
State Water Resources Control Board

October 24, 2018

To: Unified Program Agencies and Other Interested Parties

UNDERGROUND STORAGE TANK STATUTORY PROVISIONS OF ASSEMBLY BILL NO. 2902 (STATS. 2018, CH. 721)

On September 23, 2018, Governor Brown signed Assembly Bill No. 2902 (AB 2902) (Statutes 2018, Chapter 721) authored by the Assembly Committee on Environmental Safety and Toxic Materials. In relevant part, and as explained in detail below, AB 2902 amends Health and Safety Code, division 20, chapter 6.7 (H&SC, ch. 6.7), sections 25281.5, 25285, and 25292.3, **effective January 1, 2019**. The complete text of AB 2902 can be found at http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2902.

Definition of “Emergency Generator Tank System” (H&SC, ch. 6.7, § 25281.5)

Existing law limits the definition of an “emergency generator tank system” to certain underground storage tank (UST) systems which store diesel fuel. AB 2902 expands the definition of an “emergency generator tank system” to include UST systems which store kerosene.

Issuance of a UST Permit (H&SC, ch. 6.7, § 25285)

Existing law prohibits Unified Program Agencies (UPAs) from issuing or renewing a UST operating permit if the UST is not in compliance with H&SC, ch. 6.7. Pursuant to AB 2902 an UPA may issue or renew a UST operating permit even if the UST is not in full compliance with H&SC, ch. 6.7, except as provided below.

An UPA shall not issue or renew a UST operating permit if a red tag is affixed to the UST system pursuant to H&SC, ch. 6.7, section 25292.3.

An UPA shall not issue or renew a UST operating permit if the UST facility is subject to an enforcement action by the State Water Resources Control Board (State Water Board), the UPA, or other authorized entity seeking administrative liability, civil liability, or criminal liability pursuant to the H&SC, ch. 6.7, unless the violation(s) underlying the subject enforcement action has been corrected or otherwise resolved to the satisfaction of the UPA. An UPA may, however, after consultation with the State Water Board, issue or renew a UST operating permit even if the underlying violation(s) has not been corrected or otherwise resolved, if the facility is appealing, petitioning, or otherwise seeking reconsideration of the enforcement action. Please

note that an UPA is not required to issue or renew an operating permit during the pendency of an appeal, petition, or other reconsideration.

Affixing Red Tags (H&SC, ch. 6.7, § 25292.3)

Existing law limits the affixing of red tags to petroleum UST systems and limits red tag authority to UPAs. AB 2902 expands issuance of red tags to be affixed to any hazardous substance UST system and permits the State Water Board to affix red tags. In addition, the State Water Board is granted the authority to issue a notice of significant violation and affix a red tag if the violation is not corrected. The State Water Board must provide the UPA with a copy of the notice within two working days of issuing the notice. AB 2902 also expands the red tag provisions to permit the State Water Board or UPAs to issue a written directive to empty the noncompliant UST system as soon as possible, but no later than 48 hours after receiving the directive. Any action taken by the State Water Board shall be taken in consultation with the UPA.

In addition, existing law prohibits deposit of petroleum into a red tagged UST system. As amended by AB 2902, delivery, deposit, and input of a hazardous substance into and withdrawal of the stored substance from a red tagged UST system is prohibited, except to empty the UST system at the direction of the State Water Board or the UPA.

Finally, AB 2902 makes certain technical amendments to H&SC, ch. 6.7, § 25292.3.

If you have questions regarding the implementation of UST provisions of AB 2902, please contact Mr. Tom Henderson at (916) 319-9128 or tom.henderson@waterboards.ca.gov or Mr. Sean Farrow of the State Water Board at (916) 324-7493 or sean.farrow@waterboards.ca.gov.

Sincerely,



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

cc: [Via email only]

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