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January 2, 2018

Ms. Laura Fisher and Mr. Cory Hootman
c/o Ms. Jeanine Townsend, Clerk to the Board
California State Water Resources Control Board

Submitted via email to commentletters@waterboards.ca.gov

Subject: Comments to Proposed Amendments to California Code of Regulations Title 23

Dear Mr. Hootman and Ms. Fisher,

Belshire is please to present to the California State Water Resources Control Board (SWRCB) comments to the proposed amendments to California Code of Regulations Title 23 (23 CCR). The comments provided are primarily regarding the training and visual inspections by the Designated Operator (DO).

General Observations

Three general observations are provided:

1. Purpose. The SWRCB website provided a statement of purpose for changes to 23 CCR, "The purpose of the proposed UST regulatory amendments is to make chapter 16 of division 3 of title 23 of the California Code of Regulations (California UST Regulations) at least as stringent as part 280 of 40 Code of Federal Regulations (Federal UST Regulations)." However, with respect to the DO visual inspection, the SWRCB is requiring a specific form for the inspection report, a signature by the owner/operator, and a summary of action items to be provided within 48 hours on the inspection report. These rigid documentation requirements will have profound operational and cost impacts to both owners/operators and DOs, and are not found in part 280 of 40 Code of Federal Regulations (40 CFR 280).
2. Definitions. Throughout the document, the SWRCB uses language requiring that the tank owner maintain conditions not clearly defined. Belshire recommends that the SWRCB clearly define these conditions so that all CUPAs and tank owners will operate to the same standard. Examples of such phrases are "practical demonstration" (DO training), "each alarm condition" (alarm history), "any hazardous substance, water or debris" (equipment inspections), "earliest possible opportunity," (sensor placement), "inspect for damage" (containment inspection).
3. DO Report Form. The DO form has been added as a required method of documenting the inspection. The form in the past had only been recommended. The language in the regulation and the layout of the form require that the owner/operator sign the DO report within 48 hours if there are any unresolved issues identified. Notwithstanding comment #1 above, use of a strict form will also inhibit the ability to adjust for efficiencies in recording information using database functionality (for example, listing past items requiring follow up). Belshire recommends adding a provision for providing the same information in an equivalent format so that multiple pages and information can be efficiently provided. Furthermore, a single physical form to be signed and

filled out by multiple people will not allow for efficient data sharing and will increase cost for both the owner/operator and the DO. Electronic means of documenting action items and follow up should be considered.

Specific Comments

The following comments are specific to citations noted.

2712. Define Results of Inspections

This section requires maintenance of records for 36 months and specifies types of records, including 2712 (b)(1)(F) *The results of inspections.*

- ⇒ Belshire requests that SWRCB define which inspections are required under this section (for example, only inspections required in this chapter).

2715 (c) and 2611. Define Facility Employee

2715 (c) states, *“For individuals assuming the duties of a facility employee on or after October 13, 2018, the initial training shall be conducted before the individual performs the duties of a facility employee.”*

2611 defines Facility Employee: *“Facility employee” means an individual who is employed on-site at an underground storage tank facility, and who may be called upon to respond to spills, overfills, or other problems associated with the operation of the underground storage tank system...*

Since the definition includes the phrase, *“... and who may be called upon to respond to spills, overfills, or other problems...”*, Belshire assumes that SWRCB is allowing for the possibility that some employees may work at the site who would NOT be called upon for these actions. Furthermore, an employee may work at the site while not assuming these duties, but may change their role so that they do assume these duties. The training requirement would not apply until the duties were specifically assigned.

- ⇒ Belshire request that the SWRCB confirm the definition of a Facility Employee in the context of the training requirement as described above.

2715 (c)(1). Define Practical Demonstration

This section adds the phrase, *“Through a practical demonstration...”*, to the DO training requirement.

- ⇒ Since practical demonstration can take many forms, Belshire requests that the SWRCB clarify what sort of demonstration must take place. For example, does a visual review of the equipment, emergency devices and supplies outlined in the training suffice?

2716 (a). Adjust 30-days Visual Inspection Timing

The visual inspection has changed from a monthly requirement to, *“...at least once every 30 days.”* This change to rigid 30-day requirement removes flexibility for setting schedules and will result in an increase in the number of inspections per site over the course of a year. Furthermore, the tracking systems currently utilized by the regulated community follow a calendar month. Costs will be generated in updating the system to accommodate this new requirement.

- ⇒ While we acknowledge that the SWRCB is mirroring the Federal language, Belshire recommends meeting the intent of the federal requirement by keeping the monthly requirement, but adding a provision for maximum and minimum number of days between inspections. For example, an inspection is required each month, but no more than 45 days and no less than 10 days from the previous inspection.

2716 (b)(1) and (b)(2). Define Appropriate Response.

This section requires that the DO review compliance issues and alarms to verify that there have been appropriate responses. The word, “*appropriately*,” requires the DO to evaluate the actions taken, usually by a technician, to determine if the actions would be acceptable to a CUPA inspector for any given alarm or maintenance requirement. The DO is not required to have all of the manufacturer and ICC certifications required for technicians, and therefore, may not be in a position to evaluate whether or not the technician’s actions meet all of the regulatory requirements and manufacturer guidelines for the equipment, as well as alignment with CUPA expectations.

- ⇒ Belshire requests that the SWRCB confirm that a documented response to a leak alarm by a qualified, certified UST technician can always be considered by the DO to be an appropriate response.

2716 (b)(2), (c)(5). Documenting Leak Detection Alarms and Responses

These sections require the DO to verify that, “*...each alarm condition...*” was documented and responded to appropriately. We believe that the SWRCB intends that the DO review only alarm conditions related to release detection. Furthermore, Belshire considers alarm conditions “documented” through the DO report process and electronic storage of alarms in a monitoring panel.

- ⇒ Belshire recommends changing, “*...each alarm condition...*”, to, “*...each release detection alarm...*”
- ⇒ Belshire requests that the SWRCB confirm that alarms are properly documented when attached to the DO report and stored in the monitoring panel memory. No other alarm log or listing of alarm responses is required.

2716 (b)(5), (b)(8) and (b)(9)

These three sections specify an inspection of containment areas, “*...for damage and for the presence of any hazardous substance, water or debris.*” The inspection for the presence of water, debris and hazardous substance has been a common source of interpretive discussion and enforcement since the inception of the DO program. We now have added “damage” to these discussions. It is safe to say that if taken literally, completely eliminating water is virtually impossible in the physical world. However, a reasonable person understands that what is truly meant is that there is no visual evidence of moisture. But even that definition does not allow for extremely small amounts of water, such as droplets or moisture caused by condensation. And, most monitoring systems are not designed to detect even small amounts of pooled liquid. Rather, they are designed to stop a leak as it is occurring so that the accumulation in any given containment area is identified and minimized before a discharge to the environment.

- ⇒ Belshire recommends changing the phrase, “*...for damage and for the presence of any hazardous substance, water or debris,*” to, “*...for visual damage that would interfere with the leak detection*”

or containment equipment, water in quantities sufficient to trigger an alarm, debris in quantities that would interfere with the monitoring system, or visible evidence of a hazardous substance.”

2716 (b)(7). Define Secure Fill Cap

In the requirement, “*Inspect the fill cap to verify it is securely on the fill pipe?*”, the word “*securely*” is subject to interpretation.

⇒ Belshire recommends changing the question to, “*Inspect the fill caps to verify they are equipped with gaskets and the locking mechanisms are engaged.*”

2716 (b)(8) and (b)(9). Match Monitoring Equipment Placement to Physical Constraints of Equipment

These sections require the DO to check that the monitoring equipment in containment areas, “*...is located in the proper position to detect a leak at the earliest possible opportunity.*” This phrase has been a common source of interpretive discussions and enforcement since the inception of the DO requirement. The UST owner is constrained by the equipment that has been installed, yet one could argue that it is possible to detect a leak before the monitoring system is capable. Furthermore, the shape and configuration of some sumps and UDCs may inhibit the placement of probes at the extreme lowest point, though only by inches.

⇒ Belshire recommends changing, “*...is located in the proper position to detect a leak at the earliest possible opportunity,*” to, “*has not been obviously tampered with and is located in the proper position to detect a leak at the earliest possible opportunity according to the technology and physical constraints of the containment area and the approved monitoring equipment.*”

2716 (c)(2), (c)(4), (c)(5), (c)(6). Define Action Taken

These sections require the DO to document action taken to respond to alarms, respond to compliance issues, and to correct problems identified during containment inspections. Often the action taken involves dispatching a contractor or calling a supervisor to dispatch a contractor.

⇒ Belshire requests that the SWRCB confirm that a record of a dispatch is appropriate documentation of action taken, and, when recorded by the DO, these communications constitute appropriate responses. Therefore, if a compliance condition is identified by the DO, the dispatch is recorded by the owner/operator, then the site has satisfied the requirements under 2716 until the final outcome of the dispatch is recorded during the subsequent DO inspection.

2716 (d), (e). Relax Response Documentation and Timelines

As stated above in General Observations, the requirements for the DO to provide a copy of the report to the owner/operator within 48 hours, and the requirement for the owner/operator to provide descriptions of actions taken and sign the form with 48 hours, are not a part of the requirements in 40 CFR 280. To complete these tasks within the prescribed timelines will be problematic and will generate cost for both owner/operator and DO. Most of the UST owners of multiple sites who are responsible to follow up on these types of issues are not able to physically visit each site to complete the form. Furthermore, in order to accelerate responses, the information provided to the owner is often provided in electronic format, usually in a spreadsheet or email rather than the actual document image. The rigidity of the forms does not allow owner/operators to take advantage of the efficiencies offered by modern communication and data management tools.

Belshire recognizes that SWRCB is looking for confirmation that action is taking place in a timely manner. In order to achieve this goal, Belshire recommends the following:

- ⇒ Allow the DO to provide follow up information on a separate page and allow flexibility in the format. The additional page would be attached to the following month's inspection and would serve as the documentation for follow up actions from previous investigations.
- ⇒ Remove the requirement for the owner/operator to sign the DO form.
- ⇒ Remove the 48-hour requirement for the owner/operator to document a response (responses will be documented in the subsequent DO inspection).
- ⇒ If none of the above are acceptable, allow companies to submit alternative formats to the SWRCB for approval in order to achieve the documentation and timing requirements. These alternatives may include electronic transfer of information and electronic signatures by the owner/operator.

Appendix XIII

- ⇒ Belshire recommends removing the requirement to utilize a specific form.

If the form remains in the regulation, comments to the regulatory language above would also apply to the language and format of Appendix XIII and will not be repeated here. Belshire offers additional comments below.

III. Compliance Issues, V. Owner/Operator Description of Follow-up Actions

Often the list of explanations and issues will exceed the space allowed on this form.

- ⇒ Belshire recommends a notation that will allow the DO to include additional pages, attach completed pages (as was done with the employee list for Appendix XII), or that the SWRCB create supplemental pages.

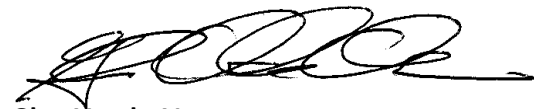
IX. UST System Inspection

Many sites will have equipment exceeding the quantities provided for on this form.

- ⇒ Belshire recommends a notation that will allow the DO to include additional pages, attach completed pages (as was done with the employee list for Appendix XII), or that the SWRCB create supplemental pages.

Belshire appreciates the SWRCB work to improve California's regulations and we look forward to working with the SWRCB in implementing and understanding the new rules when finalized.

Sincerely,



Glen VanderVeen

VP Auditing and Compliance Services
Belshire Environmental Services, Inc.