

**PROPOSED AMENDMENTS
TO THE
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**

NOTICE OF PROPOSED RULEMAKING

JANUARY 2005

**STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF FINANCIAL ASSISTANCE**

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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

NOTICE IS HEREBY GIVEN that the State Water Resources Control Board (SWRCB) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding this proposed action.

PROPOSED REGULATORY ACTION

The SWRCB proposes to adopt sections 3420-3428, article 2, chapter 24, division 3, title 23 of the California Code of Regulations to conduct a grant and loan program to assist small businesses in replacing, removing, or upgrading petroleum underground storage tanks, or making other specified improvements to such tanks, to meet applicable local, state, or federal standards (RUST program).

These proposed regulations for the RUST program implement chapter 6.76 (commencing with section 25299.100) of division 20 of the Health and Safety Code. Pursuant to section 25299.108 of that chapter, the SWRCB was required to adopt the proposed regulations as emergency regulations, and the Office of Administrative Law (OAL) was to consider the regulations to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Accordingly, the SWRCB approved a resolution, dated November 18, 2004, adopting the proposed regulations as emergency regulations. Emergency rulemaking procedures were followed, and the emergency regulations became effective December 3, 2004.

Section 25299.108 of chapter 6.76 states further that the emergency regulations shall be repealed 180 days after their effective date unless the SWRCB complies within this time period with the additional statutory rulemaking requirements set forth in Government Code sections 11346.2 through 11347.3. The SWRCB is providing this Notice of Proposed Rulemaking in compliance with these additional rulemaking requirements.

PUBLIC HEARING

A public hearing has not been scheduled for this proposed action. However, as provided in Government Code section 11346.8, any interested person, or his or her duly authorized representative, may request a public hearing if the request is submitted in writing in the manner described below to the SWRCB no later than fifteen (15) days prior to the close of the written comment period. If a request for a public hearing is made, the SWRCB shall, to the extent practicable, provide notice of the time, date, and place of the hearing in accordance with Government Code section 11346.4 by mailing the notice to every person who has filed a request for notice with the SWRCB. In addition, as prescribed by Government Code section 11340.85, notice may be provided by means of electronic communication to those persons who have expressly indicated a willingness to receive notice by this means.

WRITTEN COMMENT PERIOD

The SWRCB requests comments from interested persons to present any statements, arguments, or contentions relating to the proposed regulatory action. The comments must be submitted in writing and received by the SWRCB before the close of the written comment period in order to be considered by the SWRCB before it adopts the proposed regulations. The written comment period closes at 5:00 p.m., Pacific Standard Time, on February 28, 2005.

Comments may be hand-delivered, or submitted by U.S. mail, facsimile transmission, or electronic mail. Comments delivered by hand should be taken to 1001 I Street, Sacramento, California, and addressed to the attention of Ms. Kelly Valine, Division of Financial Assistance, 17th Floor, State Water Resources Control Board. Comments submitted by U.S. mail should be addressed as follows:

Ms. Kelly Valine, Loan Officer
RUST Program
Division of Financial Assistance
State Water Resources Control Board
P.O. Box 944212
Sacramento, CA 94244-2120

Comments submitted by facsimile should be sent to the following facsimile phone number: (916) 327-7469. Comments submitted by electronic mail should be sent to the following e-mail address: kvaline@waterboards.ca.gov

To be added to the mailing list for this rulemaking and to receive notification of updates of this rulemaking, please leave a voicemail message with Ms. Kelly Valine at (916) 327-6976 giving your name, address, and telephone number. If you would like to be notified electronically, please so indicate in the voicemail message and give your e-mail address in addition to the other information requested. Individuals who receive this notice by mail are already on the mailing list.

AUTHORITY AND REFERENCE

Health and Safety Code section 25299.108 authorizes the SWRCB to adopt regulations necessary to implement and make specific chapter 6.76 of division 20 of the Health and Safety Code, commencing with section 25299.100. References to specific code sections are identified in the proposed regulations for the RUST program.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Chapter 6.76 of division 20 of the Health and Safety Code authorizes the SWRCB to conduct a program to make grants and loans to small businesses to undertake certain actions with respect to petroleum underground storage tanks (RUST program). 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.

The objective of the proposed regulations is to implement and make specific the RUST program by defining which small businesses are eligible for grants and loans and what submittals are required of applicants seeking grants and loans, and by describing the terms of loan agreements and the SWRCB administrative process for the award of RUST grants and loans.

The RUST program, enacted in chapter 6.76 of division 20 of the Health and Safety Code, is similar to, but independent of, a recently discontinued underground storage tank grant and loan program previously administered by the former California state agency known as the Technology, Trade and Commerce Agency (TTCA). Regulations promulgated under the former TTCA program and set forth at California Code of Regulations, title 10, sections 5900 through 5906, became inoperative on January 1, 2004, upon the repeal of that program.

FISCAL IMPACT ESTIMATES

Mandate on Local Agencies or School Districts: The SWRCB has determined that the proposed regulations would not impose a mandate on local agencies or school districts. The SWRCB has determined that the proposed regulations will not result in any additional cost or savings to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of the Government Code.

Cost or Savings to any State Agency: The SWRCB has determined that there is no additional cost or savings imposed on state agencies as a result of the proposed regulations.

Other Non-discretionary Cost or Savings Imposed on Local Agencies: The SWRCB has determined that there is no cost or savings imposed on local agencies as a result of the proposed regulations.

Cost or Savings in Federal Funding to the State: The SWRCB has determined that there is no cost or savings in Federal funding to the State as a result of the proposed regulations.

ECONOMIC IMPACT ESTIMATES

Statement of Significant Statewide Adverse Economic Impact Directly Affecting Business: The SWRCB has made the initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impacts On Representative Private Persons Or Businesses: The SWRCB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect On Creation Or Elimination Of Jobs within California: The SWRCB has determined that the proposed regulatory action will have no effect on the creation or elimination of jobs within California.

Effect On Creation Of New Businesses Or Elimination Of Existing Businesses within California: The SWRCB has determined that the proposed regulatory action will have no effect on the creation of new businesses or the elimination of existing businesses within California.

Effect On Expansion Of Businesses Currently Doing Business within California: The SWRCB has determined that the proposed regulatory action will have no effect on the expansion of businesses currently doing business within California.

Effect on Small Businesses: The SWRCB has determined that the proposed regulatory action does affect small businesses in that they will derive a benefit from the enforcement of the regulation. Small businesses will now be able to participate in the grant and loan program created by the new RUST program.

Consideration Of Alternatives: In accordance with Government Code section 11346.5, subdivision (a)(13), the SWRCB must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The SWRCB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at any hearing that may be requested or during the written comment period.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The SWRCB has prepared an Initial Statement of Reasons for the proposed action. The Initial Statement of Reasons includes the specific purpose of each regulation proposed for adoption and the rationale for the SWRCB's determination that each adoption is reasonably necessary to carry out the purpose for which the regulation is proposed. The Initial Statement of Reasons, the express terms of the proposed regulations, and all information on which the proposals are based are available from the agency contact person named in this notice.

The rulemaking file is available for inspection and copying throughout the rulemaking process at the Division of Financial Assistance, 1001 I Street, 17th floor, Sacramento, California. As of the date that this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the express terms of the proposed regulations, and the Initial Statement of Reasons.

The rulemaking file will also be published and made available at the following Division Internet website: <http://www.waterboards.ca.gov/cwphome/ustcf/rust.html>

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding any hearing that is requested and considering all timely and relevant comments received, the SWRCB may adopt the proposed regulations substantially as described in this notice. If the SWRCB makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) days before the SWRCB adopts the regulations as modified. A copy of any modified regulations may be obtained by contacting Ms. Kelly Valine, the primary contact person identified below. The SWRCB will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting either of the persons listed below. A copy may also be accessed on the Division website previously listed.

CONTACT PERSONS

Inquires concerning the proposed action may be directed to:

Ms. Kelly Valine, Loan Officer
RUST Program
Division of Financial Assistance
State Water Resources Control Board
P.O. Box 944212
Sacramento, CA 94244-2120
Phone: (916) 327-6976
Email address: kvaline@waterboards.ca.gov

The backup contact person for these inquiries is:

Ms. Christine Gordon, Staff Services Analyst
Underground Storage Tank Cleanup Fund
Division of Financial Assistance
State Water Resources Control Board
P.O. Box 944212
Sacramento, CA 94244-2120
Phone: (916) 341-5835
Email address: cgordon@waterboards.ca.gov

Questions regarding the substance of the proposed regulations may be directed to either contact person.

Please direct to Ms. Kelly Valine requests for copies of the proposed text (the “express terms”) of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or any other information upon which this proposed rulemaking is based.