

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF FINANCIAL ASSISTANCE
JULY 7, 2009**

ITEM 5

SUBJECT

CONSIDERATION OF A RESOLUTION TO REPEAL ORPHAN SITE CLEANUP ACCOUNT REGULATIONS AND ADOPT REGULATIONS IMPLEMENTING THE ORPHAN SITE CLEANUP FUND

DISCUSSION

For purposes of the Underground Storage Tank (UST) Petroleum Contamination Orphan Site Cleanup Fund (Orphan Site Cleanup Fund), brownfields are abandoned or underused commercial or industrial properties, where expansion or redevelopment is hindered by contamination. Brownfields vary in size, location, age, and past use. Many brownfields in California were former gasoline service stations where leaking USTs containing petroleum products have caused, and in some cases continue to cause, impacts to soil and groundwater. These properties present public health and environmental impacts, as well as economic challenges, to the communities in which they are located.

The State Water Resources Control Board (State Water Board) implements the Petroleum UST Cleanup Fund (USTCF), which provides financial assistance to UST owners and operators for corrective action costs. In many cases, however, owners of these brownfield sites and other persons who are responsible for cleaning up the contamination (responsible parties) have abandoned the properties. Some responsible parties or other persons interested in cleaning up and redeveloping brownfields may not be eligible for the USTCF. The cost of cleaning up petroleum contamination from USTs can be substantial and is an impediment to the redevelopment of these brownfields. As a result, these properties sit idle or underutilized and the contamination at the brownfields continues to go unabated, threatening human health, safety, and the environment.

Pursuant to statutes effective January 1, 2005, \$10 million per fiscal year 2004-05, 2005-06, and 2006-07 were transferred from the USTCF to the UST Petroleum Contamination Orphan Site Cleanup Subaccount (OSCA) to address petroleum contamination from USTs at sites that qualify as brownfields. Effective January 1, 2008, the OSCA program was repealed. Therefore, the OSCA regulations are no longer in effect and should be repealed.

Pursuant to statutes effective January 1, 2009, \$10 million per fiscal year 2008-09, 2009-10, and 2010-11 shall be transferred from the USTCF to the Orphan Site Cleanup Fund to address petroleum contamination from USTs at sites that qualify as brownfields. The State Water Board's proposed regulations implement the Orphan Site Cleanup Fund program, define eligible sites, eligible applicants, and eligible costs, and establish eligibility requirements, a priority system for paying eligible applicants, and funding limitations.

The State Water Board published and distributed a Notice of Proposed Rulemaking, Initial Statement of Reasons, and the text of the proposed regulations for the Orphan Site Cleanup Fund on February 13, 2009. The 45-day public comment period ended on March 30, 2009. During the 45-day period, the State Water Board received written comments, but no requests for a public hearing. Responses to all timely comments received on the proposed regulations are contained in the Final Statement of Reasons. After the 45-day comment period ended, State Water Board staff made some minor grammatical changes to the proposed regulations. Because these changes were non-substantial, no additional notice or public comment period was required.

POLICY ISSUE

Should the State Water Board:

Adopt a resolution to repeal existing OSCA regulations, adopt the proposed Orphan Site Cleanup Fund regulations, and authorize the Executive Director to transmit the proposed regulations to the Office of Administrative Law for filing with the Secretary of State?

FISCAL IMPACT

The proposed regulations implement the statute and do not impose any additional fiscal impacts.

REGIONAL WATER BOARD IMPACT

None.

STAFF RECOMMENDATION

That the State Water Board:

Adopt a resolution to repeal existing OSCA regulations, adopt the [proposed Orphan Site Cleanup Fund regulations](#), and authorize the Executive Director to transmit the proposed regulations to the Office of Administrative Law for filing with the Secretary of State.

State Water Board action on this item will assist the Water Boards in reaching Goal 2 of the Strategic Plan Update: 2008-2012 to improve and protect groundwater quality in high-use basins by 2030.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2009-

TO REPEAL ORPHAN SITE CLEANUP ACCOUNT REGULATIONS AND ADOPTING REGULATIONS IMPLEMENTING THE ORPHAN SITE CLEANUP FUND

WHEREAS:

1. For purposes of the Underground Storage Tank (UST) Petroleum Contamination Orphan Site Cleanup Fund (Orphan Site Cleanup Fund), brownfields are abandoned or underused commercial or industrial properties where redevelopment is impeded by contamination. Many brownfields in California were former gasoline service stations where leaking USTs containing petroleum products have caused, and in some cases continue to cause, impacts to soil and groundwater. These properties present public health and environmental impacts, as well as economic challenges, to the communities in which they are located;
2. The State Water Resources Control Board (State Water Board) implements the Petroleum UST Cleanup Fund (USTCF), which provides financial assistance to UST owners and operators for corrective action costs. Some responsible parties or other persons interested in cleaning up and redeveloping brownfields may not be eligible for the USTCF. The cost of cleaning up petroleum contamination from USTs can be substantial and is an impediment to the redevelopment of these brownfields. As a result, these properties sit idle or underutilized and the contamination at these brownfields continues to go unabated and threatens human health, safety, and the environment;
3. Pursuant to statutes effective January 1, 2005, \$10 million per fiscal year 2004-05, 2005-06, and 2006-07 was transferred from the USTCF to the UST Petroleum Contamination Orphan Site Cleanup Subaccount (OSCA) to address petroleum contamination from USTs at sites that qualify as brownfields. Effective January 1, 2008, the OSCA program was repealed. The OSCA regulations are no longer in effect and should be repealed;
4. Pursuant to statutes effective January 1, 2009, \$10 million per fiscal year 2008-09, 2009-10, and 2010-11 shall be transferred from the USTCF to the Orphan Site Cleanup Fund to address petroleum contamination from USTs at sites that qualify as brownfields;
5. The State Water Board has proposed regulations to implement Health and Safety Code section 25299.50.2, which established the Orphan Site Cleanup Fund. Specifically, the proposed regulations define eligible sites, eligible applicants, and eligible costs and establish eligibility requirements, a priority system for paying eligible applicants, and funding limitations;
6. The State Water Board published and distributed a Notice of Proposed Rulemaking, Initial Statement of Reasons, and the text of the proposed regulations for the Orphan Site Cleanup Fund on February 13, 2009. The 45-day public comment period ended on March 30, 2009. During the 45-day period, the State Water Board received written comments, but no requests for a public hearing. Responses to all timely comments received on the proposed regulations are contained in the [Final Statement of Reasons](#); and
7. After the 45-day comment period ended, the State Water Board made some minor grammatical changes to the proposed regulations. These changes are non-substantial.

D R A F T

These changes do not require any additional notice or public comment period and are addressed in the Final Statement of Reasons.

THEREFORE, BE IT RESOLVED THAT:

The State Water Board:

1. Repeals existing California Code of Regulations, title 23, division 3, chapter 18, article 7, § 2814.20 et seq., relating to the OSCA; and
2. Adopts the proposed regulations for inclusion in the California Code of Regulations, title 23, division 3, chapter 18, and authorizes the Executive Director to transmit the proposed regulations to the Office of Administrative Law for filing with the Secretary of State.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on July 7, 2009.

Jeanine Townsend
Clerk to the Board