

Date of Hearing: June 2, 2020

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

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

Policy Committee: Environmental Safety and Toxic Materials Vote: 9 - 0

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill extends and expands the eligibility for 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).

Specifically, this bill:

- 1) Extends the RUST program until January 1, 2026.
- 2) Expands RUST grant eligibility to certain applicants who are not in compliance with water quality or air quality requirements.
- 3) Provides the (State Water Board) with additional authority to help prevent and recover monetary losses from fraud in the RUST program as follows:
 - a) Authorizes a member of the State Water Board or representative of a specified local agency to inspect the property where tanks are or have been located.
 - b) Requires a person, under penalty of perjury, to provide any information on grants or loans applied for or issued, or funds disbursed, to the board or specified local agency. Provides civil penalties of up to \$10,000 for each violation, as specified.
 - c) Imposes a civil penalty of \$500,000 against any person who makes a misrepresentation on a document relating to a grant or loan in addition to any other civil, administrative, or criminal remedies.
 - d) Imposes a civil penalty of \$10,000 or imprisonment in county jail for not more than one year, or prison for 16 months, two years or three years, or by both fine and imprisonment.
 - e) Authorizes the Attorney General, upon request of the board, to bring an action in superior court to impose the civil penalty referenced in b, c and d. Also, allows the executive director of the board to impose the penalty administratively. Provides guidance for establishing the level of the penalty.
 - f) Requires all fines collected to be deposited in the Petroleum Underground Storage Tank Financing Account.

FISCAL EFFECT:

- 1) Minor, if any additional costs to the State Water Board associated with the additional authority in the bill, likely offset by the recovery of monetary losses from fraud (special fund.)

Currently, a fee of 3 mills (\$0.003) per gallon is charged on petroleum stored in a UST and is available for UST contamination clean-up for school districts, clean-up from orphan contaminated sites (SCAP program), and the RUST program. The division of funding among the three purposes is adjusted each year in the budget act.

Over the past few years, the budget has allocated roughly \$25 million for the RUST program and \$25 million for the SCAP program. The school district account does not currently require additional funding. If the RUST fund sunsets, all funds would go to the SCAP program.

According to the State Water Board, demand for RUST funds is expected to increase as the December 31, 2025 deadline for single-wall UST removal approaches. Extending the program will allow the Legislature to allocate funding between the two programs in the budget act.

- 2) Unknown, likely minor, increased state costs resulting from incarceration of fraudulent grant or loan recipients.

COMMENTS:

- 1) **Rationale.** USTs and associated components have the potential of leaking gasoline, diesel fuels, fuel additives and other hazardous substances into the soil and groundwater, presenting a risk to public health and the environment. As a result, the State Water Board has adopted design and construction standards for USTs to prevent leaks from occurring and to detect leaks when they do occur.

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. AB 3039 extends the sunset of the RUST program until January 1, 2026, to allow the continuation of assistance for small businesses to comply with UST laws and regulations.

Additionally, if petroleum leaks are discovered upon removal of tanks, eligible UST owners and operators may apply for financial assistance from the State Water Board's UST Cleanup Fund. The UST Cleanup Fund is scheduled to sunset on January 1, 2026. Aligning the sunset dates for these related UST programs would extend important windows of opportunity that help UST owners and operators achieve regulatory compliance.

- 2) **Background.** Under the RUST program, the State Water Board offers direct low-interest loans and grants to assist small businesses (such as gas stations with USTs) in complying with UST regulatory requirements, including those by the State Water Board and the California Air Resources Board.

Typical eligible costs include removing and replacing single-walled USTs with double-walled USTs; upgrades, including installing containment sumps, under-dispenser containment and electronic monitoring systems; and conducting enhanced leak detection tests. RUST funds can also be used for eligible air quality-related upgrades and repairs, such as enhanced vapor recovery devices.

Grants are available to small businesses that employ fewer than 20 full-time and part-time employees for a maximum funding amount of \$70,000 per entity. Loans are available to small businesses that employ fewer than 500 full-time and part-time employees for a maximum funding amount of \$750,000 per entity.

The cost of replacing, removing, or upgrading existing USTs to meet regulatory requirements can be significant. Recent applications and contractor reports received by the State Water Board indicate the average cost to remove and replace USTs for a facility with two to four single-walled USTs ranges from \$600,000 to \$800,000.

- 3) **Enforcement Provisions.** The enforcement language in this bill is essentially the same as provisions of existing law designed to prevent and address fraud in the Underground Storage Tank Cleanup Fund (USTCF). Since the RUST program is funded from the USTCF, it is reasonable that similar language should be included.

The State Water Board has identified numerous cases of fraudulent claims being submitted to the USTCF by underground storage tank operators and their contractors and consultants, and has used the authority to address many of those cases. There is significant overlap in the UST owners and operators and the contractors or consultants that receive funds from both the USTCF the RUST program. In addition, the State Water Board has identified cases of potential fraud in the RUST program, which it is currently investigating. The current limitations on the State Water Board's enforcement authority impede its ability to go after all but the most egregious cases, which does not provide effective deterrence against fraud.