

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2004 - 0073**

RESOLUTION FINDING A CONDITION OF EMERGENCY AND ADOPTING EMERGENCY REGULATIONS IMPLEMENTING THE GRANT AND LOAN PROGRAM TO ASSIST SMALL BUSINESSES REPLACING, REMOVING, OR UPGRADING PETROLEUM UNDERGROUND STORAGE TANKS

WHEREAS:

1. Chapter 6.76 (commencing with section 25299.100) of Division 20 of the Health and Safety Code authorizes the State Water Resources Control Board (SWRCB) to administer a grant and loan program to assist small businesses in replacing, removing, upgrading, or making other specified improvements to petroleum underground storage tanks (RUST program);
2. Section 25299.108 of the Health and Safety Code requires the SWRCB to adopt emergency regulations to implement the RUST program and states that the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare; and
3. The SWRCB has determined that the adoption of these emergency regulations is necessary to immediately make available grant and loan funds to small businesses to assist them to meet underground storage tank regulatory requirements and protect California's groundwater.

THEREFORE BE IT RESOLVED THAT:

1. The SWRCB finds that a condition of emergency exists in connection with the proposed regulations implementing Chapter 6.76 of Division 20 of the Health and Safety Code justifying the immediate adoption of the proposed regulations in order to preserve the public peace, health and safety, and general welfare; and
2. The proposed additions to Title 23, California Code of Regulations, Division 3, Chapter 24, Sections 3420 to 3428 are adopted on an emergency basis, and the Executive Director is authorized to transmit the additions 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 Resources Control Board held on November 18, 2004.


Debbie Irvin
Clerk to the Board

CALIFORNIA CODE OF REGULATIONS
TITLE 23. WATERS
DIVISION 3. STATE WATER RESOURCES CONTROL BOARD
CHAPTER 24. GRANT AND LOAN PROGRAMS
ARTICLE 2. REPLACING, REMOVING, OR UPGRADING PETROLEUM
UNDERGROUND STORAGE TANKS GRANT AND LOAN PROGRAM

3420. Definitions.

The following definitions shall govern construction of this article:

"Act" means chapter 6.76 (commencing with section 25299.100) of division 20 of the Health and Safety Code.

"Applicant" means a small business that owns or operates a project tank and is applying for a loan or a grant.

"Application" means the information contained in sections 3424 or 3425 which an applicant must provide to the Board when seeking a loan or a grant.

"Board" means the State Water Resources Control Board.

"Borrower" means an applicant whose application for a loan has been approved and who has executed a loan agreement.

"Corrective action" has the same meaning as defined in section 2804 of title 23 of the California Code of Regulations.

"Environmental audit" means an investigation into all variables, including the applicant's operations and compliance with federal, state and local environmental laws, regulations and rulings, which would indicate whether the facility is, or is likely to become, contaminated.

"Financial responsibility" has the same meaning as defined in section 2804 of title 23 of the California Code of Regulations.

"Grant agreement" means a written agreement for a grant made in accordance with this article.

"Local agency" means a local agency authorized pursuant to Health and Safety Code section 25283 to implement chapter 6.7 of division 20 of the Health and Safety Code.

"Loan agreement" means a written agreement for a loan made in accordance with this article.

"Petroleum" has the same meaning as defined in section 2804 of title 23 of the California Code of Regulations.

"Project" means the work an applicant proposes to conduct on a tank by removing, replacing, upgrading, or making other specified improvements to the tank, and/or taking corrective action.

"Project tank" means the tank that is the subject of the project.

"Regional board" means a California Regional Water Quality Control Board.

"RUST program" means the program administered by the Board pursuant to the Act. The RUST program provides grants for specified improvements to petroleum underground storage tanks and provides loans for replacing, removing, upgrading, or performing corrective action related to petroleum underground storage tanks.

"Small business" means a business which complies with all of the following:

(a) The principal office is domiciled in California,

(b) The officers of the business are domiciled in California, and

(c) The business meets either (1) or (2) below:

(1) For grants, the business meets both of the following:

(A) It is a small business as defined in section 632 of title 15 of the United States Code, and in the federal regulations adopted to implement that section as specified in part 121 (commencing with section 121.101) of chapter 1 of title 13 of the Code of Federal Regulations, and

(B) The business employs fewer than 20 full-time and part-time employees.

(2) For loans, the business meets one of the following:

(A) It is a small business as defined in section 632 of title 15 of the United States Code, and in the federal regulations adopted to implement that section as specified in part 121 (commencing with section 121.101) of chapter 1 of title 13 of the Code of Federal Regulations, or

- (B) It employs fewer than 500 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation.

"Tank" means an "underground storage tank" as defined in section 2804 of title 23 of the California Code of Regulations. "Tank" also includes under-dispenser containment systems, spill containment systems, enhanced monitoring and control systems, and vapor recovery systems and dispensers connected to the underground piping and the underground storage tank.

"Underground storage tank" has the same meaning as defined in section 2804 of title 23 of the California Code of Regulations.

Authority: Section 25299.108, Health and Safety Code.

Reference: Sections 25299.100, 25299.101, 25299.102, 25299.103, 25299.104, 25299.105 and 25299.106, Health and Safety Code.

3421. Grant and Loan Purposes.

- (a) Grant funds may be used only to pay the costs necessary to comply with the requirements of Health and Safety Code sections 25284.1, 25292.4, or 25292.5.
- (b) Loan funds may be used to finance the costs necessary to upgrade, remove, or replace project tanks. Loan funds may also be used for corrective action costs and for costs necessary to comply with applicable local, state, or federal standards, including, but not limited to, any design, construction, monitoring, operation, or maintenance requirements adopted pursuant to Health and Safety Code sections 25284.1 and 25292.4.

Authority: Section 25299.108, Health and Safety Code.

Reference: Sections 25299.101, 25299.104 and 25299.105, Health and Safety Code.

3422. Eligibility.

- (a) An applicant shall be eligible for a loan when the Board determines the following:
 - (1) The applicant is an existing small business which owns or operates one or more project tanks;
 - (2) No similar financing is available to the applicant. A determination that no similar financing is available shall consist of one of the following:
 - (A) The Board makes a finding that the applicant is unlikely to obtain financing for the project from private financial institutions, the Hazardous Substance Cleanup Financing Authority, the California Pollution Control Financing Authority, or other government

agencies, under terms and conditions substantially similar to those available with a loan; or

(B) The Board locates alternative financing sources for the applicant, and the applicant submits evidence that these financing sources are unwilling to finance the project on terms and conditions substantially similar to those available with a loan;

(3) The applicant has complied with, will comply with, or is exempt from, the financial responsibility requirements specified in section 25299.31 of the Health and Safety Code and implementing regulations;

(4) All tanks owned or operated by applicant are subject to compliance with chapter 6.7 (commencing with section 25280) of division 20 of the Health and Safety Code; and

(5) The applicant demonstrates the ability to repay the loan, and the availability of adequate collateral to secure the loan.

(b) An applicant shall be eligible for a grant if the applicant owns or operates one or more project tanks and meets the requirements set forth in Health and Safety Code section 25299.105.

Authority: Section 25299.108, Health and Safety Code.

Reference: Sections 25299.101, 25299.102, and 25299.105, Health and Safety Code.

3423. Loan Terms.

(a) In addition to the loan terms established by Health and Safety Code section 25299.104, each loan agreement shall include the following terms and conditions:

(1) A description of collateral securing the loan and conditions pertaining thereto, as determined by the Board, and agreed to by the applicant,

(2) A provision that the borrower shall pay late charges in the event of a default,

(3) An affirmative covenant by the borrower that it shall continuously comply with any applicable federal, state, or local requirement, including requirements for operating tanks, throughout the term of the loan, and

(4) An agreement that all work funded with loan proceeds shall be performed by a contractor, as defined in section 7026 of the Business and Professions Code, who has been licensed pursuant to section 7065 to 7077 of the Business and Professions Code.

- (b) Disbursements shall be in stages, and each stage shall require satisfaction of conditions precedent to disbursement. The stages, and conditions precedent to disbursement for each stage, are as follows:
- (1) If the borrower is removing the project tank, disbursement is conditioned on:
 - (A) An executed contract for removal by a licensed contractor including costs consistent with the project budget contained in the loan agreement, and
 - (B) A valid tank removal permit issued by the local agency authorizing removal of the project tank.
 - (2) If the borrower is upgrading the project tank, disbursement is conditioned on:
 - (A) An executed contract for upgrading the tank by a licensed contractor including costs consistent with the project budget contained in the loan agreement, and
 - (B) A valid tank removal permit issued by the local agency authorizing removal of the project tank if removal is part of the project.
 - (3) If the project is tank replacement, disbursement is conditioned on:
 - (A) An executed contract for removal of the old tank and installation of a new tank by a licensed contractor including costs consistent with the project budget contained in the loan agreement, and
 - (B) Valid permits issued by the local agency authorizing removal of the old tank and installation of the new tank.
 - (4) If the project is to take corrective action, disbursement is conditioned on:
 - (A) An executed contract for corrective action by a licensed contractor including costs consistent with the project budget contained in the loan agreement,
 - (B) A corrective action plan approved by the local agency or regional board for the project, and
 - (C) Any federal, state, or local permits required for the project.

Authority: Section 25299.108, Health and Safety Code.

Reference: Section 25299.104, Health and Safety Code.

3424. Loan Application Content.

A completed application for a loan shall consist of the following:

- (a) The name, address and telephone number of the applicant, the name and title of applicant's principal contact person, a description of applicant's type of business and the date the applicant's business was established, the federal employer identification number or social security number of the primary owner, and the number of full- and part-time workers employed by the business. For any application where a business or individual proposes to guarantee the loan repayment, the application shall include information concerning the proposed guarantors, including current financial statements and tax returns for the previous two years, and a list of information concerning each guarantor, including his or her name, address, phone numbers, employer, and amount of time at current residence and employment;
- (b) A list of all tanks located in California and owned or operated by the applicant, including the street address of each tank;
- (c) Information indicating whether each tank owned or operated by the applicant is in compliance with federal, state, and local standards and has a current operating permit issued to the owner or operator, or an explanation why a tank which the applicant owns or operates is exempt from the permit requirements of section 25284 of the Health and Safety Code. Evidence of a current permit shall consist of one of the following:
 - (1) Copy of a current operating permit issued by the local agency; or
 - (2) Both of the following:
 - (A) A completed operating permit application form, utilized by the State Water Resources Control Board and described in section 2711 of title 23 of the California Code of Regulations, signed by an authorized representative of the local agency; and
 - (B) Evidence that the operating permit fee has been paid for each tank owned or operated by the applicant for the current year, consisting of a canceled check or a receipt from the local agency;
- (d) An environmental audit;
- (e) A description of any unauthorized releases from any tanks owned or operated by the applicant, including copies of correspondence with the local agency and regional board, and reports made to insurers;
- (f) Information regarding the project for which funding is being requested, including:

- (1) An explanation of the reasons the project tank is not in compliance with applicable federal, state, or local standards or will not be in compliance with federal, state, or local standards without the project;
 - (2) A description of the project to be completed including an estimated timetable for completion of the project;
 - (3) The reasons applicant believes that, upon completion of the project, the project tank will comply with federal, state and local standards;
 - (4) Project components and cost estimates, including the name and applicable experience of the individual or firm preparing the cost estimates, and copies of any supporting invoices, estimates or contracts; and
 - (5) Identification of any required federal, state, or local permits necessary to carry out the project;
- (g) If the project includes corrective action, the following:
- (1) A description, budget and timeline for each segment or activity comprising the corrective action, and the identified source of funding, including the loan, for each segment or activity; and
 - (2) A copy of the corrective action plan approved by the local agency or regional board;
- (h) Information and documents demonstrating that the applicant is able to provide adequate collateral and repay the loan, including applicant's tax returns for the previous two (2) years, current personal and business financial statements, any history of insolvency, status of any tax audits or lawsuits, and the existence and solvency of any guarantors;
- (i) Loan amount requested and the term of the loan;
- (j) Evidence that the applicant complies with applicable federal or state laws pertaining to financial responsibility. In the alternative, the applicant shall certify that it is exempt from financial responsibility requirements because the only tanks owned or operated by applicant will be removed as part of the project, or that financial responsibility requirements do not currently apply to the tanks, specifying reasons;
- (k) Copy of any application filed with any federal, state, or local agency to obtain the permit(s) necessary to carry out the project; and

- (l) Any other information or supporting documentation reasonably required by the Board to determine an applicant's eligibility, priority, or the amount of a loan.

Authority: Section 25299.108, Health and Safety Code.

Reference: Sections 25299.101, 25299.102 and 25299.103, Health and Safety Code.

3425. Grant Application Content.

A completed application for a grant shall consist of the following:

- (a) A description of the applicant's business, including the business' name, telephone number, street address, city, state, zip code, county, federal employer identification number or social security number of the primary owner, and the number of full- and part-time workers employed by the business. A person working fewer than forty (40) hours a week shall be considered a part-time employee;
- (b) The names and addresses of each owner and corporate officer of the applicant. If an owner is a corporate entity, list the name and business address of its principal place of business;
- (c) The amount of grant funding requested. The minimum amount of grant funding an applicant may apply for is three thousand dollars (\$3,000). The maximum amount of grant funding an applicant may apply for is fifty thousand dollars (\$50,000);
- (d) A description of the project the applicant will finance with the grant, including a list of all tanks to be improved with the funds from this grant, the actions required to comply with Health and Safety Code sections 25284.1, 25292.4, or 25292.5, and a timetable for the completion of the project;
- (e) An estimate of the cost of the project, including the name and applicable experience of the individual or firm preparing the estimate, supporting documentation (such as invoices, bids, or contracts), and a list of the materials necessary to complete the project;
- (f) A statement indicating that, between January 1, 1997 and the date of the application, the applicant, a family member, or an affiliated entity has owned or operated all tanks included in subdivision (d);
- (g) A statement indicating that the facility where the project tank is located sold less than 900,000 gallons of gasoline at retail annually for each of the two years preceding the submission of this application;
- (h) A list of all tanks located in California and owned or operated by applicant, other than those listed in subdivision (d);

- (i) Evidence of the current operating permit for each tank identified in subdivision (d), consisting of one of the following:
 - (1) Copy of a current operating permit issued by the local agency; or
 - (2) Both of the following:
 - (A) A completed operating permit application form, utilized by the State Water Resources Control Board and described in section 2711 of title 23 of the California Code of Regulations, signed by an authorized representative of the local agency; and
 - (B) Evidence that the operating permit fee has been paid for each tank owned or operated by the applicant for the current year, consisting of a canceled check or a receipt from the local agency;
- (j) The applicant's most recent Employee Tax Return Form (IRS Form 941 or EDD Form DE-6);
- (k) The applicant's most recent California Tax Return (FTB Form 530);
- (l) Schedule G, Fuel Seller's Supplement to Sales and Use Tax Return Forms (SBE Form 401, rev 49, 7-99) submitted by the applicant to the State Board of Equalization during the last eight (8) quarters; and
- (m) Any other information or supporting documentation reasonably required by the Board to determine an applicant's eligibility, priority, or the amount of a grant.

Authority: Section 25299.108, Health & Safety Code.

Reference: Sections 25299.101, 25299.105, 25299.106 and 25299.107, Health and Safety Code.

3426. Loan Application Process.

- (a) Upon receipt by the Board of the completed application, the Board shall approve a request for a loan when it finds the following requirements are met:
 - (1) The applicant meets the conditions of eligibility provided in this chapter,
 - (2) The applicant has applied for all permits necessary to complete the project,
 - (3) The business is creditworthy,
 - (4) Any environmental audit supports, or does not materially adversely affect, the decision to make the loan,
 - (5) Collateral and the source of repayment are sufficient for the proposed loan, and

- (6) Funds are available to meet the funding request.
- (b) If any of the conditions and requirements of this section have not been met, the Board shall deny the application and determine what specific actions, if any, the applicant must take to obtain further Board evaluation and review of the application.
- (c) If the Board approves the loan, then the Board shall be authorized to enter into a loan agreement which embodies the terms specified in section 3423 and any other items agreed to by the applicant and Board.
- (d) If the Board denies the application, the applicant shall have no right to administratively appeal the decision, but may reapply at any time.

Authority: Section 25299.108, Health and Safety Code.

Reference: Sections 25299.101, 25299.102, 25299.103 and 25299.104, Health and Safety Code.

3427. Grant Application Process.

- (a) Subsequent to the award of a grant, and prior to the payment of the grant award, the applicant shall enter into a grant agreement with the Board.
- (b) If the Board denies the application, the applicant shall have no right to administratively appeal the decision, but may reapply at any time.

Authority: Section 25299.108, Health and Safety Code.

Reference: Sections 25299.101, 25299.105, 25299.106 and 25299.107, Health and Safety Code.

3428. Misrepresentation; Repayment.

- (a) An applicant that obtains grant or loan funds as a result of a material misrepresentation in the application or another submitted document shall repay to the Board the amount of grant or loan funds paid to the applicant.
- (b) Any grant or loan funds paid to the applicant to which applicant is not entitled must be repaid to the Board immediately upon knowledge or notice that such a payment has been made and, in any event, not later than thirty (30) days after a written request for repayment by the Board.
- (c) Moneys repaid to the Board pursuant to this section shall be deposited in the Petroleum Underground Storage Tank Financing Account established by Health and Safety Code section 25299.109.

Authority: Section 25299.108, Health and Safety Code.

Reference: Sections 25299.101, 25299.102, 25299.103, 25299.105, 25299.106 and 25299.109, Health and Safety Code.