



# ABANDONED UST CLOSURE OUTREACH

**Johnny** “it never hurts to ask” **Wales,**  
**Environmental Specialist/Project Mgr.**  
**Wednesday, February 28<sup>th</sup>, 2024**

**Redhorse  
Corporation  
W-C1**

26th California Unified Program  
Annual Training Conference  
February 26-29, 2024



# Agenda



1. Removal of Abandoned Tanks (RAT) initiative overview
2. RUST financial assistance for abandoned UST sites
3. Illustrational Case Studies—success stories and... “learning experiences”

# RAT (Removal of Abandoned Tanks) Overview

- The RAT initiative seeks to track Abandoned USTs, research each site's history and risk factors, and works to compel them toward permanent closure
- The project's original structure: **Douglas McDevitt** and **Johnny Wales** were **Bad Cop / Good Cop**, but we've expanded...

# RAT (Removal of Abandoned Tanks) Personnel

- **Johnny** is Project Manager and assists with RUST funding applications
- **OE/Douglas** does Responsible Party (RP)/Property Owner research and issues violation correspondence from **SWRCB**
- **Jennifer Trevis** assists with administrative work/RUST
- **Gregory Abille** provides technical/inspection assistance

# “Abandoned” UST Disambiguation

- Sometimes people use the term “abandoned” to refer to USTs or piping runs that were closed in place... obviously, not what we mean
- The term “abandoned” has sometimes been interpreted to refer *only* to found/discovered USTs, and while those may *also* meet our definition of abandoned USTs, this isn’t the only population we mean to include

# What is an “abandoned” UST?

- We use this term to mean USTs that:
  - meet the **23 CCR Chp. 16** definition of a UST,
  - are non-operational
  - were not properly permanently closed,
  - are **unpermitted**,
  - and were not **decommissioned** before Jan. 1, 1984.

# What is a “decommissioned” UST?

- See: [LG 122](#)
- A “**decommissioned UST**” is: one that cannot have inputs or withdrawals, for one or more of the following reasons:
  1. it has been filled with an inert solid,
  2. its fill pipes have been sealed, or,
  3. its piping has been removed.

# What is a “decommissioned” UST?

- We would use “**decommissioned**” to refer to a tank that was not used after Jan. 1 1984, that was not “permanently closed” per the UST Regulations, but to which the permanent closure requirements may not retroactively apply.
- If there is reasonable evidence that an actual leak has occurred or that a future leak may occur, then the permanent closure requirements WOULD apply.

# RAT Inventory

- SWRCB's UST Office of Enforcement (OE) and Redhorse Corporation (US EPA contractor) maintain a list of facilities associated with Abandoned USTs
  - List comes from referrals, CERS data mining, Report 6, and historical lists (GeoTracker)
  - ~91 facilities/~232 USTs, including a few that are federally-exempt, but state-regulated

# RAT is... **challenging**

- Abandoned USTs are a shared priority between federal, state, and local regulators
- There *will* be a spike in illegal UST abandonments following the 12/31/2025 single-walled closure deadline
- Blood cannot be squeezed from a stone



# How do USTs become **Abandoned**?

- Many AbUST property owners claim to have been unaware of the presence of USTs prior to purchasing the land...

- The burden of due diligence is on *the buyer*...

- Lenders will require site investigations before lending. But when properties are bought with cash...



# How do USTs become **Abandoned**?



- The ol' Temporary Closure bait-and-switch
- Changes in zoning/poor researching of zoning prior to property acquisition can lead to delays in UST site rehabilitation or redevelopment

# RUST Grants/Loans and AbUSTs

- RUST **loans** are available to remove AbUSTs
- Provided that the AbUST RP is domiciled in CA, and not a major oil company, there is *probably* either a RUST **grant or loan** available for UST removal, but not both
- Generally, facilities that are out of compliance are not eligible for RUST grants, **unless they meet the waiver criteria.**

# RUST Waiver Grants

- Up to \$70,000 in grant funds is available to *eligible*\* applicants for removal-ONLY projects
  - *But only* if the applicant wouldn't be able to afford repayment of a RUST **loan** for the amount of the UST removal and associated closure costs
  - *AND* the applicant must be able to demonstrate the ability to pay any costs of UST closure above the \$70,000 grant maximum

# RUST Waiver Grants

- \*: Applicant/all principals must be domiciled in California, with fewer than 20 employees
  - A current, accepted CERS UST submittal is required
  - Applicant and all principals must disclose their finances via tax returns, debt schedules, and credit reports, to demonstrate the inability to afford a 10- or 20-year RUST loan for the costs of UST removal

# RUST Grant/Loan Limitations

- Cannot be used to pay for back-owed permit fees/penalties
- Cannot be used for aboveground renovation or construction, *only* UST compliance
- RUST does not make advance payments, but work can't begin until an Agreement is executed

# RUST Grant/Loan Application Limitations

- Application forms and document checklists are geared toward operational businesses, and much is not applicable to AbUST sites
  - A signed statement can substitute for most of the above-mentioned non-applicable documents
- Implementation of online Financial Application Assistance Submittal Tool (FAAST—<https://faast.waterboards.ca.gov/>) has been bumpy

# RUST Grant/Loan Application Limitations

- Currently, the only way to obtain many of the needed forms and guidance is by asking **Johnny** or **RUST staff**
- Only a handful of **waiver grants** have ever been awarded—the application process is not well-defined.
- Per RUST: a **perfect** first-attempt RUST application has NEVER been submitted; requirements and eligibility are determined on a case-by-case basis

# AbUSTs and UST Cleanup Fund

- Once notified of responsibility for AbUSTs, a new UST owner has **one year** to permanently close the AbUSTs and *possibly* be eligible for the **UST Cleanup Fund** in the event of discovery of an unauthorized release

# AbUSTs and EAR

- The Emergency, Abandoned, Recalcitrant (EAR) account: has broad powers, but requires confirmation of a release for a site to be eligible for nomination
- But if the USTs were never permanently closed, it is very unlikely that there are sampling records on file to confirm the presence of an unauthorized release...

# How Can US EPA Help?

- US EPA grant funding is usually not used for UST removal
- US EPA grant funding **CAN** be used for:
  - Release Confirmation Site Assessments
  - Site Surveys
  - Liquid removal

# Redhorse's Site Surveys

- Redhorse/SWRCB staff try to secure Access Agreements to allow for:
  - site visits and tank gauging,
  - occasionally, geophysical studies with ground-penetrating radar, magnetometer survey
- If RAT staff accompany CUPA during their routine inspection, and site is accessible by the public (not fenced) no Access Agreement may be needed



# Case Studies Part 1 - Successes



Our tools:

- **RUST grants/loans** (maybe someday, someone will take us up on the loan option)
- Release confirmation site assessments
  - Escalating violation correspondence—Notice of Non-Compliance, Notice of Violation, Failure to Comply
  - Administrative Civil Liability Complaint
    - Preceded by Settlement Invitation (“Pre-ACL”)

# South Gate Facility



- Following removal of 6 out of 10 AbUSTs in January 2022, the contractor was injured
- The contractor invoiced the UST owner for the full project cost, despite not completing the full project
- Expressing financial hardship, the site got referred to Johnny

# South Gate Facility

- With a few guidance emails and phone calls, the owner secured approval for a RUST waiver grant by May 2022, and the remaining AbUSTs were removed in March 2023



# Lake Isabella Facility



- Elderly property owner caring for a grandchild with leukemia claimed to have acquired the property to use as a residence with no knowledge of former UST activity
  - There were multiple businesses located here, formerly, including a veterinarian's office
- After Douglas and Johnny nagged her from August of 2021 until July 2022, she finally applied for a RUST waiver grant

# Lake Isabella Facility

- She was eventually awarded the grant, and 4 USTs were pulled on 5/25/2023
- The RUST application was almost derailed by confusion about addresses in CERS and multiple APNs following the parcel being split



# Firebaugh Facility

- Company that acquired the site claimed to have no knowledge that USTs were present before they demolished the existing building
- Douglas found an inspection report from 1995 in the Fresno Environmental Health Records portal (available to the public!) that provided proof of the presence of USTs, showed the location, and suggested that vent piping went through the former building's walls...

3/14/95



Photo Number \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

← Tanks are buried here.

[Redacted] thinks that  
vent pipes are in the  
walls of building.

Fill openings were sealed  
and paved over.

# Firebaugh Facility

- The owning company was not interested in applying for RUST, as they were confident that they had too much income for a waiver grant; Redhorse continued to annoy
- They initially expressed interest in signing an Access Agreement to allow for potential US EPA assistance with a Site Assessment, but later changed their tune and hired a consultant
- Tanks were removed on 10/26/2023; site is now an open LUST case...

# Firebaugh Facility

- Johnny suspects that documenting every communication on the public side of GeoTracker helped to inspire the consultant to advise conducting a geophysical study, and removing the tanks, if found to be present
- Despite their initial lack of interest in RUST, following UST closure, the owners reached out to find out how they could get reimbursed for the RUST removal costs and the costs of cleanup... see previous slides...

# Firebaugh Facility



# Oro Grande Site

- Owner was issued NONC.
- Owner was proactive and hired a consultant. Conflicting records indicated that there were somewhere **between 4 and 6 tanks**.
- **Ground Penetrating Radar** studies performed at the property prior to excavation did not detect all USTs, and upon the initial excavation, the discovery of more and larger USTs caused the contractor to raise the project price, and the owner stopped work



# Oro Grande Site

- Financially shrewd property owner secured a RUST waiver grant
- Conflicts between the property owner, prime contractor, and UST removal subcontractor contributed to project delays following the original partial excavation
- There were claims of a \$48,178 check from RUST having been lost in the mail...

# Oro Grande Site



# San Bernardino City Site

- Owners acquired the derelict site to rebuild the gas station, but city permitting rules will no longer allow a gas station in this area
- Owner couple was cooperative from the first contact with OE and applied for a RUST waiver grant.
- They were determined to have too much income, so pivoted to a RUST loan application

# San Bernardino City Site

- Due to cooperativeness, **US EPA** put owners in touch with **Brownfields** Redevelopment program, and it looks like the USTs will be removed as part of the **Targeted Brownfields Assessment**
- See:  
<https://www.epa.gov/brownfields/targeted-brownfields-assessments-tba>

# San Bernardino City Site



# Lancaster Facility

- OE issued an NONC in August of 2022. The facility owner never used the derelict USTs; they came with the facility.
- Initially the owner expressed interest in a RUST grant, but he later said that he knew he had too much income, and would pursue a RUST loan, instead. Redhorse kept following up.



# Lancaster Facility

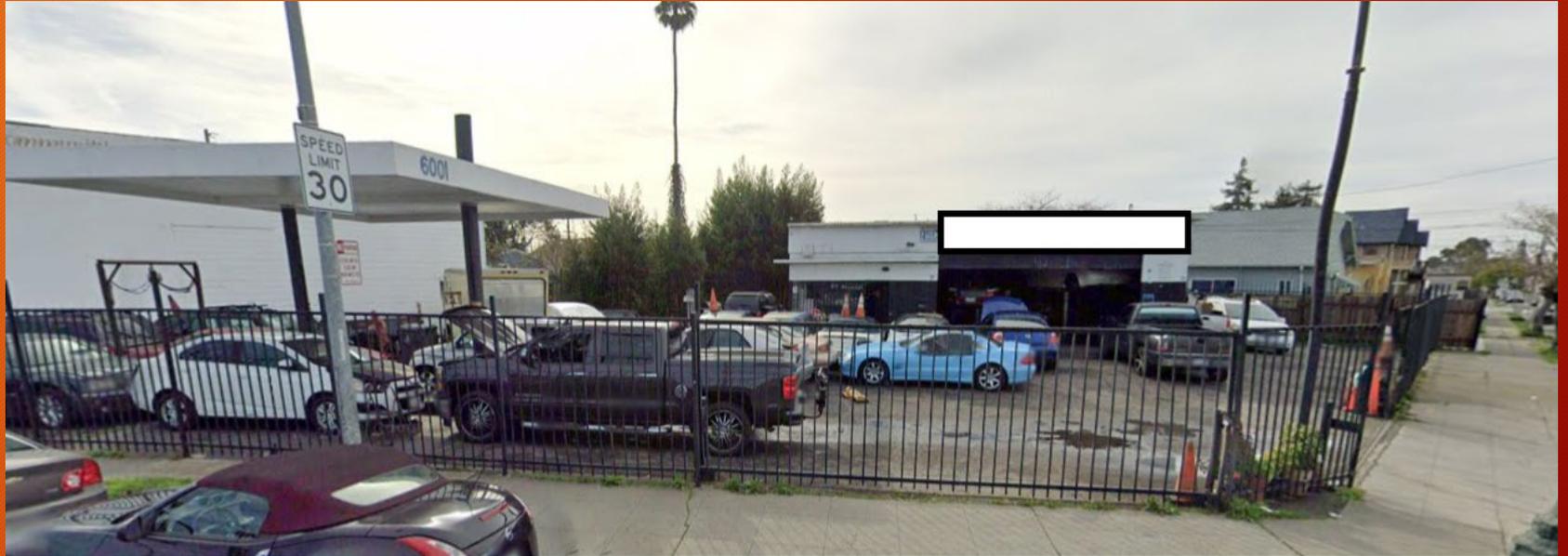
- Later, the owner expressed frustration with government red tape painting him as a “villain.” Johnny gave guidance on the administrative things the PA was asking him to do to secure a closure permit—namely, submit to CERS, submit a Certification of Financial Responsibility, and obtain a BoE number
- Two USTs were removed on 9/5/2023
- The owner later actually sent a Thank You email.

## Case Studies Part 2 - Successes yet to be realized

- “These tanks are going to come out... eventually”

# Oakland Site

- “These tanks are going to come out... eventually”



# Inglewood Site—where'd the USTs go?!



# Vallejo County Site

- Owner acquired site to rebuild gas station, but coastal community groups have successfully lobbied to forbid new gas stations.
- It is common for AbUST O/Os to not want to restore derelict USTs to compliance until the O/O can put a viable business on the site...
- NONC letter issued to owner. Owner is not interested in RUST funding, due to the many members/partners of the LLC and liability



# Mckittrick Site

- Owner was issued NONC in June of 2021
- Owner applied for a RUST waiver grant in October 2021.
- Owner was determined to have too much income for a waiver grant...
  - ...but declined to pursue a RUST loan



# Fort Bragg Site

- Owners acquired site in March of 2020 with the intent to re-open a gas station, but due to changes in zoning, this is not allowed
- Owners have hired a local UST contractor, but this seems to be their first UST removal project, which, combined with seasonal weather concerns, has led to delay after delay, and mention of a possible re-sale of the property



# Dardanelle Site

- UST site is on federal forest land, but was leased to an LLC to operate, and the site burned down in a wildfire
- Now the LLC and its members are incommunicado



# Closure Slide

(...get it, “closure?”)



- Abandoned USTs are a **shared** problem, and a complex one
- **State Water Board** funding programs are available, but hard to use to address Abandoned USTs directly
- Single-walled UST tank abandonments are coming, so let's start thinking about the issue



# Any Questions?



Johnny Wales—Redhorse Corporation,  
[Johnny.Wales@Waterboards.ca.gov](mailto:Johnny.Wales@Waterboards.ca.gov)  
(804) 852-7274

26th California Unified  
Program Annual Training  
Conference  
February 26-29, 2024

