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Honorable Art Agnos, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

As you know, we recently began an audit of the registration and monitoring of underground storage tanks that contain hazardous material. While there are problems in enforcing laws and regulations governing underground storage tanks, it is not clear who is responsible for this enforcement. Current law does not clearly define the responsibilities and authority of the State Water Resources Control Board (state board) and the regional water quality control boards (regional boards) for ensuring that tank owners and local agencies comply with laws and regulations governing underground storage tanks. Therefore, there is a lack of criteria on which to base a comprehensive audit of the performance of either the state board or the regional boards. Further audit work in this area would not be a beneficial use of audit resources until there is a clear definition of responsibility.

Background

In 1983, a statewide program was initiated to identify and regulate underground storage tanks that contain hazardous material. Chapter 1045, Statutes of 1983, required the state board to conduct an inventory of underground containers and to identify the location and contents of underground tanks. The state board has completed this inventory.

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In addition, Chapter 1046, Statutes of 1983, required local governments to establish programs for issuing permits for underground tanks and to collect from tank owners a state surcharge to cover the state board's cost to administer the permit program. Chapter 1046 further required the state board to issue regulations implementing the provisions of the permit program; the state board issued these regulations in August 1985. In addition, Chapter 1046 required that all underground storage tanks have monitoring systems and be tested periodically for leaks. Those cities and counties that had previous ordinances that provide for the issuing of permits and the monitoring of tanks are exempt from certain provisions of the law.

Underground Storage Tank Monitoring and Testing

The Legislature has expressed concern over potential problems in the effectiveness of monitoring devices that current law and regulations require. As part of our preliminary work, we interviewed staff of the state board, reviewed documents at the state board, and surveyed the nine regional water quality control boards. Staff responsible for working on the permit program at the state and regional boards generally were not aware of problems with monitoring devices. However, 54 of the 101 local agencies that administer the permit program are exempt from regulations developed by the state board that relate to monitoring. These agencies have adopted their own ordinances. The state and regional boards did, however, identify problems with the methods of testing tanks and with contractors who perform these tests. Staff responsible for working on the permit program at the regional boards stated that tank tests are often inaccurate and lack consistency. In addition, staff at the state and regional boards stated that contractors who perform tank tests may not be qualified and, therefore, there is a need to license these contractors.

The U. S. Environmental Protection Agency published a report that evaluates various methods of testing tanks. In June 1986, the state board sent copies of this report to all local agencies that implement the tank permit program. In addition, the state board surveyed local agencies that implement the permit program and identified a need to regulate tank testers. As a result, the state board is considering sponsoring legislation that requires that testers of underground storage tanks be licensed.

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Local Agencies Are Not Paying a State Surcharge

Ninety of the 101 local agencies that implement the tank permit program are required to collect a surcharge from tank owners who apply to obtain a permit, to renew a permit, or to amend a permit.* Local agencies are required to remit the surcharge to the state board. However, according to the state board, as of September 30, 1986, 56 of these 90 local agencies had not remitted any surcharge fee. In addition, not all of the remaining 34 local agencies had remitted the full surcharge fee. As a result, the state board estimates that these 90 local agencies owe the state board at least \$3.1 million. Although the state board is working with local agencies to collect the surcharge fee, according to the state board, current law does not provide the board with clear authority to require local agencies to comply with the surcharge requirement or with sanctions necessary to ensure compliance. Assembly Bill 2920, which became effective September 30, 1986, prohibits local agencies from issuing or renewing an underground storage tank permit for a tank owner who has not paid the surcharge. The bill also allows the local agencies to retain 6 percent of the surcharge for administrative costs incurred in collecting the surcharge. These recent amendments may encourage local agencies to collect the surcharge from tank owners.

Local Agencies Are Not Promptly Implementing Permit Programs

All 101 local agencies are required to issue permits to tank owners. Chapter 1584, Statutes of 1984, required local agencies to implement permit programs no later than July 1, 1985. However, according to a survey conducted by the state board in August and September of 1986, 36 (38 percent) of the 95 local agencies that responded to the survey had not issued any interim operating permits by the end of fiscal year 1985-86. Finally, according to the state board's survey, three local agencies reported that they had not yet adopted an ordinance to implement a tank permit program. According to the state board, current law does not provide the state board or the regional boards with the responsibility or authority for insuring that local agencies promptly implement a permit program or with the sanctions necessary to encourage local agencies to comply.

*Eleven cities in Santa Clara County are exempted by the statutes from collecting the surcharge.

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Methods of Reporting Tank Leaks Are Not Consistent

Current law and regulations require operators of underground tanks to report leaks to the local agency within 24 hours of the time the leak is detected. Regulations further require the tank operator to notify the State Office of Emergency Services or the regional board of the leak. Both current law and regulations further require the tank owner or operator to submit a written report to the local agency within five days of the time the leak is detected. To facilitate the reporting of leaks, the state board developed a reporting form for local agencies to distribute to tank owners. The form includes carbon copies for the tank owner, the local agency, the state board, the Department of Health Services, and the regional board.

Our survey of the nine regional boards indicates that there is no consistent method among the local agencies or tank owners for reporting information on tank leaks to the appropriate entities. For example, staff at one regional board stated that they receive only telephone calls from local agencies reporting leaks; they do not receive a copy of the state board's reporting form. In addition, staff at this regional board stated that tank owners may not be reporting all leaks. Staff at two other regional boards stated that some local agencies do not report those leaks that they do not consider a threat. All nine regional boards stated that there is no assurance that all leaks are being reported to both the regional boards and the state board. The state board has also stated in its annual report on tank leaks, dated January 1987, that not all leaks in the State have been reported to the state board. According to the state board, current law does not clearly define the responsibility or authority of either the state board or the regional boards for ensuring that tank owners and local agencies are reporting all leaks in a consistent manner.

Disagreement Over the Roles of State and Local Agencies

The Legislature has attempted to augment the state board's staff to enable the state board to play a more active role in administering the tank permit program and in overseeing the cleanup of leaks. In fiscal year 1985-86, the Legislative Analyst recommended, and the Legislature approved, an augmentation of 167 personnel years for investigating leaks and overseeing the cleanup of leaks by the state board. In fiscal year 1986-87, the Legislative Analyst recommended, and the Legislature approved an augmentation of 158 personnel years for the same purpose. The governor vetoed both augmentations. In his 1985-86

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veto message, the governor stated that the augmentation would have the State rather than local government oversee all cleanup, and this type of policy change should be addressed in specific legislation, not in the budget bill.

In addition, in 1985, one portion of Senate Bill 1063 would have allocated \$3.6 million for the state board to accelerate the cleanup of tank leaks. The governor vetoed this allocation, stating that if it were approved, the state board rather than local government would assume the responsibility for overseeing the cleanup activities, representing a significant policy change. Further, in 1985, Assembly Bill 853 would have imposed a requirement on the state board or on the regional boards to perform, or cause to be performed, any action necessary to clean up a tank leak. The governor vetoed this bill in September 1986, stating that "common sense and efficient management" dictate that local government should oversee the cleanup of tank leaks.

Conclusion

While there are problems in enforcing laws and regulations governing underground storage tanks, it is not clear who is responsible for this enforcement. Current law does not clearly define the responsibilities and authority of the State Water Resources Control Board and the regional water quality control boards for ensuring that these laws and regulations are followed. Therefore, there is a lack of criteria on which to base a comprehensive audit of the performance of either the state board or the regional boards. Further audit work in this area would not be a beneficial use of audit resources until there is a clear definition of responsibility.

Recommendation

Legislation should be passed and signed to clearly define the responsibilities and authority of the State Water Resources Control Board and of the regional water quality control boards relating to underground storage tanks.

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We conducted this review under the authority vested in the Auditor
General by Section 10500 et seq. of the California Government Code.

Sincerely,



THOMAS W. HAYES
Auditor General

