
State Water Resources Control Board

May 13, 2020

To: All UST Stakeholders

Discussion of Regulatory Relief and Enforcement Discretion

The State Water Resources Control Board (State Water Board) recognizes the challenges the COVID-19 Emergency has created for both regulators and the regulated community in many of the State Water Board's program areas, including Underground Storage Tanks (USTs). Compliance with UST leak prevention requirements is an essential function during the COVID-19 response. In specific, limited circumstances, the State Water Board across our divisions and offices has provided "regulatory relief" from certain requirements on a case-by-case basis as a result of the COVID-19 Emergency.

It has come to our attention that this type of "regulatory relief" is being confused with "enforcement discretion". To ensure proper consideration and action is being taken, the State Water Board provides the following explanations:

"Regulatory relief" is a formal determination by the State Water Board that a regulatory requirement is suspended for a period of time due to a specific conflicting COVID-19 directive or guideline. While regulatory relief may be appropriate for some requirements due to the COVID-19 Emergency, no such relief has been provided to the UST leak prevention requirements. Thus, the regulatory requirements for USTs still apply.

"Enforcement discretion" refers to a determination that, while there may be a violation of an applicable regulatory requirement, the governing body may consider the extent to which the COVID-19 Emergency contributed to the non-compliance and what, if any, enforcement response is appropriate. In the context of the COVID-19 Emergency, the difficulties of maintaining compliance because of the public health orders and/or illness experienced by UST owners and operators can be considered when determining if enforcement is warranted. Generally, even if a CUPA decides to forego formal enforcement (i.e., referral to City Attorney or District Attorney) it should nevertheless continue with informal enforcement, including communicating with the owner/operator, issuing Notices of Violation, and ensuring that the owner/operator returns to compliance as soon as is practicable under the circumstances.

Because compliance with health and safety regulations are considered essential functions, exercising enforcement discretion should be done a very narrow set of

circumstances, and accompanied with a plan to come back into compliance at the earliest possible time.

For more information regarding compliance with UST regulatory requirements, please see the link below:

https://www.waterboards.ca.gov/ust/docs/covid_letter.pdf

For information regarding the State Water Board's response to the COVID-19 emergency, please see the link below:

https://www.waterboards.ca.gov/resources/covid-19_updates/index.html

If you have questions regarding this letter, please contact me at (916) 341-5870 or Laura.Fisher@waterboards.ca.gov, or Tom Henderson at (916) 319-9128 or Tom.Henderson@waterboards.ca.gov.

Sincerely,



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