



State Water Resources Control Board

March 1, 2013

To: Unified Program Agencies

ACCEPTABLE POSITIONS OF TEST BOOTS AND/OR REDUCER FITTINGS IN UNDER DISPENSER CONTAINMENT TO SATISFY "EARLIEST POSSIBLE OPPORTUNITY"

This letter is in response to concerns about permissible positions of test boots and/or reducer fittings in under dispenser containment (UDC). Specifically, the phrase "earliest possible opportunity" in section 2630(d) of the California Code of Regulations, title 23 and whether this phrase requires that test boots and/or reducer fittings located in the UDC must be removed so as to not allow for any possible delay in leak detection.

BACKGROUND

There is no specific California statutory or regulatory language specifying the position of test boots and/or reducer fittings in the UDC (often used for secondary containment testing). The California Code of Regulations, title 23, section 2630(d) provides that monitoring equipment must be capable of detecting an unauthorized release "at the earliest possible opportunity."

REGULATORY REQUIREMENTS

Pursuant to the California Health & Safety Code, division 20, chapter 6.11, section 25404.1(a), all aspects of the unified program related to the adoption and interpretation of statewide standards and requirements shall be the responsibility of the State Water Resources Control Board (State Water Board). The State Water Board frequently provides guidance on ambiguous or complex regulatory provisions to Unified Program Agencies in order to ensure consistency throughout the state.

A strict interpretation of the phrase "at the earliest possible opportunity" could be that test boots and/or reducer fittings must be removed when in the UDC so as to not allow for any possible delay in leak detection. However, the regulatory language does not require this strict interpretation. The term "earliest possible opportunity," which is not defined in statute or regulation, may be considered synonymous with the terms "earliest practical opportunity" or "first opportunity." Furthermore, applying a strict interpretation of detecting a leak "at the earliest possible opportunity" also would mean that only the most responsive leak detection equipment available could be used, and that various types of technologies, that are available and approved for use under Title 23, and other effective design and construction technologies would be ineligible for use.

Consistent with past State Water Board decisions on leak detection requirements, the State Water Board has the authority to interpret the phrase "earliest possible opportunity" taking into account the variability of the capability (e.g. threshold limit and response time) of leak detection

equipment, environmental harm of leaving the test boot on in the UDC, the industry standard, and the economic cost of taking the test boot off in the UDC. (See Cal. Code of Regs, tit. 23, §§ 2635, subd. (d)(2) & 2636, subd. (c)(2).)

CURRENT SITUATION

For the situation described above the State Water Board has made the determination that “the earliest possible opportunity” must consider not only the amount of release before it will be detected but also take a reasonable approach in considering how testing, servicing, and inspection of the leak detection equipment can be accomplished. It is important to note that leak detection equipment response times and positional locations vary significantly and influence detection times; however, each approved piece of leak detection equipment is acceptable for meeting the leak detection at the “earliest possible opportunity” requirement.

After taking into account the variability in the capability of leak detection equipment and current design and construction methods, the State Water Board has determined that the position of test boots and/or reducer fittings in the UDC (on or off) does not cause a significant delay in leak detection or substantially increase the risk of a release to the environment but does incur an unnecessary cost to compliance.

RECOMMENDATIONS

To provide for the detection of a leak at the “earliest possible opportunity,” test boots and/or reducer fittings in the UDC of piping runs that are monitored for leaks by use of sloping the piping back to a monitored sump may stay on in any position. Piping runs that connect one UDC to another UDC must have the test boots and/or reducer fittings located in both UDCs either: 1) pulled back and off; or 2) oriented so that the test boot’s and/or reducer fitting’s port is in the downward position (located between the three and nine o’clock positions), uncapped, and with the valve stem capable of allowing for drainage so that a leak from the product piping can be detected.

All test boots and/or reducer fittings located in monitored sumps (other than UDCs) must either be: 1) pulled back and off; or 2) oriented so that the test boot’s and/or reducer fitting’s port is in the downward position (located between the three and nine o’clock positions), uncapped, and with the valve stem capable of allowing for drainage so that a leak from the product piping can be detected.

If you have questions regarding acceptable positions of test boots and/or reducer fittings please contact Cory Hootman at (916) 341-5668 or chootman@waterboards.ca.gov.

Sincerely,



Laura S. Fisher, Chief
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cc: Julie M. Osborn, Attorney III
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State Water Resources Control Board