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LG 165

STORAGE TANKS IN CONTAINMENT STRUCTURES LOCATED BENEATH THE SURFACE OF THE GROUND

(Available electronically at <http://www.swrcb.ca.gov/ust>)

July 14, 2004

To: Local Agencies and Other Interested Persons

The purpose of this letter is to answer some common questions that have arisen to date regarding whether storage tanks in containment structures (e.g., vaults or basements) located beneath the surface of the ground are underground storage tanks (USTs), and if so, whether such USTs are exempt from the requirements set forth in Chapter 6.7 of the Health and Safety (H&S) Code and Chapter 16 of Title 23, of the California Code of Regulations (CCR), and whether such storage tanks are aboveground storage tanks (ASTs).

1. What are some examples of USTs that are located in containment structures beneath the surface of the ground or not enclosed in earthen materials?

Examples of USTs that are located in containment structures beneath the surface of the ground or not enclosed in earthen materials include those: in below-grade service bays (e.g., motor vehicle oil change facilities); in basements that provide fuel for back-up generators or vehicle fueling; and enclosed in structures that provide secondary containment.

2. What is the definition of an UST?

“UST” is defined as any one or combination of tanks, including piping¹ connected thereto, that is used for the storage of hazardous substances and that is “substantially or totally beneath the surface of the ground” (explained below). Please note that certain exemptions apply. [H&S Code, §25281(y)(1).] “UST system” means an UST, connected piping, ancillary equipment, and containment system. [H&S Code, §25281(z).]

3. What is the meaning of the phrase “substantially beneath the surface of the ground?”

An UST is considered “substantially beneath the surface of the ground” if at least 10% of its system volume, including the volume of any connected piping¹, is located beneath the surface of the ground or is enclosed below earthen materials. [Title 23, CCR, §2611.]

¹ For USTs installed on or after July 1, 2003, the definition of pipe has been extended to include vent lines, vapor recovery lines, and fill pipes that are beneath the surface of the ground. [H&S Code, §25290.2(j).]

Therefore, a storage tank is an UST if at least 10% of the system volume is beneath the surface of the ground, regardless of whether it is located in a containment structure beneath the surface of the ground or enclosed below earthen materials.²

4. If an UST is located in a containment structure beneath the surface of the ground, is it exempt from the requirements set forth in Chapter 6.7 of the H&S Code and Chapter 16 of Title 23, of the CCR?

An UST may be exempt from the requirements set forth in Chapter 6.7 of the H&S Code and Chapter 16 of Title 23, of the CCR, if the UST meets all of the following criteria: (1) all exterior surfaces of the tank, including piping¹, and the floor directly beneath the tank, can be monitored by direct viewing³; (2) the structure in which the tank is located is constructed in such a manner that the structure provides for secondary containment of the contents of the tank; (3) the owner or operator conducts weekly inspections of the tank and maintains a log of the inspection results for review by the local agency; and (4) the local agency determines without objection from the Board that the UST meets requirements that are equal to or more stringent than those imposed by Chapter 6.7 of the H&S Code⁴. [H&S Code, §25283.5.] USTs that meet the exemption criteria of Chapter 6.7 of the H&S Code, but which are issued an operating permit by the local agency under separate authority, qualify for an exemption from the UST maintenance fee collected by the Board of Equalization (BOE). [H&S Code, §25283.5, 25284, 25299.41.] Owners of exempt USTs issued an operating permit may submit a request to the BOE to verify that they are exempt from the UST maintenance fee. This request must include written documentation from the local agency confirming that the UST meets the exemption criteria of Chapter 6.7 of the H&S Code and the reason why an operating permit was issued (e.g., inspection purposes). Requests can be submitted to the Board of Equalization, Fuel Industry Section, P. O. Box 942879, Sacramento, CA 94279⁵.

² Please note that pursuant to the H&S Code and Chapter 16 of Title 23, of the CCR, the definition of an UST and UST system pertain to regulation of the storage of a hazardous substance. For vapor recovery requirements that may pertain to storage tanks located in structures beneath the surface of the ground, please call Ms. Stephanie Connelly of the California Air Resources Board at (916) 445-9308.

³ To meet the direct viewing visual inspection requirement, the UST must provide an unobstructed view of ALL surfaces. Certain local agencies may allow direct viewing to be accomplished with the use of visual aids (e.g., video camera or mirror). Please note that direct viewing may raise health and safety concerns, such as confined space entry requirements. If appropriate, please consult your health and safety officer.

⁴ For USTs in containment structures located beneath the surface of the ground, we are not aware of any design, construction, and monitoring methods that are equal to or more stringent than the requirements for USTs installed on or after July 1, 2003. Therefore, we are not aware of any USTs installed on or after July 1, 2003 that would qualify USTs for this exemption.

⁵ For more information on the UST maintenance fee, please call the BOE, Fuel Taxes Division, at (916) 322-9669.

5. **Can an UST that is exempt from the requirements set forth in Chapter 6.7 of the H&S Code and Chapter 16 of Title 23, of the CCR, be regulated as an AST under the Aboveground Petroleum Storage Act (APSA), Chapter 6.67 of the H&S Code?**
No. An UST that is exempt from the requirements set forth in Chapter 6.7 of the H&S Code is still by definition an "underground storage tank" and thus would not be subject to regulation as an AST under APSA, Chapter 6.67 of the H&S Code.
6. **Can an UST (either regulated or exempt) be regulated as an AST by the United States Environmental Protection Agency (U. S. EPA), the California Air Resources Board (ARB), or a local fire authority?**
Yes. A storage tank that is defined as an UST in Chapter 6.7 of the H&S Code could be regulated as an aboveground storage container by the U. S. EPA and may be required to have an Spill Prevention, Control, and Countermeasure (SPCC) Plan (40 Code of Federal Regulations 112)⁶. These tanks could also be regulated as an AST by the California Air Resources Board² for the purpose of vapor recovery requirements (Chapter 3 of the H&S Code). Additionally, it is possible that a storage tank that is defined as an UST in Chapter 6.7 of the H&S Code could be regulated as an AST by local fire authorities for the purpose of fire safety codes (e.g., California or Uniform Fire Code).
7. **What should be done if a storage tank is currently registered and/or regulated under APSA when it is really an UST as defined in the H&S Code and Chapter 16 of Title 23, of the CCR?**
The local agency should contact the owner of the facility and require that the owner appropriately register the storage tank as an UST. Storage tank owners who need assistance in determining whether a storage tank is an UST or an AST should contact their UST local agency (enclosed is a list of UST local agencies). If a storage tank that is registered with the State Water Resources Control Board AST Program is found to be an UST, please notify Mr. David Ceccarelli by email at ceccerad@swrcb.ca.gov or by phone at (916) 341-5671 of the change in program status.

If you have questions regarding this letter, please call Ms. Laura Chaddock at (916) 341-5870.

Sincerely,

[*Original signed by*]

Elizabeth L. Haven, Manager
Underground Storage Tank Program

Enclosure

⁶ For more information on SPCC requirements, please call Mr. Pete Reich with U. S. EPA at (415) 972-3052.