

SUMMARY OF WATER QUALITY ORDER

ORDER NO.	WQO 2004-0015-UST
DATE ADOPTED	October 21, 2004
PETITION TITLE	Petition of Murray Kelsoe Regarding Participation in the Underground Storage Tank Cleanup Fund
POPULAR NAME <i>[if applicable]</i>	
REGIONAL BOARD	San Francisco Bay Regional Water Quality Control Board
FILE NO[S]	SWRCB/OCC File UST-208

PRECEDENTIAL DECISION

On October 21, 2004, the State Water Resources Control Board (SWRCB) adopted a precedential order that determined that Murray Kelsoe (Petitioner) is ineligible for reimbursement from the Underground Storage Tank Cleanup Fund (Fund). The order concerns the permit-compliance eligibility criterion and permit waivers, and a summary of relevant facts is as follows: In 1984, Petitioner replaced the existing underground storage tanks (UST) with six new fiberglass USTs. The Alameda County Health Care Services Agency (Alameda County) began implementing its UST program in 1987. In 1991, Alameda County issued two Notices of Violation to Petitioner regarding numerous violations of the California Health and Safety Code, including section 25284, which requires a permit to own or operate a UST. In 1994, the Alameda County District Attorney's Office initiated an enforcement action against Petitioner, and in December of 1994, Petitioner obtained a section 25284 permit. Petitioner's gasoline station was closed in 1998, and in 2002, Petitioner removed five 15,000-gallon gasoline USTs, and discovered an unauthorized release. In December of 2002, Petitioner installed new USTs, obtained UST permits, and reopened the station.

The order reaches the following conclusions: (1) To satisfy the permit-compliance criterion for purposes of the Fund, a claimant must obtain all section 25284 permits required of the claimant, beginning from the time the applicable local agency starts issuing section 25284 permits, (2) The permit-compliance criterion is not satisfied merely by a claimant obtaining a permit by the time the unauthorized release was discovered or when the Fund claim was filed, (3) A claimant's permit noncompliance with respect to former USTs at a site does not impact eligibility for a release from any new, properly permitted USTs at the same site, (4) A claimant may seek a waiver of permitting requirements, but permit waivers authorized in Health and Safety Code section 25299.57 are only available for permits that were required by January 1, 1990, and may not be used to excuse permit noncompliance after January 1, 1990, (5) Since Petitioner did not properly permit his USTs that had the release(s) until 1994 (seven years after Alameda County first began issuing permits), Petitioner did not comply with permitting requirements, and the

permit waiver may not be used to excuse Petitioner's permit noncompliance that lasted beyond January 1, 1990.

Even though the order concludes that the Legislature intended a January 1, 1990, cutoff date for permit waivers, the SWRCB noted that this date may be too severe for many claimants to the Fund. The order directs SWRCB staff to pursue legislation that would establish a later cutoff date for permit waivers and any other parameters for the issuance of permit waivers that are consistent with concerns of the SWRCB expressed in the order.