
State Water Resources Control Board

~ Sent via email ~

June 8, 2015

To: Unified Program Agencies (UPAs)

RECORDING UNDERGROUND STORAGE TANK (UST) VIOLATIONS

Recently, State Water Resources Control Board (State Water Board) staff has observed UST inspection reports from some UPAs that do not associate violations to specific USTs or UST systems, but rather to the UST facility as a whole. To confirm that the law requires violations to be recorded for each distinct UST or UST system, as appropriate, the State Water Board asked the Office of Chief Counsel (OCC) for a legal opinion.

The OCC's opinion, after consideration of all applicable UST statutes (California Health and Safety Code, Chapter 6.7) and regulations (California Code of Regulations Title 23, Chapter 16) is that all UST violations *must* be linked to each specific UST or UST system, as appropriate, and not simply the UST facility. The OCC's legal opinion cites to several statutory provisions in its analysis, including the requirements to ensure each tank "*system*" complies with applicable statutes and regulations (Health and Safety Code section 25288) and the provisions that state that penalties are assessed for each "*tank*" for each day of violation (Health and Safety Code section 25299). The opinion goes on to state that an UPA may not take an informal or formal enforcement action without identifying each UST or UST system that is in violation and describing what actions are needed to bring each UST or UST system into compliance. It is not necessary to report specific UST violation details in the California Environmental Reporting System though an UPA may provide such details if desired.

Violations noted on the UPA inspection report should reference the UST or UST system, as appropriate, by a name or number that is consistent with the facility's nomenclature to ensure accuracy (e.g. operating permit tank identification number, monitoring console tank identification number, fuel grade, etc.). UST inspection reports are official Unified Program records that must be maintained by UPA and made available, upon request, to the State Water Board for program evaluations and enforcement purposes. As official records, the UST inspection reports also must be maintained for public record request purposes.

The OCC's legal opinion is consistent with previous guidance given from the State Water Board (LG-159) and must be implemented immediately. Please feel free to contact Gabriel Herrera at gabriel.herrera@waterboards.ca.gov or (916) 319-9128 to discuss ways to comply with this requirement.

Sincerely,

A handwritten signature in black ink that reads "Laura S. Fisher". The signature is written in a cursive, flowing style.

Laura S. Fisher, Chief
UST Leak Prevention and
Office of Tank Tester Licensing

cc: Julie Osborn, Attorney III
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State Water Resources Control Board

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