



## Legislation Text

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**File #:** RES 2024-293, **Version:** 1

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**To:** Board of Supervisors

**From:** Anna Roth, Health Services Director

**Report Title:** Hearing to Consider Adoption of Revised Fees for the Contra Costa County Certified Unified Program Agency

Recommendation of the County Administrator  Recommendation of Board Committee

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### RECOMMENDATIONS:

1. RECEIVE staff report regarding proposed revised fees to recover costs of the Contra Costa County Certified Unified Program Agency ("CUPA") and the Community Warning System.
2. OPEN public hearing regarding the proposed CUPA fees and other related fees, receive testimony and CLOSE the public hearing.
3. APPROVE Resolution adopting the attached Fee Schedule effective immediately upon adoption.

### FISCAL IMPACT:

There will be no impact to the General Fund. Effective for Fiscal Year 2025-26, the revised fees will recover costs for CUPA programs and the Community Warning System.

### BACKGROUND:

The Hazardous Materials Programs Division of the Health Department administers the Contra Costa County Certified Unified Program Agency ("CUPA"). The CUPA operates the Hazardous Materials Business Plan (HMBP) Program, Hazardous Waste Generator (HWG) Program, Underground Storage Tank (UST) Program, California Accidental Release Prevention (CalARP) Program and Aboveground Petroleum Storage Act (APSA) Program. As directed by the Board in the early 1990s, all of the activities of the CUPA are funded through fees. The Staff Report on the Determination and Apportionment of CUPA Fees, dated August 13, 2024 ("Report"), attached as Attachment 1, describes the CUPA programs, legal authorities for and standards applicable to the apportionment of the CUPA Fees, the process used to set the fee amounts and the manner of apportionment.

As can be seen in the proposed fee schedule attached in Attachment 2, staff has proposed fees that, due to the full review of fees, will have a net increase for many regulated businesses but also decrease for others. Small changes were made to how fees are calculated across all programs. However, the main component of the fee is based on the time associated with the regulated activity and the frequency of required inspections. The fees for the Community Warning System have also been adjusted to account for a 67% increase in costs over the last 12 years.

The proposed fees include a variety of regulatory fees, charged by the hour for regulatory activities that the CUPA provides to regulated businesses. Among them are a fee of \$365 per hour for use of the Community

Warning System, charged to businesses that do not pay for the system as part of their annual permit fee, and a \$96 initial permit processing fee to be charged to businesses that become subject to regulation by the CUPA or change ownership.

Fees are also proposed for services provided by the Hazardous Materials Incident Response Team (IR Team) to persons and entities that are not regulated by the CUPA. These services are provided countywide by Hazardous Materials Specialists pursuant to the Hazardous Materials Area Plan. Fees of \$365 per hour per staff member during regular business hours and \$404 per staff member for non-business hours. These fees are authorized pursuant to Health & Safety Code section 101325.

**CONSEQUENCE OF NEGATIVE ACTION:**

If the current fee schedule remains in place, regulated businesses collectively will pay less than what is required to operate the CUPA programs. The fees were last updated in 2012, but there have been significant changes in regulatory requirements and long-term planning for the CUPA (including the addition of 3 supervisory positions), which consists of approximately 3,800 regulated facilities in Contra Costa County. The Community Warning System fees have been adjusted to account for a 67% increase in costs over the last 12 years. The current fee structure will result in a net operation loss for the County.

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**  
**and for Special Districts, Agencies and Authorities Governed by the Board**

IN THE MATTER OF ADOPTION of the revised fees for the Contra Costa County Certified Unified Program Agency, effective August 13, 2024.

- A. WHEREAS, Contra Costa Health has submitted a recommendation to revise the schedule of fees for the Contra Costa County Certified Unified Program Agency (“CUPA”), adopted by Board Resolution No. 2012/184, dated May 22, 2012; and
- B. WHEREAS, the Board has the authority to set fees for the CUPA pursuant to Health & Safety Code section 25404.5; and
- C. WHEREAS, the Board has considered the Staff Report on the Determination and Apportionment of CUPA Fees, dated August 13, 2024 (“Report”), and finds based on the Report that the reasonable and necessary costs of the CUPA justify the adoption of CUPA fees at the level set forth in the CUPA Fee Schedule attached hereto as Exhibit 1; and
- D. WHEREAS, the Board further finds based on the Report that the recommended fees bear a fair or reasonable relationship to the payors’ burdens on or benefits from the CUPA programs to be funded by the fees; and
- E. WHEREAS, the Board finds that County employees, in the performance of their duties for the CUPA, and in the enforcement of Chapter 6.95 of the Health & Safety Code, provide hazardous materials incident response services countywide, pursuant to the requirements established by the Board in the Contra Costa County Hazardous Materials Area Plan; and
- F. WHEREAS, the Board further finds that, to the extent that hazardous materials incident response services are provided to persons or entities not subject to CUPA fees, there are no fees prescribed by the state to fund the costs of these services, and that the Board, therefore, has the authority to prescribe such fees pursuant to Health & Safety Code section 101325;

NOW, THEREFORE, the Board of Supervisors of Contra Costa County hereby RESOLVES as follows:

**Adoption and Imposition of CUPA Fees**

1. This Resolution replaces Resolution 2012/184, effective immediately.
2. The CUPA Fee Schedule attached hereto as Exhibit 1 is adopted as the fee schedule of the Contra Costa County CUPA, effective immediately, replacing the CUPA fees set by Board Resolution No. 2012/184.
3. The CUPA fees set forth in Exhibit 1 (“CUPA Fees”) are hereby imposed upon, and shall be collected by the CUPA from, each business or person regulated by the CUPA, as specifically described below.

#### **Hazardous Materials Business Plan Program Fees**

4. Any business required to submit a Hazardous Materials Business Plan (“HMBP”) pursuant to the Community Right to Know Act, contained at Title III of the Federal Superfund Amendments and Reauthorization Act (“SARA”) (42 U.S.C. § 11001 et seq.) and/or Chapter 6.95 of the California Health & Safety Code (“Regulated Business”), is subject to the HMBP Program Annual Permit Fee applicable to the facility, site or branch of the Regulated Business within the jurisdiction of the CUPA (“Regulated Facility”) that is the subject of the HMBP, as set forth in Exhibit 1.
5. Except as otherwise provided in Exhibit 1, the HMBP Program Annual Permit Fee applicable to a Regulated Facility will be calculated based on the number of chemicals at the Regulated Facility and number of pounds contained in the Regulated Facility’s inventory, as reported on the HMBP, or observed on site by an inspector, or the annual inventory update submitted by the Regulated Business applicable to the calendar year beginning on the first day of the month of January prior to the fiscal year for which the annual CUPA permit is issued.
6. Any business that operates an unstaffed remote facility located in an isolated sparsely populated area and obtains an exemption from HMBP requirements pursuant to Health & Safety Code section 25505.5 will be exempt from paying the HMBP Program Annual Permit Fee that would otherwise be applicable to the facility. Such business will be subject to the fee set forth in Exhibit 1 for review of the exemption application.
7. The terms used in Paragraphs 4 through 7 of this Resolution have the definitions contained in Health & Safety Code sections 25501-25501.4.

#### **Hazardous Waste Generator Program Fees**

8. Any generator of hazardous waste within the jurisdiction of the CUPA is subject to the Hazardous Waste Generator (“HWG”) Program Annual Permit Fee applicable to such generator, as set forth in Exhibit 1.
9. Except as otherwise set forth below, the CUPA will use CERS-reported data and any inspection and hazardous waste generator reporting data to assess the permit fees levied on a business for their fiscal year operating permit from July 1st to June 30th each year. All reporting data used in assessing fees is a projection for the regulated activity during the fiscal year permit period. For purposes of Paragraphs 9 and 10 of this Resolution, the fiscal year for which the HWG Program Annual Permit Fee is assessed may be based on reported information to the CUPA in the previous calendar year immediately preceding

the fiscal year for which the annual CUPA permit is issued. Hazardous waste generation amounts will be determined by the CUPA based on untreated waste totals reported by generators on the annual Hazardous Waste Generator Reporting Form or hazardous waste manifests or consolidated manifests submitted by generators and or transporters to the California Department of Toxic Substances Control.

10. Any operator of a hazardous waste treatment facility in the jurisdiction of the CUPA that may operate pursuant to a permit by rule, conditional authorization or conditional exemption (including conditionally exempt small quantity treatment facilities, conditionally exempt specified waste stream facilities, conditionally exempt-limited facilities, and conditionally exempt commercial laundries), and is subject to regulation by the CUPA under the HWG Program during the fiscal year for which the HWG Program Annual Permit Fee is assessed, is subject to the HWG Program Annual Permit Fee applicable to such facility, set forth in Exhibit 1.
11. The terms used in Paragraphs 8 through 11 of this Resolution have the definitions set forth in Health & Safety Code section 25205.1.

### **California Accidental Release Prevention Program Fees**

12. The owner or operator of a stationary source within the jurisdiction of the CUPA that is required pursuant to Title 19, Division 5, Chapter 2 of the California Code of Regulations to submit a Risk Management Plan is or are subject to the CalARP Program Annual Permit Fee applicable to such stationary source.
13. The CalARP Program Annual Permit Fee applicable to a stationary source will be based on CalARP Annual Permit Fee applicable to each facility, set forth in Exhibit 1 as well as the calculated risk formula set forth in Exhibit 1 and data reported on the HMBP or annual inventory update submitted to the CUPA that pertains to the stationary source for the calendar year beginning on the month of January immediately preceding the fiscal year for which the annual CUPA permit is issued.  
The owner or operator of a stationary source within the jurisdiction of the CUPA that is not required to submit a Risk Management Plan pursuant to Subchapter C of Chapter 1 of Title 40 of the Code of Federal Regulations may apply to the CUPA for an exemption from preparing a Risk Management Plan under the CalARP Program. The exemption may be granted by the CUPA if the Contra Costa Health Director, or their designee, determines that there is not a significant likelihood of a regulated substances accident risk, pursuant to Health and Safety Code section 25534, subdivision (b)(2).
14. The CalARP Program Annual Permit Fees apply to stationary sources described in Paragraph 12 of this Resolution that are subject to regulation by the CUPA during the fiscal year for which the annual CUPA permit is issued. If a stationary source becomes subject to, or ceases to be subject to, regulation by the CUPA under the CalARP Program after the first day of the fiscal year for which the annual CUPA permit is issued, as the result of either meeting the legal threshold(s) for regulation or permanent closure of the stationary source, the annual fee applicable to such stationary source will be prorated based on the number of calendar months that the stationary source is subject to regulation under the CalARP Program during such fiscal year.
15. The person or persons having control of multiple stationary sources subject to CalARP Program 1

requirements that are substantially identical, as determined in the sole discretion of the Director of Contra Costa Health, or their designee, may be assessed a reduced fee, as set forth in Exhibit 1.

16. The terms used in Paragraphs 12 through 16 of this Resolution have the definitions set forth in Health & Safety Code section 25532.

### **Underground Storage Tank Program Fees**

17. Any person who is required by Health & Safety Code section 25284 to obtain a permit to own or operate an underground storage tank (“UST”) within the jurisdiction of the CUPA is subject to the applicable UST Program Annual Permit Fee set forth in Exhibit 1.
18. The UST Program Annual Permit Fee applicable to a particular UST will be calculated based on the category and storage capacity of the tank, as set forth in Exhibit 1.
19. The UST Program Annual Permit Fee applies only to a UST that is owned or in operation within the jurisdiction of the CUPA during the fiscal year for which the annual CUPA permit is issued.
20. Any owner or operator of a UST within the jurisdiction of the CUPA who applies for an amendment or transfer of an annual UST permit, or for a permit to perform any of the UST repairs, modifications, upgrades or other work related to USTs described in Exhibit 1, is subject to the applicable fee(s) set forth in Exhibit 1.
21. The UST Program Annual Permit Fees apply to the owners or operators of USTs that are in the jurisdiction of the CUPA and subject to regulation by the CUPA under the UST Program during the fiscal year for which the annual CUPA permit is issued. An owner or operator of a UST that becomes subject to, or ceases to be subject to, regulation by the CUPA under the UST Program, after the first day of the fiscal year for which the annual CUPA permit is issued, as the result of the installation of a new tank or removal of an existing tank, will have the fee prorated based on the number of calendar months that the tank is subject to regulation under the UST Program during such fiscal year.
22. The terms used in Paragraphs 17 through 22 of this Resolution have the definitions set forth in Health & Safety Code section 25281.

### **Aboveground Petroleum Storage Act Program Fees**

23. Any owner or operator of a tank facility subject to Chapter 6.67 of the Health and Safety Code that is required pursuant to Health & Safety Code section 25270.6, subdivision (a), to submit a tank facility statement to the CUPA, is subject to the applicable Aboveground Petroleum Storage Act (“APSA”) Program Annual Permit Fee set forth in Exhibit 1.
24. The APSA Program Annual Permit Fee applicable to a tank facility will be calculated based on the storage capacity of the tank(s) comprising the tank facility, as set forth in Exhibit 1.
25. The APSA Program Annual Permit Fees apply to the owners or operators of tank facilities described in

Paragraph 24 of this Resolution to the extent they are subject to regulation by the CUPA during the fiscal year for which the annual CUPA permit is issued. An owner or operator of a tank facility that becomes subject to, or ceases to be subject to, regulation by the CUPA under the APSA Program after the first day of the fiscal year for which the annual CUPA permit is issued, as the result of the installation of a new tank facility or closure of an existing tank facility, will have the fee prorated based on the number of calendar months that the tank facility is subject to regulation under the APSA Program during such fiscal year.

26. The terms used in Paragraphs 23 through 26 of this Resolution have the definitions set forth in Health & Safety Code section 25270.2.

### General

27. Any person or entity regulated under any of the CUPA programs will be subject to the Miscellaneous CUPA Fees set forth in Exhibit 1, as applicable.
28. Any direct recipient of the services of the CUPA's Hazardous Materials Incident Response Team (IR Team) that is not regulated under any of the CUPA programs will be subject to the Other Fees set forth in Exhibit 1, as applicable. For purposes of this paragraph, a direct recipient is either (1) the person or entity that requested response by the IR Team, or (2) the owner of the real property where the hazardous material incident occurred.
29. Any and all applicable CUPA Fees and Other Fees will be due and payable within forty- five (45) days of the date of the invoice(s) for such fees. Delinquent accounts may be collected by a contractor approved by the Contra Costa Health Director or their designee.
30. Applicable state surcharges will be included on the annual CUPA invoices and collected by the CUPA pursuant to Health & Safety Code section 25404.5, subd. (b)(1).
31. Any appeals concerning the application of this Resolution or Exhibit 1 with regard to CUPA Fees will be directed to the CUPA, pursuant to the CUPA's fee dispute resolution process contained in Paragraph 13.K of the Application for Certified Unified Program Agency, approved by the California Environmental Protection Agency effective January 1, 1997, as may be amended by the Contra Costa Health Director or their designee.
32. The CUPA is authorized to assess and collect penalties as follows:
- a. Nonpayment or late payment of invoiced fees: 25 percent of applicable fee(s).
  - b. Filing and or certifying an HMBP more than 30 days after the date of issuance of a 30-day Notice of Violation: 50 percent of HMBP Fee.