

Origin of the UST Enforcement Unit and Enforcement of SB445

A History of Collaborative Enforcement



Office of Enforcement, UST Unit, February 2024

Introductions

Brian Taylor, Senior Engineering Geologist
State Water Resources Control Board
Office of Enforcement
UST Enforcement Unit

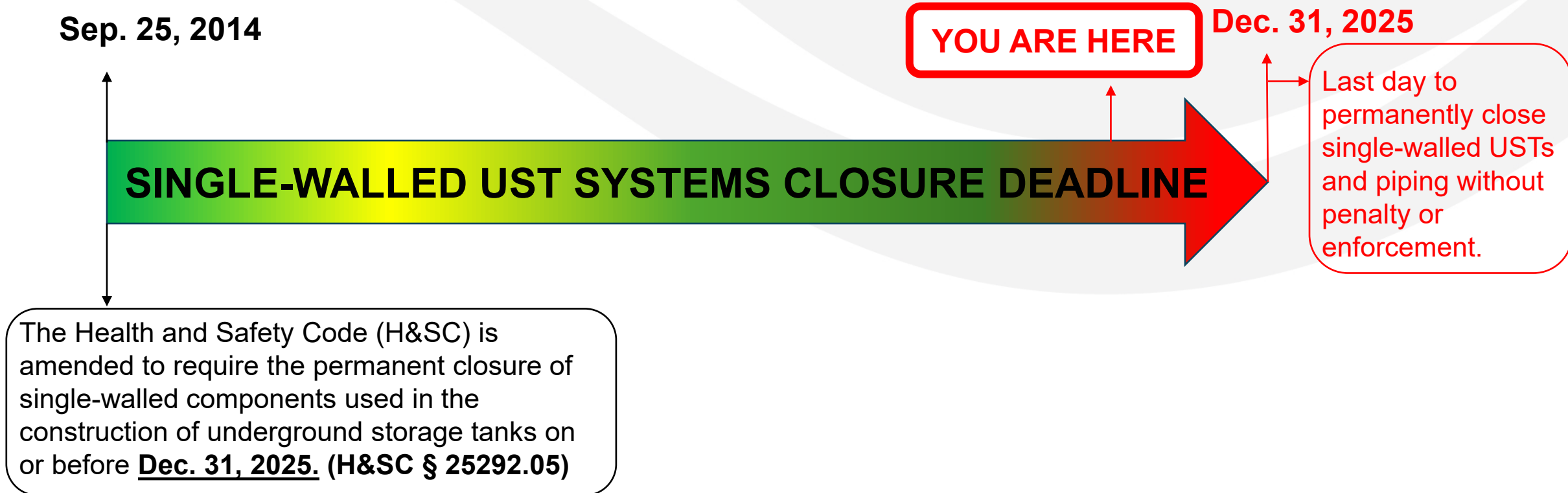
Amber Camarena

Will Speth

(vacancy)

Douglas McDevitt, Johnny Wales and Gregory Abille (Red Horse)

Reminder of why this is necessary.

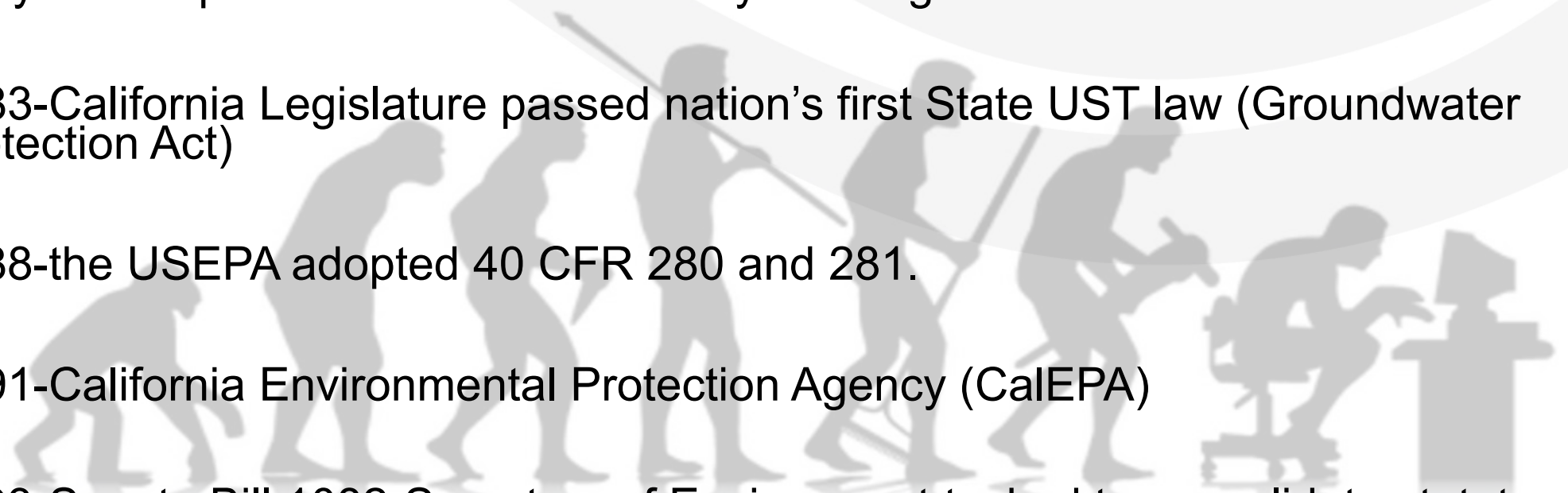


SB445 Timeline

Outline

- Evolutionary history of CUPAs and UST Enforcement Unit.
- Precedential statewide single wall UST upgrade effort of 1998
- Initial State Board SWT Initiatives (Leak Prevention and OE)
- Useful investigative enforcement resources
- Wrap up and take aways

Evolutionary History

- 
- Early 1980's polluted Santa Clara Valley drinking water wells
 - 1983-California Legislature passed nation's first State UST law (Groundwater Protection Act)
 - 1988-the USEPA adopted 40 CFR 280 and 281.
 - 1991-California Environmental Protection Agency (CalEPA)
 - 1993-Senate Bill 1082-Secretary of Environment tasked to consolidate statutory requirements into CUPA programs.
 - 1996-First CUPA is certified.

Slido Poll question

- Were you born during or after 1998?

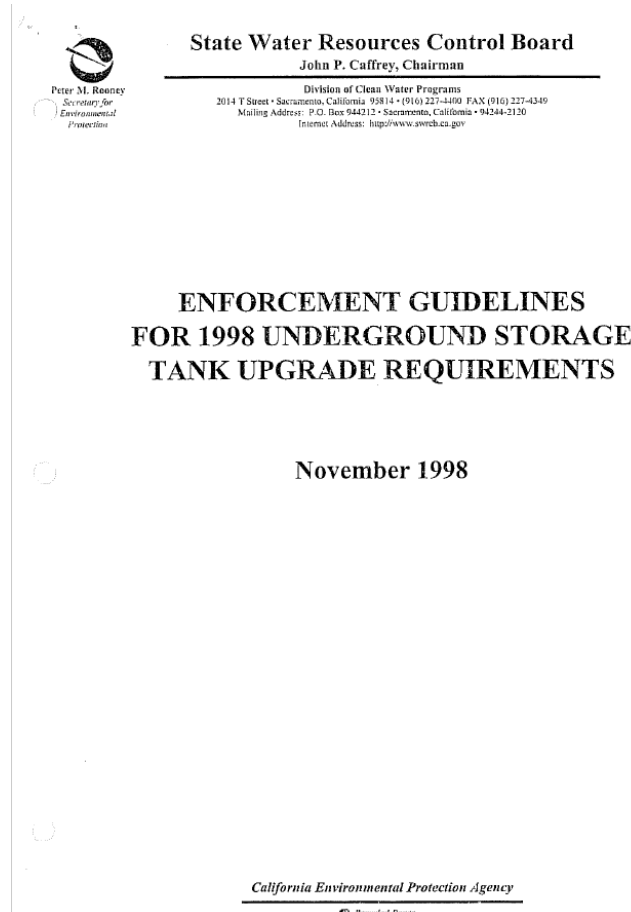
Evolutionary History

- In 1997 the H&SC was amended with 25292(5)(d) to codify the 40 CFR 280 UST upgrade requirements
- December 22, 1998, the underground storage tank shall be replaced or upgraded to prevent releases due to corrosion, spills or overfills .
- and [pressurized piping] shall be retrofitted with secondary containment and tightness tested annually
- After January 1, 1999, petroleum deliveries to any UST that did not meet upgrade standards were prohibited

Evolutionary History: Precedence

- EPA's and states respective roles implementing the 1998 UST upgrade requirements serve as a blueprint for the respective roles of the State and the CUPAs implementation of the 2026 SWT closure
- EPA – had conducted out-reach for 10 years prior, assisted states with developing procedures for dealing with violations.
- SWRCB & EPA prepared a playbook clarifying states role entitled; Enforcement Guidelines for 1998 Underground Storage Tank Upgrade Requirements that provided example violations

Evolutionary History: Precedence



- EPA Assistance
- No jurisdiction in Indian Reservations.
- EPA was prepared to
 - assist by continuing extensive outreach
 - Train inspectors
 - Concentrate activities in states that have less active enforcement programs
 - Support efforts in dealing with Federal and recalcitrant owners

Evolutionary History: Precedence

Enforcement Guidelines: Enforcement Strategies

- Revocation of SWUST Operating Permit
- Revocation of a business license – for failure to comply with local and state laws
- Lock Down – precursor to red tag
- Removing a noncompliant tank owner from USTCF- recipients claims removed and declared ineligible
- Collaborate with city, district or AG's office (H&SC 25299.01)
- SWRCB acted as technical advisor for referral to prosecutor and committed to participate in onsite inspections.

Evolutionary History: Precedence

Enforcement Guidelines: SWRCB Resolution, July 23, 1998

- UST owners required to display upgrade certificates, and to attach upgrade tags to fill pipes.
- Petroleum deliveries prohibited after January 1, 1999, to any UST that did not meet upgrade standards.
- local agencies to maintain lists of upgraded facilities and provide copies of those lists upon request.
- Owners subject to civil penalties, injunctions, criminal penalties under 17206 B&PC (unfair business practices)

Evolutionary History: Precedence

APPENDIX 280.2			
STATE OF MISSISSIPPI			
SELF CERTIFICATION OF UST SYSTEM RETURN TO DELIVERY ELIGIBILITY			
UST OWNER		UST FACILITY	
Owner Name		Facility Name	
Owner Address		Facility Physical Street Address	
City	State	City	State MS
Phone		County	
Tank Owner Contact Person		MDEQ UST Facility I.D. Number	
I CERTIFY UNDER PENALTY OF LAW THAT:			
1. The underground storage tank facility referenced above has completed the repairs/modifications necessary to establish compliance and is eligible to receive product deliveries.			
2. I have personally examined and am familiar with the information contained in this submittal and any accompanying documents. This information, to the best of my knowledge, is true, accurate and complete.			
3. I am aware that there are significant penalties for knowingly submitting false information.			
UST OWNER		MDEQ CERTIFIED UST INSTALLER	
Printed Name of Owner or Authorized Representative		Printed Name of Certified UST Installer	
Owner's Signature		Installer's Signature	
Date	Date	MDEQ Certification Number	
This form must be signed by both the UST owner and a MDEQ certified UST installer. MDEQ reserves the right to make the final determination of whether or not the UST facility has satisfactorily returned to compliance.			
PRODUCED BY THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY, OFFICE OF POLLUTION CONTROL, UST BRANCH PO BOX 2261, JACKSON, MS 39225 PHONE (601) 961-5171 FACSIMILE (601) 961-5093 www.deq.state.ms.us 7/08			

- 40 CFR 280 permitted owners to self certify compliance
- The SJCO Environmental Health Division did not allow owners to self-certify. Instead, they personally inspected each UST system.
- ARCO had 8 gas stations in San Joaquin county that had upgrade violations the inspector found bare steel components in contact with the backfill

Evolutionary History: Precedence

- San Joaquin county case settled for about \$0.5 million
- Local and state prosecutors met monthly with local and state regulators to discuss UST-related problems. These Strike Force meetings serve as a valuable, statewide communication link
- Widespread investigation found that 1,726 ARCO stations, 100 were certified in 1998 as having fiberglass tanks. At least 92 of these 100 were in violation of the upgrade requirements. 61 have leaked petroleum product and 41 have made claims to the state cleanup fund.

Evolutionary History: Precedence

- April 4, 2000 –The State Water Board and Cal/EPA jointly referred the ARCO case to the California Attorney General's Office
- November 9, 2000 – in a meeting with ARCO and attys at AG's office. ARCO stated they would have all single-wall systems out of service by July 31, 2001
- 2002 Settlement; for a total of \$47.3 million, with \$20,140,000 in statutory penalties



Evolutionary History

- In 1999, three years after the first CUPA was certified the SWRCB convened a panel of representatives from local agencies, DA offices, State and Regional Boards, CalEPA, and USEPA to study and address concerns in CUPA enforcement of UST requirements
- The panel met throughout 2001. Over half of the local agencies surveyed indicated that their management would support the State Water Board providing support in encouraging recalcitrant tank owners to remove USTs that were still not compliant with the 1998 EPA standards.

Evolutionary History

- 2001 Findings of CUPA enforcement Panel Report to the Legislature
- The absence of statutory statewide administrative enforcement processes for violations under the Underground Storage Tank Program is a barrier to consistency in the Unified Program's enforcement authorities and processes
- Other barriers include a lack of complete data, lack of direct enforcement authority and/or enforcement experience by the state agencies that have jurisdiction over the CUPA programs, and training insufficiencies are also identified

Evolutionary History

- 2001 Panel Recommendations:
- Provide local agencies with administrative enforcement authority
- Provide State Water Board with independent enforcement authority and request increased staff for enforcement activities
- FY 2000-2001-SWRCB received approval to use the Underground Storage Tank Fund to establish an Enforcement Unit

Evolutionary History



- Enforcement Unit was part of Leak Prevention/Licensing Unit and UST Clean-up Unit in the Division of Water Quality.
- 2006-UST Enforcement Unit separated from Division of Water Quality to the Office of Enforcement and was provided with administrative enforcement authority
- Unit's mission – 1) to work with Cal/EPA and the AG's office to investigate violations of UST program requirements

Single wall USTs



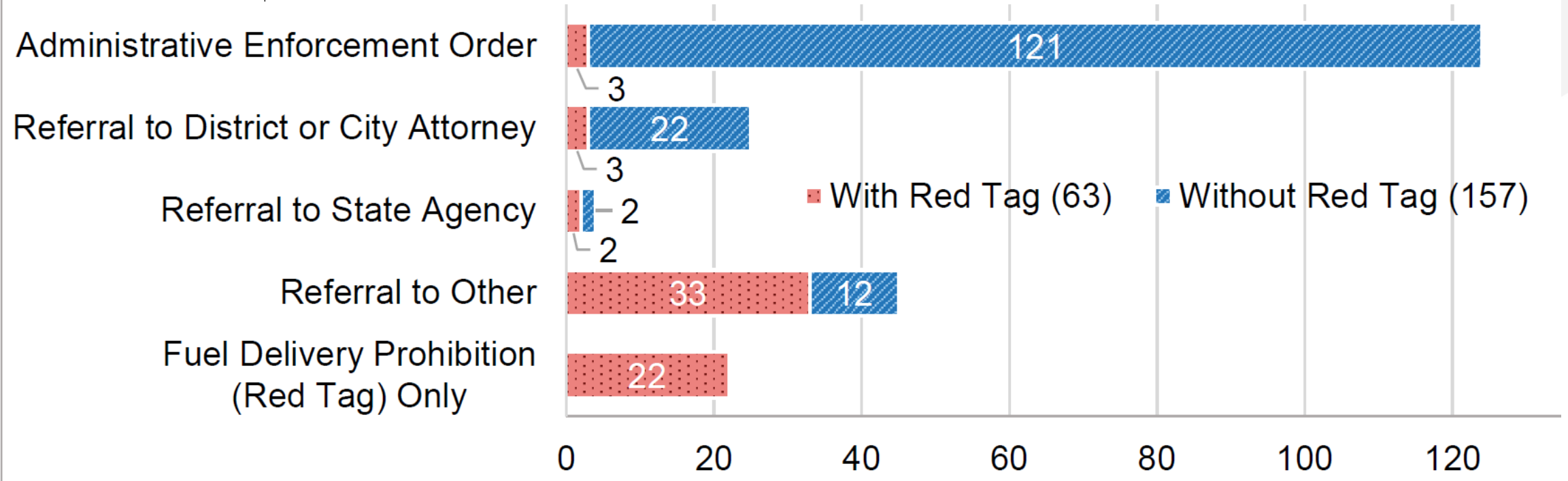
- 2014 – California Senate Bill 445 amended chapter 6.7 of the H&SC Section 25292.05
- Requires the permanent closure of all single-walled underground storage tanks (USTs) by December 31, 2025.
- Laminated, coated, or clad materials are considered single-walled. Liners and coatings do not meet H&SC, section 25291(a) secondary containment requirements.

Single wall USTs

- In 2022, Unified Program Agencies conducted 21,098 inspections at regulated Underground Storage Tank facilities across California
- CalEPA received 186 Formal Enforcement Summary reports from Unified Program Agencies in 2022. These reports show that enforcement was pursued for the Underground Storage Tank program 76 times

Initial SWT Initiatives: UPAs

Enforcement Actions Initiated at 214 UST Facilities



Total Facilities (214) is less than sum of facilities enforcement actions with Red Tag (63) and without Red Tag (157) because some of the facilities had multiple types of enforcement actions.

Number of Facilities

Single wall USTs

California UST Leak Prevention Annual Report: January-December 2022

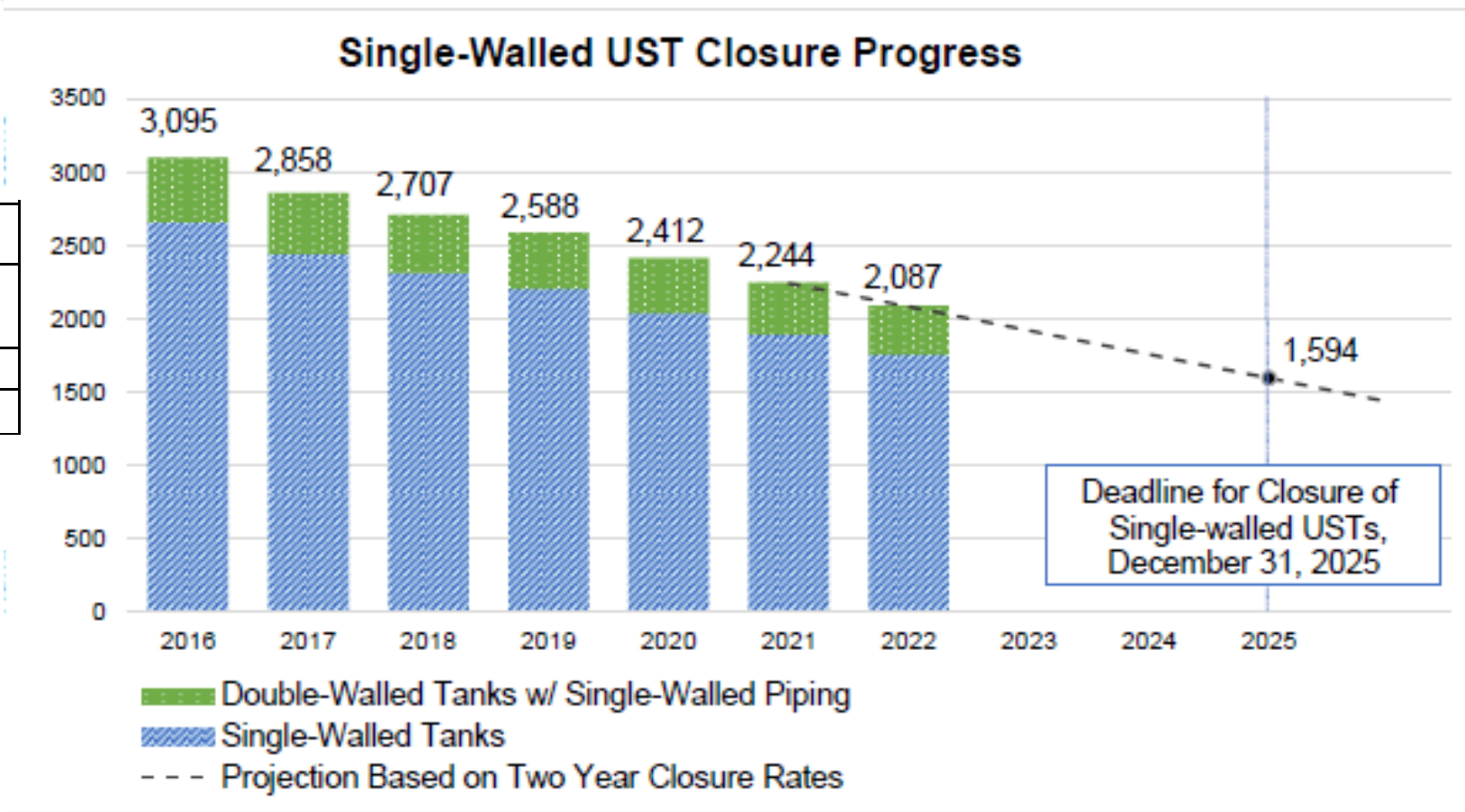
- Reminder to local agencies that encouraging owners to remove and replace SW tanks and piping in advance of the 2025 deadline will reduce contractor shortages, unmanageable permitting workloads, and UST abandonment.

Single wall USTs

- Numbers

California Single-Walled USTs			
	SW Tank	DW Tank SW Piping	Total
USTs	1,754	333	2,087
Facilities	640	158	794

Total Facilities (794) is less than sum of SW Tank and DW Tank SW Piping (798) because some of the facilities have both types of systems.



Single wall USTs

- Distribution
- https://www.waterboards.ca.gov/water_issues/programs/enforcement/tanks.html

Resources (State Water Board)

Available Guidance for the Closure of Single-Walled UST Systems

The State Water Board has prepared guidance in the form of *Local Guidance (LG) 171 - Permanent Closure of Underground Storage Tanks That Do Not Meet Health and Safety Code, Chapter 6.7, Section 25291, Subdivisions (a)(1)-(6)* to help owners, operators, and UPA staff navigate single-walled closure statute and regulation. LG 171 summarizes the main provisions of SB 445 as they apply to UST design and construction. The guidance addresses common questions of UST owners, operators and UPA staff. In addition, LG 171 specifies what actions are necessary for USTs that do not meet all the requirements of H&SC, section 25291(a)(1)-(6).

- Single-Walled UST Enforcement Guidance for Unified Program Agencies
- UST Closure Deadline Reminder for Single-Walled UST Owners and Operators
- The Technical Details of Single-Walled Systems (2023 CUPA Conference Presentation)
- LG 171 – Permanent Closure of Underground Storage Tank
- Single-Walled UST Closure Commitment Plan Workshop

Guidance for the Closure of Single-Walled UST Systems

https://www.waterboards.ca.gov/water_issues/programs/ust/docs/2023/upa-sw-enforcement-2023.pdf

Initial SWT Initiatives: State

CLOSURE COMMITMENT PLAN

- To encourage owners to get a head start on closing their SWTs the State Water Resources Control Board issued UST Closure Commitment Plans to private owners and operators of single-walled underground storage tanks in November 2021.
- Follow up virtual workshops were also held in December 2021 and January 2022
- The purpose was to assist UST owners/operators achieve and plan for compliance with the December 2025 closure deadline and disseminate information about RUST.

Initial SWT Initiatives: State

CLOSURE COMMITMENT PLANS

- Governmental agencies excluded because they are ineligible for RUST funding
- Owners were asked to complete an attached UST Closure Commitment Plan Form and return it to the State
- Of the 875 forms issued by email to private UST owners 47 completed forms were returned

Initial SWT Initiatives: State

Single-Walled UST Closures			
Year	SW Tanks	DW Tanks SW Piping	Total
2017	211	24	235
2018	129	32	161
2019	140	31	171
2020	170	20	190
2021	116	13	129
2022	14	5	19

Initial SWT Initiatives: State

December 2022: SINGLE WALL EMERGENCY TANK SYSTEMS

- Screened CERS for EG SWT systems with ongoing violations.
- Identified 69 EGSWTs in five jurisdictions
- Inspected five systems based on ongoing violations.
- Issued NOVs with options to either address violations or close tanks by December 31, 2025, closure deadline
- One system was removed and three are scheduled for removal by early 2024 and one was issued an NOV.
- Will broaden scope based on definitions in Assembly Bill 1716

Initial SWT Initiatives: State

Federally owned SWTs

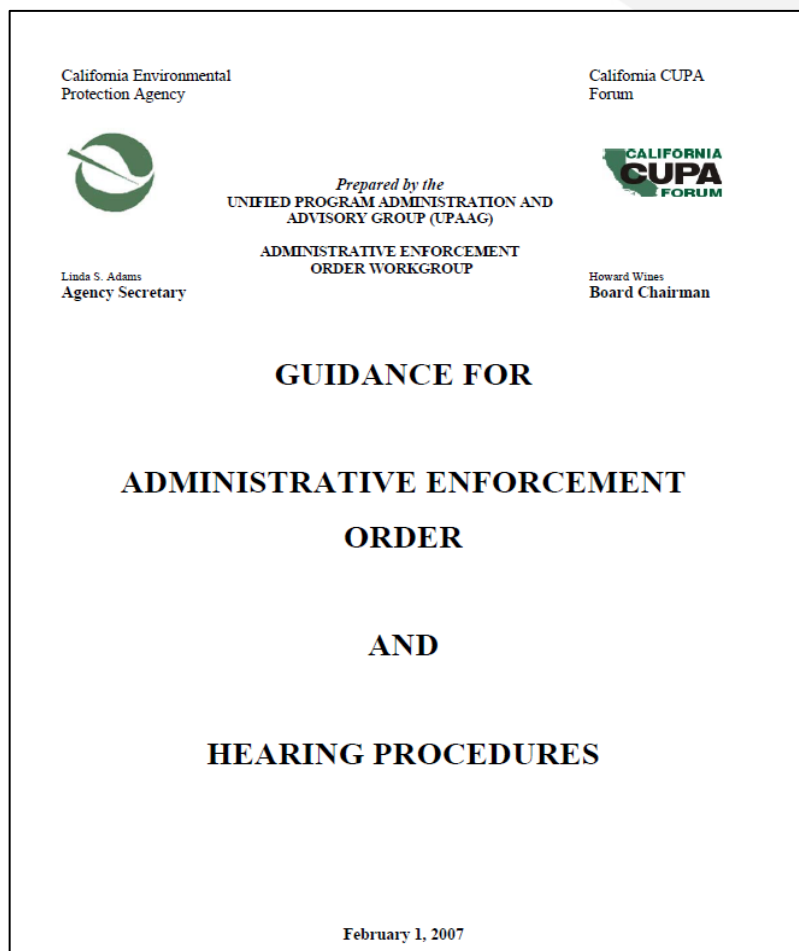
- Implemented in August 2023
- Identified 10 Federally owned SWT facilities in eight jurisdictions with ongoing violations.
- Where applicable, issued NOVs with options to either 1) address violations and past due penalties or close tanks ahead December 31, 2025, deadline
- All inspections were completed by February 2024. 1 SWT system was removed, 5 scheduled for replacement, 1 safe suction, 1 actually had no SW components

Initial SWT Initiatives: State

November 2023: Abandoned SWTs Focused Enforcement

- AbUST owners were not issued Closure Commitment Plans in November 2021.
- Outreach targeted non-responsive and uncontacted owners with verified SWTs.
- 12 facilities of 160 in the RAT program met criteria but there are 39 RAT facilities where UST construction is unknown that may also be single wall.
- The list has grown to 19. Issued 7 NOVS, 1 was removed, 1 DW, CUPA and LIA taking the lead on 2, respectively, 1 owner correctly identified as the County.

Resources (CalEPA)



- **Enforcement**
 - 21,098 Facility Inspections
 - 76 Cases where Enforcement was pursued
- CalEPA Information on Administrative Enforcement Orders
 - <https://calepa.ca.gov/cupa/orders/>
 - Guidance Documents
 - Scroll down for UST Examples of formal enforcement correspondence including
 1. Show Cause Letter
 2. Unilateral Order

Resources (CalEPA)

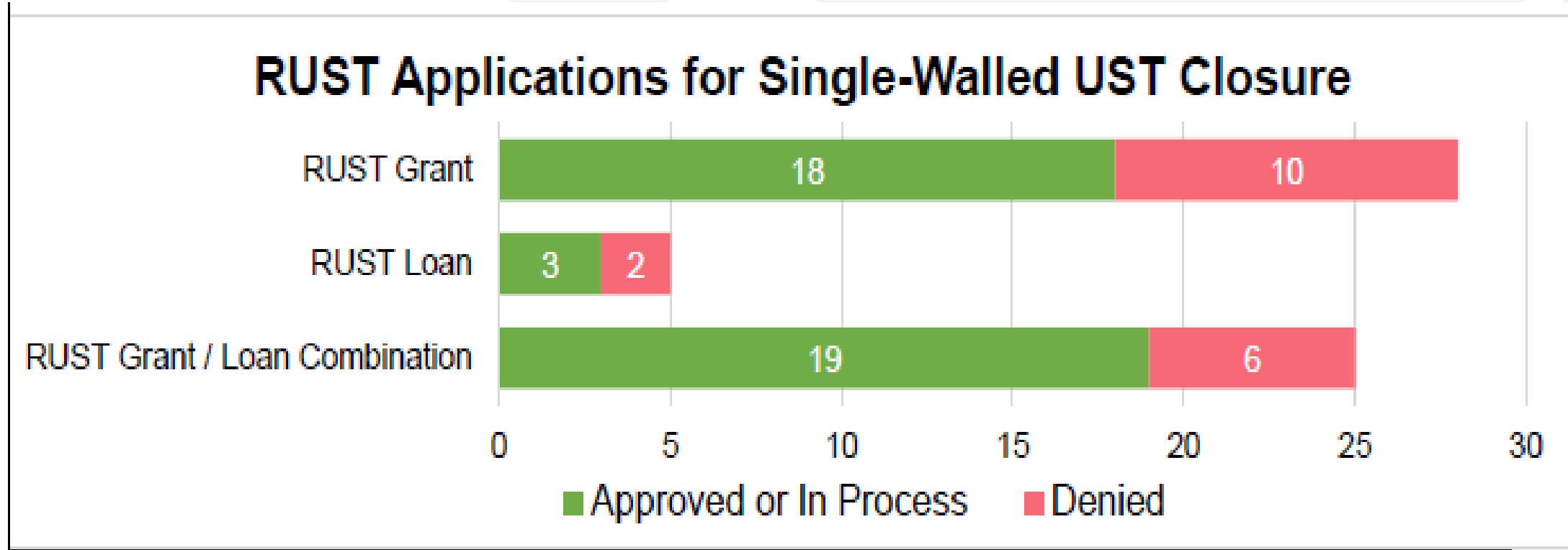
CalEPA I&E Resources

- <https://calepa.ca.gov/cupa/resources/>
 - Scroll down to Enforcement to find
 1. Sample Referral letters
 2. Information on Administrative Enforcement Orders link:

Resources (Funding)

- **Funding**
- **DIVISION OF FINANCIAL ASSISTANCE (DFA)**
- https://www.waterboards.ca.gov/water_issues/programs/grants_loans/
- **Replacing, Removing or Upgrading UST (RUST)**
- Loans for removing, or grants for replacing single-walled USTs and/or piping with double-walled USTs and/or piping.
- Sunsets 2036.

Initial SWT Initiatives: Owners



Between January 2022 and December 2022, 58 RUST applications for SWT closure were submitted. This chart does not show additional RUST applications unrelated to SWT closure.

Resources (Funding)

- **DIVISION OF FINANCIAL ASSISTANCE (DFA)**
- https://www.waterboards.ca.gov/water_issues/programs/ustcf/forms.html
- Underground Storage Tank Cleanup Fund (USTCF)
- Financial Responsibility
- Reimbursement Program for expenses associated with the cleanup of leaking USTs.
- AB 1115 extended sunset date to 2036

Resources (Funding)

- **United States Environmental Protection Agency (EPA)**
- <https://www.epa.gov/ust/leaking-underground-storage-tank-trust-fund>
- Leaking Underground Storage Tank (LUST) Trust Fund The Trust Fund is financed by a 0.1 cent tax on each gallon of motor fuel sold nationwide.
- To receive money from the Trust Fund, a state, territory, or tribe must enter into an assistance agreement with the federal government to spend the money for its intended purpose.

Resources (Investigative)

- When the property & business owner are the same party.
 - GIS database to identify a property owner.
 - Secretary of State's website, to identify a business owner.
 - Westlaw Edge PeopleMap (via County Council's office)
- When the property & business owner are different parties
 - Westlaw People search (via County Council's office)
 - Enformion (subscription)
 - <https://www.beenverified.com/> (subscription)
 - <https://www.truepeoplesearch.com/> (free)

Enforcement Resources

- Property Boundaries

- County Assessor's Office (online)

- <https://assessor.saccounty.gov/MapsPropertyDataAndRecords/Pages/AssessorParcelViewer.aspx>

- ARCMAP Advanced (requires knowledge of GIS ESRI system)

- ParcelQuest: <https://www.parcelquest.com/>

- Sanborn Maps (boundary disputes, limited coverage)

- <https://www.saclibrary.org/About/News/2013/Digitized-Local-Historical-Maps-Now-Available-Only>

Enforcement Resources

State Water Board	CUPAs
Administrative Civil Liability (ACL)	Administrative Enforcement Order (AEO)
Regional or State Board Attorney	County Counsel or District Attorney
Pre-ACL	Show Cause Letter: to enter settlement discussions
Compressed ACL	Expedited Consent Order: the respondent is not likely to contest the AEO
Administrative Civil Liability Complaint (ACLC)	Unilateral Administrative Order: the business fails to respond to the notice of settlement discussions
Stipulation For Entry of Final Consent Judgment: Hearing or settlement discussion	Stipulation and Order: Settlement discussions have led to an agreement
Penalty Calculation Methodology Worksheet	Penalty Calculation Methodology Worksheet
CWC 13328: Superior Court Property Lien	Liens, Small Claims, or Collection Agencies for refusal to pay

Case History #1: Whodunit?

- Abandoned UST

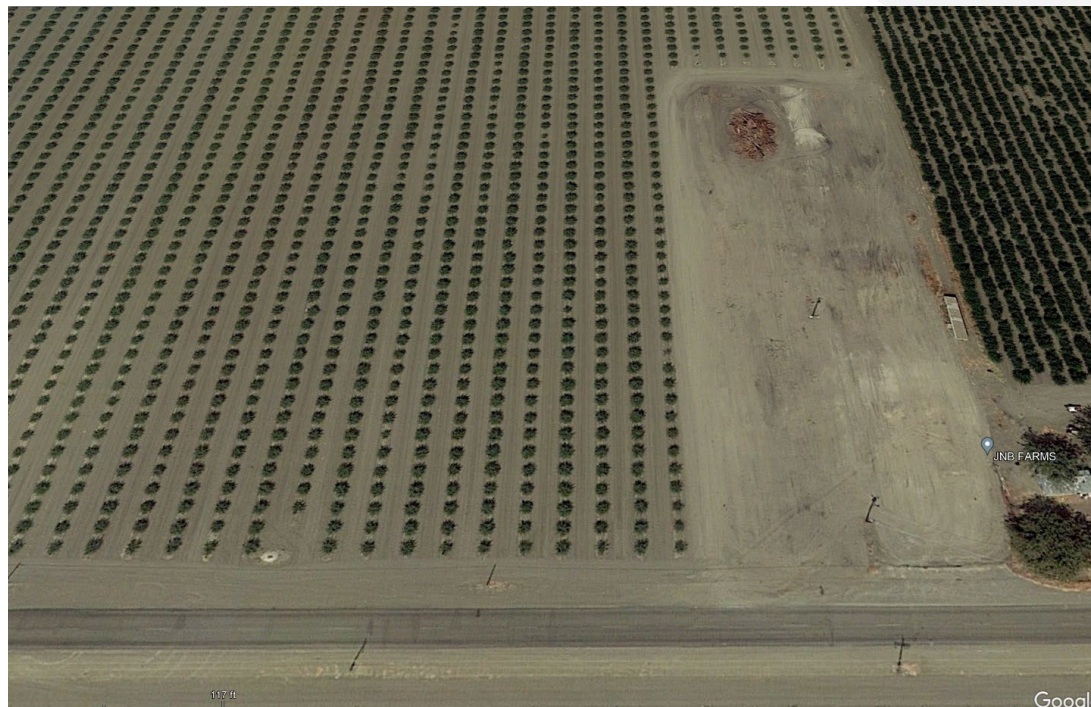
Case History #1: Whodunit?

- August 2007

June 2016



Case History #1: Whodunit?



- And here is how it appeared in August 2018. The facility had been razed.
- By checking the assessor's office. We discovered that there was a new property owner.

Case History #1: Whodunit?



California Secretary of State
Electronic Filing



Corporation - Statement of Information No Change

Entity Name: N. F. DAVIS DRIER AND ELEVATOR

Entity (File) Number: C0231805
 File Date: 11/04/2021
 Entity Type: Corporation
 Jurisdiction: CALIFORNIA
 Document ID: GY07866

There has been no change in any of the information contained in the previous complete Statement of Information filed with the California Secretary of State.

By signing this document, I certify that the information is true and correct and that I am authorized by California law to sign.

Electronic Signature: TinaHogue

Use bizfile.sos.ca.gov for online filings, searches, business records, and resources.

Document ID: GY07866

18-624725

FILED
Secretary of State
State of California
APR 25 2018

SI-550
128

**Secretary of State
Statement of Information**
(California Stock, Agricultural
Cooperative and Foreign Corporations)

IMPORTANT — Read instructions before completing this form.

Fees (Filing plus Disclosure) — \$25.00;
Copy Fees — First page \$1.00; each attachment page \$0.50;
 Certification Fee - \$5.00 plus copy fees

1. Corporation Name (Enter the exact name of the corporation as it is recorded with the California Secretary of State. Note: If you registered in California using an assumed name, see instructions.)
 N. F. DAVIS DRIER AND ELEVATOR, INC.

2. 7-Digit Secretary of State File Number
 C0231805

3. Business Addresses

a. Street Address of Principal Executive Office - Do not list a P.O. Box 9421 N. DOS PALOS AVENUE	City (no abbreviations) FIREBAUGH	State CA	Zip Code 93622
b. Mailing Address of Corporation, if different than item 3a P.O. BOX 425	City (no abbreviations) FIREBAUGH	State CA	Zip Code 93622
c. Street Address of Principal California Office, if any and if different than item 3a - Do not list a P.O. Box	City (no abbreviations)	State CA	Zip Code

4. Officers

The Corporation is required to list all three of the officers set forth below. An additional line for the Chief Executive Officer and Chief Financial Officer may be added; however, the printed lines on this form must not be altered.

a. Chief Executive Officer/ WILLIAM	First Name WILLIAM	Middle Name COFIELD	Last Name DAVIS	Suffix
Address 9421 N. DOS PALOS AVENUE	City (no abbreviations) FIREBAUGH	State CA	Zip Code 93622	
b. Secretary WILLIAM	First Name WILLIAM	Middle Name COFIELD	Last Name DAVIS	Suffix
Address 9421 N. DOS PALOS AVENUE	City (no abbreviations) FIREBAUGH	State CA	Zip Code 93622	
c. Chief Financial Officer/ PALMER	First Name PALMER	Middle Name PHILLIP	Last Name LIEN	Suffix III
Address 9421 N. DOS PALOS AVENUE	City (no abbreviations) FIREBAUGH	State CA	Zip Code 93622	

5. Director(s)

California Stock and Agricultural Cooperative Corporations ONLY. Item 5a. At least one name and address must be listed. If the Corporation has additional directors, enter the names and addresses on Form SI-550A (see instructions).

a. First Name WILLIAM	Middle Name COFIELD	Last Name DAVIS	Suffix
Address 9421 N. DOS PALOS AVENUE	City (no abbreviations) FIREBAUGH	State CA	Zip Code 93622

b. Number of Vacancies on the Board of Directors, if any: 0

6. Service of Process (Must provide either Individual OR Corporation.)

INDIVIDUAL - Complete items 6a and 6b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation) WILLIAM	Middle Name COFIELD	Last Name DAVIS	Suffix
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box 9421 N. DOS PALOS AVENUE	City (no abbreviations) FIREBAUGH	State CA	Zip Code 93622

CORPORATION - Complete item 6c only. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) - Do not complete item 6a or 6b

7. Type of Business

Describe the type of business or services of the Corporation
 STORAGE AND HANDLING OF COMMODITIES / REAL ESTATE INVESTMENT

8. The Information contained herein, including in any attachments, is true and correct.

04/17/2018 P. PHILLIP LIEN CFO
 Date Type of Print Name of Person Completing the Form Title

Signature: P. Phillip Lien
 2017 California Secretary of State
 www.sos.ca.gov/business/fe

- <https://www.parcelquest.com/> (Owner information: Fee)
- <https://bizfileonline.sos.ca.gov/search/business> (Owner information:Account)
- <https://www.allbiz.com/business/> (Company background: Public)







Soil Laboratory Analytical Results

Parameter	Concentration	Units
Diesel	1,000	mg/kg (milligrams per kilogram)
Diesel	6,900	mg/kg
Benzene	9,000	ug/kg (micrograms per kilogram)
Naphthalene	44,000	ug/kg
Lead	NS	NA

Wrap up and take aways



Wrap up and take aways

- 1993 Senate Bill 1082 is the law that created CUPAs.
- The EPA/State collaboration during the 1998 upgrades will serve as a blueprint for State and local level collaboration during the SB445 SWT closure effort.
- SWRCB is prepared to implement a high level approach that includes
 - ✓ Outreach (Closure Commitment and Guidance docs)
 - ✓ train local inspectors (Annual Conferences)
 - ✓ Administer I&E projects targeting underserved SWT subsets
 - Support enforcement efforts in jurisdictions that have overburdened enforcement programs

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