the training account established by the secretary, or in the Environmental Protection Trust Fund, as of June 1, 2011, would be authorized to be expended by the UPAs to implement the act, upon appropriation by the Legislature. The Environmental Protection Trust Fund and the training account would be inoperative as of July 1, 2011, and would be repealed as of January 1, 2012.

The bill would also make conforming changes.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) This bill would also incorporate additional changes in Section 25404 of the Health and Safety Code proposed by AB 558, to be operative only if AB 558 and this bill are both enacted and become effective on or before January 1, 2008, and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 25270 of the Health and Safety Code is repealed.

SEC. 2. Section 25270 is added to the Health and Safety Code, to read:

25270. This chapter shall be known and may be cited as the Aboveground Petroleum Storage Act.

SEC. 3. Section 25270.1 of the Health and Safety Code is repealed.

SEC. 4. Section 25270.2 of the Health and Safety Code is amended to read:

25270.2. For purposes of this chapter, the following definitions apply:

(a) "Aboveground storage tank" or "storage tank" means a tank that has the capacity to store 55 gallons or more of petroleum and that is substantially or totally above the surface of the ground. "Aboveground storage tank" does not include any of the following:

(1) A pressure vessel or boiler that is subject to Part 6 (commencing with Section 7620) of Division 5 of the Labor Code.

(2) A tank containing hazardous waste, as defined in subdivision (g) of Section 25316, if the Department of Toxic Substances Control has issued the person owning or operating the tank a hazardous waste facilities permit for the storage tank.

(3) An aboveground oil production tank that is subject to Section 3106 of the Public Resources Code.

(4) Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers, or capacitors, if the oil-filled electrical equipment meets either of the following conditions:

(A) The equipment contains less than 10,000 gallons of dielectric fluid.

(B) The equipment contains 10,000 gallons or more of dielectric fluid with PCB levels less than 50 parts per million, appropriate containment or diversionary structures or equipment are employed to prevent discharged oil from reaching a navigable water course, and the electrical equipment is visually inspected in accordance with the usual routine maintenance procedures of the owner or operator.

(5) A tank regulated as an underground storage tank under Chapter 6.7 (commencing with Section 25280) and Chapter 16 (commencing with Section 2610) of Division 3 of Title 23 of the California Code of Regulations.

(6) Any transportation-related tank facility, subject to the authority and control of the United States Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the United States Environmental Protection Agency, dated November 24, 1971, set forth in Appendix A to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(b) "Board" means the State Water Resources Control Board.

(c) (1) "Certified Unified Program Agency" or "CUPA" means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) "Participating Agency" or "PA" means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement and enforce the unified program element specified in paragraph (2) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) (A) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent that each PA has been designated by the CUPA, pursuant to a written agreement, to implement and enforce the unified program element specified in paragraph (2) of subdivision (c) of Section 25404. The UPAs have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce the requirements of this chapter.

(B) After a CUPA has been certified by the secretary, the unified program agency shall be the only agency authorized to enforce the requirements of this chapter.

(C) This paragraph shall not be construed to limit the authority or responsibility granted to the board and the regional boards by this chapter.

(d) "Operator" means the person responsible for the overall operation of a tank facility.

(e) "Owner" means the person who owns the tank facility or part of the tank facility.

(f) "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. "Person" also includes any city, county, district, the University of California, the California State University, the state, any department or agency thereof, and the United States, to the extent authorized by federal law.

(g) "Petroleum" means crude oil, or any fraction thereof, which is liquid at 60 degrees Fahrenheit temperature and 14.7 pounds per square inch absolute pressure.

(h) "Regional board" means a California regional water quality control board.

(i) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, or disposing into the environment.

(j) "Secretary" means the Secretary for Environmental Protection.

(k) "Storage" or "store" means the containment, handling, or treatment of petroleum, for any period of time, including on a temporary basis.

(l) "Storage capacity" means the aggregate capacity of all aboveground tanks at a tank facility.

(m) "Tank facility" means any one, or combination of, aboveground storage tanks, including any piping that is integral to the tank, that contains petroleum and that is used by a single business entity at a single location or site. For purposes of this chapter, a pipe is integrally related to an aboveground storage tank if the pipe is connected to the tank and meets any of the following:

(1) The pipe is within the dike or containment area.

(2) The pipe is between the containment area and the first flange or valve outside the containment area.

(3) The pipe is connected to the first flange or valve on the exterior of the tank, if state or federal law does not require a containment area.

SEC. 5. Section 25270.3 of the Health and Safety Code is amended to read:

25270.3. A tank facility is subject to this chapter if the tank facility is subject to the oil pollution prevention regulations specified in Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations or the tank facility has a storage capacity of 1,320 gallons or more of petroleum.

SEC. 6. Section 25270.4 of the Health and Safety Code is repealed.

SEC. 7. Section 25270.4 is added to the Health and Safety Code, to read:

25270.4. This chapter shall be implemented by the Unified Program Agency. If there is no UPA, the agency authorized pursuant to subdivision (f) of Section 25404.3 shall be deemed to be the UPA for purposes of this chapter and shall implement this chapter.

SEC. 8. Section 25270.4.5 is added to the Health and Safety Code, to read:

25270.4.5. (a) Except as provided in subdivision (b), each owner or operator of a storage tank at a tank facility subject to this chapter shall prepare a spill prevention control and countermeasure plan prepared in accordance with Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations. Each owner or operator specified in this subdivision shall conduct periodic inspections of the storage tank to assure compliance with Section 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations. In implementing the spill prevention control and countermeasure plan, each owner or operator specified in this subdivision shall fully comply with the latest version of the regulations contained in Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(b) A tank facility located on a farm, nursery, logging site, or construction site is not subject to subdivision (a) if no storage tank at the location exceeds 20,000 gallons and the cumulative storage capacity of the tank facility does not exceed 100,000 gallons. The owner or operator of a tank facility exempt pursuant to this subdivision shall take the following actions:

(1) Conduct a daily visual inspection of any storage tank storing petroleum.

(2) Allow the UPA to conduct a periodic inspection of the tank facility.

(3) If the UPA determines installation of secondary containment is necessary for the protection of the waters of the state, install a secondary means of containment for each tank or group of tanks where the secondary containment will, at a minimum, contain the entire contents of the largest tank protected by the secondary containment plus precipitation.

SEC. 9. Section 25270.5 of the Health and Safety Code is repealed.

SEC. 10. Section 25270.5 is added to the Health and Safety Code, to read:

25270.5. (a) Except as provided in subdivision (b), at least once every three years, the UPA shall inspect each storage tank or a representative sampling of the storage tanks at each tank facility that has a storage capacity of 10,000 gallons or more of petroleum. The purpose of the inspection shall be to determine whether the owner or operator is in compliance with the spill prevention control and countermeasure plan requirements of this chapter.

(b) The UPA may develop an alternative inspection and compliance plan, subject to approval by the secretary.

(c) An inspection conducted pursuant to this section does not require the oversight of a professional engineer. The person conducting the inspection shall meet both of the following requirements:

(1) Complete an aboveground storage tank training program, which shall be established by the secretary.

(2) Satisfactorily pass an examination developed by the secretary on the spill prevention control and countermeasure plan provisions and safety requirements for aboveground storage tank inspections.

SEC. 11. Section 25270.6 of the Health and Safety Code is amended to read:

25270.6. (a) (1) On or before January 1, 2009, and on or before January 1 annually thereafter, each owner or operator of a tank facility subject to this chapter shall file with the UPA a tank facility statement that shall identify the name and address of the tank facility, a contact person for the tank facility, the total storage capacity of the tank facility, and the location, size, age, and contents of each storage tank that exceeds 10,000 gallons in capacity and that holds a substance containing at least 5 percent of petroleum. A copy of a statement submitted previously pursuant to this section may be submitted in lieu of a new tank facility statement if no new or used storage tanks have been added to the facility or if no significant modifications have been made. For purposes of this section, a significant modification includes, but is not limited to, altering existing storage tanks or changing spill prevention or containment methods.

(2) Notwithstanding paragraph (1), an owner or operator of a tank facility that submits a business plan, as defined in subdivision (e) of Section 25501, to the UPA, and that complies with Sections 25503.5, 25505, and 25510, satisfies the requirement in paragraph (1) to file a tank facility statement.

(b) Each year, commencing in calendar year 2010, each owner or operator of a tank facility who is subject to the requirements of subdivision (a) shall pay a fee to the UPA, on or before a date specified by the UPA. The governing body of the UPA shall establish a fee, as part of the single fee system implemented pursuant to Section 25404.5, at a level sufficient to pay the necessary and reasonable costs incurred by the UPA in administering this chapter, including, but not limited to, inspections, enforcement, and administrative costs. The UPA shall also implement the fee accountability program established pursuant to subdivision (c) of Section 25404.5 and the

regulations adopted to implement that program. The UPA may provide for a waiver of these fees when a state or local government agency submits a tank facility statement.

SEC. 12. Section 25270.7 of the Health and Safety Code is repealed.

SEC. 13. Section 25270.8 of the Health and Safety Code is amended to read:

25270.8. Each owner or operator of a tank facility shall immediately, upon discovery, notify the Office of Emergency Services and the UPA using the appropriate 24-hour emergency number or the 911 number, as established by the UPA, or by the governing body of the UPA, of the occurrence of a spill or other release of one barrel (42 gallons) or more of petroleum that is required to be reported pursuant to subdivision (a) of Section 13272 of the Water Code.

SEC. 14. Section 25270.9 of the Health and Safety Code is repealed.

SEC. 15. Section 25270.9 is added to the Health and Safety Code, to read:

25270.9. (a) The board and the regional board may oversee cleanup or abatement efforts, or cause cleanup or abatement efforts, of a release from a storage tank at a tank facility.

(b) The reasonable expenses of the board and the regional board incurred in overseeing, or contracting for, cleanup or abatement efforts that result from a release at a tank facility is a charge against the owner or operator of the tank facility. Expenses reimbursable to a public agency under this section are a debt of the tank facility owner or operator, and shall be collected in the same manner as in the case of an obligation under a contract, express or implied.

(c) Expenses recovered by the board or a regional board pursuant to this section shall be deposited into the Waste Discharge Permit Fund. These moneys shall be separately accounted for, and shall be expended by the board, upon appropriation by the Legislature, to assist regional boards and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state, or for the purposes authorized in Section 13443.

SEC. 16. Section 25270.10 of the Health and Safety Code is repealed.

SEC. 17. Section 25270.11 of the Health and Safety Code is repealed.

SEC. 18. Section 25270.11 is added to the Health and Safety Code, to read:

25270.11. (a) All moneys in the Environmental Protection Trust Fund may be expended, upon appropriation by the Legislature, in the following manner:

(1) A portion of the funds, in an amount determined by the secretary in consultation with the UPAs, to a training account established and maintained by the secretary, to be used for purposes of training UPA personnel in the requirements of this chapter.

(2) All remaining funds in the Environmental Protection Trust Fund, shall be allocated to the UPAs, in accordance with a formula and process determined by the secretary in consultation with the UPAs. The UPAs shall

expend those funds for the purpose of implementing this chapter. Eighty percent or less of each UPA's allocation may be distributed to the UPA in advance of actual expenditure by the UPA.

(b) All moneys remaining in the training account established pursuant to paragraph (1) of subdivision (a), as of June 1, 2011, may be expended pursuant to paragraph (2) of subdivision (a), upon appropriation by the Legislature.

(c) All moneys remaining in the Environmental Protection Trust Fund that have not been expended, as of June 1, 2011, shall be expended pursuant to paragraph (2) of subdivision (a), upon appropriation by the Legislature.

(d) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 19. Section 25270.12 of the Health and Safety Code is amended to read:

25270.12. (a) Any owner or operator of a tank facility who fails to prepare a spill prevention control and countermeasure plan in compliance with subdivision (a) of Section 25270.4.5, to file a tank facility statement pursuant to subdivision (a) of Section 25270.6, to submit the fee required by subdivision (b) of Section 25270.6, to report spills as required by Section 25270.8, or otherwise to comply with the requirements of this chapter, is subject to a civil penalty of not more than five thousand dollars (\$5,000) for each day on which the violation continues. If the owner or operator commits a second or subsequent violation, a civil penalty of not more than ten thousand dollars (\$10,000) for each day on which the violation continues may be imposed.

(b) (1) The civil penalties provided by this section may be assessed and recovered in a civil action brought by the city attorney or district attorney on behalf of the UPA.

(2) Fifty percent of all penalties assessed and recovered in a civil action brought on behalf of a UPA pursuant to this subdivision shall be deposited into a unified program account established by the UPA for the purpose of carrying out the functions of the unified program and 50 percent shall be paid to the office of the city attorney or district attorney, whoever brought that action.

(c) (1) The civil penalties provided in this section may be assessed and recovered in a civil action brought by the Attorney General on behalf of the board or a regional board, or on behalf of the people of the State of California.

(2) All penalties assessed and recovered in a civil action brought pursuant to this subdivision shall be deposited in the Waste Discharge Permit Fund. These moneys shall be separately accounted for, and shall be expended by the board, upon appropriation by the Legislature, to assist regional boards and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state, or for the purposes authorized in Section 13443.

(d) The city attorney, district attorney, or the Attorney General may seek to enjoin, in any court of competent jurisdiction, any person believed to be in violation of this chapter.

(e) The penalties specified in this section are in addition to any other penalties provided by law.

SEC. 20. Section 25270.13 of the Health and Safety Code is amended to read:

25270.13. (a) This chapter does not preempt local storage tank ordinances, in effect as of August 16, 1989, that meet or exceed the standards prescribed by this chapter.

(b) This chapter does not preempt the authority granted to the board and the regional boards under the Porter Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

SEC. 21. Section 25404 of the Health and Safety Code is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) "Certified Unified Program Agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) "Participating Agency" or "PA" means a state or local agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) "Department" means the Department of Toxic Substances Control.

(3) "Minor violation" means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing, willful, or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation as provided in Section 25117.6.

(G) A class II violation committed by a chronic or a recalcitrant violator, as provided in Section 25117.6.

(H) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

(4) "Secretary" means the Secretary for Environmental Protection.

(5) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(6) "Unified program facility permit" means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the

regulations adopted by the department pursuant thereto, are applicable to all of the following:

(i) Hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(ii) Persons managing perchlorate materials.

(iii) Persons subject to Article 10.1 (commencing with Section 25211) of Chapter 6.5.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirements of Chapter 6.67 (commencing with Section 25270) concerning aboveground storage tanks.

(3) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(4) The requirements of Article 1 (commencing with Section 25500) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) The secretary shall establish an electronic geographic information management system capable of receiving all data collected by the unified program agencies pursuant to this subdivision and Section 25504.1. The secretary shall make all nonconfidential data available on the Internet.

(3) (A) As funding becomes available, the secretary shall establish, consistent with paragraph (2), and thereafter maintain, a statewide database.

(B) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) Once the statewide database is established, the secretary shall work with the CUPAs to develop a phased-in schedule for the electronic collection and submittal of information to be included in the statewide database, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary, in making this determination shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide database shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials.

SEC. 21.5. Section 25404 of the Health and Safety Code is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) "Certified Unified Program Agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) "Participating Agency" or "PA" means a state or local agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) "Department" means the Department of Toxic Substances Control.

(3) "Minor violation" means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing, willful, or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation as provided in Section 25117.6.

(G) A class II violation committed by a chronic or a recalcitrant violator, as provided in Section 25117.6.

(H) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

(4) "Secretary" means the Secretary for Environmental Protection.

(5) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(6) "Unified program facility permit" means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, are applicable to all of the following:

(i) Hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(ii) Persons managing perchlorate materials.

(iii) Persons subject to Article 10.1 (commencing with Section 25211) of Chapter 6.5.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirements of Chapter 6.67 (commencing with Section 25270) concerning aboveground storage tanks.

(3) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(4) The requirements of Article 1 (commencing with Section 25500) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) (A) The secretary shall establish an electronic geographic information management system capable of receiving all data collected by the unified program agencies pursuant to this subdivision and Section 25504.1. The secretary shall make all nonconfidential data available on the Internet to the maximum extent feasible within the constraints of federal and state statutes, and consistent with Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(B) For the hazardous materials inventory information required to be submitted pursuant to Section 25509, any claims by a business that the information is a trade secret as that term is defined in Section 6254.7 of the Government Code and Section 1060 of the Evidence Code shall be handled in accordance with the provisions of Section 25511.

(3) (A) To the extent funding is available by January 1, 2010, the secretary shall establish, consistent with paragraph (2), and thereafter maintain, a statewide database.

(B) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) Once the statewide database is established, the secretary shall work with the CUPAs to develop a phased-in schedule for the electronic collection and submittal of information to be included in the statewide database, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary, in making this determination shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide database shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials and Section 25509 for all hazardous materials.

(5) Using information required to be submitted pursuant to Section 25509 that is part of the statewide database, within six months of the establishment of the statewide database pursuant to subparagraph (A) of paragraph (3), the department shall develop and post on its Internet Web site baseline hazardous materials use information, and shall update that information at least annually. The department shall develop its hazardous materials use baseline information in consultation with the Office of Environmental Health Hazard Assessment consistent with the environmental protection indicators developed pursuant to Chapter 4 (commencing with Section 71080) of Part 2 of Division 34 of the Public Resources Code.

SEC. 22. Section 25404.1.1 of the Health and Safety Code is amended to read:

25404.1.1. (a) If the unified program agency determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that the UPA is authorized to enforce or implement pursuant to this chapter, the UPA may issue an administrative enforcement order requiring that the violation be

corrected and imposing an administrative penalty, in accordance with the following:

(1) Except as provided in paragraph (5), if the order is for a violation of Chapter 6.5 (commencing with Section 25100), the violator shall be subject to the applicable administrative penalties provided by that chapter.

(2) If the order is for a violation of Chapter 6.7 (commencing with Section 25280), the violator shall be subject to the applicable civil penalties provided in subdivisions (a), (b), (c), and (e) of Section 25299.

(3) If the order is for a violation of Article 1 (commencing with Section 25500) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25514.5.

(4) If the order is for a violation of Article 2 (commencing with Section 25531) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25540 or 25540.5.

(5) If the order is for a violation of Section 25270.4.5, the violator shall be liable for a penalty of not more than five thousand dollars (\$5,000) for each day on which the violation continues. If the violator commits a second or subsequent violation, a penalty of not more than ten thousand dollars (\$10,000) for each day on which the violation continues may be imposed.

(b) In establishing a penalty amount and ordering that the violation be corrected pursuant to this section, the UPA shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the penalty, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

(c) Any order issued pursuant to this section shall be served by personal service or certified mail and shall inform the person served of the right to a hearing. If the UPA issues an order pursuant to this section, the order shall state whether the hearing procedure specified in paragraph (2) of subdivision (e) may be requested by the person receiving the order.

(d) Any person served with an order pursuant to this section who has been unable to resolve any violation with the UPA, may within 15 days after service of the order, request a hearing pursuant to subdivision (e) by filing with the UPA a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(e) Except as provided in subparagraph (B) of paragraph (2), a person requesting a hearing on an order issued by the UPA under this section may select the hearing officer specified in either paragraph (1) or (2) in the notice of defense filed with the UPA pursuant to subdivision (d). If a notice of defense is filed but no hearing officer is selected, the UPA may select the

hearing officer. Within 90 days of receipt of the notice of defense by the UPA, the hearing shall be scheduled using one of the following:

(1) An administrative law judge of the Office of Administrative Hearings of the Department of General Services, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions.

(2) (A) A hearing officer designated by the UPA, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions. When a hearing is conducted by a UPA hearing officer pursuant to this paragraph, the UPA shall issue a decision within 60 days after the hearing is conducted. Each hearing officer designated by a UPA shall meet the requirements of Section 11425.30 of the Government Code and any other applicable restriction.

(B) A UPA, or a person requesting a hearing on an order issued by a UPA may select the hearing process specified in this paragraph in a notice of defense filed pursuant to subdivision (d) only if the UPA has, as of the date the order is issued pursuant to subdivision (c), selected a designated hearing officer and established a program for conducting a hearing in accordance with this paragraph.

(f) The hearing decision issued pursuant to paragraph (2) of subdivision (e) shall be effective and final upon issuance by the UPA. A copy of the decision shall be served by personal service or by certified mail upon the party served with the order, or their representative, if any.

(g) Any provision of an order issued under this section, except the imposition of an administrative penalty, shall take effect upon issuance by the UPA if the UPA finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment. A request for a hearing shall not stay the effect of that provision of the order pending a hearing decision. However, if the UPA determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, the order as a whole, except the imposition of an administrative penalty, shall take effect upon issuance by the UPA. A request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.

(h) A decision issued pursuant to paragraph (2) of subdivision (e) may be reviewed by a court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this section, the court shall uphold the decision of the UPA if the decision is based upon substantial evidence in the record as a whole. The filing of a petition for writ of mandate shall not stay any action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(i) All administrative penalties collected from actions brought by a UPA pursuant to this section shall be paid to the UPA that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the activities of the UPA in enforcing this chapter.

(j) The UPA shall consult with the district attorney, county counsel, or city attorney on the development of policies to be followed in exercising the authority delegated pursuant to this section as it relates to the authority of the UPA to issue orders.

(k) (1) A unified program agency may suspend or revoke any unified program facility permit, or an element of a unified program facility permit, for not paying the permit fee or a fine or penalty associated with the permit in accordance with the procedures specified in this subdivision.

(2) If a permittee does not comply with a written notice from the unified program agency to the permittee to make the payments specified in paragraph (1) by the required date provided in the notice, the unified program agency may suspend or revoke the permit or permit element. If the permit or permit element is suspended or revoked, the permittee shall immediately discontinue operating that facility or function of the facility to which the permit element applies until the permit is reinstated or reissued.

(3) A permittee may request a hearing to appeal the suspension or revocation of a permit or element of a permit pursuant to this subdivision by requesting a hearing using the procedures provided in subdivision (d).

(l) This section does not do any of the following:

(1) Otherwise affect the authority of a UPA to take any other action authorized by any other provision of law, except the UPA shall not require a person to pay a penalty pursuant to this section and pursuant to a local ordinance for the same violation.

(2) Restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

(3) Prevent the UPA from cooperating with, or participating in, a proceeding specified in paragraph (2).

SEC. 23. Section 25404.5 of the Health and Safety Code is amended to read:

25404.5. (a) (1) Each certified unified program agency shall institute a single fee system, which shall replace the fees levied pursuant to Sections 25201.14 and 25205.14, except for transportable treatment units permitted under Section 25200.2, and which shall also replace any fees levied by a local agency pursuant to Sections 25143.10, 25287, 25513, and 25535.5, or any other fee levied by a local agency specifically to fund the implementation of the provisions specified in subdivision (c) of Section 25404. The single fee system shall additionally include the fee established pursuant to Section 25270.6. Notwithstanding Sections 25143.10, 25201.14, 25287, 25513, and 25535.5, a person who complies with the certified unified program agency's "single fee system" fee shall not be required to pay any fee levied pursuant to those sections, except for transportable treatment units permitted under Section 25200.2.

(2) (A) The governing body of the local certified unified program agency shall establish the amount to be paid by each person regulated by the unified program under the single fee system at a level sufficient to pay the necessary and reasonable costs incurred by the certified unified program agency and by any participating agency pursuant to the requirements of subparagraph (E) of paragraph (1) of subdivision (d) of Section 25404.3.

(B) The secretary shall establish the amount to be paid when the unified program agency is a state agency.

(3) The fee system may also be designed to recover the necessary and reasonable costs incurred by the certified unified program agency, or a participating agency pursuant to the requirements of subparagraph (E) of paragraph (1) of subdivision (d) of Section 25404.3, in administering provisions other than those specified in subdivision (c) of Section 25404, if the implementation and enforcement of those provisions has been incorporated as part of the unified program by the certified unified program agency pursuant to subdivision (b) of Section 25404.2, and if the single fee system replaces any fees levied as of January 1, 1994, to fund the implementation of those additional provisions.

(4) The amount to be paid by a person regulated by the unified program may be adjusted to account for the differing costs of administering the unified program with respect to that person's regulated activities.

(b) (1) Except as provided in subdivision (d), the single fee system instituted by each certified unified program agency shall include an assessment on each person regulated by the unified program of a surcharge, the amount of which shall be determined by the secretary annually, to cover the necessary and reasonable costs of the state agencies in carrying out their responsibilities under this chapter. The secretary may adjust the amount of the surcharge to be collected by different certified unified program agencies to reflect the different costs incurred by the state agencies in supervising the implementation of the unified program in different jurisdictions, and in supervising the implementation of the unified program in those jurisdictions for which the secretary has waived the assessment of the surcharge pursuant to subdivision (d). The certified unified program agency may itemize the amount of the surcharge on any bill, invoice, or return that the agency sends to a person regulated by the unified program. Each certified unified program agency shall transmit all surcharge revenues collected to the secretary on a quarterly basis. The surcharge shall be deposited in the Unified Program Account, which is hereby created in the General Fund and which may be expended, upon appropriation by the Legislature, by state agencies for the purposes of implementing this chapter.

(2) On or before January 10, 2001, the secretary shall report to the Legislature on whether the number of persons subject to regulation by the unified program in any county is insufficient to support the reasonable and necessary cost of operating the unified program using only the revenues from the fee. The secretary's report shall consider whether the surcharge required by subdivision (a) should include an assessment to be used to

supplement the funding of unified program agencies that have a limited number of entities regulated under the unified program.

(c) Each certified unified program agency and the secretary shall, before the institution of the single fee system and the assessment of the surcharge, implement a fee accountability program designed to encourage more efficient and cost-effective operation of the program for which the single fee and surcharge are assessed. The fee accountability programs shall include those elements of the requirements of the plan adopted pursuant to former Section 25206, as it read on January 1, 1995, that the secretary determines are appropriate.

(d) The secretary may waive the requirement for a county to assess a surcharge pursuant to subdivision (b), if both of the following conditions apply:

(1) The county meets all of the following conditions:

(A) The county submits an application to the secretary for certification on or before January 1, 1996, that incorporates all of the requirements of this chapter, and includes the county's request for a waiver of the surcharge, and contains documentation that demonstrates, to the satisfaction of the secretary, both of the following:

(i) That the assessment of the surcharge will impose a significant economic burden on most businesses within the county.

(ii) That the combined dollar amount of the surcharge and the single fee system to be assessed by the county pursuant to subdivision (a) exceeds the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(B) The application for certification, including the information required by subparagraph (A), is determined by the secretary to be complete, on or before April 30, 1996. The secretary, for good cause, may grant an extension of that deadline of up to 90 days.

(C) The county is certified by the secretary on or before December 31, 1996.

(D) On or before January 1, 1994, the county completed the consolidation of the administration of the hazardous waste generator program, the hazardous materials release response plans and inventories program, and the underground storage tank program, referenced in paragraphs (1), (3), and (4) of subdivision (c) of Section 25404, into a single program within the county's jurisdiction.

(E) The county demonstrates that it will consolidate the administration of all programs specified in subdivision (c) of Section 25404, and that it will also consolidate the administration of at least one additional program that regulates hazardous waste, hazardous substances, or hazardous materials, as specified in subdivision (d) of Section 25404.2, other than the programs specified in subdivision (c) of Section 25404, into a single program to be administered by a single agency in the county's jurisdiction at the time that the county's certification by the secretary becomes effective.

(2) The secretary makes all of the following findings:

(A) The county meets all of the criteria specified in paragraph (1).

(B) The assessment of the surcharge would impose a significant economic burden on most businesses within the county.

(C) The combined dollar amount of the surcharge and the single fee system to be assessed by the county pursuant to subdivision (a) would exceed the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(D) The waiver of the surcharge for those counties applying for and qualifying for a waiver, and the resulting increase in the surcharge for other counties, would not, when considered cumulatively, impose a significant economic burden on businesses in any other county that does not apply for, or does not meet the criteria for, a waiver of the surcharge.

(e) The secretary shall review all of the requests for a waiver of the surcharge made pursuant to subdivision (d) simultaneously, so as to adequately assess the cumulative impact of granting the requested waivers on businesses in those counties that have not applied, or do not qualify, for a waiver, and shall grant or deny all requests for a waiver of the surcharge within 30 days from the date that the secretary certifies all counties applying, and qualifying, for a waiver. If the secretary finds that the grant of a waiver of the surcharge for all counties applying and qualifying for the waiver will impose a significant economic burden on businesses in one or more other counties, the secretary shall take either of the following actions:

(1) Deny all of the applications for a waiver of the surcharge.

(2) Approve only a portion of the waiver requests for counties meeting the criteria set forth in subdivision (d), to the extent that the approved waivers, when taken as a whole, meet the condition specified in subparagraph (D) of paragraph (2) of subdivision (d). In determining which of the counties' waiver requests to grant, the secretary shall consider all of the following factors:

(A) The relative degree to which the assessment of the surcharge will impose a significant economic burden on most businesses within each county applying and qualifying for a waiver.

(B) The relative degree to which the combined dollar amount of the surcharge and the single fee system to be assessed, pursuant to subdivision (a), by each county applying and qualifying for a waiver exceeds the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(C) The relative extent to which each county applying and qualifying for a waiver has incorporated, or will incorporate, upon certification, additional programs pursuant to subdivision (d) of Section 25404.2, into the unified program within the county's jurisdiction.

(f) The secretary may, at any time, terminate a county's waiver of the surcharge granted pursuant to subdivisions (d) and (e) if the secretary determines that the criteria specified in subdivision (d) for the grant of a waiver are no longer met.

SEC. 24. Section 25503.4 of the Health and Safety Code is amended to read:

25503.4. (a) The office shall adopt a format that allows persons subject to two or more of the following requirements to meet those requirements in one document:

- (1) The business plan required by this chapter.
 - (2) The risk management plan required by Section 25534.
 - (3) The contingency plan required by Division 4.5 (commencing with Section 66001) of Title 22 of the California Code of Regulations and by Part 262 (commencing with Section 262.10), Part 264 (commencing with Section 264.1), or Part 265 (commencing with Section 265.1) of Title 40 of the Code of Federal Regulations.
 - (4) The spill prevention control and countermeasure plan required by Section 25270.4.5 and by Part 112 (commencing with Section 112.1) or by Part 300 (commencing with Section 300.1) of Title 40 of the Code of Federal Regulations.
 - (5) Any accident or spill prevention plan or response plan required by Chapter 6.7 (commencing with Section 25280) or by regulations adopted pursuant to that chapter or required by an underground storage tank ordinance adopted by a city or county.
 - (6) The interim marine facility oil spill contingency plan required by Section 8670.29 of the Government Code and the marine facility oil spill contingency plan required by Section 8670.31 of the Government Code.
- (b) The format required by subdivision (a) shall be organized as follows:
- (1) A central element that will enable persons using the format to report information and data common to all of the requirements described in subdivision (a).
 - (2) Appendices that will contain the additional information unique to each individual requirement described in subdivision (a).
- (c) The office shall adopt the format required by subdivision (a) in consultation with administering agencies and the Information Management Subcommittee of the Chemical Emergency Planning and Response Commission and in cooperation with the State Water Resources Control Board, the Department of Fish and Game, and the department. The adoption of the format is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall be completed by January 1, 1995. To the extent feasible, and within the limits of budgetary constraints, the office, the State Water Resources Control Board, the Department of Fish and Game, and the department shall convene workshops and other public meetings to obtain public assistance on the development of the format.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 26. Section 21.5 of this bill incorporates amendments to Section 25404 of the Health and Safety Code proposed by both this bill and AB 558. It shall only become operative if (1) both bills are enacted and become

effective on or before January 1, 2008, (2) each bill amends Section 25404 of the Health and Safety Code, and (3) this bill is enacted after AB 558, in which case Section 21 of this bill shall not become operative.

O



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL PROTECTION

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ARNOLD SCHWARZENEGGER
GOVERNOR

Certified Mail: 7003 1680 0000 6173 5951

December 10, 2007

Ms. Valerie Toney
Manager
Los Angeles City Fire Department
200 North Main Street, Suite 970
Los Angeles, California 90012

Dear Ms. Toney:

The California Environmental Protection Agency (Cal/EPA) would like to inform you that Assembly Bill 1130 (Laird) was signed by Governor Arnold Schwarzenegger and chaptered on October 13, 2007, and goes into effect January 1, 2008. On January 1, 2008, the Certified Unified Program Agencies (CUPA's) are vested with the responsibility and authority for the implementation of the Aboveground Petroleum Storage Act (APSA). A fact sheet detailing the various aspects of APSA and a "Scope of CUPA Implementation" are enclosed, for additional information.

Cal/EPA, in consultation with the CUPA's and the State Water Resources Control Board staff through two APSA implementation work groups, has determined the process and formula for allocating the moneys from the Environmental Protection Trust Fund (EPTF) to the CUPA's. The allocation of the funds to the CUPA's will be processed through grants, which include the completion of a grant application, a local resolution to accept the funds, a signed grant agreement, and invoices documenting the CUPA's expenditures for the APSA Program.

Please submit a completed grant application no later than March 1, 2008. An extension to the deadline will be considered if needed. The following documents are also enclosed: (1) the grant application; (2) sample grant application; and (3) sample resolution.

Based on the fund distribution formula and the aboveground petroleum storage tank list completed in October 2007, the Los Angeles City Fire Department CUPA is allocated a total of \$64,929.33 from the EPTF for the purpose of implementing the APSA Program. The distribution formula is available on the Unified Program Web site at <http://www.calepa.ca.gov/CUPA/>.

Once the grant application is received and processed, Cal/EPA will send the CUPA a grant agreement for signature. The signed grant agreement must be received by Cal/EPA no later than

Ms. Valerie Toney
December 10, 2007
Page 2

June 2, 2008. No grant agreement will be accepted after June 2, 2008. The initial disbursement of 80% of the CUPA's total allocation will be processed after the signed grant agreement is finalized and the local resolution is received.

Although each CUPA is allocated a portion of the funds from the EPTF, each CUPA is also responsible for obtaining their allocated funds by submitting the grant application, local resolution, and signed grant agreement in a timely manner. The APSA also provides that no fees may be assessed upon or collected from a regulated aboveground petroleum storage tank facility until January 1, 2010.

Cal/EPA will hold a two-hour grant workshop via conference call on January 9, 2008, from 9:00 a.m. to 11:00 am (more information to follow). The purpose of the workshop will be to address all aspects of the grant process, including completion of the application, the grant agreement, invoicing and reporting requirements.

Thank you for your continued commitment to the protection of public health and the environment. If you have any questions or need further assistance, you may contact John Paine at (916) 327-5092 or jpaine@calepa.ca.gov or Jennifer Lorenzo at (916) 327-9560 or jlorenzo@calepa.ca.gov.

Sincerely,



Jim Bohon, Manager
Unified Program
California Environmental Protection Agency

Enclosures (6)

1. APSA Fact Sheet
2. APSA Scope of CUPA Implementation
3. Spill Prevention Control and Countermeasure Plan Requirements
4. APSA Program Grant Application
5. Sample APSA Grant Application
6. Sample Resolution

cc: Mr. Eloy Luna, CUPA Manager (Sent via email)
Los Angeles City Fire Department
200 North Main Street, Suite 970
Los Angeles, California 90012



California Environmental Protection Agency

Unified Program

Fact Sheet

December 2007

Aboveground Petroleum Storage Act
Assembly Bill 1130 (Laird)
Chaptered October 13, 2007

SUMMARY

This bill transfers the responsibility for the implementation, enforcement, and administration of the Aboveground Petroleum Storage Act (APSA) from the State Water Resources Control Board (SWRCB) to the Certified Unified Program Agencies (CUPA's). The bill authorizes the expenditure of a portion of the moneys in the Environmental Protection Trust Fund (EPTF), upon appropriation by the Legislature, in an amount determined by the Secretary for Environmental Protection (Secretary) in consultation with the CUPA's, to a training account established and maintained by the Secretary to be used for purposes of training CUPA personnel in the requirements of the act. The bill allocates all remaining funds to the CUPA's for expenditure to implement the act, but limits to 80% or less the allocation to a CUPA in advance of actual expenditure by the CUPA. The bill also makes conforming changes to ensure consistency with the federal Spill Prevention Control and Countermeasure (SPCC) rule provided in the U.S. Code of Federal Regulations, title 40, part 112 (40CFR112).

PREVIOUS LAW

Previous law required the SWRCB and the Regional Water Quality Control Boards (RWQCB's) to administer the program with regard to a tank facility that is subject to specified federal regulations. CUPA's, during routine compliance inspections conducted at tank facilities pursuant to other Unified Program elements, are required to verify that an SPCC plan has been prepared. If an SPCC plan had not been prepared, the CUPA's were required to submit a referral to the appropriate RWQCB for enforcement. Previous law also required a tank facility owner or operator to file a storage statement with the SWRCB and pay the fee specified in law to the SWRCB.

THE BILL

- 1) Is effective on January 1, 2008.
- 2) Establishes the California Aboveground Petroleum Storage Act (APSA).
- 3) Defines key terms, such as: *Aboveground Storage Tank; Petroleum; Storage Capacity; Tank Facility*, etc.
- 4) Identifies when tank facilities are subject to and exempt from the APSA.
- 5) Transfers the authority and responsibility for administration of the APSA from the SWRCB and RWQCBs to the CUPA's.
- 6) Requires the owner or operator of a tank facility, with an aggregate storage capacity $\geq 1,320$ gallons of petroleum, to prepare and implement an SPCC plan in accordance with federal law, 40CFR112.

- 7) Requires the CUPA's to conduct inspections at tank facilities with an aggregate storage capacity $\geq 10,000$ gallons of petroleum at least every three years. The purpose of the inspection is to determine whether the owner or operator is in compliance with the SPCC plan requirements of the APSA.
- 8) Allows the CUPA's to develop an alternative inspection and compliance plan, subject to approval by the Secretary.
- 9) Provides that an inspection conducted by a CUPA does not require the oversight of a professional engineer.
- 10) Provides that the person conducting the inspection shall complete an aboveground storage tank training program and satisfactorily pass an examination on the SPCC plan provisions and safety requirements for aboveground storage tank inspections. The training program and examination are to be developed by the Secretary.
- 11) Requires the owner or operator of a tank facility to annually file a tank facility statement with the CUPA. The submission of a business plan satisfies the requirement to submit the tank facility statement.
- 12) Requires that the governing body of the CUPA establish a fee, as part of the single fee system, at a level sufficient to pay the necessary and reasonable costs incurred by the CUPA in administering the APSA including but not limited to inspections, enforcement and administrative costs.
- 13) Prevents CUPA's from assessing and collecting an APSA-related fee from tank facilities until January 1, 2010.
- 14) Allows a CUPA to waive the APSA related single fee for a state or local government agency that submits a tank facility statement.
- 15) Requires each owner or operator of a tank facility to immediately report, upon discovery, to the Governor's Office of Emergency Services and the CUPA, the occurrence of a spill or release of 42 gallons or more of petroleum.
- 16) Requires the California Environmental Protection Agency (Cal/EPA) to expend funds from the EPTF, in consultation with the CUPA's, in the following manner:
 - a) For the purposes of training CUPA personnel in the requirements of the APSA.
 - b) To the CUPA's for the purpose of implementing the APSA.
- 17) Establishes civil penalties and specifies that any penalties assessed and recovered in a civil action by a city attorney or a district attorney would be shared 50% to the CUPA and 50% to the city attorney or district attorney.
- 18) Clarifies that transportation-related tanks regulated by the U.S. Department of Transportation and underground storage tanks are not subject to the APSA.

CONTACT

John Paine
Cal/EPA Unified Program
(916) 327-5092 or jpaine@calepa.ca.gov



California Environmental Protection Agency

Unified Program

Fact Sheet

December 2007

Aboveground Petroleum Storage Act Scope of CUPA Implementation

SUMMARY

The Unified Program Agencies (UPA's) have the responsibility and authority, to the extent provided by Chapter 6.67 and Sections 25404.1 and 25404.2 of the California Health and Safety Code, to implement and enforce the requirements of Chapter 6.67, the Aboveground Petroleum Storage Act (APSA). (*Health & Saf. Code § 25270.2*)

REQUIREMENTS OF APSA

1. Owner/Operator subject to Chapter shall: (*Health & Saf. Code § 25270.4.5(a)*)
 - A. Prepare a Spill Prevention Control and Countermeasure (SPCC) Plan in Accordance with U.S. Code of Federal Regulations, Title 40, Part 112 (40CFR112) (see Attachment 1 for SPCC plan requirements)
 - B. Conduct periodic inspections to assure compliance with 40CFR112 (Inspections, tests, and records)
 - C. Implement SPCC Plan in compliance with 40CFR112
2. An owner or operator of a tank facility that is exempt pursuant to subdivision 25270.4.5(b) shall take the following actions: (*Health & Saf. Code § 25270.4.5(b)*)
 - A. Conduct a daily visual inspection of any aboveground storage tank storing petroleum.
 - B. Allow the UPA to conduct a periodic inspection of the tank facility.
 - C. If the UPA determines installation of secondary containment is necessary for the protection of the waters of the state, install secondary means of containment for each tank or group of tanks where the secondary containment will, at a minimum, contain the entire contents of the largest tank protected by the secondary containment plus precipitation.
3. At least once every three years, the UPA shall inspect each storage tank or a representative sampling of the storage tanks at each tank facility that has a storage capacity of 10,000 gallons or more of petroleum. (*Health & Saf. Code § 25270.5*)
 - A. The purpose of the inspection shall be to determine whether the owner or operator is in compliance with the SPCC Plan requirements of the APSA.
 - B. The UPA may develop an alternative inspection and compliance plan, subject to approval by the Secretary for Environmental Protection (Secretary).

- C. An inspection conducted pursuant to this section does not require the oversight of a professional engineer.
- D. The person conducting the inspection shall meet both of the following requirements:
 - a. Complete an aboveground storage tank training program, which shall be established by the Secretary.
 - b. Satisfactorily pass an examination developed by the Secretary on the SPCC plan provisions and safety requirements for aboveground storage tank inspections.
- 4. On or before January 1, 2009, and on or before January 1 annually thereafter, each owner or operator of a tank facility subject to the APSA shall file with the UPA a tank facility statement. (*Health & Saf. Code § 25270.6(a)*)
 - A. An owner or operator of a tank facility that submits a business plan satisfies the requirement to file a tank facility statement.
- 5. Each year, commencing in calendar year 2010, each owner or operator of a tank facility who is subject to the requirements of subdivision 25270.6(a) shall pay a fee to the UPA, on or before a date specified by the UPA. (*Health & Saf. Code § 25270.6(b)*)
 - A. The governing body of the UPA shall establish a fee, as part of the single fee system implemented pursuant to Section 25404.5, at a level sufficient to pay the necessary and reasonable costs incurred by the UPA in administering the APSA, including, but not limited to, inspections, enforcement, and administrative costs.
 - B. The UPA shall also implement the fee accountability program established pursuant to subdivision (c) of Section 25404.5 and the regulations adopted to implement that program.
 - C. The UPA may provide a waiver of these fees when a state or local government agency submits a tank facility statement.
- 6. Each owner or operator of a tank facility shall immediately, upon discovery, notify the Governor's Office of Emergency Services and the UPA of the occurrence of a spill or other release of one barrel (42 gallons) or more of petroleum that is required to be reported pursuant to subdivision (a) of Section 13272 of the Water Code. (*Health & Saf. Code § 25270.8*)

CONTACT

John Paine
Cal/EPA Unified Program
(916) 327-5092 or jpaine@calepa.ca.gov

NOTE:

This is only a sample resolution. The CUPA is strongly encouraged to follow this format, but each CUPA may use their County's or City's own format, if desired. However, the language in **bold** must be included in the resolution.

- Include agreement and amendment in the title;
- The name of the CUPA;
- The title of the authorized CUPA representative to sign for the agreement and any amendment(s); and
- The grantor (California Environmental Protection Agency).

If not using the sample format provided, please coordinate with John Paine of Cal/EPA at (916) 327-5092 or jpaine@calepa.ca.gov to ensure that the resolution meets the minimum language required.

LORENZO COUNTY
Resolution No. 07-012

A RESOLUTION AUTHORIZING ENTERING INTO AN AGREEMENT WITH THE STATE
OF CALIFORNIA AND DESIGNATING A REPRESENTATIVE TO SIGN THE
AGREEMENT AND ANY AMENDMENTS THERETO FOR IMPLEMENTATION OF THE
ABOVEGROUND PETROLEUM STORAGE TANK ACT

WHEREAS:

1. The **Lorenzo County CUPA** shall use these grant funds made available pursuant to California Health and Safety Code, section 25270.11 and per the **grant agreement**, and **any amendment**, with the **California Environmental Protection Agency** to implement the requirements of the Aboveground Petroleum Storage Tank Act.

THEREFORE BE IT RESOLVED THAT:

The Lorenzo County has authorized the Environmental Health Director or designee, to execute and amend the grant agreements with the California Environmental Protection Agency, verifies invoices are accurate and certifies the Lorenzo County is in compliance with all applicable laws and regulations.

CERTIFICATION

I hereby certify that the foregoing Resolution No. 07-012 was duly and regularly adopted by the Board of Supervisors of the Lorenzo County at the meeting thereof held on the 21st of November, 2007, motion made by Jennifer Coen and seconded by Steven Blank, motion passed by the following roll call vote:

AYE: Coen, Blank, Bullrings, Frank, Chessman, Novak_ _ _

NO:

ABSENT:

ABSTAIN: →

Jessie James

Jessie James
County Clerk



California Environmental Protection Agency

Unified Program

Fact Sheet

December 2007

Attachment 1

Spill Prevention Control and Countermeasure Plan Requirements U.S. Code of Federal Regulations, Title 40, Part 112

PREPARE SPCC PLAN

Prepare a Spill Prevention Control and Countermeasure (SPCC) plan in accordance with U.S. Code of Federal Regulations, Title 40, Part 112 (40CFR112).

- i. Prepare an SPCC plan in accordance with good engineering practices. (40 C.F.R. § 112.7)
- ii. The SPCC plan must have the full approval of management at a level of authority to commit the necessary resources to fully implement the SPCC plan. (40 C.F.R. § 112.7)
- iii. You must prepare the SPCC plan in writing. (40 C.F.R. §§ 112.3 and 112.7)
- iv. If you do not follow the sequence specified in this section for the SPCC plan, you must prepare an equivalent SPCC plan that meets all of the applicable requirements listed in this part, and you must supplement it with a section cross-referencing the location of requirements listed in this part and the equivalent requirements in the other prevention plan. (40 C.F.R. § 112.7)
- v. If the SPCC plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, you must discuss these items in separate paragraphs, and must explain separately the details of installation and operational start-up. (40 C.F.R. § 112.7)
- vi. Include a discussion of your facility's conformance with the requirements listed in this part. (40 C.F.R. § 112.7(a)(1))
- vii. Comply with all applicable requirements listed in this part.
 1. Your SPCC plan may deviate from the requirements in paragraphs (g), (h)(2) and (3), and (i) of this section and the requirements in subparts B and C of this part, except the secondary containment requirements in paragraphs (c) and (h)(1) of this section, and sections 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), where applicable to a specific facility, if you provide equivalent environmental protection by some other means of spill prevention, control, or countermeasure. (40 C.F.R. § 112.7(a)(2))
 2. Where your SPCC plan does not conform to the applicable requirements in paragraphs (g), (h)(2) and (3), and (i) of this section, or the requirements of subparts B and C of this part, except the secondary containment requirements in paragraphs (c) and (h)(1) of this section, and sections 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), you must state the reasons for nonconformance in your SPCC plan and describe in detail alternate methods and how you will achieve equivalent environmental protection. If the Regional Administrator determines that the measures described in your SPCC plan do not provide equivalent environmental protection, he may require that you amend your SPCC plan, following the procedures in sections 112.4(d) and (e). (40 C.F.R. § 112.7(a)(2))
- viii. Describe in your SPCC plan the physical layout of the facility and include a facility diagram, which must mark the location and contents of each container. (40 C.F.R. § 112.7(a)(3))
 1. The facility diagram must include completely buried tanks that are otherwise exempted from the requirements of this part under section 112.1(d)(4). (40 C.F.R. § 112.7(a)(3))
 2. The facility diagram must also include all transfer stations and connecting pipes. (40 C.F.R. § 112.7(a)(3))

- ix. You must also address in your SPCC plan:
1. The type of oil in each container and its storage capacity; (40 C.F.R. § 112.7(a)(3)(i))
 2. Discharge prevention measures including procedures for routine handling of products (loading, unloading, and facility transfers, etc.); (40 C.F.R. § 112.7(a)(3)(i))
 3. Discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge; (40 C.F.R. § 112.7(a)(3)(ii))
 4. Countermeasures for discharge discovery, response, and cleanup (both the facility's capability and those that might be required of a contractor); (40 C.F.R. § 112.7(a)(3)(iii))
 5. Methods of disposal of recovered materials in accordance with applicable legal requirements; and (40 C.F.R. § 112.7(a)(3)(iv))
 6. Contact list and phone numbers for the facility response coordinator, National Response Center, cleanup contractors with whom you have an agreement for response, and all appropriate federal, state, and local agencies who must be contacted in case of a discharge as described in section 112.1(b). (40 C.F.R. § 112.7(a)(3)(v))
- x. Provide information and procedures in your SPCC plan to enable a person reporting a discharge as described in section 112.1(b) to relate information on the exact address or location and phone number of the facility; the date and time of the discharge, the type of material discharged; estimates of the total quantity discharged; estimates of the quantity discharged as described in section 112.1(b); the source of the discharge; a description of all affected media; the cause of the discharge; any damages or injuries caused by the discharge; actions being used to stop, remove, and mitigate the effects of the discharge; whether an evacuation may be needed; and, the names of individuals and/or organizations who have also been contacted. (40 C.F.R. § 112.7(a)(4))
- xi. Organize portions of the SPCC plan describing procedures you will use when a discharge occurs in a way that will make them readily usable in an emergency, and include appropriate supporting material as appendices. (40 C.F.R. § 112.7(a)(5))
- xii. Where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of a discharge), include in your SPCC plan a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure. (40 C.F.R. § 112.7(b))
- xiii. Provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in section 112.1(b). (40 C.F.R. § 112.7(b))
1. The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank or pipe, will not escape the containment system before cleanup occurs. (40 C.F.R. § 112.7(c))
 2. At a minimum, you must use one of the following prevention systems or its equivalent:
 - a. For onshore facilities:
 - i.) Dikes, berms, or retaining walls sufficiently impervious to contain oil; (40 C.F.R. § 112.7(c)(1)(i))
 - ii.) Curbing; (40 C.F.R. § 112.7(c)(1)(ii))
 - iii.) Culverting, gutters, or other drainage systems; (40 C.F.R. § 112.7(c)(1)(iii))
 - iv.) Weirs, booms, or other barriers; (40 C.F.R. § 112.7(c)(1)(iv))
 - v.) Spill diversion ponds; (40 C.F.R. § 112.7(c)(1)(v))
 - vi.) Retention ponds; or (40 C.F.R. § 112.7(c)(1)(vi))
 - vii.) Sorbent materials. (40 C.F.R. § 112.7(c)(1)(vii))

- b. For offshore facilities:
 - i.) Curbing or drip pans; or (40 C.F.R. § 112.7(c)(2)(i))
 - ii.) Sumps and collection systems. (40 C.F.R. § 112.7(c)(2)(ii))
- xiv. If you determine that the installation of any of the structures or pieces of equipment listed in paragraphs (c) and (h)(1) of this section, and sections 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c) to prevent a discharge as described in section 112.1(b) from any onshore or offshore facility is not practicable, you must clearly explain in your SPCC plan why such measures are not practicable; (40 C.F.R. § 112.7(d))
 - 1. For bulk storage containers, conduct both periodic integrity testing of the containers and periodic integrity and leak testing of the valves and piping; and, unless you have submitted a response plan under section 112.20, provide in your SPCC plan the following:
 - a. An oil spill contingency plan following the provisions of part 109 of this chapter. (40 C.F.R. § 112.7(d)(1))
 - b. A written commitment of man power, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful. (40 C.F.R. § 112.7(d)(2))

CONDUCT PERIODIC INSPECTIONS

Conduct periodic inspections to assure compliance with 40CFR112 (inspections, tests, and records).

- i. Conduct inspections and tests required by this part in accordance with written procedures that you or the certifying engineer develop for the facility. (40 C.F.R. § 112.7(e))
 - 1. You must keep these written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC plan for a period of three years. (40 C.F.R. § 112.7(e))
 - 2. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph. (40 C.F.R. § 112.7(e))

IMPLEMENT SPCC PLAN

Implement SPCC plan in compliance with 40CFR112.

- i. *Personnel, training, and discharge prevention procedures.*
 - 1. At a minimum, train your oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility SPCC plan. (40 C.F.R. § 112.7(f)(1))
 - 2. Designate a person at each applicable facility who is accountable for discharge prevention and who reports to facility management. (40 C.F.R. § 112.7(f)(2))
 - 3. Schedule and conduct discharge prevention briefings for your oil-handling personnel at least once a year to assure adequate understanding of the SPCC plan for that facility. Such briefings must highlight and describe known discharges as described in section 112.1(b) or failures, malfunctioning components, and any recently developed precautionary measures. (40 C.F.R. § 112.7(f)(3))

California Environmental Protection Agency
Unified Program Fact Sheet
Attachment 1 – SPCC Plan Requirements

ii. *Security (excluding oil production facilities).*

1. Fully fence each facility handling, processing, or storing oil, and lock and/or guard entrance gates when the facility is not in production or is unattended. (40 C.F.R. § 112.7(g)(1))
2. Ensure that the master flow and drain valves and any other valves permitting direct outward flow of the container's contents to the surface have adequate security measures so that they remain in the closed position when in non-operating or non-standby status. (40 C.F.R. § 112.7(g)(2))
3. Lock the starter control on each oil pump in the "off" position and locate it at a site accessible only to authorized personnel when the pump is in a non-operating or non-standby status. (40 C.F.R. § 112.7(g)(3))
4. Securely cap or blank-flange the loading/unloading connections of oil pipelines or facility piping when not in service or when in standby service for an extended time. This security practice also applies to piping that is emptied of liquid content either by draining or by inert gas pressure. (40 C.F.R. § 112.7(g)(4))
5. Provide facility lighting commensurate with the type and location of the facility that will assist in the:
 - a. Discovery of discharges occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.); and (40 C.F.R. § 112.7(g)(5)(i))
 - b. Prevention of discharges occurring through acts of vandalism. (40 C.F.R. § 112.7(g)(5)(ii))

iii. *Facility tank car and tank truck loading/unloading rack (excluding offshore facilities).* (40 C.F.R. § 112.7(h)(1))

1. Where loading/un-loading area drainage does not flow into a catchment basin or treatment facility designed to handle discharges, use a quick drainage system for tank car or tank truck loading and unloading areas. (40 C.F.R. § 112.7(h)(1))
 2. You must design any containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility. (40 C.F.R. § 112.7(h)(1))
 3. Provide an interlocked warning light or physical barrier system, warning signs, wheel chocks, or vehicle break interlock system in loading/un-loading areas to prevent vehicles from departing before complete disconnection of flexible or fixed oil transfer lines. (40 C.F.R. § 112.7(h)(2))
 4. Prior to filling and departure of any tank car or tank truck, closely inspect for discharges the lowermost drain and all outlets of such vehicles, and if necessary, ensure that they are tightened, adjusted, or replaced to prevent liquid discharge while in transit. (40 C.F.R. § 112.7(h)(3))
- iv. If a field-constructed aboveground container undergoes a repair, alteration, reconstruction, or a change in service that might affect the risk of a discharge or failure due to brittle fracture or other catastrophe, or has discharged oil or failed due to brittle fracture failure or other catastrophe, then evaluate the container for risk of discharge or failure due to brittle fracture or other catastrophe, and as necessary, take appropriate action. (40 C.F.R. § 112.7(i))
- v. In addition to the minimal prevention standards listed under this section, include in your SPCC plan a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in this part or any applicable more stringent State rules, regulations, and guidelines. (40 C.F.R. § 112.7(j))

FOR MORE INFORMATION

For additional information, visit U.S. Environmental Protection Agency's Web Site at
<http://www.epa.gov/oilspill/spcc.htm>.

BOARD OF FIRE COMMISSIONERS

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CITY OF LOS ANGELES
CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

FIRE DEPARTMENT

DOUGLAS L. BARRY
INTERIM FIRE CHIEF

200 NORTH MAIN STREET
LOS ANGELES, CA 90012

(213) 978-3800
FAX: (213) 978-3815

<http://www.lafd.org>

April 21, 2008

Mr. Jim Bohon,
Unified Program, Manager
California Environmental Protection Agency
1001 "I" Street, 4th Floor
P.O. Box 2815
Sacramento, CA 95814

RE: Aboveground Petroleum Storage Act (APSA) Signed Grant Application

Dear Mr. Bohon:

On behalf of the Los Angeles Fire Department as the Certified Program Agency is please to submit a copy of the Los Angeles Fire Department CUPA's signed grant agreement and local resolution for the Aboveground Petroleum Storage Act (APSA).

Should you required additional information regarding this matter, please contact Mr. Eloy Luna of the Hazardous Materials Program at (213) 978-3684.

Respectfully Submitted,

Ronald D. Jackson
Battalion Chief
Los Angeles Fire Department
Hazardous Materials Program

ABOVEGROUND PETROLEUM STORAGE ACT PROGRAM
GRANT AGREEMENT
BETWEEN THE
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
AND
CITY OF LOS ANGELES FIRE DEPARTMENT
CERTIFIED UNIFIED PROGRAM AGENCY
AGREEMENT NO. 07-655-550

State and Grantee hereby agree as follows:

1. PROVISIONS. The following statute authorizes the State to enter into this Grant Agreement:

A. California Health and Safety Code, division 20, chapter 6.67, section 25270.11

2. PURPOSE. The State shall provide a grant to and for the benefit of the Grantee for the purpose of allocating moneys from the Environmental Protection Trust Fund (EPTF) to the Certified Unified Program Agencies (CUPAs), in accordance with the formula and process determined by the Secretary for Environmental Protection (Secretary) in consultation with the CUPAs. Up to 80% of the grant is authorized by statute to be paid in advance and will be paid upon approval of the grant. The CUPAs shall expend those funds for the purpose of implementing the Aboveground Petroleum Storage Act (APSA).

3. GRANT AMOUNT. \$64,929.33

4. TERM OF AGREEMENT. The term of the Agreement shall begin on January 1, 2008, and end on March 1, 2010. The grant is for the implementation of the APSA Program from January 1, 2008, through December 31, 2009. ABSOLUTELY NO FUNDS MAY BE REQUESTED AFTER June 1, 2011.

5. REPRESENTATIVES. Either party may change its Representative(s) upon written notice to the other party. The Representatives during the term of this Agreement will be:

California Environmental Protection Agency
GRANT MANAGER
John Paine, Staff Environmental Scientist
1001 "I" Street, 4 th Floor
Sacramento, California 95814
Phone (916) 327-5092
Fax (916) 322-6555
jpaine@cal EPA.ca.gov

City of Los Angeles Fire Department	GRANT CONTACT
GRANTEE	(if different from Project Director)
Name of Project Director, Title: Ronald D. Jackson, Battalion Chief	Name: Eloy Luna
Street Address: 200 North Main Street, 1700	Street Address: 200 North Main Street, 1700
City, Zip: Los Angeles, 90012	City, Zip: Los Angeles, 90012
Phone: (213) 482-6537	Phone: (213) 978-3684
Fax: (213) 482-6511	Fax: (213) 978-3615
e-mail: Ronald.jackson@lacity.org	e-mail: eloy.luna@lacity.org

6. STANDARD AND SPECIAL PROVISIONS. The following exhibits are attached and made a part of this Agreement by this reference:

- Exhibit A REPORTING AND INVOICING PROVISIONS
- Exhibit B SPECIAL AND GENERAL PROVISIONS
- Exhibit C APSA GRANT APPLICATION

7. GRANTEE REPRESENTATIONS. The Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Grantee in its application, accompanying documents, and communications filed in support of its request for grant funding.

8. DEFINITIONS. The following defined terms apply throughout this Agreement:

"APSA" means the Aboveground Petroleum Storage Act;

"AST" means aboveground storage tank;

"Cal/EPA" means the California Environmental Protection Agency;

"CUPA" means the Certified Unified Program Agency;

"EPTF" means the Environmental Protection Trust Fund;

"Grantee" means City of Los Angeles Fire Department CUPA;

"PA" means the Participating Agency;

"Project" means the implementation of the Aboveground Petroleum Storage Act;

"Secretary" means the Secretary of the California Environmental Protection Agency; and

"State" means the State of California, including Cal/EPA.

IN WITNESS THEREOF, the parties have executed this Agreement on the dates set forth below.

By:


Grantee Signature (as authorized in the resolution)

RONALD D. JACKSON
Grantee Name, Title (Typed/Printed)

3/20/2008
Date

By:

Donald A. Johnson, Assistant Secretary
California Environmental Protection Agency

Date

EXHIBIT A

REPORTING AND INVOICING PROVISIONS

A. REPORTING PROVISIONS

1. The Grantee shall prepare and submit APSA Program Implementation Status Reports, including invoices for documentation of expenditures, and an inventory of aboveground storage tank (AST) facilities to the Cal/EPA Grant Manager at the following address:

California Environmental Protection Agency
Unified Program Section
c/o John Paine, Staff Environmental Scientist
1001 "I" Street, 4th Floor
Sacramento, California 95814

2. Each report shall provide a brief description of all the actions taken and work activities performed during the reporting period. As necessary, the report shall also include a description of any problems encountered or potential issues identified that may affect the terms, conditions, provisions, or commitments contained under this Agreement.
3. Each report shall have a cover letter certified by the Project Director or the Grant Contact.
4. For purposes of the APSA Program Implementation Status Reports, the reporting period is as follows:
 - a. 1st Report = January 1, 2008, to June 30, 2008
 - b. 2nd Report = July 1, 2008, to December 31, 2008
 - c. 3rd Report = January 1, 2009, to June 30, 2009
 - d. Final Report = July 1, 2009, to December 31, 2009
5. Submission of the reports and invoices shall be in accordance with the following schedule:

a. 1 st Report & Invoice	<u>Due Date</u>	August 1, 2008
b. 2 nd Report & Invoice	<u>Due Date</u>	February 1, 2009
c. 3 rd Report & Invoice	<u>Due Date</u>	August 1, 2009
d. Final Report & Invoice	<u>Due Date</u>	March 1, 2010
6. For purposes of the inventory of AST facilities, the Grantee shall submit a revision of the Cal/EPA list of AST facilities for the CUPA's jurisdiction. The revision will serve to determine the final percentage share for each CUPA for any funds remaining from the Environmental Protection Trust Fund. The Grantee shall use the format provided in the Cal/EPA list of AST facilities.
7. The Grantee shall submit the revised inventory of AST facilities to Cal/EPA no later than **December 1, 2008**.

B. INVOICING PROVISIONS

1. Invoices shall be used to depict the expenditures incurred by the Grantee in implementation of the APSA Program from January 1, 2008, through December 31, 2009.
2. The invoice shall include all APSA Program implementation expenditures (direct and indirect) incurred by the Grantee during the reporting period.
3. The invoice shall be submitted as an attachment to the "Implementation Status Report," in accordance with the submission schedule provided above.
4. The Grantee shall use the invoice template format provided by Cal/EPA.

EXHIBIT B

SPECIAL AND GENERAL PROVISIONS

A. SPECIAL PROVISIONS

1. **AMENDMENTS:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Agreement is binding on any of the parties.
2. **DISPUTES:** The Grantee shall continue with the responsibilities under this Agreement during any dispute. Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Cal/EPA Assistant Secretary for Local Programs or an authorized representative. The decision shall be in writing and a copy thereof furnished to the Representatives of this Agreement. The decision of the Assistant Secretary shall be final and conclusive unless, within thirty (30) calendar days after mailing of the decision to the Grantee, the Grantee furnishes a written appeal of the decision to the Secretary for Environmental Protection, with carbon copies furnished to the Cal/EPA Assistant Secretary for Local Programs and the Cal/EPA Grant Manager. The decision of the Secretary shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Grantee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Grantee shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement. This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the Cal/EPA Assistant Secretary for Local Programs or the Secretary, on any question of law.
3. **FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS:** The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Agreement. The Grantee further agrees that it will maintain financial accounts in accordance with generally accepted accounting principles. Without limitation of the requirement to maintain financial management systems and accounting standards in accordance with generally accepted fiscal and accounting principles, the Grantee agrees to:
 - a. Establish a financial account(s) and accounting system(s) that will adequately and accurately depict all EPTF amounts received and expended during the term of this Agreement, including but not limited to:
 - i. EPTF advance allocation amounts, including interest earned;
 - ii. Additional EPTF allocations amounts;
 - iii. All APSA Program implementation expenditures (direct and indirect); and
 - iv. Running balance of EPTF allocations and expenditures.
4. **RECORDS MANAGEMENT:** Maintain all documentation and financial records, as may be necessary, for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations. Establish an official file for the EPTF allocation that shall adequately document all significant activities and actions relative to the implementation of the APSA Program, including but not limited to:
 - a. Fiscal accounting;
 - b. APSA Implementation Status Reports; and
 - c. Invoicing and supporting documentation.
5. **TIMELINESS:** Time is of the essence in this Agreement. The Grantee shall proceed with APSA Program implementation in an expeditious manner. The Grantee shall prepare and submit all required reports and invoices as stipulated in this Agreement.

6. **WITHHOLDING OF GRANT DISBURSEMENTS:** Cal/EPA may withhold all or any portion of the EPTF allocations provided for by this Agreement in the event the Grantee:

- a. Materially violates, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
- b. Fails to maintain reasonable progress toward implementation of the APSA Program.

B. GENERAL PROVISIONS

1. **ASSIGNMENT:** This grant is not assignable by the Grantee, either in whole or in part, without the consent of the State.
2. **AUDIT:** Grantee agrees that the Cal/EPA, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the expenditure of allocated EPTF moneys and performance of this Agreement. The Grantee agrees to maintain such records for a possible audit for a minimum of three (3) years after term of the Agreement, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Grantee agrees to include a similar right of the State to audit records and interview staff in any contract related to performance of this Agreement.
3. **COMPUTER SOFTWARE:** The Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
4. **CONFLICT OF INTEREST:** The Grantee certifies that it is in compliance with applicable state and/or federal conflict of interest laws.
5. **GOVERNING LAW:** This grant is governed by and shall be interpreted in accordance with the laws of the State of California.
6. **INDEPENDENT ACTOR:** The Grantee, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the State.
7. **NONDISCRIMINATION:** During the performance of this Agreement, the Grantee and its contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religion, color, national origin, ancestry, disability, sexual orientation, medical condition, marital status, age (over 40) or denial of family-care leave, medical-care leave, or pregnancy-disability leave. The Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment.
8. **NO THIRD PARTY RIGHTS:** The parties to this grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this grant Agreement, or of any duty, covenant, obligation or undertaking established herein.
9. **TERMINATION:** The State may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Grantee agrees, upon demand, to immediately return the remaining unused portion, if any, of the Grantee's allocation of the EPTF.
10. **UNENFORCEABLE PROVISION:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement shall continue to have full force and effect and shall not be affected thereby.

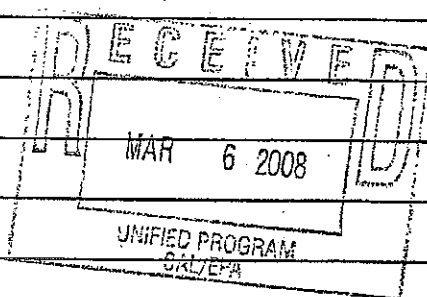
EXHIBIT C

**APSA GRANT APPLICATION
(see enclosure)**

**LOS ANGELES FIRE DEPARTMENT
ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM
GRANT APPLICATION**

1. Entity Information:

Name of Grantee: Los Angeles Fire Department
Name of Project Director: Ronald D. Jackson, Battalion Chief
Address: 200 North Main Street, 1700
City, Zip: Los Angeles, 90012
Phone: (213) 482-6537
Fax: (213) 482-6511
E-Mail: ronald.jackson@lacity.org
Name of Grant Contact (if applicable): Eloy Luna
Address: 200 North Main Street, 1700
City, Zip: Los Angeles, 90012
Phone: (213) 978-3684
Fax: (213) 978-3615
E-Mail: eloy.luna@lacity.org



2. Grant Amount: \$64,929.33

3. Work plan: (Scope of Work)

The CUPA shall develop a work plan as part of this grant application. The work plan will describe the CUPA's implementation activities and tasks and a timeline (spreadsheet) that delineates critical and completion dates of the activities and tasks.

The work plan shall include a brief narrative summary for each activity and task that clearly describes the activity or task and depicts the steps that will be taken or the methods to be used for completion. The descriptions should include as much detail as necessary to depict the CUPA's overall implementation efforts through the period of the grant. The narrative summaries shall also include a discussion of the expected completion dates of each activity and task. The list of activities and tasks provided below should be used as a reference to ensure that all applicable implementation activities are addressed.

* timeline (simple spreadsheet format) shall be developed to depict the critical milestones and expected completion dates for each activity and task identified in the work plan.

**LOS ANGELES FIRE DEPARTMENT
ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM
GRANT APPLICATION**

Los Angeles Fire Department AST Implementation Plan

The Los Angeles Fire Department CUPA will incorporate the Aboveground Petroleum Storage Act (APSA) Program into the existing Unified Program structure. The current activities of verifying preparation of an SPCC and referrals to the Regional Water Quality Control Board will be replaced with full implementation and administration of the APSA, beginning on January 1, 2008. The following work plan and associated timelines for completion address all aspects of the Los Angeles Fire Department's APSA implementation program beginning January 1, 2008, through December 31, 2009.

A. Work Plan

I. Fee Accountability Program

The Los Angeles Fire Department CUPA will incorporate the APSA Program into the existing Unified Program (UP) Fee Accountability system, accounting for the fee schedule, the actual amount billed, and the revenue collected. The fee accountability program is designed to encourage more efficient and cost-effective operation of the program for which the single fee is assessed. The APSA fee accountability program will be instituted before incorporating it into the single fee system.

The Los Angeles Fire Department CUPA's fee accountability program includes the following elements:

- Accounting for: fee schedule, the actual amount billed, and the revenue collected;
- Discrete billable services, categorized as general;
- Staff work hours required to implement the APSA program;
- Direct program expenses (including durable and disposable equipment);
- Indirect program expenses (including overhead for facilities and administrative functions);
- The number of businesses regulated under the APSA Program in the Los Angeles Fire Department; and,
- The type and range of services provided, including frequency of inspection.

The insertion of the APSA Program into the Unified Program Fee Accountability System and Program will be accomplished by June 30, 2009.

II. Unified Program Single Fee System

Prior to January 1, 2010, the Los Angeles Fire Department will adopt the APSA program fee as part of the UP Single Fee system in Los Angeles Fire Department CUPA. The APSA Program fee will be established at a level sufficient to pay the necessary and reasonable costs incurred by the CUPA in administering the APSA Program, including, but not limited to, inspections, enforcement, and administrative costs.

**LOS ANGELES FIRE DEPARTMENT
ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM
GRANT APPLICATION**

As part of the single fee system, the Los Angeles Fire Department CUPA will provide for a waiver of the APSA Program fees when a state or local government agency submits a tank facility statement.

By January 1, 2010, the Los Angeles Fire Department CUPA's "UP Consolidated Fee Invoice" will be amended to include a line item for the APSA Program fee. Fees for non-recurring APSA Program activities of the CUPA such as, but not limited to, the fee for an initial permit or special inspection, may be billed separately from the "UP Single Fee Invoice." Beginning in January 2010, each regulated business will be assessed the APSA Program fee as part of the single fee invoice.

The Los Angeles Fire Department CUPA UP fee schedules will be available to interested parties on the Fire Department's Web Site or upon request to the CUPA.

The Los Angeles Fire Department CUPA's existing dispute resolution procedures will be amended to incorporate the APSA Program, which will guide the resolution of fee disputes that arise between the businesses regulated under the APSA Program element.

III. Staffing Plan

Staff resources for the initial implementation phase (January 1, 2008 – December 31, 2009) of the APSA Program will involve the redirection of existing CUPA staff. As part of the CUPA's staffing plan and adoption of the single fee for the APSA Program, the adequacy of proposed staffing resources levels will include an analysis of:

1. The number and type of regulated tank facilities within the jurisdiction;
2. An estimate of the annual number of compliance and complaint inspections, considering cost of the following activities:
 - (i) Inspections and the related travel, research, analysis of findings, and documentation;
 - (ii) Inspection and enforcement activities including warnings, notices, meetings, hearings, legal proceedings, and documentation;
 - (iii) Permit activities including application reviews, modifications and revisions, and facility evaluations;
 - (iv) Training including field, meetings, seminars, workshops, courses and literature reviews; and
 - (v) Management including day-to-day operation scheduling and supervision.

By February 29, 2008, selected existing CUPA staff will be temporarily redirected to assist with the start up activities of the APSA Program. Once a solid funding mechanism is in place (after January 1, 2010), the CUPA will initiate the process of hiring permanent APSA Program staff as needed.

**LOS ANGELES FIRE DEPARTMENT
ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM
GRANT APPLICATION**

IV. Identification of Regulatory Universe

The Los Angeles Fire Department CUPA will use our existing Facility ID in Envision database and the AST Tank Facility list provided by Cal/EPA as the starting point for the identification of the regulated tank facilities in Los Angeles.

The Cal/EPA list will be compared with the existing facility data to determine those facilities already regulated under one or more Unified Program elements that handle petroleum materials in amounts that are equal to or in excess of 1,320 gallons. The list will then be segregated based on the following categories:

1. Exempted tank facilities with total tank storage capacity of less than 20,000 gallons
2. Tank facilities w/ storage capacity $\geq 1,320$ and $< 10,000$ gallons
3. Tank facilities w/ storage capacity $\geq 10,000$ and $< 100,000$ gallons
4. Tank facilities w/ storage capacity $\geq 100,001$ and $< 1,000,000$ gallons
5. Tank facilities w/ storage capacity $\geq 1,000,001$ and $< 10,000,000$ gallons
6. Tank facilities w/ storage capacity $\geq 10,000,001$ and $< 100,000,000$ gallons
7. Tank facilities w/ storage capacity $\geq 100,000,001$ gallons

The Los Angeles Fire Department CUPA will submit a complete list of regulated tank facilities to Cal/EPA by December 1, 2008.

V. Staff Training Plan

The CUPA staff assigned to the APSA Program will attend the AST Training Program developed by Cal/EPA, which is scheduled to be delivered in July, August, and September of 2008. If/when additional APSA Program staff is hired, they will go through the AST Training Program's computer-based training course, including successful completion of the examination for inspectors. The APSA Program standards will be incorporated into the CUPA's ongoing training program and provided to program staff on a regular basis.

VI. Inspection and Compliance Plan

As part of the Los Angeles Fire Departments' CUPA Unified Inspection and Enforcement Program, the CUPA will ensure all regulated businesses subject to the APSA Program are in compliance with all the program requirements, including SPCC Plan preparation and implementation, annual submission of their facility statement, and spill notifications. Exempted tank facilities will be periodically reviewed to verify that their total tank capacity is less than 20,000 gallons and to ensure they are performing and documenting their daily tank inspections. Tank facilities with storage capacity of $\geq 1,320$ and $< 10,000$ gallons will be periodically reviewed to verify that their total tank capacity is less than 10,000 gallons and to ensure that they have prepared and are implementing an SPCC Plan, are submitting their annual facility statements, and are paying the APSA Program fee.

**LOS ANGELES FIRE DEPARTMENT
ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM
GRANT APPLICATION**

Tank facilities with storage capacity of $\geq 10,000$ gallons will be inspected at least once every three years to ensure that they have prepared and are implementing an SPCC Plan in compliance with U.S. Code of Federal Regulations, Title 40, Part 112. The inspection will also include a visual inspection of a representative sample of the tanks at the tank facility. The inspection and all violations discovered during the inspections will be documented on an inspection report form. Minor violations will be clearly identified and required to be corrected within 30 days.

The owner/operator of the tank facility will be required to certify that all minor violations have been corrected. For more significant or serious violations, the CUPA will either initiate an administrative enforcement action or refer the case to the City Attorney for civil enforcement.

VII. UP Administrative Procedures

The Los Angeles Fire Department CUPA's administrative policy and procedures will be reviewed and updated, as necessary to incorporate all relevant aspects of the APSA Program. All revisions will be completed by December 31, 2008.

VIII. Regulated Business Outreach Activities

The Los Angeles Fire Department's CUPA will develop educational and guidance materials for those businesses regulated under the APSA Program. The educational and guidance materials will include fact sheets and guidance documents to assist regulated businesses in complying with all requirements of the APSA Program. These materials will be developed prior to September 2008. In addition to these educational and guidance materials, the Los Angeles Fire Department CUPA will hold two Compliance Assistance Workshops in October 2008. The workshops will be held in the evening and afford the regulated businesses the opportunity to learn about the APSA Program requirements and ask questions concerning specific requirements or appropriate methods of compliance.

IX. Other Implementation Activities

The Los Angeles Fire Department CUPA is the only Unified Program Agency within the jurisdictional boundaries of the city.

B. Implementation Timeline

Los Angeles City Fire Department APSA Program Implementation Timeline

Activity	2008												2009												2010		
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M
Submit APSA Grant Application		X																									
Submit Facility List to CalEPA											X		<i>2 Jul per E.L. approval 3/6/08</i>														
Develop APSA Fee Accountability Program																		X									
Adopt APSA Fees																											
Post Fees on Website																						X					
Consolidated Invoice																						X					
Secure Staffing for Implementation Phase		X																				X					
Staff Training								X	X	X																	
Business Educational Materials								X																			
Revise Administrative Procedures												X															
Outreach Workshops										X																	
Inspections																									X		

**LOS ANGELES FIRE DEPARTMENT
ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM
GRANT APPLICATION**

4. Projected Budget:

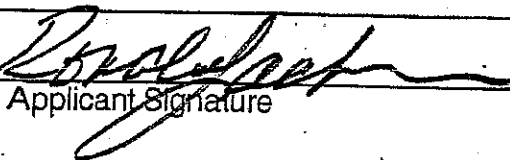
Direct Program Costs:

*Personnel Services	\$ 45,000
Operating Expenses (prorated for project)	\$ 6,000
Travel Expenses	
Supplies/Materials (less than \$5,000 per item)	
Equipment (\$5,000 or more per item)	\$ 10,000
Indirect Cost (%) (Rate applied to Personnel Services only)	\$ 3,929.33
TOTAL	\$ 64,929.33

*Salary is based on hourly rate and includes fringe benefits.

5. CERTIFICATION

I certify under penalty of perjury that the information I have entered on this application is true and complete to the best of my knowledge and that I am an employee of the applicant authorized to submit the application on behalf of the applicant. I further understand that any false, incomplete, or incorrect statements may result in the disqualification of this application. By signing this application, I waive any and all rights to privacy and confidentiality of the proposal on behalf of the applicant, to the extent provided in this program.


Applicant Signature

February 27, 2008

Date

Ronald D. Jackson, Battalion Chief

Printed Name of Applicant



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL
PROTECTION

1001 I STREET, SACRAMENTO, CALIFORNIA 95814 • P.O. BOX 2815, SACRAMENTO, CALIFORNIA 95812-2815
(916) 323-2514 • (916) 324-0908 FAX • WWW.CALEPA.CA.GOV

ARNOLD
SCHWARZENEGGER
GOVERNOR

March 14, 2008

Certified Mail: 7003 1680 0000 6173 6316

Mr. Ronald D. Jackson
Battalion Chief
City of Los Angeles Fire Department CUPA
200 North Main Street, 1700
Los Angeles, California 90012

Dear Mr. Jackson:

The California Environmental Protection Agency (Cal/EPA) has received the Aboveground Petroleum Storage Act (APSA) grant application for the City of Los Angeles Fire Department Certified Unified Program Agency (CUPA). Cal/EPA has approved your grant application. Please review the enclosed APSA Grant Agreement and return the signed agreement as soon as possible, but not later than June 2, 2008.

Once Cal/EPA receives City of Los Angeles Fire Department CUPA's signed grant agreement and local resolution, Cal/EPA will disburse the initial advance allocation of 80 percent of the CUPA's total allocation for their implementation of the APSA program. The remaining 20 percent of the CUPA's total allocation will be available on a reimbursement basis after the initial 80 percent has been expended.

If you need further assistance or have questions regarding the APSA Grant Agreement, you may contact John Paine at (916) 327-5092 or jpaine@calepa.ca.gov.

Sincerely,

Jim Bohon, Manager
Unified Program
California Environmental Protection Agency

Enclosure

cc: Mr. Eloy Luna (Sent via email)
Grant Contact
City of Los Angeles Fire Department CUPA
200 North Main Street, 1700
Los Angeles, California 90012

ATTACHMENT 4

EXPENDITURE PLAN

DIRECT COSTS - OT PERSONNEL SERVICES

Name	Position	Hourly Rate	OT (x 1.5)	Hours	Total Cost
Matthew Gatewood	Capt II	\$ 54.98	\$ 82.47	25	\$ 2,061.75
Joe Robles	Capt I	\$ 52.14	\$ 78.21	10	\$ 782.10
Eloy Luna	EGA IV	\$ 51.00	\$ 76.50	35	\$ 2,677.50
Judy Ung	MA II	\$ 38.94	\$ 58.41	35	\$ 2,044.35
Eva Bencomo	Prin Clk Typ	\$ 30.72	\$ 46.08	40	\$ 1,843.20
Shannon Lovgren	M Asst	\$ 27.67	\$ 41.51	35	\$ 1,452.68
(5) Clerical	Clerk Typist	\$ 21.12	\$ 31.68	200	\$ 6,336.00
(3) Sr. Clerical	Sr. Clerkt Typists	\$ 26.07	\$ 39.11	150	\$ 5,865.75
(2) Accounting	Accounting Clerk I	\$ 26.07	\$ 39.11	100	\$ 3,910.50
					\$ 26,973.83

2,061.75
782.10
sworn 2,843.85

2,677.50
2,044.35
1,843.20
1,452.68
6,336.00
5,865.75
3,910.50
civilian 24,129.98

INDIRECT COST

Category	Amount
Fringe Benefits	\$ 9,440.84

(Not to exceed 35% of Personnel Services Costs)

DIRECT COSTS - OFFICE/OPERATING SUPPLIES

Item	Quantity	Cost/Each	Total Cost
Software	3	\$ 500.00	\$ 1,500.00
Office/Operating Supplies	varies	\$ -	\$ 500.00
Printing/Binding (outreach)	varies	\$ -	\$ 5,000.00
Training/Travel	varies	\$ -	\$ 5,000.00
Misc	varies	\$ -	\$ 14.67
			\$ 12,014.67

DIRECT COSTS - EQUIPMENT

Item	Quantity	Cost/Each	Total Cost
Personal Computer	5	\$ 1,500.00	\$ 7,500.00
Notebook/Tablet Computer	3	\$ 3,000.00	\$ 9,000.00
			\$ 16,500.00

Grand Total: \$ 64,929.33