



State Water Resources Control Board

January 11, 2012

To: Local Implementing Agencies (LIAs)
Local Oversight Program Agencies (LOPs)
Regional Water Quality Control Boards (Regional Water Boards)

SUBJECT: IMPLEMENTING ASSEMBLY BILL NOS. 291 AND 358

During this past legislative session, changes were made to the underground storage tank (UST) program. Assembly Bill No. 291 (AB 291) authored by Assembly Member Wieckowski and Assembly Bill No. 358 (AB 358) authored by Assembly Member Smyth have been signed by the Governor and chaptered on October 8, 2011. AB 291 and AB 358 became effective immediately except for a provision of AB 358 that requires the State Water Resources Control Board (State Water Board) to notify the tank owner or operator of the 365-day claim deadline for the cases that have been closed prior to January 1, 2012 by March 31, 2012, or upon issuance of a letter of commitment, whichever occurs later.

AB 291 and AB 358 make the following changes: extends the UST Cleanup Fund (USTCF) fee increase expiration to 2014, expands reporting requirements of information on unauthorized releases, places limitations on corrective action costs where the USTCF manager has recommended case closure, establishes a deadline for filing USTCF claims, and modifies the case closure letter to notify responsible parties of the deadline changes. The provisions of AB 291 and AB 358 are incorporated into Section 25299.43 and Sections 25295, 25296.10, 25296.35, 25296.40, 25299.39.2, 25299.57, 25299.58, respectively, of the California Health and Safety Code.

The complete text of AB 291 and AB 358 can be viewed for a limited time at:

http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_291&sess=CUR&house

http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_358&sess=CUR&house

The attached tables provide a summary of the law before the enactment of these bills and the new law (after enactment of these bills). Currently the UST owner or operator is required to provide an initial report of an unauthorized release to the local agency within

24 hours and then follow up with a full written report within five working days. This requirement has not changed. Now, however, AB 358 requires Regional Water Boards and local agencies to submit reports for unauthorized releases to the State Water Board. This reporting is currently done electronically via the internet through the State Water Board's online database called GeoTracker. When creating a new case in GeoTracker, information fields specified in Table 2, Item 1 will now be required. This means that GeoTracker will not allow a new case to be created if the information fields are not filled in before form submission.

Instructions for creating a new case in GeoTracker for an unauthorized release are available on the State Water Board's website at:

https://geotracker.waterboards.ca.gov/regulators/new_project.asp

Additionally, AB 358 requires that a 365-day USTCF claim filing deadline notice be given to the tank owner or operator in the uniform closure letter. Suggested language to be added to the uniform closure letter is as follows:

Claims for reimbursement of corrective action costs submitted to the Underground Storage Tank Cleanup Fund more than 365 days after the date of this letter or issuance or activation of the Fund's Letter of Commitment, whichever occurs later, will not be reimbursed unless one of the following exceptions applies:

- *Claims are submitted pursuant to Section 25299.57, subdivision (k) (reopened UST case); or*
- *Submission within the timeframe was beyond the claimant's reasonable control, ongoing work is required for closure that will result in the submission of claims beyond that time period, or that under the circumstances of the case, it would be unreasonable or inequitable to impose the 365-day time period.*

Please review Tables 1 and 2 attached. If you have any questions regarding this letter, one may contact George Lockwood at (916) 341-5752 or email at glockwood@waterboards.ca.gov.

Sincerely,



Kevin L. Graves, Manager
Underground Storage Tank Program

Attachments: Table 1 and Table 2

Table 1: Summary Table of the Law before and after AB 291

Item	Law before AB 291	New Law after AB 291	Citation	Implementation
1	Provides for an increase in the fee at a rate of \$0.006 per gallon of petroleum between January 1, 2010 and December 31, 2011, and terminates that increase on January 1, 2012.	Continues fee increase to pay additional amount of \$0.006 per gallon until January 1, 2014.	California Health and Safety Code (HSC), Section 25299.43	Additional funding becomes available for LUST cleanups until January 1, 2014.

Table 2: Summary Table of the Law before and after AB 358

Item	Law before AB 358	New Law after AB 358	Citation	Implementation
1	Requires tank owners or operators to provide an initial report of an unauthorized release to the local agency within 24 hours and then follow up with a full written report within five working days and requires the State Water Board to post on its website reports of information concerning unauthorized releases.	<ul style="list-style-type: none"> Requires the owner or operator to transmit additional information regarding an unauthorized release to the local agency on a written form or using an electronic format developed by the State Water Board. 	California HSC, Sections 25295 and 25296.35	<ul style="list-style-type: none"> The requirement for the written reporting regarding an unauthorized release submitted by the owner or operator to the local agency has not changed. Changes, if any, to this report are to be determined. Instructions for creating a new case in GeoTracker are available on the State Water Board's website at: http://www.swrcb.ca.gov/water_issues/programs/ust/forms/ Other helpful information on GeoTracker such as Beginner's Guide, Login or Request a Password, or Frequently Asked Questions can be found at: http://www.waterboards.ca.gov/ust/electronic_submittal/index.shtml The following information fields must be filled in: <ul style="list-style-type: none"> - "Facility/Site Name, and Address" - Either "Discharge Date" or "Discovered Date" - "Report Date"

Item	Law before AB 358	New Law after AB 358	Citation	Implementation
	<ul style="list-style-type: none"> Requires the State Water Board to create a system for storing and retrieving data from cases involving discharges of petroleum. 	<ul style="list-style-type: none"> Requires each regional board and local agency to submit a report to the board for all unauthorized releases using the board's Internet-accessible database. On and before December 1, 2012, and not less than annually thereafter, the board shall post and update on its internet website, the information concerning unauthorized releases. 		<ul style="list-style-type: none"> - "Discharge Cause" valid values are: "Spill, Overfill, Physical/Mechanical Damage, Corrosion, Installation Problem, Unknown, Other" - "Discharge Source" valid values are: "Tank, Piping, Dispenser, Submersible Turbine Pump (STP), Delivery Problem, Other" <p>GeoTracker will automatically create a Global Identification Number.</p> <ul style="list-style-type: none"> Requires the Regional Water Boards and local agencies to submit reports to the State Water Board's GeoTracker database for all unauthorized releases. Report by the county for unauthorized release is available on GeoTracker at: http://geotracker.waterboards.ca.gov/sites_by_county.asp

Item	Law before AB 358	New Law after AB 358	Citation	Implementation
2	Requires a uniform closure letter to be issued by the local agency, the Regional Water Board, or the State Water Board.	In addition to the language in the uniform closure letter, the new law requires that closure letters issued on or after January 1, 2012, to include language notifying the tank owner or operator of the 365-day claim filling deadline for reimbursement of corrective action costs after the date of issuance of a closure letter or after the issuance or activation of a letter of commitment, whichever occurs later.	California HSC, Section 25296.10	<ul style="list-style-type: none"> Additional language must be added to the uniform closure letter required by HSC, Section 25296.10 (g). The suggested language is shown on page 2 of this letter.
3	<ul style="list-style-type: none"> Authorizes the State Water Board to close a tank case if that tank case is under the jurisdiction of a Regional Water Board or an LOP agency. Only allows the State Water Board to recommend closure of a case under a LIA's jurisdiction. This limitation applies to closures arising out of the petition process and the five-year review process. 	<ul style="list-style-type: none"> Allows the State Water Board to close any case. State Water Board shall provide an opportunity for reviewing and providing responses to petitions or USTCF manager's closure recommendations to the applicable Regional Water Board, local agency, water replenishment district, municipal water district, county water district, or special act district with groundwater management authority if the UST case is located in the jurisdiction of that district. 	California HSC, Sections 25296.40 and 25299.39.2	<ul style="list-style-type: none"> Petition and five-year review cases can be closed by the State Water Board for any lead agency. State Water Board shall provide an opportunity for reviewing and providing responses to closure petitions or USTCF manager's closure recommendations to the applicable Regional Water Board, local agency, water replenishment district, municipal water district, county water district, or special act district with groundwater management authority if the underground storage tank case is located in the jurisdiction of that district.

Item	Law before AB 358	New Law after AB 358	Citation	Implementation
4	Allows the tank owner or operator to apply to the State Water Board for payment of a claim for the costs of the corrective action and third-party compensation claims if corrective action was directed pursuant to state law.	<ul style="list-style-type: none"> • Additionally, authorizes eligibility if corrective action was directed under certain federal laws. • Requires the State Water Board to notify the tank owner or operator of the 365-day claim deadline for the cases that have been closed prior to January 1, 2012 by March 31, 2012, or upon issuance of a letter of commitment, whichever occurs later. 	California HSC, Sections 25299.57 and 25299.58	<ul style="list-style-type: none"> • For cases closed before January 1, 2012, the State Water Board must provide notification of the 365-day deadline for submitting USTCF claims within a year of closure or activation of a letter of commitment, excepting special circumstances, by March 31, 2012.
5	Authorizes the manager of the USTCF, with the approval of the tank owner or operator, to make a recommendation to the board for closure of any tank case.	<ul style="list-style-type: none"> • Limits reimbursements to \$10,000 per year for costs incurred after the closure recommendation (except as specified) when the USTCF's manager is recommending case closure. • Limits submission of claims to the USTCF to 365 days (except as specified) after the date of issuance of a closure letter or after the issuance or activation of a letter of commitment, whichever occurs later. 	California HSC, Section 25299.39	<ul style="list-style-type: none"> • State Water Board will notify owners or operators that USTCF requests for reimbursement must be made within a year of case closure or activation of a letter of commitment, excepting special circumstances, and reimbursements for costs incurred after the closure recommendation are limited to \$10,000 per year excepting special circumstances.