

DATE ISSUED: May 5, 2004

REPORT NO. 04-098

ATTENTION: Natural Resources and Culture Committee
Agenda of May 12, 2004

SUBJECT: Abandoned Gas Stations & Underground Storage Tanks

SUMMARY

THIS IS AN INFORMATIONAL ITEM ONLY. NO ACTION IS REQUIRED ON THE PART OF THE MAYOR AND CITY COUNCIL.

BACKGROUND

The County of San Diego, Department of Environmental Health (DEH), Hazardous Materials Division (HMD) is the Certified Unified Program Agency (CUPA) and the lead agency responsible for regulating all underground storage tanks (USTs) in all areas of San Diego County including the unincorporated areas and all incorporated cities. The HMD works closely with the City of San Diego, Fire and Life Safety Services on UST installations and removals. The HMD also relies upon the Office of the San Diego City Attorney, Consumer & Environmental Protection Unit to assist with UST enforcement cases within the City of San Diego.

UNDERGROUND STORAGE TANK SITES & DATA

Per the HMD records, the number and type of UST sites and releases within the City of San Diego and countywide are as follows:

UST Sites	City of San Diego	Countywide (includes San Diego City sites)
Active UST facilities (stations)	513	1,200
Active USTs at facilities	1,457	3,371
USTs closed since 1985	5,160	11,713
Releases of UST contents	1,342	3,165

The HMD identifies UST site by category, and each category may have USTs undergoing some type of site assessment or cleanup. The categories include the following:

- a. USTs that are operating in compliance.
- b. USTs that are operating but are significantly out-of-compliance (SNCs).
- c. USTs that are being upgraded for better environmental protection.
- d. USTs in temporary closure – usually with the intent of being upgraded or sold to another owner; USTs can only be in temporary closure for up to one year.
- e. USTs that are not active (abandoned) and the responsible party is unwilling to upgrade the USTs or remove them.
- f. USTs have been removed but the facilities still have the appearance of being a gas station.
- g. USTs uncovered during redevelopment, especially those for heating oil, installed prior to 1984 without permits.

In cases where USTs have been found to have leaked, the DEH, Land and Water Quality Division, oversees the process to be followed by responsible parties and their consultants to perform environmental investigations and clean up actions at contaminated sites. The DEH authorizes several cleanup technologies including,

- Soil excavation off-site disposal
- Soil excavation on-site treatment and re-use
- Soil vapor extraction
- Air Sparging
- Natural attenuation and bioremediation
- In-situ groundwater bioremediation
- Groundwater pump and treatment
- Biosparging

Each UST site is inspected by HMD staff and tested and certified by the operator annually, for compliance, as required by law. Since October 2002, the HMD has reduced the number of SNCs within the City of San Diego from 192 to 69 and from 395 to 144 in the entire County of San Diego. Within the City of San Diego, the HMD has identified eight sites with abandoned USTs, and only one of them is a gas station. The HMD has made these eight sites a priority for investigation and enforcement.

LAWS AND ENFORCEMENT

A comprehensive regulatory scheme, created by federal and state law, exists to address safety and pollution issues related to USTs. The federal law is commonly referred to as the Resource Conservation Recovery Act (RCRA) enacted in 1976, 42 USCA section 6901 et. seq. The federal law allows a program in states such as California USTs to regulate USTs.

In 1983 the California Legislature enacted the Underground Storage of Hazardous Substances Act, Health and Safety Code Chapter 6.7. The intent of the legislation was to, “. . . establish orderly procedures that will ensure that newly constructed underground storage tanks meet

appropriate standards and that existing tanks be properly maintained, inspected, tested, and upgraded so that the health, property, and resources of the people of the state will be protected.” Health and Safety Code section 25280(b).

In 1989 the California Legislature passed the Berry Keene Petroleum Underground Storage Tank Cleanup Trust Fund Act, Health and Safety Code section 6.75. The intent of the legislation was to ensure the efficient distribution of cleanup funds. These laws are further supported by specific regulations found in the California Code of Regulations.

These regulations are enforced by administrative actions or judicial court actions. Owners and operators are subject to civil liability of up to \$5,000 per tank per day for each violation of Chapter 6.7, and increase to \$10,000 per day for a violation of Chapter 6.75. Tank operators who falsify monitoring records or knowingly fail to report an unauthorized discharge are also subject to criminal penalties under Chapter 6.7.

The Office of the City Attorney prosecutes violations of Chapter 6.7 and 6.75 when the matter is referred for prosecution by the DEH. The Attorney’s enforcement actions include, but are not limited to; the recovery of monetary penalties, reimbursement of costs of investigation and cleanup, and removal or upgrade of the UST.

The City of San Diego has an additional enforcement tool for abandoned USTs under section 7902.1.7.2.3 of the California Fire Code as adopted by the San Diego Municipal Code section 55.0101. These cases are referred to the City Attorneys Office by the San Diego Fire-Rescue Department. Under the Municipal Code, UST tank owners are subject to six months in custody and a \$1,000 fine for failing to properly close or remove the UST.

In light of the City Attorney’s successful prosecution of cases resulting in the removal of tanks, coupled with a comprehensive state and local regulatory scheme, there is no need, at this time, for a new municipal ordinance. Moreover, attempting to add a municipal UST ordinance may be redundant and most likely subject to a pre-emption challenge.

Respectfully submitted,

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Approved: Richard G. Mendes
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HEAP/SMC