

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
)
HEROLD J. CHRISTENSEN AND)
PATRICIA A. CHRISTENSEN)
)
For Review of a Determination of)
the Division of Clean Water)
Programs, State Water Resources)
Control Board, Regarding)
Participation in the Underground)
Storage Tank Cleanup Fund.)
OCC File No. UST-12.)
_____)

ORDER NO. WQ 93-3-UST

BY THE BOARD:

Herold J. Christensen and Patricia A. Christensen
(petitioners) seek review of a Final Division Decision (Decision)
by the Division of Clean Water Programs (Division) rejecting a
claim filed by the petitioners which sought reimbursement from
the Underground Storage Tank Cleanup Fund (Fund).

For the reasons hereafter stated, we determine that the
petitioners are not eligible claimants against the Fund and that
the Division's Decision ought to be affirmed.

I. BACKGROUND

Chapter 6.75 of the California Health and Safety Code,
commencing with Section 25299.10, authorizes the State Water
Resources Control Board (State Water Board) to conduct a program
to reimburse certain owners and operators of petroleum
underground storage tanks for corrective action costs incurred by

such owners and operators.¹ Section 25299.77 of the Health and Safety Code authorizes the State Water Board to adopt regulations to implement the reimbursement program. On September 26, 1991, the State Water Board regulations, hereafter referred to as Cleanup Fund Regulations or Regulations. These Regulations are contained in Chapter 18, Division 3, Title 23 of the California Code of Regulations and became effective on December 2, 1991. Among other things, the Cleanup Fund Regulations provide for submittal of reimbursement claims to the State Water Board by owners and operators of petroleum underground storage tanks, for acceptance or rejection of these claims by the Division, and for appeal of any discretionary Division decision to the State Water Board.

Petitioners submitted a reimbursement claim to the Division. The site involved in petitioners' claim is located in Pinole, California. This site, commonly referred to as the Square Deal Garage, was acquired by the petitioners in 1973. At that time, the site was improved with two 800-gallon underground petroleum storage tanks. Petitioners used the tanks until 1975 at which time the tanks were pumped dry and use of the tanks terminated. In 1991, the City of Pinole asked the petitioners to remove the tanks to allow the City to make street and frontage improvements. The City advised the petitioners that a tank removal permit would be required. The petitioners promptly obtained the permit and arranged for removal of the tanks.

¹ Unless otherwise indicated, all statutory references in this Order are to the California Health and Safety Code.

Contamination at the site was discovered and appropriate remedial activities have been undertaken by the petitioners. Petitioners have expended approximately \$1,500 for remedial activity to date and estimate that another \$108,000 will be required to complete site remediation, and the petitioners seek reimbursement from the Fund for these costs.

The petitioners never obtained the permit to own or operate their underground storage tanks which is required by Section 25284 of the Health and Safety Code. Petitioners' claim was therefore rejected by the Division on the ground of permit noncompliance.

II. CONTENTIONS AND FINDINGS

Contentions: While acknowledging that the permit required by Section 25284 of the Health and Safety Code was not obtained prior to January 1, 1990, petitioners contend that Section 2811(a)(2) of the Cleanup Fund Regulations allows waiver of the permit requirement where the claimants can demonstrate that the circumstances are such that it would be inequitable or unreasonable to enforce the permit requirement against the claimants. Petitioners further contend that the circumstances of this case are such that it would be unfair and unreasonable to enforce the permit requirements against the petitioners.

The circumstances relied upon by petitioners in support of their contention can be summarized as follows. Use of the tanks in question was discontinued in 1975, some nine years

before the permit requirement of Section 25284 came into existence and some 15 years before the January 15, 1990, permit compliance date set forth in the Cleanup Fund Regulations. Petitioners argue that they were not in fact aware of the applicable permit requirements prior to removal of the tanks in 1991. Petitioners point out that it is unlikely that they would be aware of the permit requirement since the tanks had not been used since 1975, the site was leased to a third party, they lived at some distance from the site, and they were in the restaurant business, not the petroleum business. Petitioners argue that it would be unfair to require the petitioners to have the same level of knowledge of underground storage tank laws as persons in the petroleum industry. When the petitioners were advised of the applicable requirements, the petitioners promptly sought a closure permit and proceeded to remove the tanks in question and to remediate the site. Based on these facts, petitioners argue that it would be inequitable and unreasonable to enforce the permit requirements against the petitioners so as to deprive them of access to the Fund. We find the contentions and arguments of the petitioner to be unpersuasive.

Findings: We have this day considered the Petition of Lloyd Properties and entered an order thereon (ORDER NO. WQ 93-1-UST). That order discusses in detail the genesis of the permit requirement contained in Section 25284, the development of the Cleanup Fund Regulations which extended the permit compliance date to January 1, 1990, and the legislative

requirement of permit compliance as a condition of access to the Fund. That order further discusses the circumstances which have been accepted as sufficient to justify relief from the permit requirement as a condition of access to the Fund.

Rather than repeat the discussions contained in ORDER NO. WQ 93-1-UST, we incorporate that order herein. In summary, that order holds that permit compliance is a statutory condition imposed for access to the Fund, that we cannot simply ignore the statutory condition which has been imposed, that governmental entities do not have a specific duty to notify tank owners and operators of the permit requirements of Section 25284, that tank owners and operators have an independent duty to ascertain those laws which affect them and their property, and that lack of knowledge of the requirement to obtain a permit is not in itself sufficient to justify waiver of the permit requirement. In this case, we find that the circumstances relied on by petitioners are not sufficient to justify relief from the permit requirement and that petitioners are presently ineligible to claim against the Fund.

While the present claim of petitioners must be rejected, we recognize that there may be subsequent changes in the legislation which controls the Fund. It is not the intent of this order to preclude petitioners from reapplying to the Fund for cost reimbursement in the event of any subsequent legislative modification which would allow persons in the position of the petitioners to become eligible claimants against the Fund.

III. SUMMARY AND CONCLUSIONS

1. Where a permit or permits are required pursuant to Chapter 6.7, Division 20 of California Health and Safety Code, access to the Fund is limited to those who obtained or applied for such permit or permits not later than January 1, 1990, unless the claimant can demonstrate that obtaining or applying for the required permit or permits was beyond the reasonable control of the claimant or that it would be unreasonable or inequitable to impose the permit requirement against the claimant.

2. An assertion by a claimant that the claimant did not obtain or apply for a necessary permit because the claimant was not aware of the permit requirement is not sufficient for

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relief from the permit requirement imposed by Section 25299.57(a) and (d)(2) and Section 25284(a) of the Health and Safety Code.

3. The petitioners are not presently eligible claimants against the Fund.

IV. ORDER

IT IS THEREFORE ORDERED that the final decision of the Division rejecting the present claim of the petitioners, Claim No. 2383, is affirmed.

CERTIFICATION

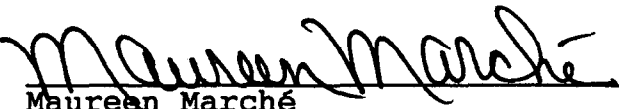
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 21, 1993.

AYE: Eliseo M. Samaniego
John Caffrey
Marc Del Piero
James M. Stubchaer

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marché
Administrative Assistant
to the Board

