
State Water Resources Control Board

~ Sent Via Email ~

November 1, 2012

To: Unified Program Agencies

CLARIFICATION REGARDING VOLUNTARY PRE-TESTING AND PREVENTATIVE MAINTENANCE FOR CONTAINMENT SYSTEMS AND LEAK DETECTION EQUIPMENT

This letter is to provide clarification as to whether voluntary pre-testing and preventative maintenance (equipment or containment testing/maintenance done prior to an event that is required by law) are subject to the same notice and/or certification requirements as tests required by law. This letter is also to clarify if Health and Safety Code section 25299.2 is appropriate for use as an authorization to require elements of a regulatory test be applied to a voluntary test. The answers to these questions are mixed, and are explained below.

California Code of Regulations, Title 23, Division 3, Chapter 16 does not prohibit performing pre-testing or conducting preventative maintenance on an underground storage tank (UST). Furthermore, California Code of Regulations, Title 23, Division 3, Chapter 16, sections 2637 and 2638 do not apply to pre-testing and preventative maintenance. Please note, however, that persons performing pre-testing or conducting preventive maintenance still must comply with the Service Technician licensing, training, and certification requirements set forth in California Code of Regulations, Title 23, Division 3, Chapter 16, section 2715.

Regardless of the applicability of testing requirements, UST owners and operators must comply with the requirements to retain written monitoring and maintenance records and requirements to record and report any unauthorized releases (California Code of Regulations, Title 23, Division 3, Chapter 16, sections 2712 and 2650).

I also would like to take this opportunity to remind the UPAs that use of Health and Safety Code section 25299.2 as authority for "policies" to require elements of a regulatory test to be applied to pre-testing or preventative maintenance is not appropriate. Section 25299.2 grants, "...the right of a local agency to adopt and enforce any regulation, requirement, or standard of performance that is more stringent than...this chapter..." The UPA must adopt the "policy" as a regulation, requirement, or

standard of performance for it to have the effect of law. Without formal adoption, a “policy” does not have the effect of law and cannot be enforced.

We appreciate your cooperation in this matter. If you have any questions pertaining to this letter, please contact me at (916) 341- 5870 (lfisher@waterboards.ca.gov) or Gabriel Herrera at (916) 319 - 9128 (gherrera@waterboards.ca.gov).

Sincerely,

A handwritten signature in cursive script that reads "Laura S Fisher".

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

cc: Julie M. Osborn, Attorney I
Office of Chief Counsel
State Water Resources Control Board