



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS**

Date Amended	<b>04/04/01</b>	Bill No:	<b>AB 1465</b>
Tax:	<b>Underground Storage Tank Maintenance</b>	Author:	<b>Nation</b>
Board Position:	<b>Oppose</b>	Related Bills:	

**BILL SUMMARY**

This bill would add non-farm, non-residential heating oil tanks to the definition of "underground storage tank" for purposes of imposing the Underground Storage Tank Maintenance Fee.

This bill would also provide that the State Water Resources Control Board (SWRCB) can pay a claim for corrective action or reimbursement for those costs related to the compensation of third parties for bodily injury and property damages only if it finds that the claimant has paid all underground storage tank fees, interest, and penalties.

**ANALYSIS**

**Current Law**

**Non-farm, non-residential heating oil tanks.** Under existing law, Section 25299.41 of the Health and Safety Code requires every owner of an underground storage tank to pay a storage fee of six mills (\$0.006) for each gallon of petroleum (including both gasoline and diesel) placed in an underground storage tank which he or she owns. Section 25299.43 imposes an additional fee of six mills (\$0.006) for a total underground storage fee of twelve mills (\$0.012) per gallon.

Section 25299.24 of the Health and Safety Code, which is in the chapter that imposes the fee, defines underground storage tank to have the same meaning as defined in Section 25281, except that it means only those tanks that are defined as petroleum underground storage tanks under the federal act.

Section 25281, which is in the chapter that requires tanks to be permitted, defines an underground storage tank to mean any one or combination of tanks, including pipes connected thereto, which is used for the storage of hazardous substances and which is substantially or totally beneath the surface of the ground. Specifically excluded from the definition, in part, is a tank which is located on a farm or at the residence of a person, which has a capacity of 1,100 gallons or less, and which stores home heating oil for consumptive use on the premises where stored.

**REVISED COST AND REVENUE ESTIMATES**

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The federal act defines underground storage tank to mean any one or combination of tanks that is used to contain an accumulation of regulated substances, and the volume of which is 10 percent or more beneath the surface of the ground. The term underground storage tank does not include, in part, a tank used for storing heating oil for consumptive use on the premises where stored.

The underground storage tank fees, which are reported and paid to the Board, are deposited into the Underground Storage Tank Cleanup Fund. The money in the fund may be expended by the SWRCB, upon appropriation by the Legislature, for various purposes, including payment of a California regional water quality control board's or local agency's corrective action costs, and the payment of claims to aid owners and operators of petroleum underground storage tanks who take corrective action to clean up unauthorized releases from those tanks.

**Eligibility for SWRCB resources.** Under existing law, Sections 25299.57 and 25299.58 of the Health and Safety Code do not require that a claimant pay all underground storage tank fees, interest and penalties to be eligible for reimbursement for corrective action or for the costs related to the compensation of third parties for bodily injury and property damage.

### Proposed Law

**Non-farm, non-residential heating oil tanks.** This bill would amend Section 25299.24 to revise the definition of "underground storage tank" to specifically include tanks that contain only petroleum, or consistent with the federal act, a mixture of petroleum with de minimis quantities of other regulated substances. In short, this bill would delete the current reference to the federal act and thereby would impose the fee upon tanks used for storing heating oil for consumptive use on the premises where stored unless such tanks have a capacity of 1,100 gallons or less and are located on a farm or at the residence of a person.

**Eligibility for SWRCB resources.** This bill would provide that The SWRCB can pay a claim for corrective action and costs related to the compensation of third parties for bodily injury and property damages only if it finds that, among other things, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 29299.40) of the Health and Safety Code and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

This bill would also make other technical changes to the Barry Keene Underground Storage Tank Cleanup Trust Act of 1989. However, those changes do not affect the Board.

### In General

**Non-farm, non-residential heating oil tanks.** Under existing law, non-farm, non-residential heating oil tanks are included within Section 25281's definition of an underground storage tank for purposes of permitting, but are not included in the federal

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law and Section 25299.24 definitions of an underground storage tank for purposes of imposing the underground storage tank fee. Therefore, no fee is due for petroleum placed in such tanks. However, the SWRCB has paid claims for corrective actions concerning these tanks. Corrective action includes, but is not limited to, evaluation and investigation of an unauthorized release of petroleum, initial corrective action measures, and any actions necessary to investigate and remedy any residual effects remaining after the initial corrective action.

Consequently, the Board does not collect the tank fee on non-farm, non-residential heating oil tanks, but the SWRCB has paid claims for corrective action for such tanks

In November 2000, the SWRCB amended its regulatory definition of “underground storage tank” to make it consistent with the statutory definition the Board relies upon to collect the storage tank fee. Therefore, the SWRCB no longer considers non-farm, non-residential heating oil tanks to be eligible for corrective action reimbursement.

**Eligibility for SWRCB resources.** Current law requires an owner of an underground storage tank, for which a permit is required, to pay a storage fee for each gallon of petroleum placed in the tank. However, there is no express statutory requirement that a tank owner or operator demonstrate that fees imposed under current law have been paid in order to be eligible for resources from the Underground Storage Tank Cleanup Fund.

### **Background**

In 1989, Senate Bill 299 (Ch. 1442, Keene) added Section 25299.24 to the Health and Safety Code. In addition, SB 299 required an owner or operator of an underground storage tank containing petroleum to pay an annual \$200 fee to the Board.

Senate Bill 2004 (Ch. 1366, 1990, Keene), among other things, repealed the annual \$200 maintenance fee and required an owner of an underground storage tank to pay a quarterly storage fee of six mills (\$0.006) for each gallon of petroleum placed into an underground storage tank.

In 1994, SB 1764 (Ch. 1191, Thompson) increased the storage fee for petroleum placed in an underground storage tank, which ultimately increased the fee by an additional 6 mills (\$0.006) effective January 1, 1997.

### **COMMENTS**

1. **Sponsor and purpose.** This bill is sponsored by the SWRCB and is intended, in part, to clarify that non-farm, non-residential heating oil tanks are included under the definition of “underground storage tank” applicable to the storage tank fee, and the owners of such tanks are therefore required to pay the underground storage tank fee. In turn, such tank owners are liable for reimbursement of their cleanup costs should the tanks leak. In addition, this bill is intended to provide an incentive for underground storage tank owners to pay outstanding storage fees, interest and penalties in order to access underground storage tank cleanup fund benefits.

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2. **This measure would ensure that non-farm, non-residential tank owners are eligible for reimbursement from the Underground Storage Tank Cleanup Fund.**

Prior to November 2000, the SWRCB paid reimbursement claims for the cleanup of at least five leaking non-farm, non-residential heating oil tanks although the owners of such tanks were not subject to the underground storage tank fee. This occurred because the SWRCB reimbursed cleanup costs associated with tanks that met the definition of a tank for permitting purposes, while the Board collected the fee from owners of tanks that met the definition of a tank for fee purposes.

In November 2000, the SWRCB's regulatory definition for "underground storage tank" was amended to be consistent with the statutory definition the Board relies upon to collect the underground storage tank fee. Accordingly, the SWRCB no longer considers non-farm, non-residential heating oil tanks to be eligible for corrective action reimbursement as of the effective date of the regulation. The SWRCB has had to deny at least one owner's request for reimbursement for the cleanup of leaking non-farm, non-residential heating oil tank since November 2000.

This bill would redefine the term "underground storage tank" for purposes of imposing the underground storage fee, thereby subjecting the owners of non-farm and non-residential heating oil tanks to the underground storage tank fee. In turn, such owners would be eligible for reimbursement of up to \$1.5 million in cleanup costs for leaking tanks. In a sense, this measure serve as an "insurance policy" for owners of underground storage tanks that hold heating oil against fees assessed or incurred for cleanup in the event of an tank leak.

3. **How will the Board notify owners of tanks storing heating oil of the fee?** This bill would require every owner of an underground storage tank storing heating oil for consumptive use on the premises where stored, other than owners of tanks storing 1,100 gallons or less located on a farm and or a residence, to pay the underground storage tank maintenance fee. If this bill were signed into law, the Board would need to notify all potential registrants.

With respect to the current fee, the Board has utilized several types and forms of notification to reach potential registrants including, but not limited to:

- The *Tax Information Bulletin*, which is mailed to all taxpayers with a Sales and Use Tax Permit.
- An Important Notice addressed to all "Fuel Sellers", which is mailed to all sales and use tax accounts with permits designated with a "G" code (fuel sellers); and
- An article in the *Environmental Fees Newsletter*, which is mailed to all environmental fee registrants.

If this bill were signed into law, the Board would use the same methods to notify potential registrants. However, it would be difficult for the Board to notify an owner of a tank storing heating oil if that owner does not hold a Sales and Use Tax account, a Fuel Taxes account, or an Environmental Fee account.

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Based on discussions with SWRCB staff, they expect that most of the potential registrants would be hospitals and schools located in rural areas without access to natural gas. Because hospitals usually hold a Sales and Use Tax Account, they could easily be notified of the fee. Schools could be notified by obtaining a listing of the schools in this state from the Department of Education. However, owners of tanks with a capacity of more than 1,100 gallons that store heating oil at a residence or farm would be difficult to notify because they most likely do not have a Sales and Use Tax Account.

3. **What is the Board's role in payment verification?** This bill would provide that a claim for corrective action and costs related to the compensation of third parties for bodily injury and property damages may be paid by the SWRCB if, among other things, the claimant has paid all underground storage tank fees, interest, and penalties for the underground storage tank that is the subject of the claim.

According to the SWRCB, the SWRCB would ask the Board to verify that a claimant has paid all underground storage tank fees, interest and penalties. Responding to the SWRCB's request for payment verification would result in additional collection and audit activities for tank locations that the Board had not previously identified. Board Fuel Division staff has estimated locating an additional fifty previously unregistered accounts annually based on this provision.

### **COST ESTIMATE (Revised)**

The Board would incur non-absorbable start-up costs to locate and register new fee payers, revise returns, program computers for payment verification, train staff and answer inquiries from the public. Additional on-going administrative costs would include mailing and processing additional returns and surcharge payments, and increased compliance and audit efforts due to additional registered accounts. The start-up costs in Fiscal Year 2002-03 are estimated to be \$222,000, and then \$161,000 in 2003-04 and annually thereafter.

### **REVENUE ESTIMATE (Revised)**

#### **Background, Methodology, and Assumptions**

**Background.** Existing law requires that owners of underground storage tanks pay a fee of 1.2 cents (\$0.012) on each gallon of petroleum purchased each month. The Board registers owners of underground storage tanks that require a permit; subsequent to the registration, the owner of the underground storage tanks submits the fee quarterly on or before the 25<sup>th</sup> of the month for the prior three months or quarter. These fees are deposited in the Underground Storage Tank Cleanup Fund and the monies can then be used by the SWRCB for the payment of claims (up to \$1,500,000 per occurrence) and certain third party injuries and damages. That is, the bill authorizes SWRCB to use the fund for the reimbursement of eligible costs "incurred in the cleanup of contamination resulting from the unauthorized release of petroleum from underground storage tanks." This program, in essence, serves as an "insurance policy"

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for owners of underground storage tanks against fees assessed or incurred for cleanup in the event of an oil leak.

Annual revenue in the Underground Storage Tank Cleanup Fund has increased each year over the past five fiscal years (i.e., 1995-96 to 1999-00), although the fund has leveled off during the past two years. Annual revenues were \$179.71 million in FY 1997-98 and \$189.14 million in FY 1998-99; in FY 1999-00 revenues reached \$190.15 million, an increase of only 0.5 percent over the prior fiscal year.

**Assumptions.** The SWRCB does not have historical data on the number of owners of underground heating oil tanks affected by this amendment or on the consumption of heating oil. They expect that most of these facilities, which use this fuel for space heating only, are schools and hospitals located in rural areas of the state without access to natural gas. The SWRCB estimates that there may be as many as 1,000 such tanks. Also, according to the SWRCB there is no limitation on tank size (i.e., the 1,100 gallon cutoff noted in the original legislation refers specifically to farms and residences with USTs; as mentioned previously, they retain their exemption as long as the heating oil is consumed on the premises). The SWRCB estimates that the tank size varies from 500 to 10,000 gallons, and that average consumption for heating is approximately 1,000 gallons per month for the six months that comprise the "winter season."

Also, the Fuel Taxes Division has identified an additional source of revenue, as various owners/operators seek to participate in the underground storage tank cleanup program. They anticipate that with the passage of this amendment, one percent, or about 10, of the owners/operators who apply for assistance in the cleanup of a spill from an underground tank each year would be charged fees, penalties, and interest (for noncompliance) of about \$50,000 per site.

**Methodology.** Based on SWRCB estimates and assuming a six-month winter season (i.e., the fourth quarter of one year and the first quarter of the following year), the consumption of heating oil for each owner is estimated at about 3,000 gallons per quarter (1,000 gals. x 3 mos. = 3,000 gals./qtr.). Applying the 1.2 cents (\$0.012) per gallon fee to the quarterly consumption at each site results in an average quarterly fee of \$36.00 (3,000 gals./qtr. X 0.012 = \$36.00/qtr.). An extension of this quarterly fee results in an estimated annual fee for the typical owner of one tank at \$72.00 per year. With the expectation that the number of owners affected by this amendment is about 1,000 statewide, the revenue gain is approximately \$36,000 per quarter (\$36.00/qtr. x 1,000 tanks = \$36,000/qtr.). Since we assume a six-month (or two-quarter) winter season, the annual FY revenue gain is projected to be about \$72,000 (\$36,000/qtr. x 2 qtrs./yr. = \$72,000/yr.). When additional owners/operators of USTs are identified each year with approximately \$50,000 owed in arrears, the expectation is a revenue gain of about \$500,000 per year (10 sites/yr. x \$50,000/site = \$500,000/yr.).

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**Revenue Summary**

Using the 1.2 cents (\$0.012) per gallon fee, the expectation is that the annual increase in revenue will be about \$72,000. As other sites are identified for cleanup each year, the revenue generated is estimated to be an additional \$500,000. Therefore, the estimated additional annual revenue deposited in the Underground Storage Tank Cleanup Fund would be approximately \$572,000.

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