

Date of Hearing: May 14, 2020

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 3039 (Quirk) – As Amended May 4, 2020

**SUBJECT:** Underground storage tanks: small business loan and grant program

**SUMMARY:** Extends, until January 1, 2026, the Replacing, Removing, or Upgrading (RUST) program, which provides loans and grants to assist small businesses with complying with state and federal standards for underground storage tanks (USTs). Expands RUST grant eligibility to certain applicants who are not in compliance with water quality or air quality requirements. Provides the State Water Resources Control Board (State Water Board) with authority to help prevent fraud in the RUST program and help recover monetary losses to the RUST program due to fraud.

**EXISTING LAW:**

- 1) Requires, by December 31, 2025, the owner or operator of an UST to permanently close that UST if the UST does not meet certain requirements in state law and regulation. (Health and Safety Code (HSC) § 25292.05)
- 2) The Barry Keene Underground Storage Tank Cleanup Fund Act of 1989 created the UST Cleanup Fund Program, until January 1, 2026, to help owners and operators of petroleum USTs satisfy federal and state financial responsibility requirements. (HSC § 25299.10)
- 3) Requires a person to furnish, under penalty of perjury, any information related to financial responsibility, costs related to grants, unauthorized releases as requested by the local agency or State or Regional Water Board. Subjects a person who fails to provide this information to civil liability not to exceed \$10,000 per violation. (HSC § 25299.78)
- 4) Provides that a person who makes a misrepresentation in a document relating to a grant or loan issued pursuant to the UST Cleanup Fund program that is submitted to the State Water Board, is subject to civil liability of not more than \$500,000 per violation. (HSC § 25299.80)
- 5) Provides that a person who knowingly makes or causes to be made a false statement, material misrepresentation, or false certification in support of a grant or loan under the UST Cleanup Fund Program is subject to a fine of not more than \$10,000, or imprisonment in county jail up to one year. (HSC § 25299.80.5)
- 6) Requires, until January 1, 2022, the State Water Resources Control Board (State Water Board) to conduct a loan and grant program to assist small businesses in upgrading, replacing, or removing USTs to meet applicable local, state, or federal standards. (HSC § 25299.101)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

*Need for the bill:* In order to protect public health and safety and the environment, USTs are regulated by the State Water Board. Existing law requires single-walled USTs to be removed no later than December 31, 2025. Given the expense of removing these USTs, the state created the RUST program to provide grants and loans to small businesses to assist them with complying with UST laws and regulations. The RUST program is scheduled to sunset on January 1, 2022; however, that is three years before the statutory requirement to replace single-walled USTs. Therefore, AB 3039 extends the sunset of the RUST program until January 1, 2026 allowing a continuation of assistance for small businesses to comply with UST laws and regulations.

*UST program:* The purpose of the UST program, administered by the State Water Board, is to protect public health and safety and the environment from releases of petroleum and other hazardous substances from USTs. An underground storage tank (UST) is defined by law as "any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground" (certain exceptions apply). Existing law requires single-walled USTs to be removed by December 31, 2025.

*UST Cleanup Fund Program:* The Barry Keene Underground Storage Tank Cleanup Fund Act of 1989 created the UST Cleanup Fund Program to help owners and operators of petroleum USTs satisfy federal and state financial responsibility requirements. The Cleanup Fund Program is available to assist petroleum UST owners and operators with the costs of cleaning up contaminated soil and groundwater caused by leakage from petroleum USTs. The federal financial responsibility requirements also require coverage for third-party liability due to unauthorized releases of petroleum from USTs. The Cleanup Fund Program receives funding from fees paid by UST owners for every gallon of fuel that is placed into a UST. The Cleanup Fund Program has been a critical resource for both cleaning up immediate impacts of UST releases, and preventing significant migration of petroleum products in groundwater and soil.

UST owners and operators who have leaking USTs are required to pay for the costs of soil and groundwater contamination that results from the leak. Under the Cleanup Fund Program, the owners and operators submit claims to the State Water Board for reimbursement of the costs of cleanup, and the State Water Board reimburses them for their cleanup costs.

The Cleanup Fund Program benefits numerous small, medium, and large businesses and individuals by providing reimbursement for expenses associated with the cleanup of leakage from petroleum USTs.

*RUST Program:* Replacing, Removing, or Upgrading Underground Storage Tanks (RUST) grants and loans are available to assist small business UST owners and operators to come into compliance with UST regulatory requirements by removing, replacing, or upgrading USTs. Loans and grants are available through the RUST program to assist small businesses to remove single-walled USTs and to replace them with double-walled USTs. Typical eligible costs are removing and replacing single-walled USTs and/or piping with double-walled USTs and/or piping, UST upgrades including installing containment sumps, under-dispenser containment boxes/pans, and electronic monitoring systems, and conducting enhanced leak detection tests.

Under current law, the RUST program sunsets on January 1, 2022; however, the requirement to remove single-walled UST is not until December 31, 2025.

AB 3039 extends the RUST program until January 1, 2026, which mirrors the UST Cleanup Fund Program; expands RUST grant eligibility to certain applicants who are not in compliance with water quality or air quality requirements; provides the State Water Board with authority to help prevent fraud in the RUST program and help recover monetary losses to the RUST program due to fraud; and, makes minor and technical changes to the RUST program for efficiency and clarification purposes.

*Related legislation:*

- 1) SB 445 (Hill, Chapter 547, Statutes of 2014). Extended the State Water Resources Control Board (State Water Board) program for the clean-up of Underground Storage Tanks (USTs) from 2016 to 2020.
- 2) AB 282 (Wieckowski, 2014). Would have extended the sunset date of the UST Cleanup Program from 2016 until 2018, and extend the sunset of a \$0.006 surcharge on petroleum stored in an UST from 2014 until 2016. Held in the Senate Appropriations Committee.
- 3) AB 120 (Committee on Environmental Safety and Toxic Materials, Chapter 635, Statutes of 2013). Required the State Water Board to waive a provision in existing law that requires a school district to have continuously maintained a permit for their underground storage tanks in order to qualify for funding from the Underground Storage Tank Cleanup Fund School District Account (School District Account), if the school district meets certain conditions.
- 4) AB 291 (Wieckowski, Chapter 569, Statutes of 2011). Extended for two years a temporary fee paid per gallon on motor vehicle fuel that the owner of an underground storage tank must pay from 1.4 mills to 2 mills per gallon through January 1, 2014.
- 5) AB 358 (Smyth, Chapter 571, Statutes of 2011). Streamlined the State Water Board process for completing the clean-up of USTs by establishing authority for the State Water Board to close sites overseen by local government as part of the State Water Board existing five-year review process.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Metropolitan Water District of Southern California

**Opposition**

None on file.

**Analysis Prepared by:** Josh Tooker / E.S. & T.M. /