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LG 165 – 2: STORAGE TANKS IN CONTAINMENT STRUCTURES LOCATED BENEATH THE SURFACE OF THE GROUND HEALTH AND SAFETY CODE SECTION 25283.5 EXEMPTION

To: Local Agencies and 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 located beneath the surface of the ground (e.g., vaults, basements) are underground storage tanks (USTs), and if so, how to determine 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).

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); basements that provide fuel for back-up generators or vehicle fueling; and 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).]

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).]

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

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

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.

4. If a pre-July 1, 2003 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 installed pre-July 1, 2003 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 piping, and the floor directly beneath the tank, can be monitored by direct viewing²; (2) the structure in which the tank is located is constructed in such a manner that the structure, at a minimum, 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 that the UST meets requirements that are equal to or more stringent than those imposed by Chapter 6.7 of the H&S Code. [H&S Code, §25283.5.]

In determining ‘equal to or more stringent’ criteria for this exemption, the local agency evaluation and determination shall be based on those requirements otherwise imposed on USTs installed at the relevant time. For example, if an UST is installed in a vault in 1990, to be exempt under Section 25283.5, the UST would need to meet requirements that are equal to or more stringent than those required in H & S Code Section 25291. An exception to this rule applies to USTs installed on or after July 1, 2003. See number 5, below.

² To meet the direct viewing requirement, there must be an unobstructed view of ALL surfaces of the tank and piping, and the floor directly beneath the tank. Certain local agencies may allow direct viewing to be accomplished with the use of visual aids (e.g., video camera, 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.

5. If an UST is installed on or after July 1, 2003 and 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 installed on or after July 1, 2003 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 viewing²; (2) the structure in which the tank is located is constructed in such a manner that the structure, at a minimum 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 that the UST meets requirements that are equal to or more stringent than the requirements of paragraphs (1) to (6), inclusive, of subdivision (a) and subdivisions (b) to (i), inclusive, of Section 25291. [H&S Code, §25283.5.]

In determining 'equal to or more stringent' criteria for this exemption, the local agency evaluation and determination shall include vent lines, vapor recovery lines, or fill pipes that are beneath the surface of the ground (also noted in Footnote 1).

6. If an UST that meets the exemption criteria of Chapter 6.7 of the H&S Code and is nonetheless issued an operating permit by the local agency, can the UST still qualify for an exemption from the UST maintenance fee collected by the Board of Equalization (BOE)?

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 State Board of Equalization, Special Taxes and Fees Division, Registration and Licensing Section, MIC: 88, PO Box 942879, Sacramento, CA 94279-0088³.

³ For more information on the UST maintenance fee, please call the BOE, Taxpayer Information Section at 1-800-400-7115.

7. 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 aboveground storage tank (AST) under the Aboveground Petroleum Storage Act (APSA), Chapter 6.67 of the H&S Code?

No. A tank regulated as an UST under Chapter 6.7 is exempt from the definition of an aboveground storage tank under APSA. If a tank does not meet the general definition of an UST or is expressly excluded from the definition, then the tank is not regulated in any way under Chapter 6.7. In those cases, the tank may be subject to ASPA. On the other hand, USTs that qualify for the exemption under Section 25283.5 are tanks that meet the definition of an UST and are regulated under Chapter 6.7, albeit to a limited extent. These USTs are subject to inspection to ensure that the exemption criteria are maintained. Also, a local agency is authorized to review weekly-inspection logs that owners and operators are required to keep, as part of maintaining the exemption under Section 25283.5. Although exempt from most requirements of Chapter 6.7, these USTs are regulated to the extent to ensure that the exempt criteria are satisfied. As such, they should be considered USTs regulated under Chapter 6.7 and exempt from the definition of an AST under ASPA.

8. 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). These tanks could also be regulated as an AST by the ARB 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 International Fire Code).

If you have questions about this guidance letter, please contact Cory Hootman at (916) 341-5668 or via email at chootman@waterboards.ca.gov.

Sincerely,



for
Kevin L. Graves, Manager
Underground Storage Tank Program