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

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**In the Matter of Underground Storage Tank (UST) Case Closure  
Pursuant to Health and Safety Code Section 25296.10 and the  
Low-Threat Underground Storage Tank Case Closure Policy**

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**BY THE CHIEF DEPUTY DIRECTOR:<sup>1</sup>**

By this order, the Chief Deputy Director directs closure of the case at the site listed below, pursuant to section 25296.10 of the Health and Safety Code.<sup>2</sup> The name of the responsible party, the site name, the site address, the Underground Storage Tank Cleanup Fund (Fund) claim number if applicable, current and former lead agencies, and case numbers are as follows:

**Winton G. Kemmis Trust (Responsible Party)**

**Former Mercury Rentals, Inc. (Mercury)**

**4664 Lincoln Avenue, Cypress, Orange County (Site)**

**UST Cleanup Fund (Fund) Claim No. 12069**

**Orange County Health Care Agency, Division of Environmental Health (Orange County)**

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<sup>1</sup> State Water Board Resolution No. 2012-0061 delegates to the Executive Director the authority to close or require the closure of any UST case if the case meets the criteria found in the State Water Board's Low-Threat Underground Storage Tank Case Closure Policy adopted by State Water Board Resolution No. 2012-0016. Pursuant to Resolution No. 2012-0061, the Executive Director has delegated this authority to the Chief Deputy Director.

<sup>2</sup> Unless otherwise noted, all references are to the California Health and Safety Code.

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## I. STATUTORY AND PROCEDURAL BACKGROUND

Upon review of a UST case, the State Water Resources Control Board (State Water Board) is authorized 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 or Chief Deputy 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 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 staff has completed a review of the UST case identified above, and recommends that this case be closed as described in the attached UST Case Closure Summary. The recommendation is based upon the facts and circumstances of this particular UST case. The UST case record that is the basis for determining compliance with the Water Quality Control Policy for Low-Threat Underground Storage Tank Case Closures (Low-Threat Closure Policy or Policy) is available on the State Water Board's GeoTracker database.

URL: [http://geotracker.waterboards.ca.gov/profile\\_report.asp?global\\_id=T0605901859](http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T0605901859)

### **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

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under Health and Safety Code section 25296.10. The Policy provides that if a regulatory agency determines that a case meets the general and media-specific criteria of the Policy, then the regulatory agency shall notify responsible parties and other specified interested persons that the case is eligible for UST case closure. Unless the regulatory agency revises its determination based on comments received on the proposed case closure, the Policy provides that the agency shall issue a uniform closure letter as specified in Health and Safety Code section 25296.10. The uniform closure letter may only be issued after the expiration of the 60-day comment period, proper destruction or maintenance of monitoring wells or borings, and removal of waste associated with investigation and remediation of the site.

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.

## **Brief Case Overview**

The Responsible Party operated a heavy equipment rental facility, Mercury Rentals, Inc., at the Site from 1964 to 1984. In January 1985, one gasoline UST, two diesel USTs, a motor oil UST, and a waste oil UST<sup>3</sup> were removed and taken off site for disposal when the business relocated. A release had occurred as evidenced in 16 cubic yards of soil taken off site for disposal. The Site was redeveloped into a rental self-storage facility and a retail plaza that the Responsible Party began operating in 1985 until 1997 when the Site was sold. The Site was sold again in 2005 and in January 2018. It is currently owned by ESP 135 LLC. The Responsible Party conducted corrective action at the Site from 1996 to 2018. In March 1995, Orange County notified the Responsible Party it was responsible for the diesel contamination found during the investigation of the adjacent property known as Hansen Auto Towing (Hansen).

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<sup>3</sup> The record contains minor inconsistencies concerning the type and number of fuel USTs.

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The former Hansen property at 4620 Lincoln Avenue is due west and upgradient of the Site, separated from the Site by an alley. As early as 1979, two 2,000-gallon gasoline USTs were operated on the former Hansen property where vehicle maintenance, repair, and painting operations were conducted. The USTs were removed in 1992. A total of 947 tons of contaminated soil were excavated from the area of the former USTs in April 1999. Confirmation soil sampling indicated little to no residual petroleum compounds remained in-situ in the area of the former USTs. An aboveground storage tank (AST) was also formerly located on the former Hansen property but was associated with owners and operators previous to Hansen. The former AST reportedly contained fuel. Releases from the former AST were investigated in 1996, but remediation was not conducted. The diesel contamination on the former Hansen property and in the alley was attributed to releases from the former Mercury USTs because the Hansen operations did not store or use diesel fuel. Soil data, the fingerprint analyses, and the location and thicknesses of measurable free product demonstrate the former AST and/or other unauthorized releases are un-remediated sources for the free product along the eastern boundary of the former Hansen property that mobilized and commingled with releases from the Site.

The former Hansen property was purchased by Bonanni Development, Inc. (Bonanni) in January 2018 and is being redeveloped for residential use. By September 30, 2018, Bonanni entered into a Cost Recovery for Regulatory Oversight of Cleanup Program, with oversight by the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board). Bonanni assumed responsibility for cleanup of the former Hansen property releases, including the former AST commingled release.

Although the unauthorized release from the Responsible Party's UST meets the Policy's criteria for closure as described in the attached UST Case Closure Summary, the Responsible Party's release has commingled with the releases from the former Hansen property. Additionally, therefore, it is necessary to address whether the circumstances of the Responsible Party's commingled release permit closure of the UST case for the Site. As described below, this Order finds that closure of the Responsible Party's UST case is merited.

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## **Relief from Responsibility at Commingled Release Sites**

In 2013, the State Water Board adopted State Water Board Order WQ 2013-0109 (*In the Matter of the Petition of James Salvatore*, hereafter *Salvatore*), which provides a test for relieving a party from responsibility where the party's unauthorized release has commingled with a release from another party. The *Salvatore* test acknowledges the relative contributions of the responsible parties and provides relief to the party whose release is not significant enough on its own to require corrective action. (*Salvatore*, p. 13.) Under this test, a party may be relieved from responsibility for a release if the party demonstrates that its release, considered separately from other commingled releases, meets case closure criteria and the site should be closed. (*Ibid.*) The party seeking removal of the responsible party status must demonstrate that the separate release for which the party is responsible has been adequately investigated and characterized, and that there are sufficient data to determine that the case based on the individual release meets case closure criteria. (*Id.*, pp. 13-14.) In addition, as a condition of closure, the party seeking relief must provide reasonable access to the responsible party performing corrective action at the relieved party's site. (*Id.*, p. 14.) Finally, the State Water Board stated that this test is not applicable in circumstances where a financially responsible party has not been identified and removal of a party may result in the creation of an orphan site. (*Id.*, p. 19.)

## **Application of the Test for Relieving a Party from Responsibility Where the Party's Release has Commingled with a Release from Another Party.**

1. There are sufficient data to determine that the Responsible Party's unauthorized release, considered separately, meets all of the specified criteria of the State Water Board's Low-Threat Closure Policy. The Responsible Party's investigation of the release is adequate to provide sufficient information to evaluate whether the Responsible Party's individual release meets case closure criteria. The Conceptual Site Model upon which the evaluation of the case has been made is described in the UST Case Closure Summary and attached hereto.

2. Based on the data in the record concerning the Responsible Party's release, corrective actions performed for the Responsible Party's separate release ensure the

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protection of human health, safety, and the environment. Based on the State Water Board's technical analysis described in the attached UST Case Closure Summary, the residual petroleum constituents that can be attributed to the release from the Responsible Party's UST system meet Policy criteria, and the Responsible Party's individual release would be eligible for case closure. The affected groundwater is not currently being used as a source of drinking water or for any other designated beneficial use, and it is highly unlikely that the affected groundwater will be used as a source of drinking water or for any other beneficial use in the foreseeable future. Remaining petroleum constituents that can be attributed to the Responsible Party's release are limited, stable and declining. Additional assessment/monitoring will not likely change the conceptual model. Any remaining petroleum constituents that can be attributed to the Responsible Party's release do not pose significant risk to human health, safety, or the environment.

3. The Responsible Party's case is consistent with the Low-Threat Closure Policy. The Responsible Party's site meets all the General Criteria and all the applicable Media-Specific Criteria, as described in the attached UST Case Closure Summary.

4. The Responsible Party does not own or lease the Site, so it is not authorized to provide others with access to the Site. The Responsible Party and the Site owner did not have a written access agreement, but the Site owner permitted the Responsible Party to enter the Site to conduct corrective action from 1996 to 2018. It is anticipated that the Site owner will continue to permit access to the Site as necessary for further corrective action activities.

5. Closure of the Responsible Party's case will not create an orphan site because the current owners of the former Hansen site have entered into a Cost Recovery for Regulatory Oversight of Cleanup Program that will address cleanup of the commingled plume.

## II. FINDINGS

Pursuant to the test established by State Water Board Order WQ 2013-0109, a party may be removed as a responsible party for a UST cleanup case if that party

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demonstrates that its release, when considered separately from other releases that have commingled with the responsible party's release, meets State Water Board closure policies. The Responsible Party has demonstrated that the separate release for which the Responsible Party is responsible has been adequately investigated and characterized. There are sufficient data for the State Water Board to determine that the Responsible Party's UST case should be closed, as summarized in the attachment.

Based on the State Water Board's review, closure of the Responsible Party's case will not create an orphan site, as another financially responsible party is currently undertaking cleanup activities related to the unauthorized release from the upgradient property and the commingled plume that has impacted the Responsible Party's site. Bonanni has been identified as the responsible party at the former Hansen property by the Santa Ana Water Board. Bonanni remains in compliance with requirements from the Santa Ana Water Board to investigate and cleanup contamination beneath the Site and has the financial ability to complete corrective action related to the commingled releases.

Based upon the facts in the UST case record and the hydrogeologic conditions at the site, the State Water Board finds that corrective action taken to address the unauthorized release of petroleum at the UST release site identified as:

**Winton G. Kemmis Trust (Responsible Party)**

**Former Mercury Rentals, Inc.**

**4664 Lincoln Avenue, Cypress, Orange County**

**Fund Claim No. 12069**

**Orange County Health Care Agency, Division of Environmental Health**

ensures 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, the Low-Threat Closure Policy and with other applicable water quality control policies and plans.

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The unauthorized release from the UST consisted only of petroleum. This order directs closure for the petroleum UST case at the site. This order does not address non-petroleum contamination at the site, if non-petroleum contamination is present.

Pursuant to the Low-Threat Closure Policy, 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.

Pursuant to section 21080.5 of the Public Resources Code, environmental impacts associated with the adoption of this order were analyzed in the substitute environmental document (SED) the State Water Board approved on May 1, 2012. The SED concludes that all environmental effects of adopting and implementing the Low-Threat Closure Policy are less than significant, and environmental impacts as a result of adopting this order in compliance with the Policy are no different from the impacts that are reasonably foreseen as a result of the Policy itself. A Notice of Decision was filed August 17, 2012. No new environmental impacts or any additional reasonably foreseeable impacts beyond those that were addressed in the SED will result from adopting this order.

The UST case identified above may be the subject of orders issued by the Regional Water Quality Control 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 this case should be rescinded to the extent they are inconsistent with this order.

### III. ORDER

**IT IS THEREFORE ORDERED** that:

- A. The UST case identified in Section II of this order, meeting the general and media-specific criteria established in the Low-Threat Closure Policy, be closed in accordance with the following conditions and after the following actions are

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complete. Prior to the issuance of a uniform closure letter, the responsible party is ordered to:

1. Properly destroy monitoring wells and borings, except those required by the Santa Ana Regional Board to be maintained and for which 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 responsible party 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

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Code section 25296.10, subdivision (g) and upload the uniform closure letter to GeoTracker.

- 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.

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Chief Deputy Director

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Date