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May 18, 2000

To: All Local Underground Storage Tank Program Managers and CUPA Agencies

LEGAL AUTHORITY TO IMPLEMENT ENFORCEMENT ALERTS

The State Water Resources Control Board recently issued three enforcement alerts requesting your cooperation in discovering violations of the 1998 UST upgrade requirements. This memo outlines the legal authority to implement the recommended action set forth those alerts.

Enforcement Alert #2 recommends that a preliminary assessment be conducted to verify compliance of single-wall piping systems with upgrade requirements. This requires an inspection of both the dispenser and turbine areas. What is my authority to conduct this inspection?

In order to carry out the purposes of the Chapter 6.7 of the Health and Safety Code, including verifying compliance with the upgrade requirements, a local agency is authorized, at any reasonable hour of the day, to enter and inspect a facility where an underground storage tank is located. (Health and Saf. Code, §§ 25289, 25185.) If you are denied access to the property or denied permission to inspect the dispenser and turbine areas during the preliminary assessment, contact your local District Attorney immediately. Your District Attorney can assist you in obtaining an administrative inspection warrant. (*Id.* § 25185; Code Civ. Proc., § 1822.50 et seq.)

If I find that the dispenser or turbine area is not compliant, what authority do I have to take pictures?

If you find that the dispenser or turbine are is not compliant with the 1998 UST upgrade requirements, you may take pictures of the conditions that constitute a violation of the law pursuant to subdivision (a)(5) of section 25185 of the Health and Safety Code. (Health and Saf. Code, § 25289.)

After I have documented any noncompliance, what can I legally do next?

Revoke the Operating Permit

If your preliminary assessment indicates that the UST system is out of compliance with the 1998 upgrade requirements, you may immediately revoke the operating permit. (Health and Saf. Code, § 25285.1.) Revoking the operating permit simultaneously revokes any accompanying upgrade compliance certificate. (*Id.* § 25284, subd. (e).) If you revoke the operating permit, the facility will effectively be shut down. To protect against continued unlawful operation, you may notify fuel distributors that the operating permit and upgrade compliance certificate are no longer valid and that fuel deliveries to

the subject UST station are prohibited. (*Id.* §25292.3.) If the owner or operator continues to operate without a valid permit, they will be in violation of the law and could face civil penalties. (*Id.* §§ 25284, subd. (a), 25299, subd. (a)(1).)

The Uniform Fire Code may also provide authority to install chains and locks on dispensers and pumps at those stations found to be out of compliance. The Long Beach Fire Department has successfully done this in the past. They may be contacted at (562) 570-4153. You may also contact your county counsel regarding the authority to implement this procedure.

Request that the owner or operator expose the entire single-wall piping system

Once a local agency has revoked a facility's operating permit, that facility may not legally continue to operate without first obtaining a new permit. (Health and Saf. Code, §25284, subd. (a).) Local government agencies have the exclusive authority to issue operating permits to owners and operators of USTs. (*Id.*) Before any new permit is issued to a facility that has had their operating permit revoked, the local agency is required to inspect the underground storage tank and determine that it meets the upgrade requirements. (Cal Code Regs, tit. 23, § 2712, subd. (c).) In order to do this, the local agency may require that the owner or operator expose the entire UST. If the owner or operator refuses, the local agency should not issue a new permit. The local agency also has authority to expose the piping even in the absence of a permit request. (Health & Saf. Code, §§ 25289, 25185.) If you wish to do so, you should get permission from the owner or operator. If permission is not granted, contact your local District Attorney and request that they assist you in obtaining an administrative inspection warrant.

Take Samples to Determine if there is Contamination

If your preliminary assessment indicates that the UST is out of compliance with the upgrade requirements, you may take soil samples from the property on which the tank is located and any real property within 2000 feet of the tank to determine whether or not there is contamination. (Health and Saf. Code, §§ 25289, subd. (a), 25185, subd. (a)(2).)

If contamination is found, you may require that the owner or operator remove the remaining stored substance from the tank to prevent further releases to the environment or to facilitate corrective action. (Cal. Code Regs., tit. 23, § 2652, subd. (b).)

If you have any questions, please contact me at (916) 227-4420.

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State Water Resources Control Board