



OFFICE OF THE STATE FIRE MARSHAL ABOVEGROUND PETROLEUM STORAGE ACT (APSA) ADVISORY COMMITTEE

MEETING MINUTES

Tuesday, May 1, 2018

1:30 PM – 4:00 PM

Via Web Conference/Teleconference

Staff Present:

Jennifer Lorenzo, Senior Environmental Scientist, Committee Chair

Glenn Warner, Senior Environmental Scientist

Joann Lai, Environmental Scientist

Members Present:

Tom Ellison, Kern County Fire Department

David Harris, Donlee Pump Company

Craig Fletcher, Fletcher Consultants, Inc.

Ryan Hanretty, California Independent Oil Marketers Association (CIOMA)

Michael Huber, U.S. Department of the Navy

Patrick Wong, Pacific Gas & Electric (PG&E)

Vince Mendes, Fresno County Environmental Health Certified Unified Program Agency (CUPA)

Ernie Medina, Bakersfield Fire Department CUPA

Stacey Miner, Walmart

Sande Pence, San Diego County Environmental Health CUPA

Nancy Schlotthauer, San Bernardino County Fire District CUPA

Jason Rizzi, Northern California Fire Prevention Officers (FPO)

Randy Sawyer, Committee Co-Chair, Contra Costa County Hazardous Materials CUPA

Todd Tamura, Tamura Environmental, Inc. (Consultant to Western States Petroleum Association [WSPA])

Jim Whittle, Shasta County Environmental Health CUPA

Guests Present:

Devra Lewis, Contra Costa County Hazardous Materials CUPA
Justin Tao, San Bernardino County Fire District CUPA
Alejandra Venegas, San Bernardino County Fire District CUPA
Christina Graulau, U.S. Department of the Navy
Jessica Gallagher, Placer County CUPA

Members Absent:

James Carver, Southern California FPO
Armand Delgado, Verizon Wireless
Rich Erickson, Donlee Pump Company
Michelle Le, PG&E
Emily Richter, Northern California FPO
Wayne Geyer, Steel Tank Institute (STI)
Peter Reich, US EPA

I. Call to Order

Committee Chair, Jennifer Lorenzo, called the meeting to order at 1:35 p.m. and welcomed everyone to the meeting.

II. Roll Call and Introductions

Ms. Joann Lai conducted the roll call and it was determined that a quorum was present. Attendees and guests introduced themselves.

III. Approval of Minutes

Minutes from the meeting on December 14, 2017, were reviewed. No changes were made. Ms. Sande Pence motioned to approve the minutes and Mr. Vince Mendes seconded the motion. All other committee members that were present were in favor and none opposed.

IV. Review of Action Items from May 1, 2018

Ongoing Action Items

1. APSA Frequently Asked Questions (FAQ)
2. Petroleum FAQ
3. APSA Regulations and Rulemaking Timeline

Completed Action Items

1. Tanks in Underground Areas (TIUGA) Fact Sheet
2. TIUGA and APSA Applicability Questions

V. Old Business

A. Tanks in Underground Areas

Guidance documents for TIUGAs are posted on the [Department of Forestry and Fire Protection \(CAL FIRE\) – Office of the State Fire Marshal \(OSFM\) APSA website](#). The TIUGA working group met a few times since the last advisory committee meeting to review the updated guide or fact sheet. The outdated guide from 2015 has been removed and replaced by the updated version. A laws and regulations manual specific to TIUGAs and the information bulletin that clarifies the exception to the fire code section on piping requirements are both available on the website. OSFM plans to post the monthly inspection checklist for TIUGA facilities with less than 1,320 gallons of petroleum, which was made consistent with the recent edition of the STI SP001 standard with the help of Mr. Craig Fletcher. The monthly inspection checklist for all other facilities are available for free on the [STI website](#) – scroll down to question 5. There is also a link on the OSFM APSA webpage that will lead to STI's inspection checklists for all other facilities.

An optional form that notifies the local regulators about the owner's or operator's TIUGA will also be posted on the website. The notification form is available for an owner/operator of a TIUGA that wants to notify their agency, or if the local CUPA wants to use that form. It is not a requirement for anyone to use the notification form. This form has not been given to the committee members, because it is still in a draft form but the Committee Chair will send the notification form once it is finalized, either as an attached document in an email or its link. The Committee Chair mentioned that there is an additional issue that still needs to be addressed for TIUGAs, specifically on existing tank systems that meet the full definition of a TIUGA on July 1, 2018, but are currently classified as underground storage tanks (UST) in the California Environmental Reporting System (CERS). Ms. Sande Pence developed a Help Guide, with the assistance of Mr. Robert Rapista of San Diego County CUPA. The guide was routed to the State Water Resources Control Board (State Water Board) and the Committee Chair is waiting for feedback. The Committee Chair anticipates further guidance in developing a transitional process to be able to capture these facilities by July 1st.

The TIUGA working group will need to reconvene to address the [California Code of Regulations (CCR)] Title 19 rulemaking, including the adoption of an abbreviated spill prevention, control, and countermeasure (SPCC) plan template [for facilities with less than 1,320 gallons of petroleum]. The rulemaking will be contingent on [Assembly Bill \(AB\) 2902](#).

B. Legislation

AB 2902

Ms. Sande Pence and Mr. Randy Sawyer, the Committee Co-Chair, provided an update on AB 2902. The bill has passed the Assembly and is now in the Senate environmental quality committee.

The first section of AB 2902 would revise the definition of an “aboveground storage tank” (AST) to include the term container. AB 2902 would also clarify that if a petroleum waste tank at a tank facility is under a permit-by-rule from the CUPA, or the petroleum waste tank is at a treatment, storage, and disposal facility (TSDf), then the petroleum waste tank will be excluded under the definition of an AST in APSA. These tank systems already have several existing requirements under CCR Title 22. Ultimately, AB 2902 will expand the petroleum waste tank exclusion to not just those tank systems found at tank facilities regulated as TSDfS by the Department of Toxic Substances Control (DTSC), but also those tank systems found at tank facilities regulated by CUPAs under the permit-by-rule authorization.

Ms. Pence also mentioned that AB 2902 will clarify a TIUGA with less than 55 gallons will no longer be regulated under the UST program, but will be excluded under the APSA program, similar to the oil-filled electrical equipment exclusion. Ms. Pence wants to add Subsection (8) to Health and Safety Code (HSC) Section 25270.2(a) to clarify that if a TIUGA contains less than 55 gallons of petroleum, has secondary containment, is inspected monthly and the inspections are logged or recorded, then the TIUGA will be excluded under the APSA program. Ms. Pence hopes this additional clarification and amendment to AB 2902 will be accomplished, so that 25-gallon oil-filter crusher tanks in a basement, for example, will no longer be subject to UST requirements.

The Committee Chair asked whether the Subsection (8) to HSC Section 25270.2(a) is in the current version of AB 2902, as it is written today. Ms. Pence replied that Subsection (8) of HSC Section 25270.2(a) is not yet in the current language of AB 2902 and clarified that the only changes were made under section 1 of AB 2902, in HSC Section 25270.2, to include a tank in an underground area that has a capacity to store any volume of petroleum be considered as an “aboveground storage tank” or “storage tank”. This means that a TIUGA with less than 55 gallons will no longer be subject to the UST program, but they will be regulated under APSA. These smaller TIUGAs will be fully regulated under APSA. Ms. Pence added that the bill still needs to be amended, so that TIUGAs with a capacity of less than 55 gallons of petroleum are recognized under APSA and if they meet certain conditions such as those in the proposed Subsection (8) to HSC Section 25270.2(a), then they are also excluded from the other requirements of APSA [such as fees, annual tank facility statement, and prepare/implement SPCC Plan].

AB 2902 will also amend the definition of a TIUGA, so that it will exclude 55-gallon drums from the definition of a TIUGA for consistency with the UST program. A TIUGA will only capture stationary tanks, not portable tanks. This is already captured in the current version of AB 2902.

AB 2902 will also require OSFM to adopt an SPCC plan for TIUGA facilities with less than 1,320 gallons of petroleum. A modified Tier I qualified facility SPCC plan template for less than 1,320 gallons was suggested. Further exclusions for certain tank systems are included in AB 2902 if the tank facility's storage capacity is less than 1,320 gallons of petroleum. The exclusions would be expanded to TIUGAs that are hydraulic fluid closed-loop mechanical systems (similar to the UST program exclusions) and heating oil tanks.

Ms. Pence stated that the Committee Co-Chair has submitted the additional changes, with priority given to the proposed Subsection (8) to HSC Section 25270.2(a), to the CUPA Forum Board and Mr. Justin Malan.

The Committee Co-Chair confirmed that there are no oppositions for the changes proposed in AB 2902. The Committee Co-Chair plans to follow up and check on the proposed changes. The bill includes two parts. One includes the APSA program and the other includes the UST program. The two subjects were combined into one bill. The Committee Chair also mentioned that AB 2902 has a provision for expanding the hazardous materials release reporting section under the business plan law.

The Committee Chair asked the committee members if they had any additional questions or concerns regarding less than 55-gallon TIUGAs. In the last meeting, most committee members supported the idea of TIUGAs with less than 55 gallons being regulated under the APSA program. [If AB 2902 is amended to include the proposed Subsection to HSC 25270.2(a), then] a TIUGA storing less than 55 gallons would not be regulated under the UST program, which means that they are not subject to other applicable requirements such as vacuum, pressure or hydrostatic (VPH) monitoring. These smaller tank systems would be recognized under the APSA program, but excluded [from other APSA requirements] like oil-filled electrical equipment. If changes are not included in the current bill, then such TIUGAs are still subject to the UST provisions. Any changes to the statute would have to be introduced in a different bill in the next legislative session. The Committee Chair plans to contact the State Water Board about this topic.

Mr. Jim Whittle asked about a scenario where a facility that is not currently subject to APSA, but does have a tank in a basement that is less than 55 gallons. Similar to the oil-filled electrical equipment exclusion, these TIUGAs with less than 55 gallons would be excluded if the proposed changes are in place. For example, if a facility only has transformers, has 1,320-gallons or more of petroleum, and meets the applicable conditions of exclusions, then the facility is

excluded from [other provisions of] APSA. The facility would not be required to prepare an SPCC Plan under APSA, but may still be subject to the federal program.

Ms. Pence reminded the committee members that they can sign up to track the bill, and see the exclusion language for less than 55-gallon TIUGAs be added in the next amendment.

APSA Applicability (HSC Section 25270.3)

The Committee Chair and committee members went over HSC Section 25270.3. Under HSC Section 25270.3, Subsection (a) is specific to a tank facility being regulated under the federal SPCC Rule. Subsection (b) contains the storage capacity threshold of 1,320 gallons of petroleum regardless of whether it is regulated under the federal program or under APSA. Subsection (c) is the applicability section for TIUGAs regardless of total petroleum storage capacity. There was previous discussion of having a threshold of 1,320 gallons of petroleum added to Subsection (a) for consistency with Subsection (b). Subsection (b) has no requirement of potential threat of discharge to navigable waters. Subsection (a), on the other hand, requires the facility to have more than 1,320 gallons of oil and a potential threat to navigable water. We want to keep Subsection (a) to ensure that federal facilities are regulated under the APSA program, but the current statute means a tank facility with at least one 55-gallon container or tank that is already subject to the federal SPCC rule is also subject to APSA. It is unlikely that we have any federal facility with less than 1,320 gallons of petroleum, but the facilities are regulated only if they have a potential threat to navigable water.

Mr. Glenn Warner asked whether the TIUGA applicability in Subsection (c) would also need to be replicated in Subsection (a) for federal facilities. The Committee Chair replied no, since we are looking for consistency between subsection (a) and (b) in terms of the petroleum storage capacity threshold only.

Mr. Michael Huber stated he had no objections, if necessary, to adding the 1,320 gallons or more of petroleum threshold to Subsection (a). He believes it is redundant, since the federal SPCC rule includes their own threshold of 1,320 gallons of oil; however, he would not oppose the proposed amendments.

Ms. Pence believes it is necessary to add the petroleum threshold to Subsection (a) for clarification. HSC Section 25270.3(a) is interpreted where if a federal facility is subject to the federal SPCC rule, then it is subject to APSA, regardless of the total petroleum storage capacity of the facility. The federal SPCC rule includes all oils, not just petroleum. The APSA program looks specifically at petroleum products. For example, this would mean that a federal facility subject to the federal SPCC rule with vegetable oil and one 55-gallon drum of gasoline is subject to the APSA program. Adding "at least 1,320 gallons of petroleum or

more” to HSC Section 25270.3(a) would add further clarification.

The Committee Chair clarified that Subsection (a) has existed since APSA was enacted in 1989 and has never been amended. Subsection (b) was changed from 10,000 gallons of crude oil to 1,320 gallons [or more] of petroleum from AB 1130. Subsection (c) was added recently from Senate Bill (SB) 612. APSA regulates most facilities based on Subsection (b), while Subsection (a) is typically applied for regulating federal facilities under APSA. Federal facilities generally have large volumes of petroleum, so Subsection (a) has never posed an issue.

Mr. Huber believes that the addition of the proposed language to Subsection (a) is redundant because federal facilities tend to have more than the 1,320-gallon oil storage capacity and believes a review by legal is necessary before making any amendments. The Committee Chair plans to ask for CAL FIRE’s legal review and will email the committee members or discuss it in the next committee meeting.

C. Regulations

A draft proposed regulation document was sent via e-mail to the committee members.

Tank Facility Statement (Article 6, Section 2200.01)

The Committee Chair believes the tank facility statement, as proposed in Article 6, Section 2200.01, is unnecessary and should be removed. The statute clearly describes that if a facility satisfies the business plan requirements and certain sections of the business plan, then they meet the annual tank facility statement annual reporting. The intent of Section 2200.01 was to clarify the statute; however, this section seems unnecessary. Also, Section 2200.01 is less stringent than the statute.

Ms. Sande Pence agrees that it is duplicative. Section 2200.01 makes an impression that the chemical inventory is the only requirement to satisfy the submittal of an annual tank facility statement when that is not the case. Ms. Christina Graulau also found that Section 2200.01 made it confusing and did not need to be repeated. Ms. Pence thought that if a person was not looking at the statute, they would see the requirement under Section 2200.01, but agreed with Ms. Graulau that Section 2200.01 is duplicative. The Committee Chair removed proposed Section 2200.01.

Enforcement (Article 4, Section 2180.06)

The Committee Chair proposed new language [Subsection (a)] that a facility that fails to prepare a Spill Prevention, Control, and Countermeasure (SPCC) Plan

shall be cited a class I or class II violation. The Committee Chair provided other recommendations, where upon the discovery of an owner or operator who fails to prepare an SPCC Plan pursuant to HSC Section 25270.4.5(a), the UPA shall issue a class I or class II violation. OSFM is continually challenged by CUPAs during their CUPA evaluation. OSFM's main role is to assess the CUPA's implementation of the Unified Program which consolidates six program elements, including the APSA program. In 2013, during the initial phases of the regulation subgroup meetings, to cite a facility for failing to prepare an SPCC Plan as a class I or class II violation was suggested to be included then. However, at the time, former committee member and Committee Co-chair Mr. Mike Vizzier recommended including this as part of the violation classification guidance document instead of the APSA regulations. The violation classification guidance has yet to be updated. CalEPA and the [Enforcement] Steering Committee have started working on updating the violation classification guidance recently.

The justification to include this new proposed language in the enforcement section is due to the number of encounters where CUPAs challenge OSFM on the validity of citing a facility with no SPCC Plan as a class I or class II violation. The term minor violation is not defined in APSA, but it is defined in the Unified Program administration laws where CalEPA receives their authority to implement the Unified Program. OSFM has observed several facilities being cited a minor violation for not preparing an SPCC Plan. The definition of a minor violation can be found in HSC Chapter 6.11, Section 25404.

Of the options provided by the Committee Chair, the Committee Co-Chair favored the first proposal. Ms. Graulau often see facilities cited for not having an SPCC Plan when an element in the SPCC plan is missing. A facility that has missing elements in their SPCC Plan is issued a different violation. OSFM does not want a CUPA issuing a minor violation for facilities that have never prepared an SPCC Plan before. There are many requirements in an SPCC Plan where a facility needs to implement the SPCC Plan. There is also the aspect of OSFM being consistent with the Federal Civil Penalty Policy. This policy can be found online (<https://www.epa.gov/sites/production/files/documents/311pen.pdf>). They have three different classifications, like the Unified Program. The Unified Program uses the terms minor, class I, and class II violations. US EPA's Civil Penalty Policy uses the terms minor noncompliance, moderate noncompliance, and major noncompliance. In this federal policy, not having an SPCC Plan was listed as either a moderate noncompliance or major noncompliance. This violation was not listed as a minor noncompliance. OSFM asks CUPAs to cite facilities with no SPCC Plan as class I or class II violation. For minor violations, owners or operators are required to comply and return to compliance within 30 days. Many facilities may not be able to comply within 30 days if they require a professional engineer to prepare a plan. The Committee Chair emphasized that the 'no SPCC Plan' violation is for a facility that has never prepared a plan at all.

Ms. Pence mentioned that the first proposal is the most straightforward. Ms. Graulau did not favor any of the suggested proposals. Ms. Pence reassured that a facility that has an SPCC Plan but is missing elements does not receive this 'no SPCC Plan' violation; the facility receives a different violation. Mr. Jim Whittle confirmed that there is a CERS violation specifically for failure to prepare a plan that meets all applicable requirements.

Ms. Janice Witul has issued violations to facilities that have never prepared a plan as major noncompliance. However, she described an extenuating circumstance where a facility does not have a plan but has all the major elements such as secondary containment, conducting inspections and testing, and the facility knew what to do, but didn't know that they had to. Ms. Witul would consider a moderate noncompliance in such circumstance. The SPCC Plan is a regulatory requirement. If a facility does not have a plan, then there is the possibility that the owner or operator does not know the depth of regulatory requirements to operate. When calculating penalties, US EPA does not double count violations that are observed.

The Committee Chair asked the committee members from industry if they had any opinions or concerns. Mr. David Harris mentioned that businesses may have never known about the existence of the APSA program and the requirements to prepare an SPCC Plan, especially after adding another tank to their facility, increasing their petroleum storage capacity. This automatically places those types of businesses in major noncompliance. The Committee Chair responded that immediate penalties are not common and not always the case. CUPAs usually issue a Notice of Violation (NOV) to the facility. The CUPAs do not fine a facility upon initial discovery of no SPCC Plan. Mr. Harris believes this is a reasonable approach if facilities are allowed time to comply before being given a fine. Mr. Jim Whittle confirmed that their CUPA's protocol is to issue NOV and give the facility some time to complete and implement their SPCC Plan. They generally would not take immediate enforcement actions that result in monetary penalty. Their CUPA typically allows for 60 days to comply. A more complicated facility that requires a professional engineer would have 90 days. There have been instances where smaller facilities that utilize the Tier I Qualified Facility SPCC Plan template can comply within 30 days. The time it takes for a facility to return to compliance varies and depends on each facility and whether there are any site complications.

Mr. Craig Fletcher asked how it would affect a facility that recognized they have a TIUGA and is now subject to the SPCC Plan requirement. The Committee Chair believes this instance will be common once the full definition of a TIUGA is in effect on July 1st, 2018. There would be no immediate monetary penalty. There will be a compliance period for tank facilities with these types of tank systems and the regulatory agencies will likely need to focus on outreach.

The Committee Chair asserted that there are instances where existing regulated facilities are cited a violation for not preparing an SPCC Plan and have not returned to compliance after a year or more. The Committee Chair wants to see CUPAs classifying the 'no SPCC Plan' violation as a class I or class II violation, instead of a minor violation. This does not mean the CUPA will assess penalties immediately.

Ms. Pence described that most CUPAs would start with a class II violation for the 'no SPCC Plan' violation and if the facility addresses the requirements and complies (or corrects the violation), there would be no formal enforcement taken against the facility.

Adding to Mr. Fletcher's question about a facility with a TIUGA that is recently subject to APSA, the Committee Chair mentioned that certain facilities with TIUGAs, such as typical oil change shops were already subject to the APSA program since 2016 and, now that it's 2018, many of those facilities are still probably not aware of the SPCC Plan requirements.

Originally, this proposal to classify the failure to prepare an SPCC Plan as a class I or class II violation should have been included in the APSA rulemaking, but then it was recommended to be included in the enforcement guidance document. It has not yet been added to the guidance document. OSFM continues to get challenged on this issue during CUPA evaluations.

Ms. Pence mentioned that the Enforcement Technical Advisory Group (TAG) is currently working to include this in the guidance document. The Committee Chair emphasized that a guidance document is just guidance, it is not law.

The Committee Chair asked Mr. Todd Tamura if WSPA and its constituents would have any issues or concerns about this proposal. The Committee Chair believed that they should not have much issues or concerns, since many of WSPA's constituents should already have SPCC Plans in place.

On the other hand, Mr. Ryan Hanretty of CIOMA is unsure what the impact would be on their industry. The Committee Chair assured that the impact on industries would go unchanged, but it would have a greater impact on CUPAs that cite this violation as a minor violation. The CUPAs have their Inspection and Enforcement Plan to guide them through this scenario. Major penalties resulting in monetary fines are typically observed at facilities that have had a major release and caused environmental and public harm. Facilities that are cited a violation for not having an SPCC Plan are typically not fined or assessed a penalty immediately by a CUPA.

The Committee Chair asked the committee members if it would be okay to eliminate the other proposals and keep the first proposal [to Subsection (a)]. The committee members agreed to keep the first proposal.

UPA Staff Training (Article 5, Section 2190.00)

The Committee Chair proposed a clarification to the section on UPA inspector training requirement. Since AB 1130, HSC Section 25270.5(c) required that the person conducting the inspection shall complete an aboveground storage tank training program established by the Secretary for Environmental Protection (Secretary) and satisfactorily pass an examination developed by the Secretary. However, the statute has been amended and the current HSC Section 25270.5(c) reads, “the person conducting the inspection shall complete and pass the initial aboveground storage tank inspector training program.”

The Committee Chair mentioned that the additional language to Section 2190 would not necessarily change what UPAs are already required to do. One proposal [Subsection (b)] is intended to clarify the training requirement and revert to the original requirement as it was intended from AB 1130, specifically including the training and exam. An additional proposal included that training and passing the exam are required for UPAs to inspect facilities with 10,000 gallons or more of petroleum [Subsection (c)]. The Committee Chair will discuss Subsection (c) with the legal office.

The Committee Chair asked the members to focus on Subsections (a) and (b). Subsection (a) would clarify that the training is established by OSFM. Before OSFM was delegated oversight of the APSA Program, the initial training and exam were required to be developed by the Secretary. Currently, there is no specific organization on who administers, develops or approves the training. Subsection (b) would require inspectors to complete the training and pass an exam before conducting inspections. Though current statute implies that completing and passing the training can be interpreted as passing the exam as well, Subsection (b) would provide explicit language about passing the exam. Subsection (c) will be reviewed by the legal office and the Committee Chair plans on discussing Subsection (c) with the committee members at the next advisory meeting. Subsection (d) existed in previous drafts [as an exception to Subsection (a)]. This subsection states that the initial training does not apply to inspecting tank facilities with less than 10,000 gallons of petroleum or one or more TIUGAs. The Committee Chair will discuss more with State Water Board to confirm if they agree with the draft language.

Ms. Graulau asked what the differences are between the subsections. APSA inspections are focused on facilities with 10,000 gallons or more of petroleum. Ms. Pence said that CUPAs are not mandated to do a full APSA inspection unless the facility has 10,000 gallons or more of petroleum or a TIUGA. Some CUPAs do verifications at the facility instead of a full inspection for facilities with less than 10,000 gallons, which may mean that they are not required to take the initial aboveground storage tank training [under Subsection (d)]. There are also CUPAs that require each of their inspectors to go through the initial training to inspect all different APSA facilities. There is no cost to CUPAs, since the online

training is provided for free by OSFM.

Substantial changes have been made to the draft proposed APSA regulations and a vote was conducted to determine the following proposed amendments.

Section 2180.06 (a) Enforcement

<u>Ayes</u>	<u>Noes</u>	<u>Abstain</u>
Tom Ellison David Harris Craig Fletcher Ryan Hanretty Vince Mendes Sande Pence Jason Rizzi Randy Sawyer Jim Whittle	None	Michael Huber Patrick Wong Todd Tamura

Section 2190.00 (a), (b), and (d) UPA Staff Training

<u>Ayes</u>	<u>Noes</u>	<u>Abstain</u>
Tom Ellison David Harris Craig Fletcher Ryan Hanretty Patrick Wong Vince Mendes Sande Pence Jason Rizzi Randy Sawyer Jim Whittle	None	Michael Huber Todd Tamura

Subsection (c) of 2190.00 will be discussed at the next meeting after discussion with the legal office. The Committee Chair will ask the industry representatives of the advisory committee for any changes to the fiscal impact.

Mr. Harris asked the Committee Chair about the timeline on the approval of the regulations. The Committee Chair replied that it's still pending and dependent on all necessary documents being completed.

D. APSA Training

Ms. Joann Lai gave an update on the online APSA training. The online course has been available since early November 2017. There are 86 individuals enrolled and 59 of those individuals have received their APSA certification through the online training. OSFM allows three months for an inspector/trainee

to take the course; however, OSFM extends their enrollment if they are unable to complete the course within the timeframe due to circumstances, such as other work priorities or family emergencies. It is common that OSFM extends their enrollment.

About 73 percent of the trainees pass on their first attempt (42 of the 59 individuals that received their APSA certification). There was only one individual that passed the exam on their third attempt. Overall, based on the score the trainees receive on the first attempt, including the scores where trainees did not pass, the average score is about 84 percent, which is above the minimum passing score of 80 percent. If based on the passing score only, the average score is about 87 percent. Trainees who failed on their first attempt raised their score by an average of 13 percent on their second attempt.

Five of the trainees are enrolled as refresher training. Ms. Lai welcomed any CUPA inspectors to take the online training as a refresher if they are interested by emailing cupa@fire.ca.gov. The Committee Chair also indicated that the training is available to regulators only. Owners or operators can find resources, such as the [“How to prepare an SPCC Plan” training on the San Diego County CUPA website](#). The [CUPA Forum website](#) also provides annual training and has presentations available online.

Trainees take a course evaluation at the end of the training. Some problems that were mentioned were internet connectivity. There were occasions where the contractor’s server was down, but the Committee Chair would send an IT (information technology) “fix-it” ticket when that happens. There were occasions where trainees could not access the course because of the connectivity at their location. There were a few occasions where a trainee was blocked from signing in because the server recognized there were two ISPs (internet service provider) for one account. We updated the instructions, including using one ISP at a time.

E. Frequently Asked Questions (FAQ)

Mr. Glenn Warner provided an update on the APSA FAQ. The first draft of the FAQ has been developed and will be reviewed by the OSFM staff. The FAQ is not the same as the previous FAQ, but it takes many of the questions from the previous FAQ and appears completely new and reformatted.

The Committee Chair asked if any committee members or other stakeholders are interested in reviewing the FAQ after OSFM has reviewed it. Ms. Christina Graulau volunteered to have herself or another colleague to review it. Mr. Craig Fletcher and US EPA staff will also review the FAQ. If any other agency or stakeholders are interested in reviewing and providing feedback, they can email OSFM.

F. APSA Violation Library

Ms. Joann Lai gave an update on the APSA Violation Library. One new APSA violation is added to the 2018 violation library. The new violation addresses secondary containment and leak detection for TIUGA piping that cannot be directly viewed on all sides. The full definition of a TIUGA becomes effective July 1, 2018, but the violation will be effective this fall on October 1, 2018, or later depending on when CalEPA publishes the violation library and have it available in CERS.

Besides the new APSA violation that was added, there were minor changes to eight existing violations. These changes included removing and adding a more appropriate citation for seven of the violations, and changing the name of a violation.

The Committee Chair mentioned that the 2018 violation library is going through the QA/QC process by CalEPA and the CUPA Forum Board.

G. Petroleum FAQ

A draft version of the petroleum guidance document, along with the regulations, were sent to the committee. The Committee Chair asked for feedback on the document, especially for the term “oily water mixture”. Oil and water mixture, including oil and wastewater mixture are not regulated under APSA. The draft version was provided to OSFM’s legal office for review.

Mr. Todd Tamura pointed out on the first page, “APSA does not regulate petroleum containing hazardous materials or petroleum containing hazardous substance based on a percentage of petroleum found in the liquid product.” Mr. Tamura asked if ‘petroleum containing’ is supposed to be hyphenated. Mr. Glenn Warner wanted to focus the key point of the sentence, “based on a percentage,” and asked if it’s okay to remove the phrase, “containing hazardous materials or petroleum containing hazardous materials.” The final statement would simply read, “APSA does not regulate based on a percentage of petroleum found in liquid product.”

The Committee Chair requested feedback from the members. The Committee Chair wants to make changes to “oil and water mixture, including oil and wastewater mixture” to add more clarity to the language since it can be open to many different interpretations.

Ms. Janice Witul felt that the language of “oil and water mixture” can mean that any one person can add water to oil to be considered not regulated. The Committee Chair stated that traces of oil droplets in water are not regulated. In the federal SPCC rule, oily water mixture, other than wastewater, is regulated

especially in the production facilities. APSA does not regulate facilities that are under the jurisdiction of the Division of Oil, Gas, and Geothermal Resources (DOGGR). There might be refineries or facilities that may have product or by-product with oil.

The committee members can email comments and suggestions on the petroleum guidance to the Committee Chair.

VI. New Business

A. CERS 3 Enhancement

CalEPA is working on developing the four new APSA data fields in CERS. These fields were previously discussed. Three of the data fields were specified in the proposed regulations; however, an additional field was added to identify conditionally exempt tank facilities. The additional data field will ensure that conditionally exempt tank facilities are not required to fill in the other three fields. The other three data fields will request the date of the SPCC plan, the total petroleum storage capacity of a tank facility, and the number of TIUGAs at the facility. OSFM is working on the data fields with CalEPA's CERS team. Mr. Jim Whittle confirmed that testing will start this week. CalEPA still needs to incorporate the new data field into the data dictionary through their rulemaking process. The data fields are not effective until the data dictionary has been adopted.

B. OSFM Relocation

The OSFM 'CUPA' program was expected to relocate again this year; however, we are no longer expected to move. The remaining OSFM staff from the downtown area in Sacramento will be moving across the street from our current office next month. The next office relocation is expected in five years.

C. US EPA Update

Ms. Janice Witul indicated that there were no updates from US EPA. The Committee Chair asked if there were any updates on the waters of the U.S. (WOTUS) ruling. Ms. Witul responded that there was no update to the WOTUS ruling.

D. APSA TAG

Mr. Jim Whittle indicated there were no issues to report from the APSA TAG. The last meeting was at the CUPA conference in February 2018. The next APSA TAG meeting will be in late May or June.

E. STI Update

A new STI SP001 Standard is available for purchase. Regulators may request a free copy from Dana Schmidt. A new version of their checklists are available on the [STI website](#) (refer to Question 5). The link is also found on the [OSFM APSA website](#).

Mr. Craig Fletcher mentioned that there will be an SP001 certified inspector training class on October 29 – November 2, 2018, in Costa Mesa.

VII. Open Forum and Public Comments

The Committee Chair asked the committee members and guests to discuss additional items, issues, or concerns, if they had any. No one had any additional item, issue or concerns to discuss.

VIII. Action Items

1. APSA FAQ
2. Petroleum FAQ – Email committee members with a deadline for feedback
3. APSA Regulations and Rulemaking Timeline

IX. Schedule Next Meeting and Adjourn

The Committee Chair will send out a “Doodle” poll to the committee members to determine the best available date for the next committee meeting.

The meeting was adjourned by the Committee Chair at 3:28 p.m.

ATTACHMENT

DRAFT

California Code of Regulations

Title 19 Public Safety Code

Division 1

Chapter 15

Aboveground Petroleum Storage Act Program

Articles 1 – 7

Sections 2150.00 – 2210.00

ARTICLE 1 ADMINISTRATION

2150.00 AUTHORITY

California Code of Regulations, Title 19, Division 1, Chapter 15 is adopted by the Office of the State Fire Marshal under the authority of the Health and Safety Code, Division 20, Chapter 6.67, Section 25270.4.1.

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code.
Reference: Section 25270.4.1(a), (c) and (d), Health and Safety Code.

2150.01 TITLE

These regulations shall be known as the “Regulations for the Aboveground Petroleum Storage Act (APSA),” may be cited as such, and will be hereinafter referred to as “these regulations.”

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code.
Reference: Sections 25270 and 25270.4.1(a), Health and Safety Code.

2150.02 PURPOSE

The purpose of these regulations is to implement the Aboveground Petroleum Storage Act which requires tank facility owners or operators in California, as described in Health and Safety Code Section 25270.3, to comply with the requirements of the spill prevention, control, and countermeasure (SPCC) plan specified under the Code of Federal Regulations, Title 40, Chapter I, Subchapter D, Part 112 (commencing with Section 112.1).

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code.
Reference: Sections 25270.3 and 25270.4, Health and Safety Code.

2150.03 SCOPE

(a) Except as otherwise provided in the exemptions described in Sections 2150.04, 2150.05 and 2150.06, these regulations apply to all tank facilities and Unified Program Agencies as specified in Health and Safety Code Sections 25270.3 and 25270.4.

(b) A tank facility is subject to these regulations if any of the following apply:

(1) The tank facility is subject to the oil pollution prevention regulations specified in the Code of Federal Regulations, Title 40, Part 112 (commencing with Section 112.1).

(2) The tank facility has a total aggregate storage capacity of 1,320 gallons or more of petroleum as described in Health and Safety Code Section 25270.3(b).

(3) The tank facility has a storage capacity of less than 1,320 gallons of petroleum and has one or more tanks in an underground area meeting the conditions specified in Health and Safety Code Section 25270.2(o)(1). If this subsection is applicable, only tanks meeting the conditions specified in Health and Safety Code Section 25270.2(o)(1) shall be included as storage tanks and subject to these regulations.

(c) These regulations apply to the protection of the natural resources of the State of California, including navigable waters of the United States as defined in the Code of Federal Regulations Title 40, Part 112.

Note: Authority Cited: Sections 25270.4.1(a) and (d), and 25270.4.5(a), Health and Safety Code.

Reference: Sections 25270.3, 25270.4, 25270.4.1(a) and (d), and 25270.4.5(a), Health and Safety Code; and Section 1321(o), Chapter 26, Title 33, United States Code.

2150.04 EXEMPTIONS TO THESE REGULATIONS

Facilities, tanks and equipment that are exempt from the Code of Federal Regulations, Title 40, Part 112 as described in the Code of Federal Regulations, Title 40, Section 112.1(d)(1)(ii) through (d)(12) are exempt from these regulations.

EXCEPTIONS:

(1) A tank in an underground area as defined in Health and Safety Code Section 25270.2(o) is not exempt from these regulations even if exempt under the Code of Federal Regulations, Title 40, Section 112.1(d)(4).

(2) A tank facility with an aggregate storage capacity of 1,320 gallons of petroleum is not exempt from these regulations even if exempt under the Code of Federal Regulations, Title 40, Section 112.1(d)(2)(ii).

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code.
Reference: Sections 25270.2(a) and (o), and 25270.4.1(d), Health and Safety Code;
and Section 112.1, Part 112, Title 40, Code of Federal Regulations.

2150.05 NONAPPLICABILITY

The tank facilities, tanks and equipment listed in Health and Safety Code Section 25270.2 (a)(1) through (7) are not subject to these regulations.

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code.
Reference: Section 25270.2(a), Health and Safety Code.

2150.06 For purposes of clarification, Health and Safety Code Section 25270.2(a)(1) through (7) is repeated.

(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 or extremely hazardous waste, as respectively defined in Sections 25117 and 25115, 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) of the Health and Safety Code and Chapter 16 (commencing with Section 2610) of Division 3 of Title 23 of the California Code of Regulations and that does not meet the definition of a tank in an underground area.

(6) A 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, as 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.

(7) A tank or tank facility located on and operated by a farm that is exempt from the federal spill prevention, control, and countermeasure rule requirements pursuant to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code.

Reference: Sections 25270.2(a) and 25270.4.1(d), Health and Safety Code.

ARTICLE 2 DEFINITIONS

2160.00 DEFINITIONS

(a) The following terms used in these regulations shall have the definitions provided in the Code of Federal Regulations, Title 40, Chapter 1, Subchapter D, Part 112, Section 112.2 unless the terms have already been defined in Health and Safety Code, Division 20, Chapter 6.67, Section 25270.2.

- (1) Adverse weather
- (2) Alteration
- (3) Animal Fat
- (4) Breakout tank
- (5) Bulk storage container
- (6) Bunkered tank
- (7) Completely buried tank
- (8) Complex
- (9) Contiguous zone
- (10) Contract or other approved means
- (11) Discharge
- (12) Facility
- (13) Farm
- (14) Fish and wildlife and sensitive environments
- (15) Injury
- (16) Loading/unloading rack
- (17) Maximum extent practicable
- (18) Mobile refueler
- (19) Motive power container
- (20) Navigable waters of the United States
- (21) Non-petroleum oil
- (22) Offshore facility
- (23) Oil
- (24) Oil-filled operational equipment
- (25) Oil Spill Removal Organization

(26) Onshore facility

(27) Owner or operator

(28) Partially buried tank

(29) Permanently closed

(30) Petroleum oil

(31) Produced water container

(32) Production facility

(33) Regional Administrator

(34) Repair

(35) Spill Prevention, Control, and Countermeasure Plan; SPCC Plan, or Plan

(36) Storage capacity of a container

(37) Transportation-related and non-transportation-related

(38) United States

(39) Vegetable oil

(40) Vessel

(41) Wetlands

(42) Worst case discharge

(b) The following terms used in these regulations shall have the definitions provided in Health and Safety Code, Division 20, Chapter 6.67, Section 25270.2.

(1) Aboveground storage tank or storage tank

(2) Board

(3) Certified Unified Program Agency or CUPA

(4) Direct Viewing

(5) Office

(6) Operator

(7) Owner

(8) Person

(9) Participating Agency or PA

(10) Petroleum

(11) Regional board

(12) Release

(13) Secretary

(14) Storage or store

(15) Storage capacity

(16) Tank facility

(17) Tank in an underground area

(18) Unified Program Agency or UPA

(19) Viewing

(c) The following term shall have the definition provided in Health and Safety Code, Division 20, Chapter 6.11, Section 25404(a)(3).

(1) Minor violation

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code.
Reference: Sections 25270.2, 25270.4.1(a), (c) and (d), and 25404(a), Health and Safety Code; and Section 112.2, Part 112, Title 40, Code of Federal Regulations.

ARTICLE 3 GENERAL PROVISIONS

2170.00 IMPLEMENTATION

(a) Tank facility owners or operators subject to Health and Safety Code, Chapter 6.67 shall prepare and implement an SPCC plan to address discharges or releases.

(b) These regulations shall be applied by the Unified Program Agency (UPA) in a manner that is consistent with the Code of Federal Regulations, Title 40, Part 112.

(c) The UPA is not authorized under these regulations to evaluate the provisions and recommendations contained in an SPCC plan independent from the provisions of the

Code of Federal Regulations, Title 40, Part 112, but the UPA is authorized to review the Plan to ensure that it complies with the Code of Federal Regulations, Title 40, Part 112 and is implemented in accordance with the Code of Federal Regulations, Title 40, Part 112. In carrying out its responsibilities under these regulations, the UPA shall request additional information from the owner or operator of the tank facility if necessary to verify that the Plan meets the abovementioned federal requirements and that the owner or operator is implementing the Plan as written.

(d) In accordance with the Code of Federal Regulations, Title 40, Sections 112.7(c)(1)(i) and 112.8(c)(2), any containment systems that are required must be sufficiently impervious to contain petroleum such that the entire containment system, including walls and floor, must be capable of containing petroleum and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs. Systems that meet the applicable requirement of being sufficiently impervious to contain petroleum with respect to the Code of Federal Regulations, Title 40, Sections 112.7(c)(1)(i) and/or 112.8(c)(2) also meet that requirement with respect to the Aboveground Petroleum Storage Act and these regulations.

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code.

Reference: Sections 25270.4.1, 25270.4.5(a), and 25270.5, Health and Safety Code.

2170.01 SPCC PLAN PREPARATION, IMPLEMENTATION AND CONDITIONAL EXEMPTION

2170.02 For purposes of clarification, Health and Safety Code, Chapter 6.67, Section 25270.4.5 is repeated.

(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 applying good engineering practices to prevent petroleum releases using the same format required by Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations, including owners and operators of tank facilities not subject to the general provisions in Section 112.1 of those regulations. Each owner or operator specified in this subdivision shall conduct periodic inspections of the storage tank to ensure compliance with Part 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 and operated by 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. Unless excluded from the definition of an “aboveground storage tank” in Section 25270.2, 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. For purposes of this section, “daily” means every day that the contents are added to or withdrawn from the tank, but no less than five days per week. The number of days may be reduced by the number of state or federal holidays that occur during the week if there is no addition to, or withdrawal from, the tank on the holiday. The unified program agency may reduce the frequency of inspections to not less than once every three days at a tank facility that is exempt pursuant to this section if the tank facility is not staffed on a regular basis, provided that the inspection is performed every day the facility is staffed.

(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.

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code.

Reference: Section 25270.4.5, Health and Safety Code.

2170.03 PERIODIC INSPECTIONS BY TANK FACILITY OWNERS AND OPERATORS

In conducting periodic inspections as described in Section 2170.02(a), each owner or operator shall inspect each aboveground storage tank at a tank facility in accordance with the frequency specified in the applicable industry inspection standard or an equivalent inspection program developed by a licensed professional engineer in accordance with good engineering practice.

EXCEPTION: This section shall not apply to tank facilities that meet the conditions described in Section 2170.02(b).

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code.

Reference: Sections 25270.4.5(a) and 25270.4.1(d), Health and Safety Code.

2170.04 AGGREGATE STORAGE CAPACITY OF A TANK FACILITY

For purposes of these regulations, the aggregate petroleum storage capacity shall include aboveground storage tanks and containers with a shell capacity of 55 U.S. gallons or greater including, but not limited to, tanks in an underground area, bulk storage containers (for example, drums, intermediate bulk containers and totes), mobile refuelers, oil-filled operational equipment, and oil-filled manufacturing equipment, as described in the Code of Federal Regulations Title 40, Section 112.2. The aggregate petroleum storage capacity shall not include capacity calculations from exemptions and exclusions identified in Sections 2150.04, 2150.05, and 2150.06.

Note: Authority cited: Section 25270.4.1(a) Health and Safety Code.

Reference: Sections 25270.4.1(a), (c) and (d), 25270.2(a)(1) through (6), Health and Safety Code; and Section 112.1, Part 112, Title 40, Code of Federal Regulations.

ARTICLE 4 COMPLIANCE VERIFICATION, INSPECTIONS AND ENFORCEMENT BY UPA

2180.00 SPCC COMPLIANCE VERIFICATION – LESS THAN 10,000 GALLONS

(a) At least once every three years, to verify SPCC plan implementation at each tank facility with less than 10,000 gallons of petroleum storage capacity, the UPA shall, at a minimum, verify that each owner or operator is in compliance with the following:

(1) The tank facility has a current SPCC plan in place that has been certified by the owner or operator or, if necessary, a licensed professional engineer.

(2) The SPCC plan is complete and appropriate for the tank facility type.

(3) The SPCC plan is reviewed by the owner or operator at least once every five years and the review is documented.

(4) Appropriate containment and/or diversionary structures or equipment is provided pursuant to the SPCC plan prepared in accordance with the Code of Federal Regulations, Title 40, Part 112.

(5) Tank facility inspections of aboveground storage tanks are conducted as described in Section 2170.03 pursuant to the Code of Federal Regulations, Title 40, Part 112.

(6) Visible discharges from aboveground storage tanks are corrected and accumulations of petroleum in diked areas are removed pursuant to the Code of Federal Regulations, Title 40, Part 112, Section 112.8(c)(10).

(b) The UPA may develop a form and allow the owner or operator to utilize the form to self-certify that the tank facility is in compliance with subsection (a). The number of facilities that use this form to self-certify compliance with subsection (a) shall be reported in the UPA's annual self-audit.

(c) The UPA may inspect a tank facility with less than 10,000 gallons of petroleum storage capacity to verify that, at a minimum, the tank facility meets subsection (a).

EXCEPTION: This section shall not apply to tank facilities that meet the conditions described in Section 2170.02(b).

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code. Reference: Sections 25270.4, 25270.4.5(a), and 25270.5, Health and Safety Code; and Section 112.3, Part 112, Title 40, Code of Federal Regulations.

2180.01 SPCC COMPLIANCE INSPECTIONS – 10,000 GALLONS OR MORE AND TANKS IN UNDERGROUND AREAS

(a) At least once every three years, for each tank facility with a petroleum storage capacity of 10,000 gallons or more and each tank facility with a tank in an underground area, the UPA shall do the following to ensure compliance with Health and Safety Code Chapter 6.67 and the Code of Federal Regulations, Title 40, Part 112:

(1) Verify that each tank facility has a current SPCC plan in place that has been certified by the owner or operator or, if necessary, a licensed professional engineer.

(2) Review the SPCC plan, and any updates thereto, to determine whether the SPCC plan is complete and appropriate for the tank facility type.

(3) Verify that each SPCC plan is reviewed by the owner or operator at least once every five years and the review is documented.

(b) At least once every three years, the UPA shall inspect each tank facility with a petroleum storage capacity of 10,000 gallons or more and each tank facility with a tank in an underground area to verify SPCC Plan implementation and compliance with all applicable requirements of the Code of Federal Regulations, Title 40, Part 112, and the Health and Safety Code, Chapter 6.67.

EXCEPTION: This section shall not apply to tank facilities that meet the conditions described in Section 2170.02(b).

Note: Authority cited: Section 25270.4.1(a) and 25270.4.5(a), Health and Safety Code.
Reference: Sections 25270.2(c)(3), 25270.2(o), 25270.3(c), 25270.4, 25270.4.5(a), 25270.5, and 25270.13(b), Health and Safety Code.

2180.02 OPTIONAL INSPECTIONS

The UPA may inspect tank facilities conditionally exempt under Section 2170.02(b) to verify compliance with the conditions of the exemption.

Note: Authority cited: Sections 25270.4.1(a) and 25270.4.5(b)(2), Health and Safety Code.
Reference: Sections 25270.4, 25270.4.5(b)(2), and 25270.13(a), Health and Safety Code.

2180.03 INSPECTION REPORTS

(a) The UPA inspector shall, if the owner or operator or authorized representative is present, prior to leaving the tank facility, discuss the findings of the inspection and any questions or concerns that the owner or operator or authorized representative might have regarding the inspection.

(b) Within five business days after the conclusion of an inspection, the UPA inspector should provide to the owner or operator or authorized representative of the tank facility an initial summary of all violations, a notice to comply, or the final inspection report, including applicable citations alleged by the inspector. The final inspection report shall be provided within 30 calendar days after the inspection.

Note: Authority cited: Section 25270.4.1(a) Health and Safety Code.
Reference: Sections 25270.4, 25270.4.5(a), 25270.5(a), 25185(c)(1) and 25288(b), Health and Safety code.

2180.04 NOTICE TO COMPLY

2180.05 For purposes of clarification, Health and Safety Code, Chapter 6.11, Section 25404.1.2(a), (b), (c), (d), and (e) is repeated.

- (a) (1) An authorized representative of the UPA, who in the course of conducting an inspection, detects a minor violation, shall take an enforcement action as to the minor violation only in accordance with this section.
(2) In any proceeding concerning an enforcement action taken pursuant to this section, there shall be a rebuttable presumption upholding the

- determination made by the UPA regarding whether the violation is a minor violation.
- (b) A notice to comply shall be the only means by which a UPA may cite a minor violation, unless the person cited fails to correct the violation or fails to submit the certification of correction within the time period prescribed in the notice, in which case the UPA may take any enforcement action, including imposing a penalty, as authorized by this chapter.
- (c) (1) A person who receives a notice to comply detailing a minor violation shall have not more than 30 days from the date of the notice to comply in which to correct any violation cited in the notice to comply. Within five working days of correcting the violation, the person cited or an authorized representative shall sign the notice to comply, certifying that any violation has been corrected, and return the notice to the UPA.
- (2) A false certification that a violation has been corrected is punishable as a misdemeanor.
- (3) The effective date of the certification that any violation has been corrected shall be the date that it is postmarked.
- (d) If a notice to comply is issued, a single notice to comply shall be issued for all minor violations noted during the inspection, and the notice to comply shall list all of the minor violations and the manner in which each of the minor violations may be brought into compliance.
- (e) If a person who receives a notice to comply pursuant to subdivision (a) disagrees with one or more of the alleged violations listed on the notice to comply, the person shall provide the UPA a written notice of disagreement along with the returned signed notice to comply. If the person disagrees with all of the alleged violations, the written notice of disagreement shall be returned in lieu of the signed certification of correction within 30 days of the date of issuance of the notice to comply. If the issuing agency takes administrative enforcement action on the basis of the disputed violation, that action may be appealed in the same manner as any other alleged violation under Section 25404.1.1.

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code.

Reference: Sections 25270.4.1(c) and 25404.1.2(b), (c), (d) and (e), Health and Safety Code.

2180.06 ENFORCEMENT

(a) The failure of an owner or operator of a tank facility to prepare an SPCC plan pursuant to Health and Safety Code, Chapter 6.67, Section 25270.4.5(a) shall be

classified as class I or class II violation as provided in Health and Safety Code, Chapter 6.11, Section 25404(a).

(b) The UPA may pursue enforcement for class I or class II violation as described in Health and Safety Code, Chapter 6.11, Section 25404(a)(3) through an administrative penalty pursuant to Health and Safety Code Section 25270.12.1, an administrative enforcement order pursuant to Health and Safety Code Section 25404.1.1, a civil penalty pursuant to Health and Safety Code Section 25270.12, or as a misdemeanor pursuant to Health and Safety Code Section 25270.12.5.

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code.

Reference: Sections 25270.2(c)(3)(A), 25270.4, 25270.4.1(c), 25270.12, 25270.12.1, 25270.12.5, 25404(a)(3), 25404.1.1, and 25404.2, Health and Safety Code.

ARTICLE 5 UPA TRAINING

2190.00 UPA STAFF TRAINING

(a) The initial training described in Health and Safety Code Section 25270.5(c) shall be established by the Office of the State Fire Marshal.

(b) Upon completion of the initial training, the UPA staff shall also satisfactorily pass an examination developed by the Office of the State Fire Marshal on SPCC plan provisions and safety requirements for aboveground storage tank inspections.

(c) The completion of the initial training and satisfactorily passing an exam shall apply to UPA staff prior to conducting an inspection of a tank facility with an aggregate storage capacity of 10,000 gallons or more of petroleum.

(d) The initial training pursuant to Health and Safety Code Section 25270.5(c) shall not apply to UPA staff conducting inspections at the following tank facilities:

(1) A tank facility with an aggregate storage capacity of less than 10,000 gallons of petroleum, including a tank facility with one or more tanks in underground areas.

(2) A tank facility that meets the conditions specified in Section 2170.02(b).

(e) UPA staff who inspect tank facilities pursuant to Section 2180.01 shall complete a minimum of four hours of refresher training every three years to maintain knowledge of applicable federal and state laws and regulations regarding tank facilities. Training topics may include, but not be limited to, those covered in an aboveground storage tank training program or any other generally accepted industry practice.

(f) Training shall be documented and the training records maintained by the UPA.

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code.
Reference: Section 25270.5, Health and Safety Code.

ARTICLE 6 REPORTING REQUIREMENTS

2200.00 TANK FACILITY ELECTRONIC DATA REPORTING

(a) Regardless of whether a tank facility statement is submitted pursuant to Health and Safety Code Section 25270.6(a), the owner or operator of a tank facility shall submit the following information electronically to the statewide information management system within twelve months following the date that the statewide information management system is capable of receiving these data, and, thereafter, annually review and certify that the information in the statewide information management system is complete, accurate, and up to date. Review of this information shall be completed in conjunction with the annual review and certification of hazardous materials business plan information, if applicable, in accordance with Health and Safety Code, Chapter 6.95, Section 25508.2.

(1) Date of SPCC plan certification or most current 5-year review, whichever is more recent;

(2) Total aggregate petroleum storage capacity of a tank facility in gallons (as specified in Section 2170.04); and

(3) Number of tanks in an underground area as defined in Health and Safety Code Section 25270.2(o).

(b) Each UPA shall verify that a tank facility has submitted the information listed under subsection (a).

EXCEPTION: This section shall not apply to tank facilities that meet the conditions described in Section 2170.02(b).

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code.
Reference: Sections 25270.2(m) and (o), 25270.4.1(d), 25270.4.5(a) and (b), 25270.6(a), 25404(e)(4) and 25508.2, Health and Safety Code.

ARTICLE 7 AGENCY COORDINATION

2210.00 UPA COORDINATION WITH REGIONAL WATER BOARD

If the UPA determines that cleanup or abatement of a release from an aboveground storage tank at a tank facility is required, or additional investigation is necessary to

determine if cleanup is required, then the UPA shall notify and coordinate with the Regional Water Quality Control Board on investigation, cleanup or abatement activities.

Note: Authority cited: Section 25270.4.1(a), Health and Safety Code.

Reference: Sections 25270.2(j), 25270.4, 25270.9 and 25270.13(b), Health and Safety Code.

DRAFT