

When Can a UST Operating Permit be Issued?

UST FAQ: Can a UPA issue a UST operating permit if the facility has not submitted electronically to CERS or a local portal? What if they have submitted but the UPA does not accept the submittal?

Answer: No. The Facility Information and UST submittal elements at minimum must be reported to CERS or to a local portal before an operating permit can be issued. This information must be current for the reporting year in accordance with the established submittal anniversary date set by the CUPA or PA.

The second question is more complex because there are several possible scenarios. If the facility submittal is not accepted by the UPA should the UPA issue the operating permit?

- Answer: It depends.
 - If the submittal is only marginally deficient, the UPA could
 1. choose to 'not accept' the submittal and issue the operating permit
 2. choose to 'not accept' the submittal and **NOT** issue the permit
 3. choose to 'accept' with conditions that a resubmittal be made and issue the operating permit
 - The Water Board recommends the third option; accept the submittal conditional upon a corrected submittal within a specified timeframe. This allows the business to operate but does not relieve them of their responsibility to correct the submittal deficiencies.
 - If the submittal is seriously deficient, the UPA should not accept the submittal and not issue the operating permit until a corrected submittal is made.
 - Another possible scenario is that the business reports electronically but the UPA does not review the submittal. In this instance the Water Board recommends that the operating permit be issued with a condition that if the submittal is later found to be deficient a corrected submittal will be required within a specified timeframe.

Please note that this practice may result in a deficiency for the UPA during its program evaluation. UPAs should not prevent a business from operating or put the facility in the position of operating without a valid operating permit because of UPA staffing or resource deficiencies but delaying the issuance of an operating permit for these reasons is not acceptable and may result in a deficiency for the UPA during its program evaluation.

To avoid potential operational restrictions based on an unacceptable or late submittal, UPAs should advise regulated businesses to report well in advance of the expiration date of the current operating permit. They should further advise their regulated businesses that significant deficiencies in submittals or failure to submit will result in a delay in the issuance of the operational permits.

Code references:

CCR Title 23, chapter 16, section 2712 states that the local agency shall not renew an underground storage tank permit unless the underground storage tank has been inspected by the local agency or a special inspector within the previous 12 months and the inspection verified that the underground storage tank complied with the provisions of Article 3 or 4, as applicable, and with all existing permit conditions. The inspection shall be conducted as specified in section 25288 of Chapter 6.7 of Division 20 of the Health and Safety Code. Part of this inspection (as outlined in regulations and summarized in LG 159) includes compliance with various forms or information being submitted to the CUPA or PA. If that information required by regulation has not been reported electronically then it is a violation and the permit cannot be issued. The HMIS is included in this interpretation because it includes critical emergency response information including the quantity of hazardous materials contained in the UST and the location of the UST(s). HSC section 25508.1 specifies that significant changes are required to be reported within 30 days.

CCR Title 23, chapter 16, section 2712:

2712(c) ...Before a local agency issues a new permit or renewal to operate an underground storage tank the local agency shall inspect the underground storage tank and determine that it complies with the provisions of these regulations.

2712(e) The local agency shall not renew an underground storage tank permit unless the underground storage tank has been inspected by the local agency or a special inspector within the previous 12 months and the inspection verified that the underground storage tank complied with the provisions of Article 3 or 4, as applicable, and with all existing permit conditions.

California Health and Safety Code Section 25508.1. Within 30 days of any one of the following events, a business subject to this article shall electronically update the information submitted to the statewide information management system: (a) A 100 percent or more increase in the quantity of a previously disclosed material. (b) Any handling of a previously undisclosed hazardous material subject to the inventory requirements of this article. (c) Change of business address. (d) Change of business ownership. (e) Change of business name. (f) (1) A substantial change in the handler's operations occurs that requires modification to any portion of the business plan. (2) For the purposes of this subdivision, "substantial change" means any change in a regulated facility that would inhibit immediate response during an emergency by either site personnel or emergency rescue personnel, or that could inhibit the handler's ability to comply with Section 25507, change the operational knowledge of the facility, or impede implementation of the business plan.

4/13/2015 Revision note: This FAQ was updated to remove reference to the requirement to submit the Hazardous Materials Inventory Statement (HMIS), Emergency Response and Training Plan (ERTP) in the first paragraph of the original version. While all UST facilities are also regulated under the Hazardous Materials Business Plan program and a valid HMBP is required under that program, failure to submit an HMBP is not a violation under the UST program reporting requirements and therefore would not be justification for withholding a UST operating permit.