

DTSC + CUPA =

The Alphabet Soup of Shooting Range Regulation Oversight Problems

Just as California shooting ranges let out a deep sigh of relief from the headaches associated the COVID-19 pandemic, the regulatory agencies have again reared their ugly regulations.

Many ranges/clubs up and down the state have recently noticed increasing regulatory oversight and have expressed concern regarding what their local county health departments are saying about shooting ranges. For those ranges/clubs that are in front of the curve on regulatory issues, they recognize the local county health department, usually the hazardous materials or environmental division, as the CUPA. CUPA is the acronym for the Certified Unified Program Agency, which enforces hazardous materials regulatory programs in place of the state agency (DTSC) and/or the federal agency (EPA).

The biggest challenge for ranges comes from state or local environmental regulatory agencies that are often led by zealous bureaucrats who are sometimes doing the dirty work for anti-gun groups or NIMBYS. This is typified by the coordinated efforts between the California Department of Toxic Substances Control (DTSC) and the Certified Unified Program Agency (CUPA). Specifically, the enforcement branch for the various CUPA's have made shooting ranges a top priority and have been very active in confronting ranges with inspections and enforcement actions.

Ranges/clubs that follow the California Rifle & Pistol Association (CRPA)'s Range Coalition and its legal counsel, Michel & Associates, know that for several years now the CUPA's have been requesting the DTSC to provide guidance on the numerous environmental regulations applicable to shooting ranges. As confirmed in many meetings between DTSC personnel, lawyers, consultants, the DTSC has a Draft "Facts Sheet" explaining the various environmental regulations that apply to shooting range operations. And the CUPA's intend to use the Facts Sheet as guidance to enforce the regulations against ranges by inspections and citations *via* a Notice of Violation (NOV).

The DTSC, however, has been reluctant to publish its comprehensive Facts Sheet that will effectively serve as a "search warrant" for the CUPA's to begin harassing ranges. Many reasons may be attributed to DSTC holding on to the Draft Facts Sheet for over five years now, but that has not prevented the CUPA's from moving forward. Their collaborative pledge is that every CUPA will visit all the ranges in its county.

To kick start the CUPA's enforcement actions, the San Diego County CUPA has taken the lead and has published its own Facts Sheet, and it has held numerous conferences/seminars in order to inform ranges about the regulations and the CUPA's oversight. Additionally, the San Diego County CUPA has reached out to all California county's CUPA's and has disseminated the Facts Sheet to prod them into enforcement actions.

To date, there has been regulatory enforcement actions, with corresponding NOV's issued, in several counties, including San Diego, Orange, Santa Clara, Sacramento, Solano and San Joaquin. There have also been investigative actions taken in friendlier counties like Shasta, San Bernardino, Santa Barbara, and San Luis Obispo. To date, the inspections have overwhelmingly involved indoor ranges, because those facilities have issues that are more familiar to CUPA inspectors, who typically know nothing about firearms and outdoor shooting ranges.

Most CUPA inspections are surprise visits where inspectors show up and ask to view the range. These no notice visits overwhelmingly result in the issuance of NOV's that carry a demand for corrective action, and potentially heavy fines and penalties. Increasingly, these NOV's are leading to the closure of the range, primarily involving lead contamination at indoor ranges. Examples of shooting ranges shut down in this manner include, but are not limited to, Mangan Rifle and Pistol Range in Sacramento, California and Target Masters West in Milpitas, California.

To make matters worse, the San Diego County CUPA has recently informed ranges that DTSC will soon be publishing its Facts Sheet, which will supersede the San Diego County CUPA's Facts Sheet. In other words, DTSC will publish a more complete and problematic Facts Sheet. As we have explained in the past, there are numerous problems associated with DTSC publishing all the regulations applicable to shooting ranges. Wherein DTSC may clarify and make a distinction regarding what is hazardous and what is reclaimable, the real problem is what may be reclaimable has many specific regulatory strings attached.

The real big problem in California regarding lead is that DTSC does not completely follow EPA's Guidance Document, U.S. EPA's *Best Management Practices for Lead at Outdoor Shooting Ranges* (EPA Guidance Document), ostensibly as it applies to the Military Munitions Rule (MMR). Under federal law, the Resource Conservation Recovery Act (RCRA), military ranges can reuse lead contaminated soil after lead ammunition is reclaimed and recovered from a range. This is what is referred to as the MMR under RCRA.

DTSC, however, claims that the MMR does not apply to non-military ranges, as the EPA Guidance Document is merely "guidance" and is not a legally binding federal law under RCRA. Therefore, DTSC claims that California, as a RCRA certified state, is precluded from enforcing EPA guidance that is less restrictive than RCRA. This is legally known as federal preemption.

Considering all the recent events, including a change in the federal administration and the DTSC and the CUPA's regulatory oversight push, it is time for shooting ranges/clubs to be proactive and become aware of the regulatory matrix involving shooting ranges. Staying ahead of the curve and proactively being ready for when, not if, the regulators decide to visit your ranges is absolutely critical. That is why all California ranges/clubs need to become a member of the CRPA Range Coalition and be part of the solution in the fight against the alphabet soup of regulatory oversight problems.

For more information on joining the CRPA Range Coalition or for assistance for your range, please email Rick Travis at rtravis@crpa.org