



California Environmental Protection Agency

2002 Legislative Package

AB 2481 (Frommer)
Chapter 999, Statutes of 2002
Sponsor: State Water Resources Control Board

SUMMARY:

This new law strengthens and reorganizes the law related to underground storage tanks (USTs) in order to protect the environment against unauthorized releases of petroleum, including methyl tertiary butyl ether (MTBE) by: (1) prohibiting fuel delivery to USTs that have significant water quality violations; (2) requiring new USTs installed after July 1, 2003 to be liquid and vapor tight; (3) increasing the number of UST cleanup sites by providing funding, under certain conditions, to previously ineligible parties; (4) requiring licensed tank testers to prepare a report on each tank or piping integrity test they perform and to sign the report under penalty of perjury; (5) modifying the Enhanced Leak Detection testing requirements, including a one-time testing requirement for double-walled USTs within 1,000 feet of a public drinking water well; (6) authorizing the use of the UST Cleanup Fund for investigations of suspected violations of leak prevention requirements; (7) clarifying that all secondary containment components that are part of an emergency generator tank system, as opposed to just the under dispenser containment or spill containment or control system, may be tested using enhanced leak detection, and (8) streamlining the Health and Safety Code (HSC) to make it more user friendly to public and private parties.

Additionally this new law: (1) creates a single, consistent, administrative enforcement authority (orders and/or penalties) for Certified Unified Program Agencies' (CUPAs) use in enforcing UST requirements and other CUPA requirements; (2) extends the waiver renewal deadline for septic systems from January 1, 2003 to June 30, 2004 to allow new statewide septic system standards to be developed; (3) provides sufficient indemnification for the State of California in developing the brownfield insurance program (Financial Assurance and Insurance for

Redevelopment Program); (4) continues an important drinking water grant program at the Department of Health Services (DHS) that assists public agencies to purchase alternate drinking water supplies if their water is contaminated or threatened by MTBE; (5) requires a public water system that receives cleanup funds from the DHS to aggressively pursue the recovery of cleanup costs from liable parties, and to reimburse the DHS for any cleanup funds received from the DHS within five years of receiving those funds, unless the public water system can demonstrate that cost recovery from liable parties is not possible (this would not apply in cost recovery cases where cleanup funds received from this DHS are less than \$1 million); and (6) expands the Regional Water Quality Control Boards' (RWQCBs') use of hearing panels to matters in addition to just administrative civil liabilities and cease and desist orders.

BACKGROUND:

UST Program:

In 1983, California became one of the first states to regulate the construction, permitting and monitoring of USTs containing hazardous substances by adopting the *Underground Storage of Hazardous Substance* provisions in the HSC.

Title VI of the Hazardous and Solid Waste Amendments of 1984 to the federal Resource Conservation and Recovery Act (RCRA) established the federal program regulating USTs. The United States Environmental Protection Agency (USEPA) promulgated final regulations in 1988 with respect to UST construction and monitoring methods. The federal regulations set standards for new UST system design, construction, installation and notification, upgrading of existing UST systems, general operating requirements, release detection, reporting and investigation, corrective action and out-of-service and closed UST systems. Additionally the USEPA regulations impose financial responsibility requirements on owners or operators of USTs containing petroleum.

The SWRCB developed statewide standards for the installation, monitoring, and upgrading of UST systems in California. A person must comply with various laws enacted by the Legislature and regulations adopted by the SWRCB in order to own or operate a UST. The most common USTs are those containing motor vehicle fuel located at gasoline stations. If motor vehicle fuel is released from a UST, it may contaminate groundwater thereby threatening public health, safety, and the environment. Therefore existing law establishes various requirements to prevent releases. For USTs containing motor vehicle fuel, existing law establishes design and monitoring standards that are dependent upon when an owner installed the USTs.

California's UST law contains a financial responsibility requirement that mirrors the requirement of federal law. Each owner and operator of a UST system must maintain evidence of financial responsibility of taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from the UST system.

In addition to efforts to prevent the release of product from a UST system, the UST laws establish procedures for investigating and remediating a release from a UST system. Existing law gives the SWRCB responsibility to adopt regulations governing the investigation and cleanup of releases from UST systems containing motor vehicle fuel.

To assist certain owners or operators in correcting the effects of unauthorized releases from petroleum USTs, the Legislature established the UST Cleanup Fund. The purpose of the UST Cleanup Fund is to protect public health and safety and the environment by rapidly distributing cleanup funds. UST owners pay a fee into the UST Cleanup Fund for every gallon of petroleum stored in a UST. The SWRCB then uses the UST Cleanup Fund to reimburse eligible UST owners and operators for certain costs, including eligible cleanup costs, resulting from an unauthorized release from their UST. The SWRCB may reimburse an eligible owner or operator up to \$1.5 million per occurrence, less a deductible, for UST Cleanup Fund-reimbursable costs.

In addition to UST Cleanup Fund monies administered by the SWRCB, the Legislature has transferred funds from the UST Cleanup Fund to establish a loan program for small businesses administered by the Trade and Commerce Agency. The loan program makes loans available to small businesses to finance the cost of removing, replacing and upgrading UST systems to comply with regulatory requirements.

CUPA Program:

This program began in 1993 with the goal of consolidating, coordinating, and making consistent local implementation of the following six regulatory programs:

(1) Hazardous Waste (Generator and Onsite Treatment); (2) Hazardous Materials (Plans and Inventories); (3) USTs; (4) Aboveground Storage Tanks (Spill Prevention); (5) Hazardous Materials (Accidental Release Prevention); and (6) Hazardous Materials (Fire Code Plan and Inventories). Before this bill was enacted, only the first two programs provide for administrative enforcement options.

A 2000 report from the Legislative Analysts Office highlighted the lack of consistency in CUPA enforcement. The California Environmental Protection Agency (Cal/EPA) supplemental report to the 2000 Budget Act also recommended a unified administrative enforcement process be adopted. Chapter 812, Statutes of 1999 (SB 989, Sher) required, in part, that the Cal/EPA to convene meetings of interested parties to review enforcement and cleanup policies and efforts relating to USTs. Workshops were held in 2001 to carry out this mandate.

Septic Tank Waiver Program:

Under current law the RWQCBs may prohibit discharges of waste from new and existing onsite sewage treatment systems (OSTS) if substantial evidence shows that the discharge will violate water quality objectives, impair present or future beneficial uses of water, cause pollution, nuisance or contamination, or unreasonably degrade the quality of the waters of the state. When a prohibited discharge occurs the RWQCB may assess administrative civil liabilities or seek court imposed civil liability against each discharger violating the prohibition. Additionally the SWRCB is required to adopt regulations or standards by January 1, 2004, for the permitting and operation of specified OSTS. The RWQCBs are required to incorporate the regulations or standards into the appropriate regional water quality control plans (Basin Plans).

Brownfield Insurance Program:

The FAIR program requires the Cal/EPA Secretary to solicit proposals for a package of environmental insurance products from insurance companies through a competitive bidding process. The insurance company selected by the Cal/EPA Secretary is required to offer a prenegotiated package of environmental insurance products to any interested recipient of a loan under the Cleanup Loans and Environmental Assistance to Neighborhoods Program, which provides loans to finance the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible property, and to any other person who conducts a response action in the state. If the insurance company selected to provide prenegotiated environmental insurance products under the FAIR program terminates its contract or otherwise becomes unable to honor written policies, the state is not required to honor those policies or to pay any claims made on those policies.

Drinking Water Treatment and Research Program:

This program, enacted by Chapter 997, Statutes of 1998 (SB 2198, Sher), provides funds to public drinking water systems whose water supplies are threatened with, or are contaminated by, MTBE. The funds may be used to treat contaminated water

supplies, investigate the sources of contamination, develop alternative water supplies, and to conduct research and development on cost-effective treatment techniques.

Porter-Cologne Water Quality Control Act (Act) Administrative Civil Penalties:

Before this bill was enacted, the executive officer of a RWQCB was authorized to issue a complaint for an administrative civil penalty under the Act. The Act also authorized the complaint to be served by personal notice or certified mail and requires that a hearing be conducted before at least a 3-member panel of the RWQCB board not later than 60 days from the date the party is served. The Act required that orders imposing administrative civil liability be served by personal service or registered mail. The Act also authorized the SWRCB to issue administrative civil liability for a violation of a waste discharge requirement.

ANALYSIS:

This new law makes a large number of amendments to a variety of statutes that are technical and clarifying in nature, that reformat language without making substantive changes and that correct cross references.

In addition, this new law makes the following substantive changes to existing law:

UST Regulatory Requirements:

- Establishes a new, more stringent set of requirements for UST systems installed on or after July 1, 2003. The law requires new tanks must be double-contained, both primary and secondary containment must be "product tight" (impervious to the liquid and vapor phases of the substance stored), water intrusion must be prevented, secondary containment must meet specified volumetric requirements, the tank must have a continuous leak monitoring system, pressurized piping must be equipped with leak detection, and the tank must be tested using enhanced leak detection, an inert gas pressure test, or an equivalent test method before it is placed into use.
- Requires that tank spill containment structures be tested annually.
- Requires licensed tank testers to prepare a report on each tank or piping integrity test they perform and to sign the report under penalty of perjury.
- Requires that owners of tanks within 1,000 feet of drinking water wells take action to fix the problem when enhanced testing shows tank leakage.

- Exempts unburied fuel piping connected to an emergency generator tank from regulation as part of an UST system if the piping is inspected each time the tank is operated, but not less than monthly, and a log of inspection results is maintained. Additionally the law allows owners and operators of emergency generator tank systems to test secondary containment using enhanced leak detection. If the tank is located within a structure that provides secondary containment, periodic secondary containment testing is not required if the tank is visually inspected at least monthly.
- Provides local agencies with the authority to affix “red tags” to the fill pipes of UST systems discovered to have significant violations. This law repeals obsolete certification requirements for tanks that were upgraded to meet a 1998 deadline. The law provides instead that when significant violations of UST requirements occur, local agencies may fasten a "red tag" to the tank, immediately if the violation represents an imminent threat, after seven days if the violation is significant but not an imminent threat and is not corrected. The law prohibits delivery of fuel to any red-tagged tank and would make violation of the red tag requirements subject to a civil penalty of up to \$5,000 per day.

UST Cleanup (Corrective Action)

- Repeals the corrective action requirements that are now part of the UST cleanup funding law (HSC Chapter 6.75) and reenacts them in the UST regulatory law (HSC Chapter 6.7). The effect of this reorganization is to locate all corrective action requirements that apply to USTs in one place and reserve the cleanup funding law for procedures for administering the UST Cleanup Fund, reimbursing owners of leaking tanks for cleanup costs, determining eligibility for reimbursement, submitting claims for reimbursement, and other similar matters.
- Authorizes the reimbursement of a new owner of an UST who would otherwise be ineligible for reimbursement for cleanup costs because the owner purchased the tank from a previous owner that was ineligible for reimbursement, even if the new owner knew about the tank at the time the property on which it is located was purchased if: (1) the new owner is not affiliated with, or a relative of, the previous ineligible owner; (2) the leaks that are the cause of the cleanup problem began before the property was purchased; and (3) the new owner obtains a permit to operate the tank, pays applicable deductibles, and pays storage fees that are owed for petroleum fuel placed in the tank. The law authorizes the SWRCB to seek reimbursement for the costs of any tank cleanup described above from the previous owner of the tank who was ineligible for reimbursement of cleanup costs.

UST Grant and Loan Program

- Reduces the minimum grant that may be made to small businesses to comply with UST requirements from \$10,000 to \$3,000.
- Deletes a requirement that grants may be made only to small businesses that have already incurred, and are making payments on, debt to upgrade their USTs.
- Authorizes grants to small businesses that will be required, because they are located within 1,000 feet of a public drinking water well, to test their tanks one time using enhanced leak detection tests to determine if they are product-tight.

Drinking Water Treatment and Research Program

- Reenacts the Drinking Water Treatment and Research Program, which sunsetted at the beginning of 2001. The reenacted program sunsets on January 1, 2010.
- Requires a public water system that receives cleanup funds from DHS to aggressively pursue the recover of cleanup costs from liable parties, and to reimburse DHS for any cleanup funds received from the DHS within five years of receiving those funds, unless the public water system can demonstrate that cost recovery from liable parties is not possible. However, the law additionally provides that DHS may not require a public water system to aggressively pursue cost recovery in cases where cleanup funds received from DHS are less than \$1million.

Porter-Cologne Water Quality Control Act Administrative Civil Penalties

- Requires that when the executive officer of a RWQCB issues a complaint imposing a civil penalty, a hearing on an appeal before the RWQCB must be held within 90 days.
- Specifies that when the SWRCB imposes administrative civil penalties, the procedure will be analogous to that used by a RWQCB. The executive director of the SWRCB will issue the complaint and any hearing shall be before the SWRCB or a member of the SWRCB and shall be conducted not later than 90 days after the party has been served.

CUPA Provisions:

- Authorizes a CUPA, if it determines that a person has committed, or is committing, a violation of any requirement that the CUPA is authorized to enforce or implement pursuant to the unified program, to issue an administrative enforcement order requiring that the violation be corrected and imposing an administrative penalty.

- Specifies procedures for the conduct of a hearing, upon the request of a person served with an order, pursuant to one of two specified hearing processes, except under certain conditions.
- Requires that all administrative penalties collected from actions brought by a CUPA to be paid to the CUPA that imposed the penalty, and that the penalties are deposited into a special account that would be required to be expended to fund the activities of the CUPA in enforcing the unified program.
- Defines the term "minor violation," for purposes of the unified program, as "the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the CUPA is authorized to implement or enforce pursuant to the program. The following violations would not qualify as a minor violation: (1) a violation that presents a significant threat to human health or the environment; (2) a willful or intentional violation; (3) a chronic violation by a recalcitrant violator; or (4) a violation that enables a violator to benefit economically from the noncompliance.
- Directs a CUPA, which discovers a minor violation, to issue a notice to comply detailing the violation.

Septic Tank Waiver

- Extends the waiver renewal deadline for septic systems from January 1, 2003 to June 30, 2004 to allow new statewide septic system standards to be developed.

Financial Assurance and Insurance for Redevelopment Program (FAIR)

- Provide sufficient indemnification for the State of California in developing the FAIR brownfield insurance program.