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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
ORDER WQ 20XX-XXXX-UST

**In the Matter of Underground Storage Tank Case Closure
Pursuant to Health and Safety Code Section 25296.40 and
Health and Safety Code Section 25296.10**

BY THE BOARD:

By this order, the State Water Resources Control Board (State Water Board) directs closure of the underground storage tank (UST) case at the site listed below, pursuant to section 25296.40 of the Health and Safety Code.¹ The name of the Petitioner, the site name, the site address, the Underground Storage Tank Cleanup Fund (Fund) claim number if applicable, the lead agency, and case number are as follows:

Ultramar Inc.

Former Beacon Station No. 439

2112 Lincoln Avenue, San Jose, Santa Clara County

Santa Clara County Department of Environmental Health, Case No. 07S1E29L01f

I. STATUTORY AND PROCEDURAL BACKGROUND

Upon receipt of a petition from a UST owner, operator, or other responsible party, section 25296.40 authorizes the State Water Board to close or require closure of a UST case where an unauthorized release has occurred, if the State Water Board determines that corrective action at the site is in compliance with all of the requirements of subdivisions (a) and (b) of section 25296.10. The State Water Board, or in certain cases the State Water Board Executive Director, may close a case or require the closure of a UST case. 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 division 20 of the Health and Safety Code and implementing regulations; 2) Any applicable

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

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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.

On May 1, 2012, the State Water Board adopted [Resolution No. 2012-0016](#), the Low-Threat Underground Storage Tank Case Closure Policy (Low-Threat Closure Policy or Policy). This Policy, which is a state policy for water quality control, provides standard closure criteria for petroleum UST cases. [Resolution No. 92-49](#) governs all investigations and cleanups under Water Code section 13304. If a petroleum UST case does not meet the closure criteria in the Low-Threat Closure Policy, regulatory agencies are required to consider case closure pursuant to Resolution No. 92-49.

State Water Board staff has completed a review of the UST case identified above, and recommends that the case be closed. The recommendation is based upon the facts and circumstances of this particular UST case. A UST Case Closure Summary has been prepared for the case identified above. The factors considered in determining compliance with the Low-Threat Closure Policy and State Water Board Resolution No. 92-49 are explained in the Case Closure Summary.

Low-Threat Closure Policy

In State Water Board Resolution No. 2012-0016, the State Water Board adopted the Low-Threat Closure Policy. The Policy became effective on August 17, 2012. The Policy establishes consistent statewide case closure criteria for certain low-threat petroleum UST sites. In the absence of unique attributes or site-specific conditions that demonstrably increase the risk associated with residual petroleum constituents, cases that meet the general and media-specific criteria in the Low-Threat Closure Policy pose a low-threat to human health, safety, and the environment and are appropriate for closure under Health and Safety Code section 25296.10.

State Water Board Resolution No. 92-49

State Water Board Resolution No. 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 UST cases. State Water Board Resolution No. 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 No. 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

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unreasonably affect current and anticipated beneficial use of affected water, 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 No. 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.

Health and Safety Code section 25299.57, subdivision (l)(1) provides that claims for reimbursement of corrective action costs that are received by the Fund more than 365 days after the date of a uniform closure letter or a letter of commitment, whichever occurs later, shall not be reimbursed unless specified conditions are satisfied.

II. FINDINGS

Based upon the UST Case Closure Summary prepared for this case and attached hereto, the State Water Board finds that corrective action taken to address the unauthorized release at the UST release site identified as:

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ensure protection of human health, safety, and the environment and is consistent with chapter 6.7 of division 20 of the Health and Safety Code, and implementing regulations, and other water quality control policies and applicable water quality control plans.

Notification has been provided to all entities that are required to receive notice of the proposed case closure, a 60 day comment period has been provided to notified parties, and any comments received have been considered by the State Water Board in determining that the case should be closed.

The UST case identified above may be the subject of orders issued by the Regional Water Quality Control Water Board (Regional Water Board) pursuant to division 7 of the Water Code. Any orders that have been issued by the Regional Water Board pursuant to division 7 of the Water Code, or directives issued by a Local Oversight Program (LOP) agency for these case should be rescinded to the extent they are inconsistent with this Order.

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III. ORDER

IT IS THEREFORE ORDERED that:

- A. The UST case identified in Section II of this Order be closed in accordance with the following conditions and after the following actions are complete. Prior to the issuance of a uniform closure letter, the Petitioner is ordered to:
 - 1. Properly destroy monitoring wells and borings unless the owner of real property on which the well or boring is located certifies that the wells or borings will be maintained in accordance with local or state requirements;
 - 2. Properly remove from the site and manage all waste piles, drums, debris, and other investigation and remediation derived materials in accordance with local or state requirements; and
 - 3. Within six months of the date of this Order, submit documentation to the regulatory agency overseeing the UST case identified in Section II of this Order that the tasks in subparagraphs (1) and (2) have been completed.

- B. The tasks in subparagraphs (1) and (2) of Paragraph (A) are ordered pursuant to Health and Safety Code section 25296.10 and failure to comply with these requirements may result in the imposition of civil penalties pursuant to Health and Safety Code section 25299, subdivision (d)(1). Penalties may be imposed administratively by the State Water Board or Regional Water Board.

- C. Within 30 days of receipt of proper documentation from the Petitioner that requirements in subparagraphs (1) and (2) of Paragraph (A) are complete, the regulatory agency that is responsible for oversight of the UST case identified in Section II of this Order shall notify the State Water Board that the tasks have been satisfactorily completed.

- D. Within 30 days of notification from the regulatory agency that the tasks are complete pursuant to Paragraph (C), the Deputy Director of the Division of Water Quality shall issue a uniform closure letter consistent with Health and Safety Code section 25296.10, subdivision (g) and upload the uniform closure letter and UST Case Closure Summary to GeoTracker.

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- E. Pursuant to section 25299.57, subdivision (l) (1), and except in specified circumstances, all claims for reimbursement of corrective action costs must be received by the Fund within 365 days of issuance of the uniform closure letter in order for the costs to be considered.

- F. Any Regional Water Board or LOP agency directive or order that directs corrective action or other action inconsistent with case closure for the UST case identified in Section II is rescinded, but only to the extent the Regional Water Board order or LOP agency directive is inconsistent with this Order.

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 Resources Control Board held on _____, 20xx.

AYE:

NAY:

ABSENT:

ABSTAIN:

Jeanine Townsend
Clerk to the Board