

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF FINANCIAL ASSISTANCE
JUNE 15, 2010**

ITEM 7

SUBJECT

CONSIDERATION OF AN ORDER DIRECTING UNDERGROUND STORAGE TANK CASE CLOSURES PURSUANT TO HEALTH AND SAFETY CODE SECTION 25299.39.2.

DISCUSSION

Section 25299.39.2 of the Health and Safety Code directs the manager responsible for the Underground Storage Tank (UST) Cleanup Fund (Fund Manager) to review the case history of claims that have been active for five years or more (five-year review), unless there is an objection from the tank owner or operator.

Section 25299.39.2 of the Health and Safety Code further authorizes the Fund Manager to make recommendations to the State Water Resources Control Board (State Water Board) for closure of a five-year-review case if the tank owner or operator approves.

The Fund Manager has completed one or more five-year reviews of the cases listed below and recommends that the cases be closed. The Fund Manager considered the site-specific facts and circumstances and applied the decisional framework established in previous State Water Board UST closure orders when arriving at these recommendations.

- Don's Rhino, 400 Healdsburg Avenue, Healdsburg, California
- Redwood Oil, 401 Healdsburg Avenue, Healdsburg, California

The Fund Manager notified the tank owner or operator, applicable regional water quality control board, fee title owners of the site and adjacent sites and other interested persons of the recommendation for case closure. In addition, a case closure summary was prepared for each of the cases and made available for review and comment by all of the parties identified above and the public.

It is the opinion of the Fund Manager that corrective actions taken at these UST release sites ensure protection of human health, safety and the environment and are consistent with applicable provisions of Health and Safety Code and implementing regulations, State Water Board [Resolution No 1992-0049](#) and other State Water Board policies.

POLICY ISSUE

Should the State Water Board:

1. Adopt an order directing the UST cases for the listed sites be closed pursuant to Health and Safety Code Section 25299.39.2 and no further action related to the UST be required?

2. Direct the Deputy Director of the Division of Financial Assistance (Division) to issue closure letters consistent with Health and Safety Code, section 25296.10, subdivision (g)?

FISCAL IMPACT

None.

REGIONAL WATER BOARD IMPACT

Yes. Region 1.

STAFF RECOMMENDATION

The State Water Board should:

1. Adopt an order directing the UST cases for the listed sites be closed pursuant to Health and Safety Code Section 25299.39.2 and no further action related to the UST be required; and
2. Direct the Deputy Director of the Division to issue closure letters consistent with Health and Safety Code, section 25296.10, subdivision (g).

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.

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STATE OF CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

ORDER: WQ 2010–XXXX-UST

In the Matter of Underground Storage Tank Case Closures Pursuant to Health and Safety Code Section 25299.39.2

BY THE BOARD:

Pursuant to Health and Safety Code section 25299.39.2, the Manager of the Underground Storage Tank Cleanup Fund (Fund) recommends closure of underground storage tank (UST) cases at sites listed below.¹ The name of each Fund claimant, the Fund claim number and the applicable site address are as follows:

1. Peter Van Alyea, Fund Claim No. 2757, 401 Healdsburg Avenue, Healdsburg
2. Juanita Giovannoni, Fund Claim No. 524, 400 Healdsburg Avenue, Healdsburg, CA

I. STATUTORY AND PROCEDURAL BACKGROUND

Section 25299.39.2 directs the Fund manager to review the case history of claims that have been active for five years or more (five-year review), unless there is an objection from the UST owner or operator. This section further authorizes the Fund Manager to make recommendations to the State Water Resources Control Board (State Water Board) for closure of a five-year-review case if the UST owner or operator approves. In response to a recommendation by the Fund Manager, the State Water Board may close a case or require the closure of a case if the case is under the jurisdiction of a regional water quality control board (Regional Water Board) or a local agency that is implementing the local oversight program pursuant to section 25297.1.

¹ Unless otherwise noted, all references are to the Health and Safety Code.

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The Fund Manager has completed a five-year review of the UST cases identified above, and recommends that these cases be closed. Each recommendation is based upon the facts and circumstances of the particular UST case. A UST Case Closure Summary has been prepared for the cases identified above and the bases for the closure recommendation are explained in these summaries.

Several statutory and regulatory provisions provide the State Water Board, Regional Water Boards, and local agencies with broad authority to require responsible parties to clean up a release from a petroleum UST. (See Health & Saf. Code, § 25296.10; Wat. Code, § 13304, subd. (a).) The State Water Board has promulgated regulations specifying corrective action requirements for petroleum UST cases. (Cal. Code Regs., tit. 23, §§ 2720-2728.) The regulations define corrective action as "any activity necessary to investigate and analyze the effects of an unauthorized release, propose a cost-effective plan to adequately protect human health, safety and the environment and to restore or protect current and potential beneficial uses of water, and implement and evaluate the effectiveness of the activity (ies)." (Cal. Code Regs., tit. 23, § 2720.)

Closure of a UST case is appropriate where the corrective action ensures the protection of human health, safety, and the environment and where the corrective action is consistent with: 1) Chapter 6.7 of the Health and Safety Code and implementing regulations; 2) Any applicable waste discharge requirements or other orders issued pursuant to Division 7 of the Water Code; 3) All applicable state policies for water quality control; and 4) All applicable water quality control plans.

State Water Board Resolution 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304* is a state policy for water quality control and applies to petroleum UST cases. State Water Board Resolution 92-49 directs that water affected by an unauthorized release attain either background water quality or the best water quality that is reasonable if background water quality cannot be restored. (State Water Board Resolution 92-49, Section III.G.) Any alternative level of water quality less stringent than background must be consistent with the maximum benefit to the people of the state, not unreasonably affect current and anticipated beneficial use of affected water,

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and not result in water quality less than that prescribed in the water quality control plan for the basin within which the site is located. (*Ibid.*) Resolution 92-49 does not require, however, that the requisite level of water quality be met at the time of site closure. Resolution No. 92-49 specifies compliance with cleanup goals and objectives within a reasonable time frame. (*Id.* at section III.A.) Therefore, even if the requisite level of water quality has not yet been attained, a site may be closed if the level will be attained within a reasonable period.

Regional Water Boards adopt Regional Water Quality Control Plans (Basin Plans) for their respective regions and the State Water Board approves Basin Plans. Basin Plans include beneficial uses of water for the applicable region and water quality objectives to protect specific beneficial uses of water. Each UST Case Closure Summary identifies relevant beneficial uses and water quality objectives from the applicable Basin Plan.

II. FINDINGS

Based upon the UST Case Closure Summary prepared for each case attached hereto as [Exhibits 1](#) and [2](#), the State Water Board finds that corrective action taken at the UST release sites identified below ensures protection of human health, safety and the environment and is consistent with Chapter 6.7 of the Health and Safety Code and implementing regulations, State Water Board Resolution 92-49 and other water quality control policies and applicable water quality control plans.

1. Peter Van Alyea, Fund Claim No. 2757, 401 Healdsburg Avenue, Healdsburg
2. Juanita Giovannoni, Fund Claim No. 524, 400 Healdsburg Avenue, Healdsburg, CA

Any orders that have been issued by Regional Water Boards pursuant to Division 7 of the Water Code for these cases that are inconsistent with case closure should be rescinded.

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III. ORDER

IT IS THEREFORE ORDERED that:

- A. The UST cases identified in Section II of this Order are closed and no further action related to the UST case is required.
- B. The Deputy Director of the Division of Financial Assurance issue a closure letter consistent with Health and Safety Code, section 25296.10, subdivision (g) and upload the closure letter and UST Case Closure Summary for each case to Geotracker.
- C. Any Regional Water Board order issued pursuant to Division 7 of the Water Code that directs corrective action or other action inconsistent with case closure for a UST case identified in Section II is rescinded.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Board held on June 15, 2010.

Jeanine Townsend
Clerk to the Board