

# **Recommendations for Prompt Closure of Non-Upgraded Underground Storage Tanks**

**Prepared By the  
California Non-Upgraded Tank Workgroup**

**January 2001**

## Executive Summary

Senate Bill 989, introduced by Senator Sher and approved by Governor Davis, became effective January 1, 2000. This bill requires the State Water Resources Control Board (SWRCB) to take various actions to reduce the likelihood of pollution to groundwater from Methyl Tertiary Butyl Ether (MTBE), a fuel additive.

Section 34 of this bill required the following action: "The State Water Resources Control Board (SWRCB) shall convene a working group of interested parties, including, but not limited to, local agency, regional board, industry, environmental, and water agency representatives to review and evaluate options for the prompt closure of petroleum underground storage tanks that have not been upgraded to meet the December 22, 1998, upgrade deadline and that have not been closed in conformance with Section 25298 of the Health and Safety Code. On or before January 1, 2001, the working group shall recommend to the Secretary for Environmental Protection appropriate actions to reduce the threat to groundwater resources posed by those tanks" (hereafter and in the report referred to as "non-upgraded tanks").

In response to this legislative directive, the SWRCB formed the California Non-upgraded Tank Workgroup (workgroup). A diverse group, members represented four local agencies, a water district, major and independent oil industries, an environmental perspective, an attorneys office, Cal/EPA, U.S. EPA, and an independent interested party. Although the size of the workgroup presented report development and time commitment challenges, a collaborative effort was achieved.

The attached report is entitled "Recommendations For Prompt Closure of Non-Upgraded Underground Storage Tanks." In summary, the report explains how the workgroup completed its mission (Introduction), provides findings and conclusions including problems and impediments to prompt closure (Section 1), and provides recommendations for appropriate actions to reduce the threat to groundwater resources posed by non-upgraded tanks (Sections 2 and 3).

Information obtained from literature and a survey of local agencies (Report Appendices B and C) provided the basis for three flowcharts that integrate much of the workgroup's efforts (included at the end of the introduction). Flowchart 1 provides a process to determine the appropriate course of action when a non-upgraded tank is discovered. Flowchart 2 provides options or actions and controls available to local agencies to gain compliance with not only closure but all requirements. Flowchart 3 shows how the workgroup's recommendations fit into the schematic diagram of Flowchart 2.

The workgroup conceived of eight recommendations that fulfil three criteria. First, they address problems and impediments to gain prompt closure. Second, they support a general approach considered critical to successful closure of non-upgraded tanks. This approach maintains the authority of local agencies for taking enforcement and supplements it with state oversight and authority. This will provide additional assistance to those local agencies that for any number of reasons may not gain prompt closure. Lastly, to adequately reduce the threat to groundwater resources, the recommendations support closure as defined by Title 23, Section 2672, Permanent Closure Requirements. This includes closure in-place or by removal and, depending on soil/and

or water sample results, may include site investigation and cleanup. This protocol constitutes no deviation from current standard operating procedures.

The eight recommendations were assigned a priority ranking of high, medium, or low as shown in the right-hand column. A high priority means that this recommendation is most likely to provide prompt closure. Conversely, a low priority will take longer to provide closure. One will note that all recommendations require SWRCB involvement and therefore staffing resources.

<b>Recommendations</b>	<b>Priority Ranking</b>
1. Use the SWRCB UST Quarterly Report to obtain non-upgraded tank information.	High
2. Increase the effectiveness of the Emergency, Abandoned, Recalcitrant (EAR) account in closing non-upgraded tanks.	High
3. Delegate to the SWRCB state-oversight responsibility and authority.	High
4. Delegate to the SWRCB responsibility for developing and maintaining a central repository of effective measures to gain compliance.	Medium
5. Delegate to the SWRCB responsibility for re-instituting enforcement training aimed at enhancing local agency enforcement efforts.	Medium
6. Delegate to the SWRCB the responsibility of coordinating activities and conducting oversight of the EPA-funded California USTfields program.	Medium
7. Delegate to the SWRCB responsibility for determining the feasibility of local agency administrative enforcement authority for UST violations.	Low
8. Delegate to the SWRCB responsibility for determining the feasibility of applying criminal penalties against owners of non-upgraded tanks.	Low

The workgroup agreed the recommendations provided in this report are appropriate actions to reduce the threat to groundwater resources posed by non-upgraded tanks. The workgroup expects that Recommendations 3, 4, 5, and 7 may be appropriate for application to the UST program in general. Appendix D, Participant Concurrence With Report Content, provided the workgroup members the opportunity to concur with the report's contents and/or express dissenting opinions.

Determining the cost of recommendations contained in this report was beyond the scope of the workgroup. It is recommended that Cal/EPA develop an analysis of the resources necessary to implement the recommendations, and the funding sources, or additional revenues, needed to enact the recommendations.

In brief, closure of non-upgraded tanks will provide lasting benefit in terms of protection of groundwater resources and human health and the environment and in terms of enhanced property values.

## Table of Contents

Acknowledgements.....	1
Introduction.....	3
Background - UST Program History.....	3
Completing the Mission.....	4
Flowchart 1      Process to Determine Actions to Take if an Underground Storage Tank is not Upgraded or Closed.....	7
Flowchart 2      Actions and Controls Available to Local Agencies to Gain Prompt Closure.....	9
Flowchart 3      Additional Actions and Controls From Workgroup Recommendations.....	11
Section 1   Findings and Conclusions.....	13
Findings.....	13
Problems and Impediments to Prompt Closure.....	14
Conclusions.....	16
Section 2   List of Recommendations.....	19
Section 3   Analysis of Recommendations.....	21
Recommendation 1   Use the SWRCB UST Quarterly Report to obtain non-upgraded tank information.....	23
Recommendation 2   Increase the effectiveness of the Emergency, Abandoned, Recalcitrant (EAR) account in closing non-upgraded tanks.....	27
Recommendation 3   Delegate to the SWRCB state-oversight responsibility and authority.....	31

Recommendation 4	Delegate to the SWRCB responsibility for developing and maintaining a central repository of effective measures to gain compliance.....	35
Recommendation 5	Delegate to the SWRCB responsibility for re-instituting enforcement training aimed at enhancing local agency enforcement efforts.....	37
Recommendation 6	Delegate to the SWRCB the responsibility of coordinating activities and conducting oversight of the EPA-funded California USTfields program.....	39
Recommendation 7	Delegate to the SWRCB responsibility for determining the feasibility of local agency administrative enforcement authority for UST violations.....	43
Recommendation 8	Delegate to the SWRCB responsibility for determining the feasibility of applying criminal penalties against owners of non-upgraded tanks.....	45
Section 4	Conclusion.....	47

---

## Appendices

Cover.....	49	
Appendix A	Enforcement Guidelines for 1998 Underground Storage Tank Upgrade Requirements.....	51
Appendix B	Workgroup Survey of Enforcement Efforts by Local Agencies.....	69
Appendix C	Local Agency Survey Responses.....	73
Table 1	Responses to Survey Question 1, Number of Non-upgraded Facilities and Tanks (August 2000).....	74

Chart 1	Responses to Survey Question 5 Showing Local Agency Time Expenditure to Enforce Compliance Relative to a Typical Compliant Facility - Number of Respondents in Four Categories.....	75
Chart 2	Responses to Survey Question 6, Local Agency Recommendations to Gain Prompt Closure - Number of Responses in Six Categories.....	76
Appendix D	Participant Concurrence With Report Content.....	77
Appendix E	USTfields Process.....	79



# Acknowledgements

The California Non-upgraded Tank Workgroup is comprised of sixteen members representing a wide variety of interests and perspectives. The success of this project was accomplished with their combined expertise and contributions. Many members endured early morning commuting to Sacramento to attend the numerous meetings. The SWRCB acknowledges and thanks them for their perseverance and commitment to this project.

## Participants:

## Representing:

Greg Mobley*	Urban local agency - Northern California (Marin County)
Mike Vizzier*	Urban local agency - Southern California (San Diego County)
Tracy Gidel*	Rural local agency (Nevada County)
Holly Clark*	Fire Department local agency (San Bernardino County)
Donna Drogos	Water District (Santa Clara Valley)
Steven Arita	Industry - Major Oil (Western States Petroleum Association)
Jay McKeeman*	Industry - Independent Oil (California Independent Oil Marketers Association)
Alvin Greenberg	Environmental - Planning and Conservation League
Jim White*	Interested Party - White Environmental Associates
David Ireys*	San Joaquin County District Attorney's Office
April Katsura* and Matthew Small*	Federal EPA, Region 9
Lisa Brown*	Assistant Counsel for Enforcement, California EPA
Chuck Headlee*	Regional Water Quality Control Board, Region 2
David Holtry and John Welch* (Facilitator)	State Water Resources Control Board, UST Program

\*Primary Participants

Special thanks to the following for providing editorial and technical review:

Allan Patton	State Water Resources Control Board
Jennifer White	State Water Resources Control Board
Lisa Fernandez	California Department of Health Services





## Introduction

Federal and state law provided tank owners ten years to upgrade their underground storage tank systems (USTs) or close them. The deadline to complete this work was December 22, 1998. That year, California's attention was directed toward the environmental impacts of Methyl Tertiary Butyl Ether (MTBE), a fuel additive. The University of California published a report concluding that, "while MTBE has provided California with clean air benefits, because of leaking underground fuel storage tanks, MTBE poses an environmental threat to groundwater and drinking water." To mitigate the impacts of MTBE on California's groundwater supplies, the legislature passed Senate Bill 989 (Chapter 812, statutes of 1999).

During the bill's public hearing process, testimony was given supporting the need to determine the number of tanks that have not met the December 22, 1998 upgrade deadline and the impact that they may have on groundwater and drinking water supplies. This testimony prompted inclusion of Section 34: "The State Water Resources Control Board (SWRCB) shall convene a working group of interested parties, including, but not limited to, local agency, regional board, industry, environmental, and water agency representatives to review and evaluate options for the prompt closure of petroleum underground storage tanks<sup>①</sup> that have not been upgraded to meet the December 22, 1998, upgrade deadline and that have not been closed in conformance with Section 25298 of the Health and Safety Code. On or before January 1, 2001, the working group shall recommend to the Secretary for Environmental Protection appropriate actions to reduce the threat to groundwater resources posed by those tanks."

## Background - UST Program History

Prior to 1984, California did not have a uniform regulatory program for USTs. Commonly, UST systems installed before that year consisted of single-walled bare-steel tanks and piping which were subject to corrosion and undetected leaks. Under a statewide regulatory program that became effective January 1, 1984, all new UST systems were required to meet standards for corrosion protection, leak detection, spill containment, and overfill prevention. In addition, new systems were required to include secondary containment which was capable of holding any leak from the primary containment until the leak could be detected and cleaned up. In 1990, to be consistent with federal rules, a requirement was added to the California program to upgrade all older systems to meet minimum standards to protect against corrosion, prevent spills and overfills and to address other deficiencies in the older systems. Alternatively, these old tanks could be permanently closed. The deadline for meeting these requirements was set for December 22, 1998, the same as in the federal program.

---

① Tank means an underground tank system. Section 25281 of the Health and Safety Code states an "'Underground tank system' or 'tank system' means an underground storage tank, connected piping, ancillary equipment, and containment system, if any." Title 23, Section 2621 provides exclusions to the term "underground storage tank." (<http://www.swrcb.ca.gov/cwphome/ust/legal/caustreg.html#2621>)

Those tank owners that did not upgrade their tanks by the deadline were required to remove any remaining product and proceed with closure. They had the option, subject to local agency approval, to place their tanks in temporary closure for up to two years following the upgrade deadline, to allow time for scheduling and completing permanent closure<sup>②</sup>. To obtain approval for temporary closure, the owner or operator had to remove any remaining product and disconnect power from their UST and meet other requirements.

The California UST regulatory program is administered by over 100 local agencies (typically county environmental health or city fire departments). These agencies issue operating permits to UST owners, conduct compliance inspections and take enforcement action against owners and operators for non-compliance with UST program requirements.

## Completing the Mission

In response to this legislative directive, the SWRCB formed the California Non-upgraded Tank Workgroup (workgroup). This diverse team was represented by four local agencies, a water district, major and independent oil industries, an environmental league, an attorneys office, Cal/EPA, U.S. EPA, and an independent interested party.

Although the size of the workgroup presented report development and time commitment challenges, a collaborative effort was achieved. The following are highlights of tasks accomplished.

### Development Of A Mission Statement

The workgroup's mission is to recommend to the Secretary of Environmental Protection appropriate actions to reduce the threat to groundwater resources posed by non-upgraded tanks<sup>③</sup>.

### Literature Review

The workgroup reviewed options for prompt closure of non-upgraded tanks. A review of existing literature provided an understanding of options and issues related to non-upgraded tanks. Insight was gained from questioning the literature. Why do non-upgraded tanks still exist?

---

② Permanent Closure means complying with the requirements given in Title 23, Section 2672. This section provides requirements for cleaning, inerting, and disposal of a tank system. It also requires investigation and reporting of any unauthorized release and compliance with applicable corrective action requirements (Article 11, Section 2720 et. seq.). A non-upgraded tank can be considered closed only after successful completion of these requirements.

③ Non-upgraded tank means a tank system that is regulated, stores petroleum, is not permanently closed, and has not been issued an upgrade compliance certificate. It should have been upgraded or closed by December 22, 1998 or should have been upgraded or closed by the termination of a temporary closure permit.

What options are available for dealing with non-upgraded tank owners? What is and is not effective in helping achieve closure? What are the constraints on local agency resources if any? How effective are local agency enforcement efforts?

The following literature provided material and information presented in this report.

- California SWRCB Cleanup Fund Policy
- Report of the State Water Resources Control Board's Advisory Panel on the Leak History of New and Upgraded UST Systems  
([http://www.swrcb.ca.gov/cwphome/ust/advisory\\_panel/advisory\\_panel.htm](http://www.swrcb.ca.gov/cwphome/ust/advisory_panel/advisory_panel.htm))
- "Risk-informed" decision making literature
- Statutes and regulations (Appendix A) contains the SWRCB Enforcement Guidelines for 1998 Underground Storage Tank Upgrade Requirements. These guidelines provide statutory and regulatory citations, authorities, and options available to local agencies. They are also available as the link "Enforcement Guidelines" at:  
<http://www.swrcb.ca.gov/cwphome/ust/docs/documents.htm>
- SWRCB UST Quarterly Report and UST reporting requirements
- Funding sources for closures
- Hazardous waste and Air Pollution Control District (APCD) requirements

### Local Agency Survey

The workgroup surveyed local agencies implementing the UST program to obtain the number of non-upgraded tanks in California and to identify strategies effective in gaining prompt closure. Survey results are included in Section 1, Findings and Conclusions. Numerous problems and impediments preventing tank owners from upgrading or achieving closure were identified. These are also explained in Section 1.

A copy of the survey is included as Appendix B. Local agency responses to survey questions are included as Appendix C.

### Bringing Clarity To Numerous Actions and Controls<sup>④</sup>

The various actions and controls available to local agencies and, to a lesser degree, the state and private citizenry to promote compliance with upgrade and closure requirements were captured in flowchart form. These flowcharts, attached at the end of the introduction, represent a collection of disparate ideas into one construct.

---

④ The term "actions and controls" is used instead of "options" as provided by the statute. Actions are taken in response to stimuli. Controls are strategic barriers intended to gain a desired outcome or to prevent a particular behavior or action.

- Flowchart 1 gives a process to determine actions to take if an underground storage tank is not upgraded or closed.
- Flowchart 2 provides and clarifies actions and controls available to local agencies to gain prompt closure.
- Flowchart 3 shows additional actions and controls from workgroup recommendations.

Flowcharts 2 and 3 organize the available and proposed actions and controls within one of five categories: Administrative, Civil/Criminal Enforcement, Administrative Enforcement, Educational, and Political. The actions and controls shown in Flowchart 2 are generally implemented by a local agency. Those in Flowchart 3 would require both state and local implementation.

### **Developing Recommendations**

Each problem was assessed and, where there was no existing solution, the workgroup developed one or more recommendations. These recommendations along with current options provide numerous strategies to increase the likelihood of prompt closure. Section 2 lists the workgroup's recommendations under the headings of high, medium, and low priority. It also shows how the recommendations address problems identified in the previous section. Section 3 provides analysis of and justification for each recommendation. It also explains the priority assigned to each recommendation.

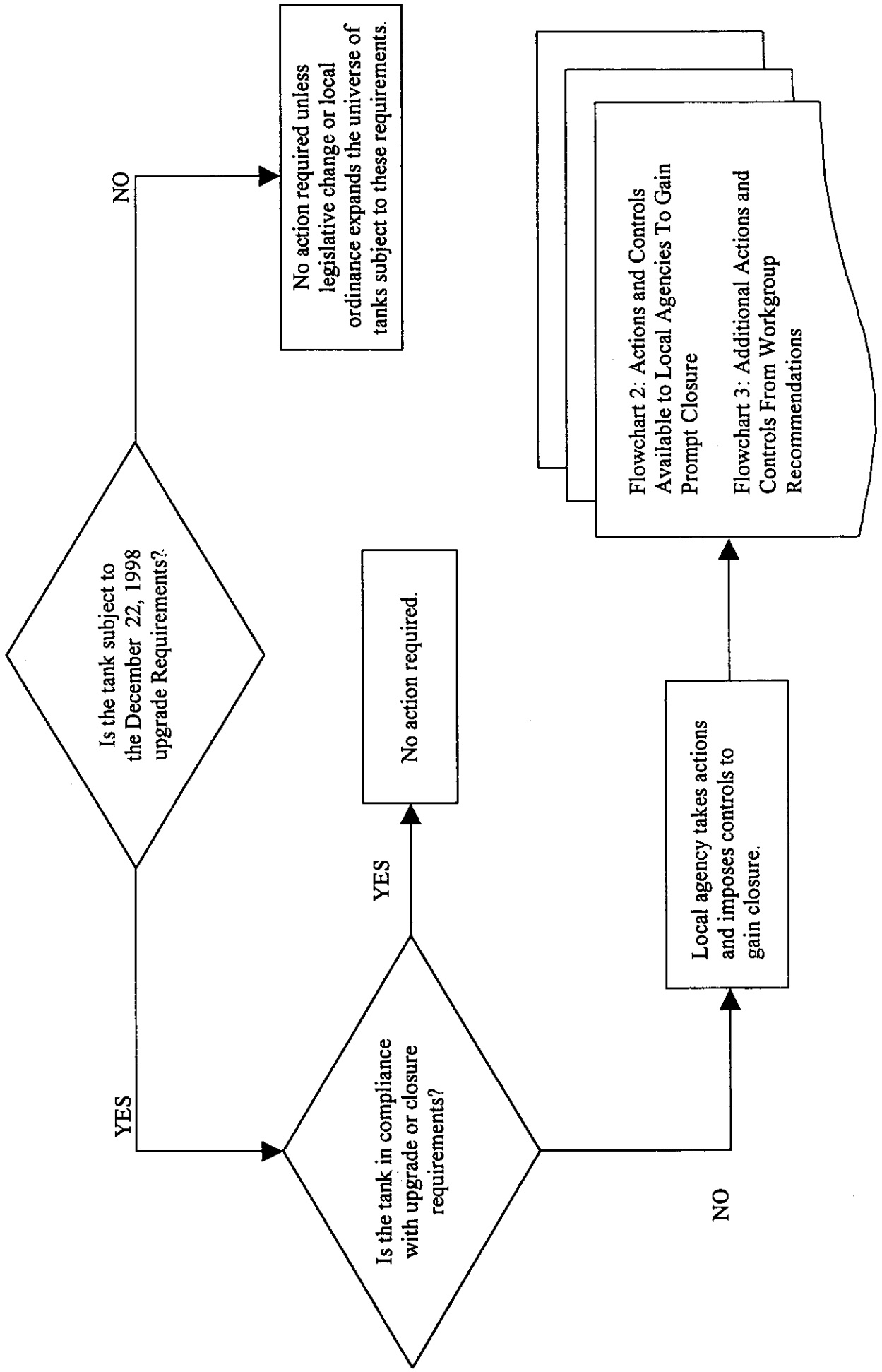
### **Participant Agreement**

The workgroup agreed the recommendations provided in this report are appropriate actions to reduce the threat to groundwater resources posed by non-upgraded tanks. Appendix D, Participant Concurrence With Report Content, provided the workgroup members the opportunity to concur with the report's contents and/or express dissenting opinions.

## **Flowchart 1**

### **Process To Determine Actions To Take If an Underground Storage Tank Is Not Upgraded or Closed**

**Flowchart 1**  
**Process To Determine Actions To Take**  
**If an Underground Storage Tank Is Not Upgraded or Closed**

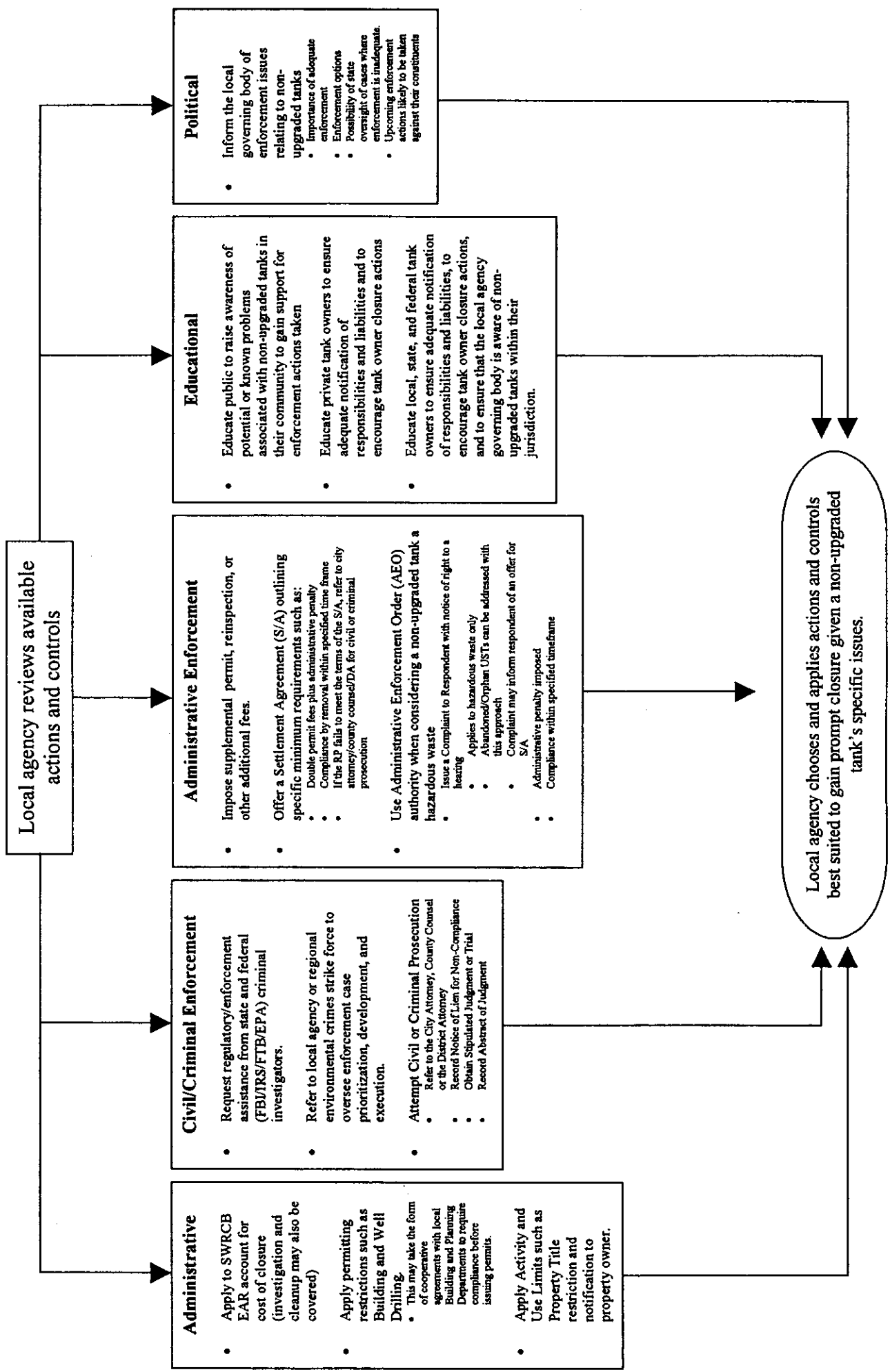


## **Flowchart 2**

### **Actions and Controls Available to Local Agencies To Gain Prompt Closure**



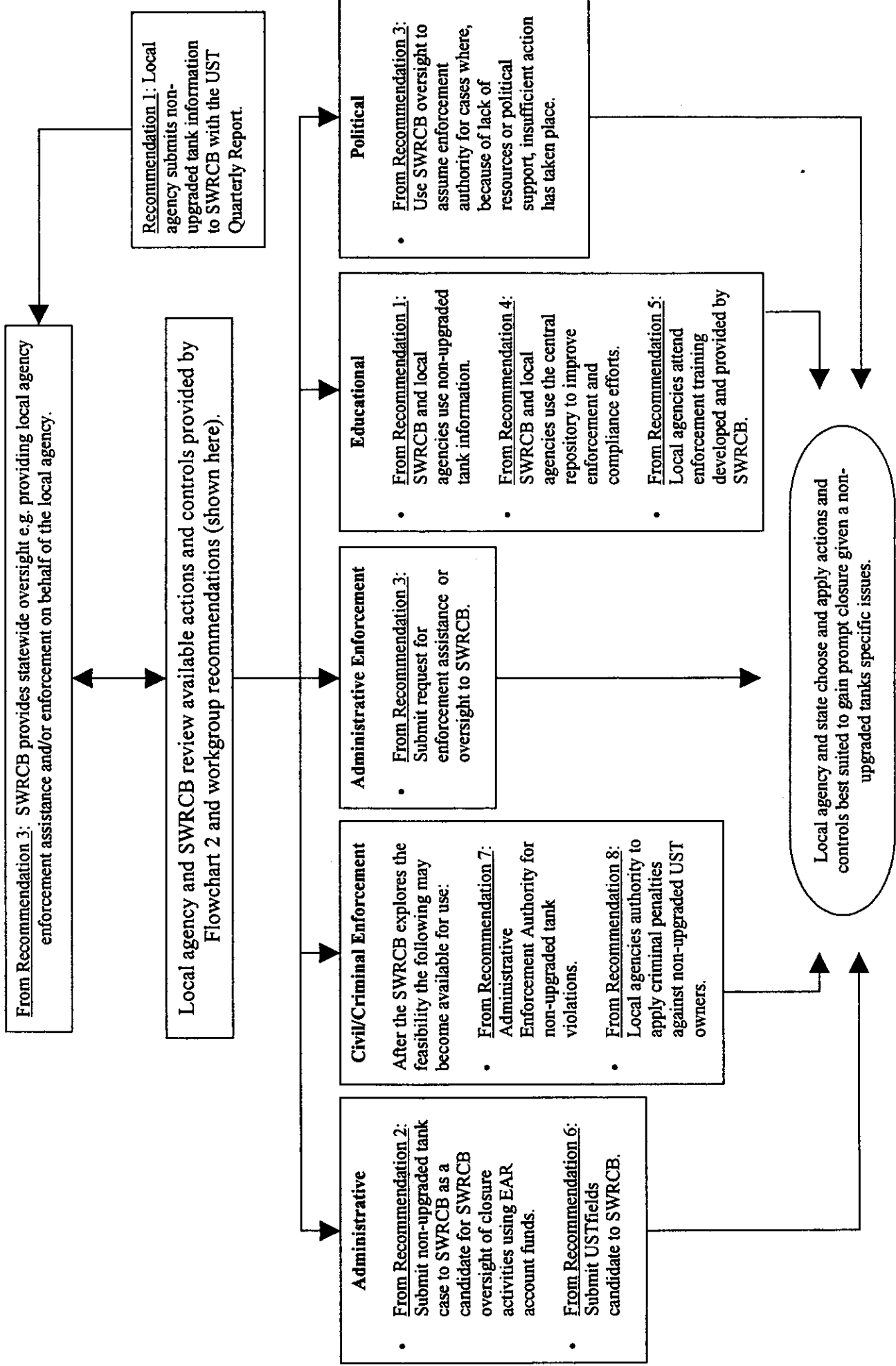
## Flowchart 2 Actions and Controls Available to Local Agencies To Gain Prompt Closure



## **Flowchart 3**

### **Additional Actions and Controls From Workgroup Recommendations**

**Flowchart 3**  
**Additional Actions and Controls From Workgroup Recommendations -**  
 (For parallel construction with Flowchart 2, all are presented as if currently available)



# Section 1

## Findings and Conclusions

---

Workgroup discussions resulted in an abundance of issues relating to upgrading, closure, and the UST program in general.

### Findings

1. *Survey Results:* The workgroup received 80 responses from the 104 local agencies surveyed (77% exceeded the workgroup's 75% desired minimum return). From these responses (see Appendix C), the workgroup estimated the number of non-upgraded tanks to be between 2,000 and 5,000, or about 8% of the state's tank population, and the number of non-upgraded tank sites<sup>⑤</sup> to be about 1,000 to 2,500. The lower limit was derived from the results of Question 1 of the survey. After adjustment, the number of non-upgraded tanks totaled 2,197. The upper limit was chosen because the workgroup does not expect the number to exceed 5,000. Lack of a firm number was attributed to 1) unavailable non-upgraded tank information from some local agencies and 2) no response from 23% of local agencies.

Factors that could cause these numbers to increase include newly discovered tanks and failure of owners of temporarily closed tanks to follow through with permanent closure.

This voluntary survey provided information for workgroup recommendations in terms of a need for a state oversight role. In response to Question 6, "What are your recommendations for gaining prompt closure of tanks that should have been upgraded or closed by December 22, 1998, but were not?", seventeen agencies suggested state involvement in terms of funding or administration. This was second after the most frequently made recommendation, strict adherence to enforcement (see Appendix C, Chart 2).

2. *Potential Impacts Of Non-Upgraded Tanks:* Excluding those tanks granted temporary closure permits, non-upgraded tanks may continue to store product or may have leaked in the past (those granted a temporary closure permit were required to remove product and perform site characterization). According to the local agency survey (Appendix C) over 700 non-upgraded tanks at about 340 facilities were granted temporary closure permits.

---

⑤ Non-upgraded tank site means a site with one or more non-upgraded tanks. Sites are significant because closure, investigation, and cleanup activities are generally applied to a site rather than individual tanks. However, the workgroup focused on the number of tanks because a site may be in non-compliance due to a system defect that would not require tank removal.

The remaining 1,400 tanks pose a potential threat to the beneficial uses of groundwater resources, human health and the environment, and may present an economic burden in terms of redevelopment and possibly an unfair business advantage.

3. *Basis For the Development of a State Oversight Role:* Non-upgraded tank data would provide a basis for determining whether a state oversight function is reasonable. It would probably be unnecessary to develop a considerable state oversight function if few non-upgraded tanks exist. However, the survey estimate of about 1,100 (see Table 1, Appendix A) non-upgraded tank sites is significant. For this reason, each of this report's eight recommendations require some action or involvement by the SWRCB.
4. *UST Quarterly Report Data:* The July to September 2000 Quarterly Report shows that 45 local agencies report 100% tank compliance with 1998 upgrade requirements. Thirty-four agencies report 90% or greater tank compliance. In combination, 75% of the agencies have few or no problem facilities. A review of this information indicates the majority of the problem resides in the state's urban areas.
5. *Cleanup Fund:* The UST Cleanup Fund, which is administered by the SWRCB, is available to pay for corrective action at abandoned sites (H&SC 25299.51(e)) and sites needing emergency action (H&SC 25299). A subaccount of the Fund, the Emergency, Abandoned, and Recalcitrant Account, has been established by the SWRCB for this purpose. Currently, the EAR Account receives a five million dollar (\$5,000,000.00) annual appropriation.

### **Problems and Impediments to Prompt Closure**

The workgroup determined the following to be problems and impediments to prompt closure of non-upgraded tanks. They have been identified through workgroup discussions, review of studies and reports, survey results and anecdotal information.

1. There is a general lack of information regarding non-upgraded tanks in California.
  - a. Data has not routinely been collected on non-upgraded tanks.
  - b. There is no central agency dedicated to collect, maintain, and report non-upgraded tank data.

Without this information, state and federal assistance programs may not be utilized or made available.

2. Some local agencies lack resources or the management support necessary for enforcement to be effective.
  - a. According to survey results (see Appendix C, Chart 1), substantially greater resources are needed to enforce closure requirements relative to a typical compliant facility. When resources are stretched thin, non-upgraded tanks may not get the attention needed to gain closure.
  - b. No contingency plan exists if the local agency fails to take appropriate actions against owners of non-upgraded tanks. For example, there is no state agency that has the authority to assume inspection and/or enforcement actions on behalf of or instead of the local agency.
  - c. UST statute does not provide the local agencies administrative enforcement authority or provide criminal penalties for non-compliance with upgrade requirements.
3. Local agency enforcement actions vary in effectiveness.
  - a. Based on CUPA evaluation findings, some local agency enforcement plans:
    - i. Have not been developed;
    - ii. Are ineffective due to insufficient scope and/or detail; or
    - iii. Not been implemented.
  - b. Some local agencies may not be aware of all enforcement options.
    - i. Successful local agency compliance and enforcement actions and controls are rarely shared throughout the state because there is no state-wide central repository to gather, maintain, and disseminate information.
    - ii. Delays with local agency enforcement may be from a lack of enforcement training.
    - iii. Statutory and regulatory upgrade requirements are not well understood.
4. Contacting owners of non-upgraded tanks can be difficult. Some are not available at the last known address; some have left the state or the country. There is no statewide guidance on how to find unavailable tank owners and/or what to do about a non-upgraded tank owned by such a person.
5. Some tank owners are insolvent. There are no statewide guidelines to address this situation.

6. Government-owned non-upgraded tanks present unique challenges.
  - a. Some federal agencies have disputed local agency enforcement authority.
  - b. Non-upgraded tanks owned by a local or state agency may receive enforcement leniency relative to other tank owners.
  - c. Government tanks have not paid into the UST Cleanup Fund.

## Conclusions

1. *Prompt Closure:* The statute requires the workgroup to "review and evaluate options for the prompt closure of petroleum underground storage tanks ..." The workgroup's recommendations aim to achieve closure of all non-upgraded tanks in the shortest time.
2. *Risk-informed Decision Making:* Consistent with the statutory initiative of reducing the threat to groundwater resources posed by non-upgraded tanks, and because the threat is site specific (depends on a number of site and groundwater use conditions) the workgroup assumes that the agency(ies) implementing this report's recommendations will apply a risk-informed decision making approach in determining site priority for inspection, investigation, and/or corrective actions.
3. *Upgrading is no Option:* As expressed above, the workgroup was tasked to review and evaluate options for the prompt closure of non-upgraded tanks. While the law does not expressly prohibit upgrading these tanks, the workgroup's recommendations provide no allowance for post-deadline upgrading instead of closure.
4. *Local Agency Retains Lead Enforcement Role:* SWRCB UST Quarterly Report data indicate the majority of local agency educational, inspection, and enforcement efforts have been effective in gaining tank system upgrading or closure. The numerous actions and controls available to gain compliance are provided in Flowchart 2.

Although it is the opinion of the workgroup that local agencies are the most appropriate to continue the lead role in overseeing the closure of non-upgraded tanks, Recommendation 3 would enable the SWRCB to assume the lead role in conjunction with or independent of the local agency.

These various actions and controls provide local agencies flexibility when deciding on an approach to gain prompt closure. However, there are circumstances that preclude use of a particular action or control. Most significantly, non-upgraded government-owned tanks should be ineligible for SWRCB Cleanup Fund money because the Cleanup Fund gas tax is not collected on government-owned tanks. Also, some actions or controls may not be effective in cases where a tank owner is insolvent or unknown to the local agency. Except for ineligibility of government tanks, the flowcharts do not provide this detail.

5. *SWRCB As Oversight Agency:* The SWRCB has evaluated local agency enforcement implementation, has provided extensive outreach and assistance to local agency staff, and recently established a UST Enforcement Unit. This unit assists in local enforcement cases, provides local agency staff with enforcement training, and pursues state-led UST enforcement cases where appropriate. With this background, the workgroup considers the SWRCB as the appropriate agency to provide oversight as outlined in Recommendation 3.
  
6. *Scope of the Non-upgraded Tank Universe:* The recommendations in this report apply to non-upgraded tanks only. This report does not address those tanks that are either not regulated by the statute and regulations, for example farm tanks under 1,100 gallons, or that store a hazardous substance other than petroleum. Further, it is not intended to address permitted tanks that fail to comply with upgrade or other regulatory requirements. However, the workgroup recognizes that this report's recommendations may also be applied to such tanks.





## Section 2

### List of Recommendations

---

This section performs three functions. It summarizes the workgroup's recommendations; shows the priority of each based on the analysis provided in Section 3; and shows that recommendations have been developed to address problems and impediments expressed in the last section.

Recommendations	Problems Addressed (as numbered in Section 1 Pages 13 - 16)
<u>High Priority</u>	
1. Use the SWRCB UST Quarterly Report to obtain non-upgraded tank information.	1
2. Increase the effectiveness of the Emergency, Abandoned, Recalcitrant (EAR) account in closing non-upgraded tanks.	2, 5
3. Delegate to the SWRCB state-oversight responsibility and authority.	1b, 2a - c, 4, 5, 6
<u>Medium Priority</u>	
4. Delegate to the SWRCB responsibility for developing and maintaining a central repository of effective measures to gain compliance.	1, 2
5. Delegate to the SWRCB responsibility for re-instituting enforcement training aimed at enhancing local agency enforcement efforts.	3a - d
6. Delegate to the SWRCB the responsibility of coordinating activities and conducting oversight of the EPA-funded California USTfields program.	2

Low Priority

7. Delegate to the SWRCB responsibility for determining the feasibility of local agency administrative enforcement authority for UST violations.
8. Delegate to the SWRCB responsibility for determining the feasibility of applying criminal penalties against owners of non-upgraded tanks.

2

2

## Section 3

### Analysis of Recommendations

---

In combination with available local agency actions and controls, the workgroup's recommendations would provide an effective program to achieve prompt closure of non-upgraded tanks. The recommendations support a concept that the local agencies and the state work together to solve this problem quickly.

The foundation for this concept assumes that the local agencies will make reasonable efforts to close non-upgraded tanks. If efforts are unsuccessful, the local agency can apply to the SWRCB EAR account to contract directly for closure, investigation, and cleanup activities. The local agency is required to pursue cost recovery in cases where the EAR account funds have been used. The SWRCB should prioritize the applications that it receives and, if approved, dispense funding. If an agency does not apply to use the EAR account, the SWRCB should consider contracting directly for closure, investigation, and cleanup activities (Recommendations 2 and 3). The decision for the SWRCB to contract directly should be based on one of the following: 1) non-upgraded tank information provided by the local agencies per Recommendation 1; 2) request from the local agency or RWQCB; 3) other information suggesting that a site poses a significant threat to groundwater resources and for which immediate action must be taken. The SWRCB should pursue cost recovery in cases where the EAR account funds have been used.

The SWRCB should also perform a state oversight role (Recommendation 3). Part of the function should be to monitor the rate at which non-upgraded tank sites are being closed. The SWRCB Enforcement Unit may take enforcement actions in conjunction with or instead of a local agency for sites that remain on the list. In addition, the SWRCB should perform other functions to ensure options and resources are available to local agencies. It should receive, monitor, and share non-upgraded tank information that should be provided with the UST Quarterly Report (Recommendation 1). A central repository of effective measures to gain compliance should be developed (Recommendation 4). Enforcement training aimed at enhancing local agency enforcement efforts should be re-instituted (Recommendation 5). The SWRCB should coordinate and assist the local agency development of USTfields Programs (Recommendation 6). Lastly, a workgroup should be convened to determine the feasibility of administrative enforcement authority and criminal penalties for use on non-upgraded tank violations (Recommendations 7 and 8).

This section provides analysis of each recommendation. The criteria for analysis include actions needed, resources needed, benefits and incentives, disincentives, immediacy of impact, and effectiveness. Estimated resource needs, whether at state or local levels, are presented as high, medium or low; the implementing agency(ies) will determine actual needs. A priority ranking of high, medium, or low is assigned based on the ability for the recommendation to achieve prompt closure.



## Recommendation 1

### Use the SWRCB UST Quarterly Report to Obtain Non-Upgraded Tank Information

---

Non-upgraded tank information is necessary to identify the number and distribution of non-upgraded tanks statewide. This information will provide a basis for decision making at the state, regional, and local levels.

#### Actions Needed

1. The SWRCB should create an addendum to its UST Quarterly Report requesting non-upgraded tank information:
  - a. Name and address of each facility with one or more non-upgraded tank systems.
  - b. Tank owner name.
  - c. Type of owner:
    - i. Private.
    - ii. Corporate.
    - iii. Government.
  - d. Number of tank systems at the facility:
    - i. Type of tanks.
    - ii. Contents of tanks.
  - e. Reason the tank system(s) is not upgraded:
    - i. Recalcitrant owner.
    - ii. Insolvency.
    - iii. Other.

- f. Tank Closure Status:
    - i. Closure permit issued. Include permit issuance date and planned closure date.
    - ii. No closure permit issued – local agency pursuing informal measures aside from enforcement to gain prompt closure. Indicate the date of last action.
    - iii. No closure permit issued - local agency pursuing formal enforcement to gain prompt closure. Indicate the name of the enforcement agency, date and type of last enforcement action.
  - g. Tank Upgrade Status:
    - i. Upgrade permit issued but work is not completed. Include permit issuance date and the date by which upgrading activities are or were required to be completed.
2. The SWRCB should consult the Cal/CUPA Forum Board to verify appropriateness of information and to receive support of the recommendation.
  3. The SWRCB should modify the existing UST Quarterly Report database to maintain non-upgraded tank information. This database should be used to generate reports for distribution to state, regional, and local agencies.
  4. The SWRCB should allow for electronic or hardcopy submittal of data.
  5. The SWRCB should consider providing feedback to local agencies to ensure accuracy of data.
  6. UST Quarterly Report data reporting requirements are codified in Title 27, Section 15290(a). An addendum will require rulemaking.
  7. Once the addendum is codified and reviewed by the Cal/CUPA Forum Board, the CUPA Forms and Data Committee should assign data parameters. This is necessary for electronic submittals.

#### **Resources Needed**

For most local agencies, resource needs are anticipated to be low. For local agencies that have no tracking system or have many non-upgraded tank sites, resource needs are anticipated to be moderate. SWRCB resource needs are anticipated to be low.

### **Benefits and Incentives**

Local agencies that submit non-upgraded tank information may receive state assistance as outlined in Recommendation 2 (use of the EAR account) and Recommendation 3 (the state oversight function). It is expected that state assistance will expedite closures thereby reducing local agency staffing resources devoted to oversight of non-upgraded tank activities. This information will allow the SWRCB to effectively implement its state oversight role as outlined in Recommendation 3.

### **Disincentives**

Local agencies not tracking this information may believe that they must develop or amend a database and may be reluctant to absorb the costs to do so.

### **Immediacy of Impact**

An emergency rulemaking package may require six-months to conclude. After adoption of regulations, request for submittal from the local agency could start immediately. Local agencies who have the information available could submit it within the first quarter that it was requested and update it every quarter thereafter. In this scenario, reasonably high-quality non-upgraded tank information can be received within one year. Local agencies that do not have the information readily available may not submit it within the first few quarters. In this scenario, reasonably high-quality data may take two years or more.

Once data is received, it should be made available and used immediately by the state and regional agencies.

### **Effectiveness**

It is expected that this information will allow the state, regional, and local agencies to work together more effectively to allocate resources, to determine appropriate actions, and to prioritize workload. It may provide the basis for state actions outlined in Recommendation 2 (use of the EAR account), Recommendation 3 (the state oversight function), and Recommendation 6 (state assistance of USTfields Programs).

### **Conclusion**

This recommendation impacts the local agencies most. To compile and submit the information may require additional resources; they have most to gain in terms of state assistance and oversight; there are two significant yet manageable disincentives; the immediacy of impact depends largely on the swiftness of local agency submittal; and the effectiveness will be seen as the local agencies' non-upgraded tanks are closed expeditiously.



**Priority**

High because it provides critical information necessary to implement Recommendations 2, 3, and 6. Recommendations 2 and 3 are also high priority recommendations.

## Recommendation 2

### Increase the Effectiveness of the Emergency, Abandoned, Recalcitrant (EAR) Account in Closing Non-Upgraded Tanks

---

In cases where the owner cannot be located or is financially unable, government action will be required to remove non-upgraded tanks and perform investigation and cleanup activities. The EAR Account is likely the only available source of funds to complete this task. The SWRCB should take necessary actions to improve the usefulness of the account for closing non-upgraded tanks.

#### Actions Needed

The SWRCB should:

1. Evaluate current authority and, if not sufficient, adopt any necessary regulations or seek legislation to allow use of the EAR account for removal of non-upgraded tanks at sites where there is no evidence of a release.
2. Immediately modify its existing procedures to clarify that account funds can already be used for removal of non-upgraded tanks at sites where there is evidence of an unauthorized release.
3. Conduct outreach to local agency and RWQCB staff to ensure they are familiar with the requirements for EAR account use.
4. Direct reasonable additional funds into the EAR account, as appropriate, to accommodate non-upgraded tank removal activity.
5. Consider conditions under which it would access the account directly for purposes of contracting and overseeing closure of non-upgraded tanks. This would increase the SWRCB's effectiveness and may provide support of Recommendation 3, SWRCB oversight and assistance of local agency enforcement activities. Direct use of the account by the SWRCB was recently authorized by passage of A.B. 2886 (Kuehl, Chapter 727, statutes of 2000).
6. Prohibit use of EAR account funds for removal or cleanup of government-owned tanks.
7. Ensure that any agency that uses the EAR account pursues cost recovery.

#### Resources Needed

Expanded use of the EAR Account for non-upgraded tank removal and cleanup would significantly increase demand on the account and staff resources to administer the account. The

SWRCB would need to transfer additional funds into the account from the UST Cleanup Fund and seek necessary budget authority to expand administrative staff. This would reduce the amount of funds available for claimants. The SWRCB would need to balance these competing needs.

### **Benefits and Incentives**

It is expected that the greatest benefit will be expedited closure for those sites where other actions and controls are ineffective. Insolvent tank owners may come into compliance with the law thereby halting additional civil liabilities (a minimum of \$500 per tank per day per violation). Communities may benefit from increased property values.

The incentive for tank owners is that it offers them compliance with the law. Regulators may support it to reduce their workload by removing oversight responsibility. Communities and local governing bodies may support it to remove this stigma that depresses property values. The SWRCB may support it because, in accordance with Health and Safety Code Section 25299.70, the SWRCB has the authority and ability to seek cost recovery for closure, investigation, and remedial actions.

### **Disincentives**

No significant disincentives were identified regarding implementation of this recommendation. However, local agency and RWQCB staff may perceive disincentives. Reports indicate that they believe the application process to be time consuming and fear that use of the account resources to remove non-upgraded tanks may bring liability for cleanup costs.

### **Immediacy of Impact**

The implementation time-frame for this recommendation is variable. If it is determined that existing authority allows use of the Account at abandoned sites that do not show evidence of a release, local agencies could begin to access funds almost immediately using existing SWRCB procedures. If legislation is required, approximately one year would likely be required before the program could be expanded. During this time, the SWRCB could begin development of a funding priority list, complete necessary outreach to local agencies and begin implementation of other workgroup recommendations.

### **Effectiveness**

Use of the EAR account would allow closure of many non-upgraded tank sites where other options would fail to achieve this goal. SWRCB oversight would be especially effective since the SWRCB administers the account, knows how to get contractors to complete closure activities, and knows the applicable rules and requirements.

### **Conclusion**

Actions needed apply mostly to the SWRCB. Based on its ability to allocate staffing to the account administration, the numerous benefits and incentives, and lack of significant disincentives, implementation of this recommendation should effectively reduce the number of non-upgraded tanks.

### **Priority**

High because it will allow the SWRCB to contract directly to close tanks when other options have failed or are not available.



## Recommendation 3

### Delegate to the SWRCB State Oversight Responsibility and Authority

---

Due to the complexities of non-upgraded tank cases, local agency options to gain closure of non-upgraded tanks may be inadequate. Developing a state oversight function will provide additional options to increase the likelihood of prompt closure.

#### Actions Needed

The SWRCB oversight function should include:

1. Review and Reporting of Non-upgraded Tank Information.
  - a. Review of non-upgraded tank information and enforcement status.
  - b. Submittal of a semi-annual report to the Board members, Secretary for Environmental Protection (Secretary), and the State Attorney General and annually to the Legislature regarding non-upgraded tank status. The report submitted to the Board members, the Secretary, and the State Attorney General should also identify tank cases where insufficient action has taken place.
2. Enforcement Advisement and Assistance.
  - a. Educating and advising local agencies on methods and strategies to gain prompt closure.
  - b. Providing annual recommendations to the Board members and the Secretary regarding resources needed or proposed legislative or regulatory amendments recommended to achieve prompt closure.
  - c. Developing criteria and a system for accepting non-upgraded tank cases from local agencies. This should include determining the applicability for closure using EAR account funding, as a USTfields candidate, and/or SWRCB assumption of closure and enforcement activities (as provided by number 3 below).
  - d. Coordinating enforcement actions and oversight with local and regional environmental crimes strike forces.
3. Assumption of Enforcement Authority (generally a last-resort option).
  - a. Identifying cases where, because of lack of local resources or political support, insufficient action has taken place and assuming lead role for enforcement.

4. **Determination of the Feasibility of Applying the Oversight Function to the General UST Program.**

Section 25283 Chapter 6.7 Health and Safety Code directs local agencies to assume the authority and responsibility for implementing the UST law. For the oversight function to include assumption of enforcement authority (number 3 above), legislative amendment will be required. Development of regulations, while not required, will be useful to reinforce goals and duties of the oversight function.

The SWRCB should convene an advisory panel of interested and affected parties to ensure proper application of the oversight role. The advisory panel may also accept implementation duties at the discretion of the SWRCB.

**Resources Needed**

The Underground Storage Tank Enforcement Unit is most likely to assume the duties of this recommendation. The unit has five staff positions including the unit supervisor. Additional SWRCB staffing resources, if needed, should be determined by this unit based on criteria such as non-upgraded tank caseload, requests for assistance, and the quantity of other work assigned. Resource needs are anticipated to be medium to high.

**Benefits and Incentives**

Local and regional agencies may benefit from the state oversight function in terms of advisement on and assistance with enforcement actions. This central source may reduce time spent deciding on and implementing appropriate actions and controls to gain prompt closure.

Local agencies may also benefit by reduced costs if the SWRCB uses its resources to oversee closure. Recommendation 3 will allow SWRCB to assume enforcement actions on behalf of the local agency. Recommendations 2 and 6 will allow the SWRCB to use the EAR account and USTfields program respectively to oversee closure activities. These additional options may be effective for cases that are politically sensitive or difficult to close.

Stakeholders such as the Secretary For Environmental Protection and the legislature should be routinely updated on the status of issues related to non-upgraded tanks. This information may provide a clear understanding of the remaining problems and a basis for action.

Federal EPA would consider this a positive step toward the SWRCB's efforts to gain State Program Approval (SPA) for the UST Program from EPA. While the state is not required to obtain formal program approval, Federal EPA recommends California seek this approval to 1) reduce redundant oversight roles between the state and federal agencies, 2) provide tank owners and operators one set of regulations to follow (following state regulations would mean that federal requirements are also met since state regulations may be no less stringent than the federal requirements), and 3) reduce the staffing resources needed to implement the federal program.

Application of an oversight function to the UST program in general may benefit the local agency enforcement efforts and provide a more level playing field for tank owners statewide.

### **Disincentives**

The SWRCB should allocate resources for the development and maintenance of a state oversight function. Assumption of referred cases could lead to expensive and long-term oversight costs if cases are not closed promptly or if legal issues become involved.

If an advisory panel is developed, interested and affected parties should bear the cost of participation.

### **Immediacy of Impact**

Review and reporting of non-upgraded tank information can begin once it is made available from the local agencies. This will depend, in part, on how long it will take to implement Recommendation 1 (use of the UST Quarterly Report to obtain non-upgraded tank information). It is expected that reporting can begin within the first quarter that information is made available.

Enforcement advisement can begin immediately. Enforcement assistance should not begin until other options are exhausted. To accept cases from local agencies for conducting independent or coordinated enforcement, legislation must be passed. These actions may take a year or longer to complete.

### **Effectiveness**

State oversight may provide additional options to local and regional agencies and may substantially increase the likelihood of prompt closure.

### **Conclusion**

State oversight may provide significant benefits to local and regional agencies. The main disincentive is the cost applied to the SWRCB. In general, implementation may take at least one year. Prompt closure of difficult cases is likely to occur with implementation of this recommendation.

### **Priority**

High because of the additional options it may provide state, regional, and local agencies in their enforcement efforts against owners of non-upgraded tanks. Some oversight functions are expected to bring prompt closure.





## **Recommendation 4**

### **Delegate to the SWRCB the Responsibility for Developing and Maintaining a Central Repository of Effective Measures to Gain Compliance**

---

As shown by Flowchart 2, numerous actions and controls are available to agencies to promote compliance. However, due to the large number of administering agencies, administrative and enforcement program inertia, lack of training, and lack of resources, some agencies have not adopted successful strategies for dealing with non-upgraded tanks. Agencies interested in developing new compliance strategies need to have an up-to-date resource available to find out what has worked in other jurisdictions. An Internet-based repository would provide the greatest flexibility for updating and best access.

#### **Actions Needed**

The SWRCB should take the following actions:

1. Designate the unit responsible for developing and maintaining an Internet-based central repository with features such as:
  - a. A searchable database.
  - b. A cataloguing system.
  - c. A system for entering techniques to gain compliance.
  - d. User input for comments or reviews on methods which have been used.
  - e. A ranking system that allows users to quickly locate methods that have been successful.
2. Provide outreach to state, regional, and local agencies to ensure usage of the site.

#### **Resources Needed**

SWRCB resource needs are anticipated to be moderate.

#### **Benefits and Incentives**

State, regional, and local agency enforcement and compliance efforts may be enhanced by the ability to benefit from the experiences of others. This will reduce time deciding upon appropriate actions to take or controls to implement to gain compliance. As forms and guidelines are made available, the time needed to reproduce such documents will be eliminated.

Using a web-based approach will reduce SWRCB overhead costs by eliminating copying, handling, and postage costs.

### **Disincentives**

The disincentives apply mainly to the SWRCB. This recommendation requires start-up and maintenance costs to be incurred primarily in terms of staffing resources.

### **Immediacy of Impact**

Development of the central repository may take one year assuming user-interface capability. Soliciting information to be placed on the site would be an on-going effort. Within the first year, it is expected that sufficient materials can be collected, analyzed, and formatted to provide the website adequate content. Once the website is developed, it can be improved and updated by its users.

### **Effectiveness**

A central repository should reduce redundancy and increase consistency and coordination by enforcement agencies. It may provide a forum for exchange of ideas and documents. Instant and widespread access provided by the Internet should enhance development and implementation of effective enforcement tools.

### **Conclusion**

This is a cost-effective way to provide additional resources for agencies and compliance personnel and may allow more efficient review and collection of proven compliance strategies. It also provides an important tool for the oversight function in providing assistance to agencies with obtaining prompt closure or compliance.

The enforcement and compliance agencies benefit; the costs apply to the SWRCB. Once the website is developed, information will be immediately accessible. Its effectiveness will be determined by its users.

### **Priority**

Medium because the users will determine its effectiveness and because, while it is expected to increase the likelihood of prompt closure, it does not directly achieve it.

## **Recommendation 5**

### **Delegate to the SWRCB Responsibility for Re-instituting Enforcement Training Aimed at Enhancing Local Agency Enforcement Efforts**

---

Local agency enforcement efforts are successful in helping most tank owners achieve and maintain compliance. However, routine actions such as compliance inspections, educational assistance, and issuance of a Notice-of-Violation are often ineffective when applied to recalcitrant tank owners. Some local agencies do not pursue other more effective enforcement options because of lack of resources to apply to tough cases, unknown or unavailable enforcement tools and options, and lack of training.

Without consultation and implementation of other enforcement options, tough cases may remain unresolved. Enforcement training, offered on a routine basis, may help enforcement agencies determine where improvements can be made to enforcement plans and practices. Training may direct attention to proven strategies and provide model protocols, forms, and documentation that can be adopted and modified by local agencies.

The SWRCB has provided enforcement training in the past, and training is one of the tasks already envisioned for the UST enforcement unit now being staffed. To address non-upgraded tanks in particular, the SWRCB should focus enforcement training on problems and opportunities associated with non-upgraded tanks, and should accelerate the development of such courses.

#### **Actions Needed**

Although not provided this year, the SWRCB's UST Training Program has provided enforcement training (<http://www.swrcb.ca.gov/cwphome/ust/training/training.html>). To address non-upgraded tanks in particular, the SWRCB should focus this enforcement training on the following:

1. Discuss actions and controls available and the success of these to address tough cases. Flowchart 2 can be used as a basis for this discussion.
2. Discuss roadblocks to actions and controls.
3. Discuss other options available including those that may become available from the recommendations of this report. Examples of options include development of local ordinances and use of assistance from other enforcement agencies (Environmental Crimes Strike Force, U.S. EPA, FBI, etc.).
4. Develop a model enforcement protocol for taking various types of actions such as how to develop a case for formal prosecution. This may also include development of supporting enforcement forms and documentation. The protocol may address timelines for taking actions.

5. Discuss how to apply this information to the local agency-required enforcement plans as required by Title 27 Section 15200(f)(2) and provided at:  
[http://www.calepa.ca.gov/Publications/Title27/Hwft27\\_2.pdf](http://www.calepa.ca.gov/Publications/Title27/Hwft27_2.pdf).

### **Resources Needed**

SWRCB resource needs are anticipated to be moderate.

### **Benefits and Incentives**

Local, regional, state, and federal enforcement personnel may gain insight and experience by learning about proven enforcement strategies. Attendance by this wide range of enforcement personnel may contribute to development of creative ideas to solve difficult problems. With new ideas and model protocols, local agencies may develop and implement more effective enforcement plans. Experience and knowledge gained will likely be applied to UST enforcement efforts in general.

From a statewide perspective, UST enforcement training may enhance consistency. Consistency intends to provide a level-playing field for all tank owners.

### **Disincentives**

The SWRCB may incur staffing costs to develop, schedule, and provide training. Local agencies request training but often cannot attend because of travel expenses or lack of staff.

### **Immediacy of Impact**

Developing a model protocol may take up to one year. Developing a training program may take up to one year. These actions can be taken concurrently. Information, ideas, and strategies gained from training can generally be implemented without delay.

### **Effectiveness**

Use of new enforcement actions or controls does not guarantee prompt closure but will, at a minimum, increase its likelihood.

### **Conclusion**

Providing training to enforcement personnel may increase the likelihood of prompt closure. It may increase a local agency's effectiveness in promoting compliance in general. It may also improve consistency statewide. Based on these benefits and a lack of significant disincentives, this recommendation should be adopted.

### **Priority**

Medium because, while it is expected to increase the likelihood of prompt closure, it does not directly achieve it.

## **Recommendation 6**

### **Delegate to the SWRCB the Responsibility of Coordinating Activities and Conducting Oversight of the EPA-Funded California USTfields Program**

---

Non-upgraded tanks present a potential environmental hazard and a social blight and reduce the value of the property on which they are located. Often there is little or no incentive to remove these tanks and tank or facility owners are reluctant to pay for the closure and cleanup costs. Banks and developers resist involvement due to the cost and possible liability associated with investigation and cleanup.

A new program has been initiated by Federal EPA to help address this problem. The USTfields Program, similar to the Superfund Brownsfield concept, proposes to acquire funding to remove non-upgraded tanks and pay for investigation and cleanup costs. The long-term goal is to revitalize property and communities. Refer to Appendix E for a summary of the USTfield process.

Properties that have significant economic or social value are good candidates for the USTfields process. The recommended approach for California is to have UST fields Programs developed at the local level, use the SWRCB to provide coordination and assistance statewide, and obtain funding for local programs from various sources including Federal EPA. EPA's Office of Underground Storage Tanks (OUST), which advocates USTfield Projects and considers these to be a top priority initiative, expects to provide funding to California beginning Fiscal Year 2001 for pilot projects (<http://www.epa.gov/swerust1/ustfield/index.htm>).

Oakland, California has already developed a USTfields Program. The Oakland Urban Land Redevelopment (ULR) Program helps establish risk-based cleanup goals, promotes community participation, and tracks USTfield site information. By providing a precedent, the ULR may act to stimulate development of and provide a template for other community programs.

#### **Actions Needed**

To encourage and assist USTfields programs in California, the SWRCB should provide an oversight role to:

1. Identify funding sources such as the Federal EPA, local businesses, developers, non-profit and other charitable organizations, municipalities, cities, and philanthropists.
2. Locate communities that can benefit from a USTfields program.
3. Provide guidance to local agencies to develop and manage their programs.
4. Provide coordination for programs throughout the state.

### **Resources Needed**

SWRCB resource needs are anticipated to be minimal.

### **Benefits and Incentives**

Local agency businesses and governing bodies are likely to support this recommendation because it provides incentives that hasten tank removal and site cleanup and promotes community redevelopment. This translates into increased property values and revitalized communities.

Oversight will provide the SWRCB a tool for encouraging clean up and redevelopment of USTfield sites. The state and local agencies will obtain water quality information at sites where none would otherwise be provided.

Using the USTfields process, the local agency may help a prospective developer or owner of a non-upgraded tank through the removal, investigation, and cleanup processes which may provide: (1) an expedited approval of cleanup; (2) streamlined cleanup using a risk-based screening approach to establish cleanup goals; and (3) limited liability.

### **Disincentives**

SWRCB will be required to allocate staffing resources to develop and maintain the USTfields Program oversight role. Local agencies who choose to develop a program will also have to allocate staffing (however, funding can cover some of this cost).

A USTfields Program will mostly benefit those local agencies that have non-upgraded tanks that are located in the urban environment. For the others, a USTfields Program will not be applicable.

Cleanup and redevelopment requirements and costs may discourage a developer or business from taking advantage of this opportunity.

### **Immediacy of Impact**

The existing SWRCB Enforcement Unit can be delegated the task of developing the SWRCB USTfields coordination and assistance program. To implement a program should take less than one year. Local agencies that choose to develop a USTfields Program should also be able to begin non-upgraded tank closures within one year. These activities can happen concurrently.

### **Effectiveness**

Funding and interest is necessary for success of USTfields Programs. Funding sources are not well-established nor has this concept been promoted to find out the level of interest. For these reasons, it is not known how effective this recommendation may be. However, for communities

that have many urban facilities with non-upgraded tanks, this may become the most effective method to gain prompt closure.

### **Conclusion**

Development of USTfields Programs at both the state and local levels provides a unique mechanism to close, investigate, and provide cleanup of non-upgraded tanks. It allows and encourages other interests such as redevelopment agencies, interested businesses, and philanthropists to support closure. Use of SWRCB staff resources will help ensure that USTfield projects are effectively implemented throughout California.

### **Priority**

Medium because of the lack of certainty regarding its effectiveness for prompt closure of non-upgraded tanks.





## **Recommendation 7**

### **Delegate to the SWRCB Responsibility for Determining the Feasibility of Local Agency Administrative Enforcement Authority for UST Violations**

---

The UST Programs is one of the few environmental regulatory programs that does not have uniform statewide administrative enforcement authority. This authority allows a local agency to conduct hearings, enter into formal settlement agreements, issue administrative enforcement orders, and impose administrative penalties. Penalties are determined based on the nature of violations and a tank owner's circumstances, using statutory or regulatory penalty criteria. The local agency may negotiate formal consent agreements with responsible parties regarding penalties and time frames to return to compliance, or proceed with a formal hearing.

Currently, local agencies are developing procedures to implement this authority to apply to hazardous waste violations. Although legislation does not provide administrative enforcement authority for UST violations, it may be adopted by local ordinance. To date, few local agencies have used this option.

#### **Actions Needed**

The SWRCB should convene a workgroup of interested parties. Duties should include reviewing the usefulness and necessity of local agency administrative enforcement authority as it applies to UST violations and non-upgraded tank violations in particular. To support the state oversight function outlined in Recommendation 3, the workgroup should also determine if SWRCB should also receive this authority. The workgroup should provide the Secretary a report of its findings by a date specified by the Secretary.

#### **Resources Needed**

SWRCB resource needs are anticipated to be low to moderate.

#### **Benefits and Incentives**

Local agencies may receive the greatest benefits. This approach preserves local agency control to impose and collect civil penalties and the ability to negotiate terms of a settlement with a recalcitrant tank owner. Since it does not require use of an outside agency such as the City or District Attorney's office, and because it is less resource intensive relative to pursuing formal criminal or civil enforcement (fewer formal rules of evidence apply), local agencies may expend less resources to achieve settlements.

Furthermore, when other prosecutorial agencies' resources are limited, this authority provides an alternative form of formal enforcement to the local agencies. Also, the local agency may receive penalties collected (typically, penalties are shared with the Attorney's Office that oversees prosecution).

Federal EPA would consider this a positive step toward the SWRCB's efforts to gain State Program Approval (SPA) for the UST program. This is also discussed in Recommendation 3.

**Disincentives**

None identified.

**Immediacy of Impact**

Setting up a workgroup and developing a report can be accomplished within one year. If recommendations are approved, a legislative amendment may take an additional year. Development and implementation of local agency administrative enforcement programs may take one year.

**Effectiveness**

The ability to impose penalties and negotiate settlement agreements will give local agencies an enforcement tool that may bring compliance where other options fail. Tank owners may be more inclined to use money to achieve compliance than to pay penalties.

**Conclusion**

Local agency enforcement efforts can be significantly enhanced, resource needs are manageable, and there are no identified disincentives. The relatively lengthy time for implementation means that this recommendation may not be effective in gaining prompt closure. However, it may be a valuable enforcement tool for general non-compliance issues. As such, this recommendation should be pursued.

**Priority Assessment**

Low because this recommendation does not achieve prompt closure.

## **Recommendation 8**

### **Delegate to the SWRCB Responsibility for Determining the Feasibility of Applying Criminal Penalties Against Owners of Non-Upgraded Tanks**

---

Tank owners who violate UST requirements can be assessed civil penalties. In contrast to other environmental laws, for example hazardous waste, the UST law provides no criminal penalties (except when tampering or fraud is involved). Criminal penalties include severe fines and may include imprisonment.

Criminal penalties provide a greater level of deterrence relative to the threat provided by civil penalties which lack the possibility of imprisonment, probation, or creation of a criminal record if convicted. Criminal penalties are more severe: \$5,000 to \$100,000 compared to \$500 to \$5,000 for civil penalties. In the event of a civil conviction, a tank owner can declare bankruptcy, avoiding payment of penalties and foregoing compliance.

#### **Actions Needed**

The SWRCB should convene a workgroup of interested parties. Duties should include reviewing the appropriateness of criminal sanctions for non-upgraded tank and general UST violations. The workgroup should provide the Secretary a report of findings by a date specified by the Secretary.

#### **Resources Needed**

SWRCB resource needs are anticipated to be low to moderate.

#### **Benefits and Incentives**

The incentive to comply under threat of criminal penalties is expected to translate into more timely actions taken by recalcitrant tank owners. This should reduce the significant local agency and attorney staff time spent prosecuting these cases.

#### **Disincentives**

None identified.

#### **Immediacy of Impact**

Setting up a workgroup and developing a report can be accomplished within one year. If recommendations are approved, a legislative amendment may take an additional year. Use of this option by prosecutors can take place once the authority is granted.

### **Effectiveness**

Criminal penalties should provide significantly greater incentive for tank owner compliance. It will also provide appropriate punishment in extreme cases.

### **Conclusion**

Local agency enforcement efforts can be significantly enhanced, resource needs are manageable, and there are no identified disincentives. The relatively lengthy time to implementation means that this recommendation may not be effective in gaining prompt closure. However, it will be a valuable enforcement tool for general non-compliance issues. As such, this recommendation should be pursued.

### **Priority Assessment**

Low because this recommendation does not achieve prompt closure.

## Section 4

### Conclusion

---

This report provides the Secretary for Environmental Protection eight recommendations that are expected to promote prompt closure of non-upgraded tanks. In developing these recommendations, the workgroup reviewed and evaluated the various options available to local, regional, and state agencies to gain prompt closure. Workgroup findings, identification of problems and impediments to gain prompt closure, and conclusions provided the basis for the recommendations. The Secretary can gain an understanding of some of the consequences of implementing these recommendations from the analysis provided in this report.

Determining the cost of recommendations contained in this report was beyond the scope of the workgroup. It is recommended that California EPA develop an analysis of the resources necessary to implement the recommendations, and the funding sources, or additional revenues, needed to enact the recommendations.

In brief, closure of non-upgraded tanks will provide lasting benefit in terms of protection of groundwater resources and human health and the environment and in terms of enhanced property values.



# Appendices

---

**Appendix A**  
Enforcement Guidelines for 1998  
Underground Storage Tank Upgrade Requirements

**Appendix B**  
Workgroup Survey of Enforcement Efforts by Local Agencies

**Appendix C**  
Local Agency Survey Responses

**Table 1**  
Responses to Survey Question 1, Number of Non-upgraded Facilities and Tanks  
(August 2000)

**Chart 1**  
Responses to Survey Question 5 Showing Local Agency Time Expenditure to Enforce  
Compliance Relative to a Typical Compliant Facility - Number of Respondents in Four  
Categories

**Chart 2**  
Responses to Survey Question 6, Local Agency Recommendations to Gain Prompt  
Closure - Number of Responses in Six Categories

**Appendix D**  
Participant Concurrence With Report Content

**Appendix E**  
USTfields Process





## **Appendix A**

### **Enforcement Guidelines for 1998 Underground Storage Tank Upgrade Requirements**

**Enforcement Guidelines for  
1998 Underground Storage Tank  
Upgrade Requirements**

**Table of Contents**

Introduction

I.	UST Upgrade Program History . . . . .	2
II.	Violations and Penalties . . . . .	2
III.	Other Enforcement Actions . . . . .	6
IV.	Preparing an Enforcement Case . . . . .	7
V.	Role of the California Attorney General's Office. . . . .	8
VI.	Role of the State Water Resources Control Board . . . . .	8
VII.	Role of the U.S. Environmental Protection Agency . . . . .	9

<u>Appendices</u>	<u>Page</u>	<u>Subject</u>
Appendix A	1	Statutory References
Appendix B	3	Related Regulations
Appendix C	3	LG 149 - Tank Closure after the 1998 Upgrade Deadline
Appendix D	5	Sample Permit Revocation
Appendix E	7	Sample Enforcement Case Referral
Appendix F	9	EPA's Enforcement Strategy

## ENFORCEMENT GUIDELINES FOR 1998 UNDERGROUND STORAGE TANK UPGRADE REQUIREMENTS

November 1998

### Introduction

December 22, 1998 is the deadline for upgrading, replacing, or closing underground storage tank (UST) systems in California. By the deadline, USTs storing hazardous substances must meet construction and monitoring standards established in 1989 in Chapter 6.7 of the Health and Safety Code (H&SC).

The primary purpose of these guidelines is to assist local government agencies in enforcing UST upgrade laws and regulations. The information and guidance provided also may be useful to local agency in-house counsel and prosecutors such as city and district attorneys and the California attorney general's office.

Local government agencies have the exclusive authority to issue operating permits to owners and operators of USTs.<sup>1</sup> Those permits must require compliance with all applicable regulations adopted by the State Water Resources Control Board (State Water Board).<sup>2</sup> In addition, the Legislature has expressly preserved the authority of the local agency to adopt and enforce any regulation, requirement, or standard of performance that is more stringent than, but not in conflict with, those imposed by Chapter 6.7 H&SC. Under the program, all facility owners must obtain a permit to operate from their local agency. The permit includes conditions regarding design, construction, and installation of new USTs, monitoring, repairs, upgrades, release response, closure, and notification or reporting.

When considering enforcement action, local agency UST program staff should consult with their agency's legal counsel. None of the information in this document is intended to supersede established agency procedures or sound legal advice. It is intended to provide a reference point for taking enforcement action against those who violate UST upgrade laws and regulations.

Appendix A lists all the statutory references in this document and includes the text of each statute cited.

### I. UST Upgrade Program History

In 1989, California added upgrade requirements to the Health and Safety Code.<sup>3</sup> By December 22, 1998, all USTs containing hazardous substances were required to meet improved construction and monitoring standards to ensure protection of the environment and public health.

In 1997, new requirements were added to the Health and Safety Code to ensure that the December 22, 1998 deadline would be met.<sup>4</sup> Owners of tanks storing petroleum are required by the law to display an upgrade certificate, provided by the State Board and issued by the local agency, to demonstrate compliance with upgrade requirements. Local agencies are required to keep lists of upgraded facilities, and the State Water Board is required to inform petroleum distributors how to obtain those lists<sup>5</sup>. Most importantly, the law prohibits petroleum deliveries after

---

<sup>1</sup> H&SC 25284

<sup>2</sup> H&SC 25284(d)

<sup>3</sup> Stats. 1989, c. 1397

<sup>4</sup> Stats. 1997, c. 808 (see H&SC 25284 (e) and (f) and 25292.3)

<sup>5</sup> H&SC 24284 (f)

January 1, 1999, to any UST storing petroleum that does not meet new standards and provided specific ways for distributors to determine whether a UST system is approved to receive deliveries.<sup>6</sup>

Emergency regulations adopted in October 1998, required owners or operators to display the upgrade certificate in a window or other prominent location and to attach upgrade certificate tags to the fill pipes of their USTs.<sup>7</sup> Tags were required in order to provide distributors with a measure of confidence that the tanks receiving fuel were, in fact, in compliance.

Some USTs are exempt from Health and Safety Code provisions containing upgrade requirements, the upgrade certificate program, and the fuel delivery prohibition. The most common type of exempt USTs are farm tanks, heating oil tanks, hydraulic lift tanks,<sup>8</sup> and USTs located on Indian lands.<sup>9</sup> USTs on Indian lands that have been inspected by a local agency and are operating under permits issued by the agency may receive upgrade compliance certificates.

## II. Violations and Penalties

Although local agencies may be most familiar with the California Health and Safety Code, there are other California laws that may apply to UST upgrade violations. Those include Business and Professions Codes (B&PC) and Government Codes (GC). When presenting a case to a prosecutor, it may be helpful to include all applicable code citations. The types of violations presented here represent the most common violations of UST upgrade laws; local agencies may discover other, related violations, which also should be addressed in enforcement actions.

### a. Typical Violations

#### 1. Operating a non-upgraded tank after the deadline

Owners or operators who continue to operate non-upgraded UST systems after the December 22, 1998 deadline may be found in violation of Section 25291 or subdivisions (d) and (e) of Section 25292 H&SC and may be subject to penalties found in Section 25299(a) or (b) H&SC. They also may be in violation of related regulations in Articles 3, 4, 6, and 7 of Chapter 16, Title 23, California Code of Regulations (CCR). Appendix B lists related regulations and includes the text of each regulation.

“Operate” includes storing and removing (e.g. via dispensers at a gas station) petroleum or other hazardous substances, or having those substances delivered to a tank. If a tank system has not been closed either temporarily or permanently, it is in operation. See Appendix C, local guidance letter LG 149, “TANK CLOSURE AFTER THE 1998 UPGRADE DEADLINE” for more information about closing USTs.

#### 2. Delivering fuel to a non-upgraded UST after January 1, 1999

Any person who delivers fuel to a non-upgraded petroleum UST after January 1, 1999 may be found in violation of Section 25292.3 H&SC. Delivery may be from the marketer, the delivery truck driver, the tank owner or operator, or any other person.

#### 3. Operating (any) UST without a valid operating permit issued by the local agency.

Any person operating (any) UST without a permit for its operation may be found in violation of Section 25284(a) H&SC.

<sup>6</sup> H&SC 25292.3

<sup>7</sup> Title 23 California Code of Regulations (CCR) 2611 and 2712-2712.7 (October 1998)

<sup>8</sup> H&SC 25281.5, 25283.5, 23 CCR 2621

<sup>9</sup> 40 CFR Part 280

**4. Making/submitting false information, representation, or certification**

Some local agencies will have relied on information submitted by owners or operators to determine eligibility for upgrade compliance certificates. Owners or operators who make or submit false information may be found in violation of Section 25299(b)(8) H&SC.

**5. Using unfair business practices**

One of the purposes of the Unfair Practices Act in Chapter 4 of the Business and Professions Code is to, "... encourage competition, by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented."<sup>10</sup>

Tank owners and operators who continue to operate substandard tanks after the deadline give themselves an unfair economic advantage over those who have complied with the laws. These owners and operators may be found guilty of a misdemeanor pursuant to Section 17100 B&PC; subject to an injunction pursuant to Section 17203 B&PC; and subject to a civil penalty pursuant to Section 17206 B&PC.

Cases referred for prosecution should include applicable citations in Sections 17000 through 17208 BPC.

**b. Penalties**

**1. Civil penalties (fines)**

The civil penalty for failing to comply with upgrade requirements (or for violating any provision of Section 25299 [a] and [b] H&SC) includes a fine of not less than \$500 or more than \$5,000 per tank, per day of violation.<sup>11</sup>

The civil penalty for submitting false information is not more than \$5,000.<sup>12</sup> Fines are not assessed directly by the local agency, but are adjudicated through an action brought by a city or district attorney or the attorney general.<sup>13</sup> Fines collected are paid to the treasury of the agency bringing the action.

The civil penalty for engaging in unfair competition is not more than \$2,500 for each violation.<sup>14</sup>

**2. Injunctions/restraining orders**

A city or district attorney, or the attorney general may apply to the superior court for a permanent or temporary injunction or restraining order or an order directing compliance against any person in violation of UST laws in Chapter 6.7 H&SC.<sup>15</sup> or of regulations adopted by the Board implementing Chapter 6.

The attorney general's office may also file for an injunction against any person for the protection of the natural resources of the state from pollution, impairment, or destruction.<sup>16</sup> The injunction may be

---

<sup>10</sup> B&PC Section 17001

<sup>11</sup> H&SC 25299(a)(b)

<sup>12</sup> H&SC 25299(c)

<sup>13</sup> H&SC 25299(f)

<sup>14</sup> B&PC 17206(a)

<sup>15</sup> H&SC 25299.01, GC Section 12607

<sup>16</sup> GC 12607

against anyone who poses a threat against the environment. This includes not only the tank owner or operator, but also the person or persons responsible for delivering fuel to a UST.

Persons who engage in unfair competition may be subject to injunctions pursuant to Section 17203 B&PC.

### 3. Criminal penalties (misdemeanors)

Cities and counties are specifically allowed to adopt local ordinances, regulations, requirements, and standards to implement and enforce Chapter 6.7 H&SC so long as those standards are consistent with and not less stringent than the requirements of Chapter 6.7 and State Water Board regulations.<sup>17</sup>

Violations of city and county ordinances are misdemeanors (unless specified as infractions),<sup>18</sup> which carry with them criminal fines and/or jail sentences. Therefore, if a city or county has an ordinance against UST violations such as operating or making fuel deliveries to non-upgraded USTs, the local prosecutor may file misdemeanor charges against the violator.

As mentioned above, a violation of Section 17206 B&PC (unfair business practices) is also misdemeanors, which may result in fines and/or jail sentences.<sup>19</sup>

### 4. Infractions (of local ordinances)

Infractions are punishable by fines not exceeding \$100 for the first violation, \$200 for the second violation, and \$500 for each additional violation occurring within one year.<sup>20</sup>

## III. Other Enforcement Actions

### a. Revocation of a UST operating permit

A permit to operate a UST requires the owner to comply with all UST regulations.<sup>21</sup> Local agencies may take administrative action to revoke or modify operating permits and they may refuse to renew those permits.<sup>22</sup> A sample permit revocation letter is at Appendix D. Although revocation of a permit would be appropriate, it may not be effective in stopping the operation of the UST. However, a prosecutor may seek civil penalties against an owner or operator for operating a UST without a permit.<sup>23</sup>

If an operating permit is revoked by the local agency, the upgrade compliance certificate is also revoked because the certificate is part of the permit.<sup>24</sup> A local agency may require a tank owner or operator to remove the upgrade decal and the fill pipe tags if the operating permit has been revoked. The local agency may also notify fuel distributors that the operating permit and upgrade certificate are no longer valid and that fuel deliveries to the subject UST system are prohibited.<sup>25</sup>

---

<sup>17</sup> H&SC 25299.1(d) and 25299.2 (a)

<sup>18</sup> GC 25132, 36900 and 36901

<sup>19</sup> B&PC 17100

<sup>20</sup> GC 25132(b)

<sup>21</sup> H&SC 25284(d)

<sup>22</sup> H&SC 25285(b) and 25285.1; CCR §2712[e.]

<sup>23</sup> H&SC 25299

<sup>24</sup> H&SC 25284(e)

<sup>25</sup> H&SC 25292.3

**b. Revocation of business licenses.**

Business licenses may also be subject to revocation for failure to comply with local and state laws. Local UST agencies should communicate with government offices responsible for issuing business licenses to determine the procedure for forwarding information about violations.

**c. Lock down of dispensers and pumps**

At least one California fire department installs chains and locks on dispensers and pumps when tank owners are out of compliance with UST requirements. The fire department, in conjunction with the local city attorney's office, locks down or "red tags" dispensers and pumps. Agencies wishing to explore the use of this enforcement method may contact the Long Beach Fire Department at (562) 570-4153.

**d. Ineligibility for State Cleanup Fund**

Tank owners who are receiving state Cleanup Fund money to pay for their cleanup costs may find their claims removed from the Fund if they are in violation of upgrade requirements.<sup>26</sup> Tank owners who do not have an existing claim may be denied access to state money for future cleanup costs.<sup>27</sup> Local agencies should notify the Fund at (800) 813-FUND regarding administrative, criminal, or civil action taken against owners and operators.

**IV. Preparing an Enforcement Case**

This guidance is provided especially for local agency staff who may not have experience dealing with enforcement matters. Some of the information also may be useful when incorporated into existing local agency enforcement procedures.

**a. Prioritization**

Local agencies faced with numerous violations may need to prioritize enforcement cases. Priority should be given to cases based on the degree of potential harm to public health or the environment caused by a release from the tank in violation. Consideration should be given to the proximity of the tank to water supplies; the type of hazardous substance stored; and the age, type, and size of the tank in violation. For example, a 30-year old, 10,000-gallon single-walled bare steel tank with single-walled steel piping that stores oxygenated petroleum near a municipal drinking water well, would likely have more potential for environmental harm than a 500-gallon tank of the same age and construction used to store diesel for emergency generators and located a safe distance from water supplies.

**b. Reporting Format/Content**

When preparing an enforcement case, it is important to use a format acceptable to the prosecutor. It is also important to include all information necessary for adjudicating the case. At a minimum, the report should include information about the owner/operator, location of the UST, and identification of the laws, regulations, and ordinances violated. The report should be objective, omitting opinions unless they are identified as such. Technical terms should be either avoided or, or, if necessary to the context, explained clearly. A chronological history of events leading to the request for enforcement action should also be included.

Copies of all correspondence such as Notices of Warning, Notices of Violation, Notices to Comply, etc., between the local agency and the owner or operator should be attached to the report. Attachments should also include copies of inspection reports, telephone logs, records of office conferences, and Articles of

---

<sup>26</sup> 23 CCR 2813.4

<sup>27</sup> 23 CCR 2811(a)(2)



Incorporation or other documents showing the facilities operational structure and the person designated for service of process.

Local agencies should communicate with the city or district attorney to determine the desired format and content before preparing enforcement documents. A sample enforcement referral letter is at Appendix E.

**V. Role of the California Attorney General's Office**

The attorney general's office may bring actions in conjunction with local prosecutors or may act in place of local prosecutors who lack the time or resources to address UST cases. The attorney general's office has already prosecuted UST cases with the help of local health departments, and has obtained civil penalties as a result of those actions. The attorney general's authority to prosecute UST cases is found in H&SC 25299.01, 25299.02 and GC 12607.

In a memorandum to the State Water Board dated October 24, 1997, the attorney general's office stated, "The Attorney General has independent authority pursuant to GC 12607, to maintain actions for equitable relief, including injunctions, against any person for the protection of the natural resources of the state from pollution, impairment, or destruction. It is through this independent authority that our office has worked directly with local agencies to prosecute underground storage tank cases. We believe that stopping UST owners/operators from using non-certified tanks past the certification deadline would fall within the Attorney General's independent powers."

**VI. Role of the State Water Resources Control Board**

The State Water Board's role in enforcing the 1998 upgrade requirements is to provide assistance to local agencies. All requests for information and assistance pertaining to enforcement activities are welcome. The State Board is also prepared to act as technical advisor when local agencies are preparing cases for referral to a local or state prosecutor.

If requested to do so by the local agency, the State UST Program staff may participate in onsite inspections of facilities that are out of compliance with upgrade requirements. State Board staff may also help by participating in meetings with local prosecutors, or by contacting the attorney general's office on behalf of the local agency.

Upon receipt of information that tanks located on State property are being operated illegally, the State Board will take immediate action. If necessary, enforcement action in the form of an injunction will be requested through the attorney general's office. Such violations should be reported to the UST Program staff by calling (916) 227-4313 and requesting to speak to an enforcement staff person.

**VII. Role of the U.S. Environmental Protection Agency (EPA)**

In 1984, the U.S. Congress approved the Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA) and created Subtitle I, 42 USC 6991 et. seq., the first federal regulatory program for UST systems used to store liquid petroleum.

Individual states were authorized to establish their own requirements as long as they were equal to or more stringent than federal requirements (42 USC 6991b [h]). They were also allowed to mandate additional penalties for non-compliance with UST regulations.

Under federal law EPA is authorized to clean up petroleum releases under certain conditions and to issue specific enforcement orders to UST owners/operators directing them to take corrective action. EPA is also authorized to take enforcement action and exact penalties for leak detection violations.

EPA's Strategy for Enforcement was published on August 10, 1998.

## STATUTORY REFERENCES

The following citations are used in the text of the Enforcement Guidelines for 1998 UST Upgrade Requirements. The citations are in numerical order.

### HEALTH AND SAFETY CODE (H&SC)

#### §25281.5 "Pipe" defined; exclusions

(a) Notwithstanding subdivision (k) of Section 25281, for purposes of this chapter "pipe" means all parts of any pipeline or system of pipelines, used in connection with the storage of hazardous substances, including, but not limited to, valves and other appurtenances connected to the pipe, pumping units, fabricated assemblies associated with pumping units, and metering and delivery stations and fabricated assemblies therein, but does not include any of the following:

- (1) An interstate pipeline subject to 49 Code of Federal Regulations, Part 195.
- (2) An intrastate pipeline subject to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code.
- (3) Unburied delivery hoses, vapor recovery hoses, and nozzles which are subject to unobstructed visual inspection for leakage.
- (4) Vent lines, vapor recovery lines, and fill pipes which are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(b) In addition to the exclusions specified in subdivision (x) of Section 25281, "underground storage tank" does not include vent lines, vapor recovery lines, and fill pipes which are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(Added by Stats.1986, c. 1025, Section 1. Amended by Stats.1989, c. 1397, A 4; Stats.1991, c. 1091 (A.B.1487),Section 100; Stats.1991, c. 1033 (A.B.1699), Section 1, eff. Oct. 14, 1991.)

#### §25283.5. Exemptions from chapter; underground storage tanks; criteria

An underground storage tank which meets all of the following criteria is exempt from the requirements of this chapter:

- (a) All exterior surfaces of the tank, including connected piping, and the floor directly beneath the tank, can be monitored by direct viewing.
- (b) The structure in which the tank is located is constructed in such a manner that the structure provides for secondary containment of the contents of the tank, as determined by the local agency designated pursuant to Section 25283.
- (c) The owner or operator of the underground storage tank conducts daily inspections of the tank and maintains a log of inspection results for review by the local agency, designated pursuant to Section 25283, as requested by the local agency.
- (d) The local agency designated pursuant to Section 25283 determines without objection from the board that the underground storage tank meets requirements which are equal to or more stringent than those imposed by this chapter.

(Added by Stats.1988, c. 876, Section 1. Amended by Stats.1991, c. 627 (A.B.1057), Section 1.)

**§25284. Permit to own or operate underground storage tank; transferred permits**

(a)(1) Except as provided in subdivision (c), no person shall own or operate an underground storage tank unless a permit for its operation has been issued by the local agency to the owner or operator of the unified program facility on which the tank is located.

(2) If the operator is not the owner of the tank, or if the permit is issued to a person other than the owner or operator of the tank, the permittee shall ensure that both the owner and the operator of the tank are provided with a copy of the permit.

(3) If the permit is issued to a person other than the operator of the tank, that person shall do all of the following:

(A) Enter into a written agreement with the operator of the tank to monitor the tank system as set forth in the permit.

(B) Provide the operator with a copy or summary of Section 25299 in the form that the board specifies by regulation.

(C) Notify the local agency of any change of operator.

(b) Each local agency shall prepare a form that provides for the acceptance of the obligations of a transferred permit by any person who is to assume the ownership of an underground storage tank from the previous owner and is to be transferred the permit to operate the tank. That person shall complete the form accepting the obligations of the permit and submit the completed form to the local agency within 30 days from the date that the ownership of the underground storage tank is to be transferred. A local agency may review and modify, or terminate, the transfer of the permit to operate the underground storage tank, pursuant to the criteria specified in subdivision (a) of Section 25295, upon receiving the completed form.

(c) Any person assuming ownership of an underground storage tank used for the storage of hazardous substances for which a valid operating permit has been issued shall have 30 days from the date of assumption of ownership to apply for an operating permit pursuant to Section 25286 or, if accepting a transferred permit, shall submit to the local agency the completed form accepting the obligations of the transferred permit, as specified in subdivision (b). During the period from the date of application until the permit is issued or refused, the person shall not be held to be in violation of this section.

(d) A permit issued pursuant to this section shall apply and require compliance with all applicable regulations adopted by the board pursuant to Section 25299.3.

(e) A permit issued for a petroleum underground storage tank system that meets the requirements of Section 25291 or subdivisions (d) and (e) of Section 25292 and related regulations adopted pursuant to Section 25299.3 shall include an upgrade compliance certificate, the color, size, and content of which shall be specified by the board, that documents that the petroleum underground storage tank system meets the requirements of Section 25291 or subdivisions (d) and (e) of Section 25292 and related regulations. The owner shall place the upgrade compliance certificate in a conspicuous location that can be readily viewed by any person depositing petroleum into the underground storage tank system.

(f) On or before December 22, 1998, the board shall notify all persons that may deliver petroleum to an underground storage tank of where they can obtain a list of underground storage tank facilities that have been issued an upgrade compliance certificate. Local agencies shall maintain a list of underground storage tank facilities that have been issued an upgrade compliance certificate and shall provide this information to anyone requesting it.

(Formerly §25283, added by Stats.1983, c. 1046, §3. Renumbered 25284 and amended by Stats.1984, c. 1038, §5; Stats.1989, c. 1397, §6. Amended by Stats.1992, c. 654 (A.B.3089), §3, eff. Sept. 14, 1992; Stats.1995, c. 639 (S.B.1191), §54. Amended by Stats.1997, c., § (A.B.1491).)

**§25285. Permit; term; inspection; fee and surcharge**

(a) Except as provided in Section 25285.1, a permit to operate issued by the local agency pursuant to Section 25284 shall be effective for five years. This subdivision does not apply to unified program facility permits.

(b) A local agency shall not issue or renew a permit to operate an underground storage tank if the local agency inspects the tank and determines that the tank does not comply with this chapter.

(c) Except as provided in Section 25404.5, a local agency shall not issue or renew a permit to operate an underground storage tank to any person who has not paid the fee and surcharge required by Section 25287.

(Formerly 25283.1 added by Stats. 1983, c. 1046, § 3, renumbered § 25285 and amended by Stats. 1984, c. 1038, § 6; Stats. 1986, c. 1390, § 5, eff. Sept. 30, 1986; Stats. 1989, c. 1442, § 2, eff. Oct. 2, 1989. Amended by Stats. 1995, c. 639 (S.B. 1191), § 55.)

**§25285.1. Revocation or modification of permit; justifiable reasons**

(a) A local agency may revoke or modify a permit issued pursuant to Section 25284 for cause, including, but not limited to, any of the following:

(1) Violation of any of the terms or conditions of the permit.

(2) Obtaining the permit by misrepresentation or intentional failure to fully disclose all relevant facts.

(3) A change in any condition that requires modification or termination of the operation of the underground storage tank.

(b) The local agency shall revoke the permit of an underground storage tank issued pursuant to Section 25284 if the owner or operator is not in compliance with Article 3 (commencing with Section 25299.30) of Chapter 6.75 on the date three months after the date on which the owner or operator of the tank first becomes subject to Article 3 (commencing with Section 25299.30) of Chapter 6.75.

(Added by Stats. 1989, c. 1442, Section 3, eff. Oct. 2, 1989.)

**§25291. Underground storage tanks installed after January 1, 1984; requirements**

Every underground storage tank installed after January 1, 1984, shall meet all of the following requirements:

(a) The underground storage tank shall be designed and constructed to provide primary and secondary levels of containment of the hazardous substances stored in it in accordance with the following performance standards:

(1) Primary containment shall be product-tight.

(2) Secondary containment shall be constructed to prevent structural weakening as a result of contact with any released hazardous substances, and also shall be capable of storing the hazardous substances for the maximum anticipated period of time necessary for the recovery of any released hazardous substance.

(3) In the case of an installation with one primary container, the secondary containment shall be large enough to contain at least 100 percent of the volume of the primary tank.

(4) In the case of multiple primary tanks, the secondary container shall be large enough to contain 150 percent of the volume of the largest primary tank placed in it, or 10 percent of the aggregate internal volume of all primary tanks, whichever is greater.

(5) If the facility is open to rainfall, then the secondary containment shall be able to additionally accommodate the maximum volume of a 24-hour rainfall as determined by a 25-year storm history.

(6) Single-walled containers do not fulfill the requirement of an underground storage tank providing both a primary and a secondary containment. However, an underground storage tank with a primary container constructed with a double complete shell shall be deemed to have met the requirements for primary and secondary containment set forth in this section if the outer shell is constructed primarily of non-earthen materials, including, but not limited to, concrete, steel, and plastic, which provide structural support and a continuous leak detection system with alarm is located in the space between the shells; the system is capable of detecting the entry of hazardous substances from the inner container into the space; and the system is capable of detecting water intrusion into the space from the outer shell.

(7) Underground storage tanks for motor vehicle fuels installed before January 1, 1997, may be designed and constructed in accordance with this paragraph in lieu of the requirements of paragraphs (1) to (6), inclusive, if all of the following conditions exist:

(A) The primary containment construction is of glass fiber reinforced plastic, cathodically protected steel, or steel clad with glass fiber reinforced plastic.

(B) Any alternative primary containment is installed in conjunction with a system that will intercept and direct a leak from any part of the underground storage tank to a monitoring well to detect any release of motor vehicle fuels.

(C) The system is designed to provide early leak detection and response, and to protect the groundwater from releases.

(D) The monitoring is in accordance with the alternative method identified in paragraph (4) of subdivision (b) of Section 25292. This subparagraph does not apply to tanks designed, constructed, and monitored in accordance with paragraph (6).

(E) Pressurized piping systems connected to tanks used for the storage of motor vehicle fuels and monitored in accordance with paragraph (4) of subdivision (b) of Section 25292 also meet the conditions of this subdivision if the tank meets the conditions of subparagraphs (A) to (D), inclusive. However, any pipe connected to an underground storage tank installed after July 1, 1987, shall be equipped with secondary containment, which complies with paragraphs (1) to (6), inclusive.

(b) The underground tank system shall be designed and constructed with a monitoring system capable of detecting the entry of the hazardous substance stored in the primary containment into the secondary containment.

(c) The underground storage tank shall be provided with equipment to prevent spills and overflows from the primary tank.

(d) If different substances are stored in the same tank and in combination may cause a fire or explosion, or the production of flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container, those substances shall be separated in both the primary and secondary containment so as to avoid potential intermixing.

(e) If water could enter into the secondary containment by precipitation or infiltration, the facility shall contain a means of monitoring for water intrusion and for removing the water by the owner or operator. This removal system shall also prevent uncontrolled removal of this water and provide for a means of analyzing the removed water for hazardous substance contamination and a means of disposing of the water, if so contaminated, at an authorized disposal facility.

(f) Underground-pressurized piping that conveys a hazardous substance shall be equipped with an automatic line leak detector and shall be tightness tested annually.

(g) Before the underground storage tank is covered, enclosed, or placed in use, the standard installation testing for requirements for underground storage systems specified in Section 2-7 of the Flammable and Combustible Liquids Code, adopted by the National Fire Protection Association, (NFPA 30) as amended and published in the respective edition of the Uniform Fire Code, shall be followed.

(h) Before the underground storage tank is placed in service, the underground tank system shall be tested in operating condition using a tank integrity test.

(i) If the underground storage tank is designed to maintain a water level in the secondary containment, the tank shall be equipped with a safe method of removing any excess water to a holding facility and the owner or operator shall inspect the holding facility monthly for the presence of excess water overflow. If excess water is present in the holding facility, the permit holder shall provide a means to analyze the water for hazardous substance contamination and a means to dispose of the water, if so contaminated, at an authorized disposal facility.

(Formerly Section 25284, added by Stats.1983, c. 1046, Section 3. Renumbered Section 25291 and amended by Stats.1984, c. 1584, Section 2; Stats.1985, c. 1228, Section 3, eff. Sept. 30, 1985; Stats.1985, c. 1535, Section 3, eff. Oct. 2, 1985; Stats.1986, c. 248, Section A151; Stats.1986, c. 1025, Section 2; Stats.1987, c. 1372, Section 6; Stats.1989, c. 1397, Section 11. Amended by Stats. 1996, c. 611 (S.B. 562), Section 2.5.)

**§25292. Underground storage tanks installed on or before January 1, 1984; actions to monitor, replacement or upgrading; automatic line leak detectors**

(d) On or before December 22, 1998, the underground storage tank shall be replaced or upgraded to prevent releases due to corrosion or spills or overfills for the underground storage tanks's1 operating life.

(e)(1) All existing underground-pressurized piping shall be equipped with an automatic line leak detector on or before December 22, 1990, and shall be retrofitted with secondary containment on or before December 22, 1998. Underground-pressurized piping shall be tightness tested annually.

(2) Paragraph (1) does not apply to existing pressurized piping containing motor vehicle fuel, if the pipeline is constructed of glass fiber reinforced plastic, cathodically protected steel, or steel clad with glass fiber reinforced plastic, is equipped with an automatic line leak detector, and is tightness tested annually.

(Formerly Section 25284.1, added by Stats.1983, c. 1046, Section 3. Renumbered Section 25292 and amended by Stats.1984, c. 1584, Section 4; Stats.1986, c. 935, Section 5; Stats.1986, c. 1025, Section 5; Stats.1987, c. 1372, Section 7; Stats.1989, c. 1397, Section 12.)

**§25292.3 Upgrade compliance certificate for petroleum underground storage tank systems**

(a) On and after January 1, 1999, no person shall deposit petroleum into a underground storage tank system unless the underground storage tank system meets the requirements of Section 25291 or subdivisions (d) and (e) of Section 25292 and related regulations adopted pursuant to Section 25299.3.

(b) Any person depositing petroleum into an underground storage tank system shall verify that the system meets the requirements of Section 25291 or subdivisions (d) and (e) of Section 25292, and related regulations adopted pursuant to Section 25299.3, by taking one of the following actions:

(1) Viewing the upgrade compliance certificate for the petroleum underground storage tank system displayed pursuant to subdivision (e) of Section 25284.

(2) Obtaining written verification from the local agency that the petroleum underground storage tank system is on a list maintained by a local agency pursuant to subdivision (f) of Section 25284.

(3) Obtaining a correct copy of the upgrade compliance certificate from the owner or operator of the petroleum underground storage tank system.

(Added by Stats.1997, c. , § (A.B.1491).)

**§25299. Violations; civil and criminal penalties; operative date**

(a) Any operator of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) for each underground storage tank for each day of violation for any of the following violations:

- (1) Operating an underground tank system, which has not been, issued a permit, in violation of this chapter.
- (2) Violation of any of the applicable requirements of the permit issued for the operation of the underground tank system.
- (3) Failure to maintain records, as required by this chapter.
- (4) Failure to report an unauthorized release, as required by Section 25294 and Section 25295.
- (5) Failure to properly close an underground tank system, as required by Section 25298.
- (6) Violation of any applicable requirement of this chapter or any requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.
- (7) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.
- (8) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(b) Any owner of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) per day for each underground storage tank, for each day of violation, for any of the following violations:

- (1) Failure to obtain a permit as specified by this chapter.
- (2) Failure to repair or upgrade an underground tank system in accordance with this chapter.
- (3) Abandonment or improper closure of any underground tank system subject to this chapter.
- (4) Knowing failure to take reasonable and necessary steps to assure compliance with this chapter by the operator of an underground tank system.
- (5) Violation of any applicable requirement of the permit issued for operation of the underground tank system.
- (6) Violation of any applicable requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.
- (7) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.
- (8) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(c) Any person who intentionally fails to notify the board or the local agency when required to do so by this chapter or who submits false information in a permit application, amendment, or renewal, pursuant to Section 25286, is

liable for a civil penalty of not more than five thousand dollars (\$5,000) for each underground storage tank for which notification is not given or false information is submitted.

(d) Any person who falsifies any monitoring records required by this chapter, or knowingly fails to report an unauthorized release, shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000) or more than ten thousand dollars (\$10,000), by imprisonment in the county jail for not to exceed one year, or by both that fine and imprisonment.

(e) In determining both the civil and criminal penalties imposed pursuant to this section, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm or potential harm caused by the violation, the nature of the violation and the period of time over which it occurred, the frequency of past violations, and the corrective action, if any, taken by the person who holds the permit.

(f) Each civil penalty or criminal fine imposed pursuant to this section for any separate violation shall be separate, and in addition to, any other civil penalty or criminal fine imposed pursuant to this section or any other provision of law, and shall be paid to the treasury of the local agency or state, whichever is represented by the office of the city attorney, district attorney, or Attorney General bringing the action. All penalties or fines collected on behalf of the board or a regional board by the Attorney General shall be deposited in the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund, and are available for expenditure by the board, upon appropriation, pursuant to Section 13441 of the Water Code.

(g) This section shall become operative on January 1, 1991.

(Added by Stats.1988, c. 296, Section 3, operative Jan. 1, 1991. Amended by Stats.1989, c. 1397, Section 19, operative Jan. 1, 1991.)

#### **§25299.01. Injunctions; restraining orders or other orders**

When any person has engaged in, is engaged in, or is about to engage in any acts or practices which violate this chapter, or Chapter 6.75 (commencing with Section 25299.10) or any rule, regulation, permit, standard, requirement, or order issued, adopted, or executed pursuant to this chapter or Chapter 6.75 (commencing with Section 25299.10), the city attorney of the city in which the acts or practices occur, occurred, or will occur, the district attorney of the county in which the acts or practices occur, occurred, or will occur, or the Attorney General may apply to the superior court for any order enjoining these acts or practices, or for an order directing compliance. The court may grant a permanent or temporary injunction, restraining order, or other order.

(Added by Stats.1986, c. 1390, Section 10, eff. Sept. 30, 1986. Amended by Stats.1989, c. 1442, Section 4, eff. Oct. 2, 1989.)

#### **§25299.02. Civil actions; joined or consolidation**

Every civil action brought under this chapter shall be brought by the city attorney, the district attorney, or the Attorney General in the name of the people of the State of California, and any actions relating to the same violations may be joined or consolidated.

(Added by Stats.1986, c. 1390, Section 11, eff. Sept. 30, 1986.)

#### **§25299.1. City or county exempt from provisions of this chapter**

(d) This chapter does not limit or abridge the authority of any city or county to adopt an ordinance requiring information, conducting investigations, inspections, or implementing and enforcing this chapter.

(Formerly Section 25288, added by Stats.1983, c. 1046, Section 3. Amended by Stats.1984, c. 1537, Section 2. Renumbered Section 25299.1 and amended by Stats.1984, c. 1038, Section A 21; Stats.1984, c. 1584, Section 8; Stats.1985, c. 1228, Section 5, eff. Sept. 30, 1985; Stats.1989, c. 1397, Section 20.)



**§25299.2. Local regulations, requirements, or standards of performance**

(a) Except as provided in subdivision (a) of Section 25299.4, this chapter does not preclude or deny the right of a local agency to adopt and enforce any regulation, requirement, or standard of performance that is more stringent than a regulation, requirement, or standard of performance in effect under this chapter with respect to underground storage tanks, if the regulation, requirement, or standard of performance, as provided in this subdivision, is consistent with this chapter.

(Formerly Section 25288.1, added by Stats.1983, c. 1046, Section 3. Renumbered Section 25299.2 and amended by Stats.1984, c. 1038, Section 22; Stats.1989, c. 1397, Section 21; Stats.1991, c. 724 (A.B.1731), Section 1, eff. Oct. 9,1991.)

**BUSINESS AND PROFESSIONS CODE SECTION (B&PC)**

**§ 17001. Purpose of chapter**

The Legislature declares that the purpose of this chapter is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented.

(Added by Stats. 1941, c. 526, § 1.)

**§17100. Offense; punishment**

Any person, whether as principal, agent, officer or director, for himself, or for another person, or for any firm or corporation, or any corporation, who or which violates this chapter is guilty of a misdemeanor for each single violation and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment not exceeding six months or by both such fine and imprisonment, in the discretion of the court.

(Added by Stats. 1941, c. 526, p. 1846, § 1.)

**§ 17200. Unfair competition; prohibited activities**

As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

(Added by Stats. 1977, c. 299, p. 1202, § 1. Amended by Stats. 1992, c. 430 (SB 1586), § 2.)

**§ 17203. Injunction; orders or judgments**

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

(Added by Stats. 1977, c. 299, p. 1202, § 1. Amended by Stats, 1992, c. 430 (SB 1586), § 3.)

**§ 17206. Violations; penalty; actions for recovery; expenses of investigation and prosecution; disposition of proceeds from penalties**

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and

recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city, or city and county, having a population in excess of 750,000, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction.(a)

(Added by Stats. 1977, c. 299, p. 1202, § 1. Amended by Stats 1979, c. 897, p. 3101, § 2; Stats. 1991, c. 1195 (SB 709), § 2; Stats. 1991; c. 1196 (AB 1755), § 2; Stats. 1992, c. 430 (SB 1586), § 4.)

#### **GOVERNMENT CODE (GC)**

##### **§12607. Action for equitable relief; attorney general**

The Attorney General may maintain an action for equitable relief in the name of the people of the State of California against any person for the protection of the natural resources of the state from pollution, impairment, or destruction.

(Added by Stats. 1971, c. 1518, p. 2995, § 3.)

##### **§25132. Misdemeanor; violation reduced to infraction by ordinance; prosecution; fines for infractions**

(a) Violation of a county ordinance is a misdemeanor unless by ordinance it is made an infraction. Such a violation may be prosecuted by county authorities in the name of the people of the State of California, or redressed by civil action.

(b) Every violation determined to be an infraction is punishable by (1) a fine not exceeding one hundred dollars (\$100) for a first violation; (2) a fine not exceeding two hundred dollars (\$200) for a second violation of the same ordinance within one year; (3) a fine not exceeding five hundred dollars (\$500) for each additional violation of the same ordinance within one year.

(Added by Stats. 1975, c.716, p. 1707, § 1. Amended by Stats. 1983, c. 1092, § 136, urgency, eff. Sept. 27, 1983, operative Jan. 1, 1984.)

##### **§36900. Violation; offense; persecution; action; penalty**

(a) Violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction. Such a violation may be prosecuted by city authorities in the name of the people of the State of California, or redressed by civil action.

(b) Every violation determined to be an infraction is punishable by (1) a fine not exceeding one hundred dollars (\$100) for a first violation; (2) a fine not exceeding two hundred dollars (\$200) for a second violation of the same ordinance within one year; (3) a fine not exceeding five hundred dollars (\$500) for each additional violation of the same ordinance within one year.

(Added by Stats. 1949, c. 79, p. 151 § 1. Amended by Stats. 1974, c. 677, p.1543, § 1; Stats 1983, c. 1092, § 138, urgency eff. Sept. 27, 1983, operative Jan. 1, 1984.)

##### **§ 36901. Fines; imprisonment; penalties; forfeitures**

The city legislative body may impose fines, penalties, and forfeitures for violations of ordinances. It may fix the penalty by fine or imprisonment, or both. A fine shall not exceed one thousand dollars (\$1,000). Imprisonment shall not exceed six months.



## **Appendix B**

### **Workgroup Survey of Enforcement Efforts by Local Agencies**

## State Water Resources Control Board's (SWRCB) Abandoned Tank Workgroup Survey of Enforcement Efforts by Local Agencies

Please submit this survey to the SWRCB by  
**Monday July 24, 2000**

Fax: 916-227-4349  
Attn: Marj Rogers

Telephone: 916-227-4303  
Attn: Marj Rogers

E-mail: [welchj@gwgate.swrcb.ca.gov](mailto:welchj@gwgate.swrcb.ca.gov)

Mail: State Water Resources  
Control Board  
Attn: Marj Rogers  
2014 T Street, Suite 130,  
Sacramento CA 95814

Submitted by (agency name): \_\_\_\_\_

Submitted by (person): \_\_\_\_\_

Date submitted: \_\_\_\_\_

1.	Enter the number of abandoned facilities and tanks (e.g. those that should have been upgraded or closed by December 22, 1998, but have not. Include those under temporary closure):	This information can provide a basis for determining the extent and significance of abandoned tanks.				
	<table style="margin-left: auto; margin-right: auto;"><tr><td style="text-align: center;"><b>Facilities</b></td><td style="text-align: center;"><b>Tanks</b></td></tr><tr><td style="text-align: center;"><input type="text"/></td><td style="text-align: center;"><input type="text"/></td></tr></table>	<b>Facilities</b>	<b>Tanks</b>	<input type="text"/>	<input type="text"/>	
<b>Facilities</b>	<b>Tanks</b>					
<input type="text"/>	<input type="text"/>					
	Of the number above, enter the number that have a temporary closure permit:					
	<table style="margin-left: auto; margin-right: auto;"><tr><td style="text-align: center;"><b>Facilities</b></td><td style="text-align: center;"><b>Tanks</b></td></tr><tr><td style="text-align: center;"><input type="text"/></td><td style="text-align: center;"><input type="text"/></td></tr></table>	<b>Facilities</b>	<b>Tanks</b>	<input type="text"/>	<input type="text"/>	
<b>Facilities</b>	<b>Tanks</b>					
<input type="text"/>	<input type="text"/>					

<p>2.</p>	<p>Why does a tank owner/operator fail to comply with upgrade and closure requirements? Rank the following reasons with one (1) being most common. Enter your ranking in the box.</p> <ul style="list-style-type: none"> <li>❖ Does not want to comply <input style="width: 50px; height: 20px;" type="text"/></li> <li>❖ Orphan site (no RP) <input style="width: 50px; height: 20px;" type="text"/></li> <li>❖ Lack of money or financially insolvent <input style="width: 50px; height: 20px;" type="text"/></li> <li>❖ Waiting on availability of contractors or other professional services <input style="width: 50px; height: 20px;" type="text"/></li> <li>❖ Waiting on funds to become available <input style="width: 50px; height: 20px;" type="text"/></li> <li>❖ Waiting on oversight agency to identify actions to take <input style="width: 50px; height: 20px;" type="text"/></li> <li>❖ Concern that closing the tank infers liability for investigation and cleanup <input style="width: 50px; height: 20px;" type="text"/></li> <li>❖ Other: <input style="width: 50px; height: 20px;" type="text"/></li> </ul>	<p>This information can provide a basis for understanding why this problem occurs. This understanding will help determine which recommendations are most appropriate.</p>
<p>3.</p>	<p>Rank the following methods for effectiveness in gaining <i>prompt</i> compliance with one (1) being most effective.</p> <ul style="list-style-type: none"> <li>❖ Education <input style="width: 50px; height: 20px;" type="text"/></li> <li>❖ Leniency with the tank owner/operator when compliance is not achieved and allowing tank owner time to come into compliance <input style="width: 50px; height: 20px;" type="text"/></li> <li>❖ Multiple reinspections (making presence known) <input style="width: 50px; height: 20px;" type="text"/></li> <li>❖ Reinspection fee <input style="width: 50px; height: 20px;" type="text"/></li> <li>❖ Issuance of NOV(s) <input style="width: 50px; height: 20px;" type="text"/></li> <li>❖ Office hearing <input style="width: 50px; height: 20px;" type="text"/></li> <li>❖ Referral to city, county, or district attorney for formal enforcement action <input style="width: 50px; height: 20px;" type="text"/></li> <li>❖ Other: <input style="width: 50px; height: 20px;" type="text"/></li> </ul>	<p>This information can provide a basis for deciding which enforcement alternatives are most effective and may give evidence to support workgroup recommendations.</p>

<p>4. Rank the following reasons why formal enforcement is not often used with one (1) being most common. Enter your ranking in the box.</p> <ul style="list-style-type: none"> <li>❖ Case development requires too much staff resources <input style="float: right;" type="text"/></li> <li>❖ Attorney's office is not responsive to cases involving UST closure <input style="float: right;" type="text"/></li> <li>❖ Management prefers to work with tank owner/operators rather than take this type of enforcement <input style="float: right;" type="text"/></li> <li>❖ Referral to an attorney's office removes the case from the control of our office <input style="float: right;" type="text"/></li> <li>❖ Other _____ <input style="float: right;" type="text"/></li> </ul>	<p>This information can provide a basis for deciding what actions may need to be taken to make formal enforcement efficient and effective.</p>
<p>5. What is the time expenditure by staff to promote, achieve, and/or enforce compliance with UST regulations on a typical abandoned tank case relative to a typically compliant facility? Enter in the box an estimate by what percent more or less.</p> <ul style="list-style-type: none"> <li>❖ Less <input style="float: right;" type="text"/></li> <li>❖ About the same <input style="float: right;" type="text"/></li> <li>❖ More <input style="float: right;" type="text"/></li> <li>❖ Substantially more <input style="float: right;" type="text"/></li> </ul>	<p>This information can provide a basis for determining the relative staff resources expended on facilities with abandoned tanks.</p>
<p>6. What are your recommendations for gaining <i>prompt</i> closure of tanks that should have been upgraded or closed by December 22, 1998, but were not?</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p>This information will be used to provide the workgroup a broader range of ideas from which to develop recommendations.</p>

## **Appendix C**

### **Local Agency Survey Responses**

**Table 1**

Responses to Survey Question 1,  
Number of Non-upgraded Facilities and Tanks (August 2000)

**Chart 1**

Responses to Survey Question 5 Showing Local Agency Time Expenditure to Enforce  
Compliance Relative to a Typical Compliant Facility -  
Number of Respondents in Four Categories

**Chart 2**

Responses to Survey Question 6, Local Agency Recommendations to Gain Prompt Closure -  
Number of Responses in Six Categories



**Table 1**  
**Responses to Survey Question 1,**  
**Number of Non-upgraded Facilities and Tanks (August 2000)**

AGENCY NAME	1a: Facilities	1b: Tanks	1c: Temporary closure facilities	1d: Temporary closure tanks
<b>CITIES</b>				
ANAHEIM	0	0	0	0
BAKERSFIELD	7	25	4	13
BERKELEY	2	2	2	2
BURBANK				
CAMPBELL	2	2	2	2
EL SEGUNDO	0	0	0	0
CUPERTINO (see Campbell)				
FREMONT	2	7	2	7
FULLERTON	1	4	1	4
GILROY	0	0	0	0
GLENDALE	5	11	4	9
HAYWARD	0	0	0	0
HEALDSBURG/SEBASTOPOL				
HESPERIA	1	3	1	3
HOLLISTER	0	1	0	0
LONG BEACH				
LOS ANGELES	0	0	0	0
LOS GATOS (see Campbell)				
MILPITAS				
MORGAN HILL (see Campbell)				
MOUNTAIN VIEW	0	0	0	0
NEWARK				
OAKLAND	24	71	3	6
ORANGE				
OXNARD	0	0	0	0
PALO ALTO	0	0	0	0
PASADENA				
PETALUMA	0	0	0	0
PLEASANTON	2	3	2	3
ROSEVILLE	1	2	0	0
SAN JOSE	2	2	0	0
SAN LEANDRO				
SAN LUIS OBISPO				
SAN RAFAEL	0	3	0	3
SANTA ANA	0	0	0	0
SANTA CLARA	2	2	2	2
SANTA FE SPRINGS	4	8	0	0
SANTA MONICA	3	4	3	4
SANTA ROSA	0	0	0	0
SUNNYVALE	0	0	0	0

Recommendations For Prompt Closure of Non-Upgraded Underground Storage Tanks  
January 2001

AGENCY NAME	1a: Facilities	1b: Tanks	1c: Temporary closure facilities	1d: Temporary closure tanks
TORRANCE	1	5	0	0
UNION CITY	0	0	0	0
VENTURA	1	2	1	2
VERNON				
VICTORVILLE	0	0	0	0
WATSONVILLE				
<b>COUNTIES</b>				
ALAMEDA	4	12	0	0
ALPINE				
AMADOR	4	6	1	2
BUTTE	25	49	5	12
CALAVERAS	4	8	0	0
COLUSA	1	1	0	0
CONTRA COSTA				
DEL NORTE	4	17	0	0
EL DORADO	3	8	1	2
FRESNO				
GLENN	3	12	0	0
HUMBOLDT	9	15	0	0
IMPERIAL				
INYO	4	15	0	0
KERN	39	97	0	0
KINGS	0	0	0	0
LAKE	7	14	4	8
LASSEN				
LOS ANGELES	355	880	163	420
MADERA	2	6	2	6
MARIN	1	3	0	0
MARIPOSA	4	9	4	9
MENDOCINO	1	2	0	0
MERCED	9	41	0	0
MODOC				
MONO	0	0	0	0
MONTEREY	11	23	3	6
NAPA	0	0	0	0
NEVADA	12	18	1	2
ORANGE	133	0	42	0
PLACER	3	6	0	0
PLUMAS	1	2	1	2
RIVERSIDE	30	76	3	7
SACRAMENTO	18	23	3	3
SAN BENITO				
SAN BERNARDINO	33	81	0	0
SAN DIEGO	21	42	4	7
SAN FRANCISCO				
SAN JOAQUIN				
SAN LUIS OBISPO	3	9	1	3

Recommendations For Prompt Closure of Non-Upgraded Underground Storage Tanks  
January 2001

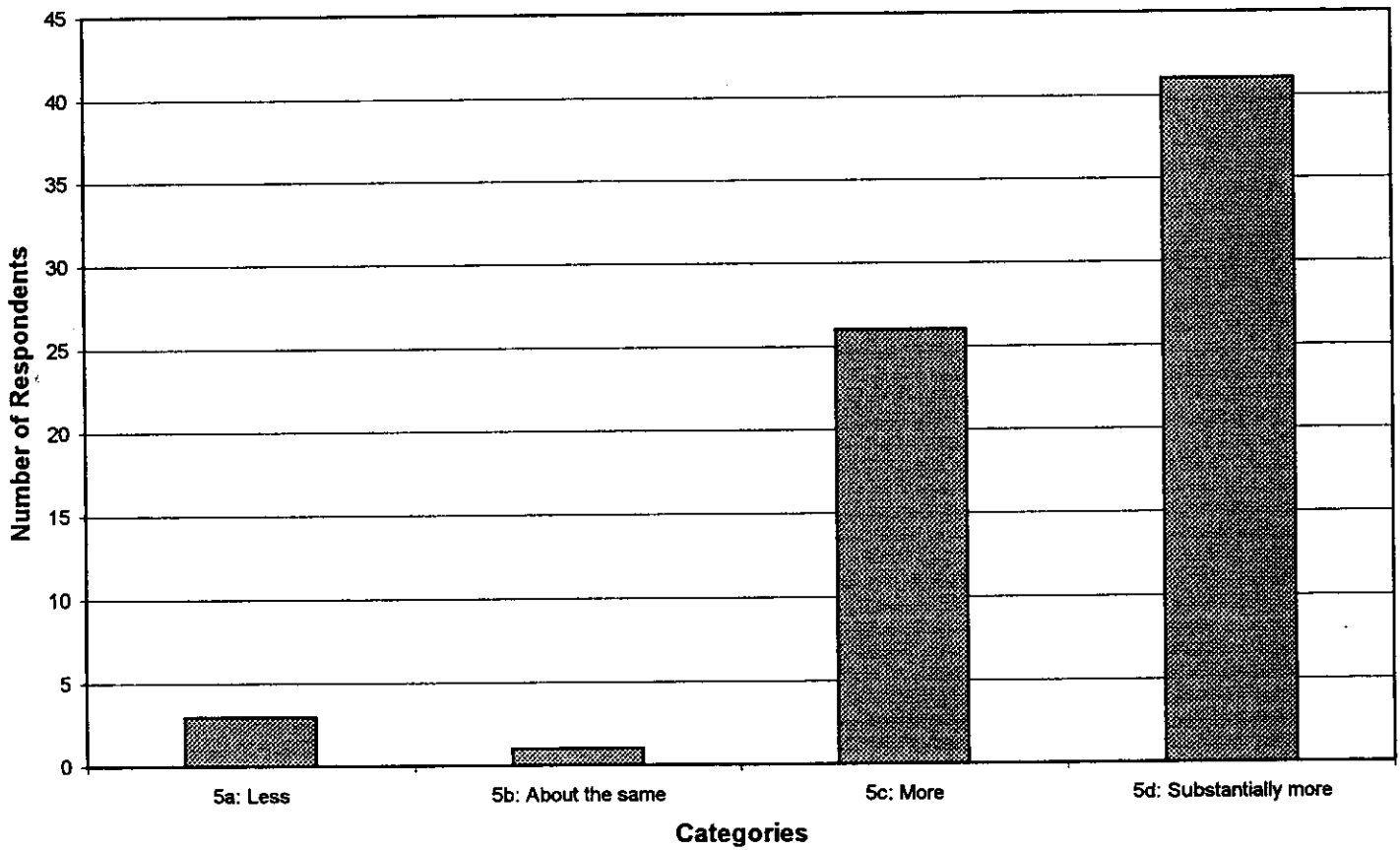
AGENCY NAME	1a: Facilities	1b: Tanks	1c: Temporary closure facilities	1d: Temporary closure tanks
SAN MATEO	5	8	2	2
SANTA BARBARA	0	0	0	0
SANTA CLARA	0	0	0	0
SANTA CRUZ				
SHASTA				
SIERRA				
SISKIYOU	0	0	0	0
SOLANO	6	12	4	8
SONOMA				
STANISLAUS				
SUTTER	2	7	2	7
TEHAMA	15	17	0	0
TRINITY	1	4	1	4
TULARE	15	40	0	0
TUOLUMNE	45	45	0	0
VENTURA	0	0	0	0
YOLO	2	5	1	2
YUBA	5	16	1	6
<b>TOTALS:</b>	<b>900</b>	<b>1786</b>	<b>276</b>	<b>578</b>

A crude adjustment by adding 23% to totals is made to account for deficiency in response (i.e. 24 nonrespondents account for about 23% of the agencies. Also note: Campbell, Cupertino, Saratoga, and Los Altos are counted as one response since information is combined into one report; same for Sebastopol and Healdsburg)

<b>ADJUSTED TOTALS:</b>	<b>1107</b>	<b>2197</b>	<b>339</b>	<b>711</b>
-------------------------	-------------	-------------	------------	------------

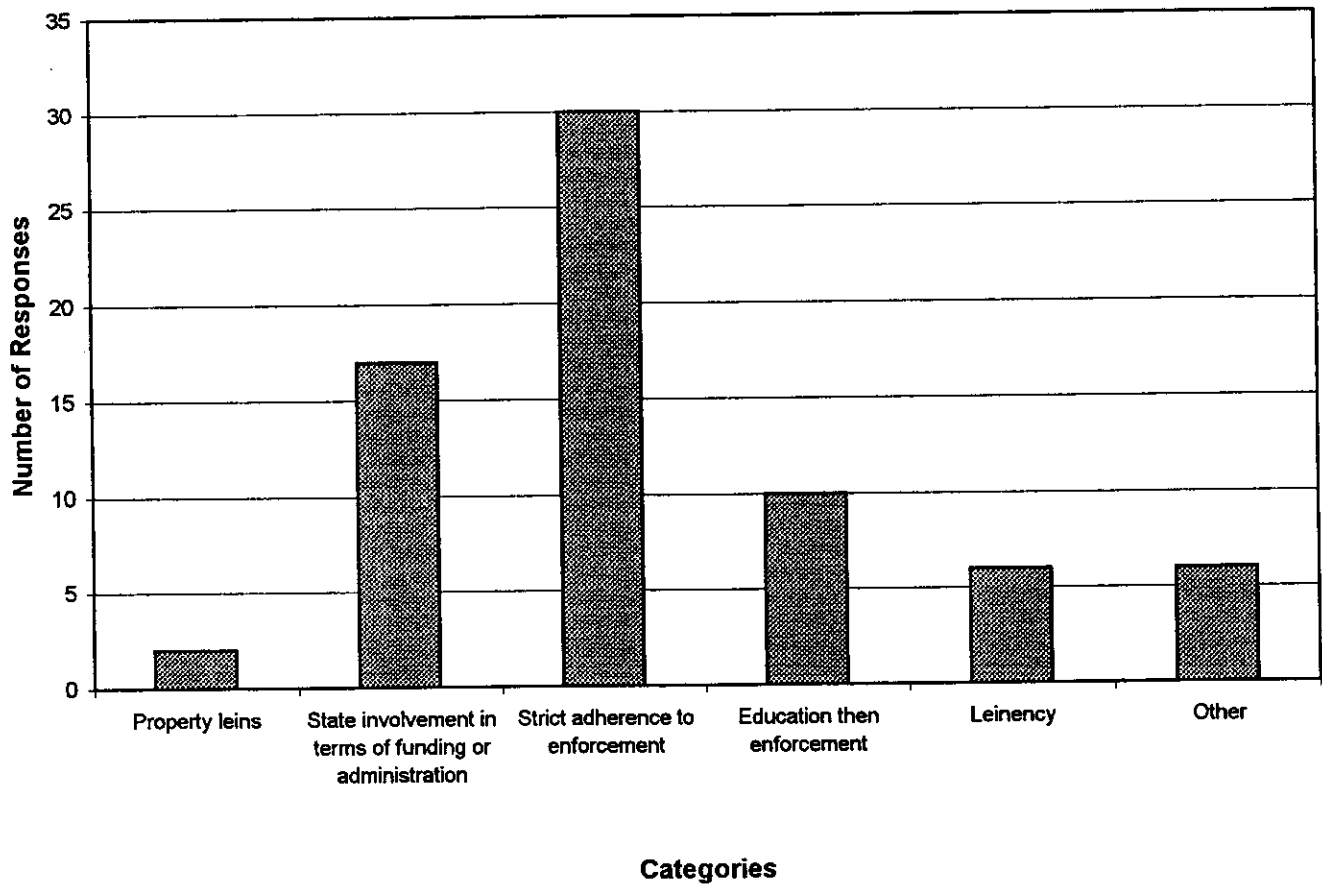
**Chart 1**

**Responses to Survey Question 5  
Showing Local Agency Time Expenditure to Enforce Compliance  
Relative to a Typical Compliant Facility -  
Number of Respondents in Four Categories**



**Chart 2**

**Responses to Survey Question 6  
Local Agency Recommendations to Gain Prompt Closure -  
Number of Responses in Six Categories**



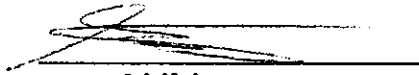


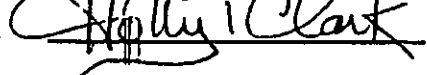
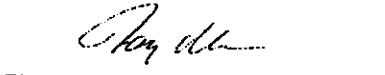
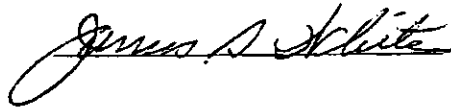
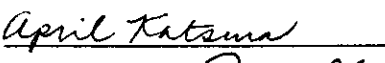

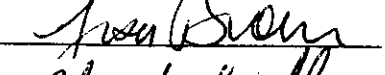
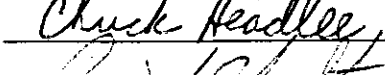
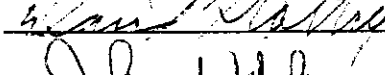
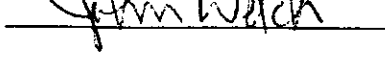
## **Appendix D**

### **Participant Concurrence With Report Content**

**Participant Concurrence With Report Content**

We the participants of the California Non-upgraded Tank Workgroup agree by signing below that the report entitled "Recommendations For Prompt Closure of Non-upgraded Underground Storage Tanks" contains recommendations that will be most effective in reducing the threat to groundwater resources posed by these tanks.

The report and its recommendations was developed by consensus of the workgroup. It was the wish of the workgroup that participants may express a dissenting opinion on any recommendation that was otherwise accepted by the workgroup. To indicate a dissenting opinion, a participant will enter the recommendation number in the right-hand column and may provide clarification by attachment. No dissenting opinion will be shown as "none."

<b>Participants</b>	<b>Representing</b>	<b>Signature</b>	<b>Dissenting Opinion (Identify Recommendation Number(s) or "None")</b>
Greg Mobley	Urban CUPA		None
Mike Vizzier	Urban CUPA		None
Tracy Gidel	Rural CUPA		None
Holly Clark	Fire Department CUPA		None
Donna Drogos	Water District	In Absentia	None
Steven Arita	Industry - Major Oil	No Position	No Position
Jay McKeeman	Industry - Independent Oil		None
Alvin Greenberg	Environmental	In Absentia	None
Jim White	Interested Party		None
David Irely	San Joaquin County District Attorney	In Absentia	None
April Katsura	Federal EPA, Region 9		None
Matthew Small	Federal EPA, Region 9		None
Lisa Brown	California/EPA		None
Chuck Headlee	RWQCB, Region 2		None
David Holtry	SWRCB		None
John Welch	SWRCB		None

## **Appendix E**

### **USTfields Process**



## USTfields Process

USTfields are the UST equivalent to Brownfields. They are usually smaller in size because they cover smaller areas such as a service station or auto body shop. USTfield projects focus on the cleanup and redevelopment of UST sites where there is actual or perceived contamination and where there is the potential for economic development and community revitalization. USTfields may be abandoned or orphaned sites or there may be a viable owner. USTfields exist in both urban and non-urban areas. The steps in a project are as follows:

- Identify USTfield and/or abandoned sites
- Empty the tanks, if not already done
- Conduct emergency response, if needed
- Remove or close the tanks in place
- Conduct a site assessment
- Prioritize the site according to risk
- If there is contamination, initiate cleanup, institutional controls, etc. Based upon priority determined through risk analysis
- Establish risk based cleanup goals (remedial goals must be clearly defined to encourage re-development)
- Expedited approvals and release of new developers/lenders from liability for existing contamination could help encourage re-development
- Perform cleanup
- Conduct redevelopment. If a property is owned by a city, for example, the city may offer incentives to the developer. An example might be a waiver of property taxes or a reduction in rent
- Site returned to productive use
- Long term management and site tracking

USTfield projects can be funded in various ways. Funding might be from:

- The State cleanup fund
- The city or county where the site is located
- EPA LUST Trust Fund
- Private party
- Developer
- RUST Fund
- Other sources

Funding might depend on the stage in the project. For example, the city, county, or State might pay for the tank removal and site assessment while the developer pays for the cleanup and redevelopment. Pay For Performance is encouraged so that cleanups are performed as quickly and efficiently as possible.