

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 94-43

DELEGATING AUTHORITY TO THE CHIEF, DIVISION OF CLEAN
WATER PROGRAMS OR HIS DESIGNATED REPRESENTATIVE TO
SIGN CERTIFICATE OF DEPOSIT AGREEMENT AND
AUTHORIZE PAYMENT IN ACCORDANCE WITH 40 CFR 280.112

WHEREAS:

1. The Underground Storage Tank Cleanup Fund Regulations allow the use of any mechanisms authorized by the Federal Act.
2. The Federal Act allows for the use of alternative financial assurance mechanisms providing the mechanism is effective.
3. Tank owners and operators have proposed that a Certificate of Deposit be accepted to help meet the requirements of financial responsibility.
4. The CD agreement contains requirements to provide an adequate degree of assurance that funds will be available if needed.
5. The United States Environmental Protection Agency has determined that the use of the CD and the governing agreement is an effective mechanism.
6. EPA has stated that it is acceptable for the Chief of the Division of Clean Water Programs or his designated representative to sign and to authorize payment from the CD so long as there is a formal delegation from the Director.

THEREFORE BE IT RESOLVED THAT:

The State Water Resources Control Board delegates the authority to the Chief, Division of Clean Water Programs or his designated representative to sign the CD agreement and authorize payment in accordance with 40 CFR 280.112.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 18, 1994.


Maureen Marché
Administrative Assistant to the Board

CERTIFICATE OF DEPOSIT AGREEMENT

Certificate of deposit agreement (Agreement), entered into as of [date] by and between [name of the owner or operator], a California [insert "corporation," "partnership," "association," or "proprietorship"], and the State Water Resources Control Board (SWRCB).

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations contained in Code of Federal Regulations (CFR) applicable to the owner or operator, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The relevant tanks are as follows: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.].

Whereas, [the owner or operator] has elected to establish a Certificate of Deposit (CD) to provide all or part of such financial assurance for the underground storage tanks identified herein. The CD shall be purchased by the tank owner or operator and made payable to the State Water Resources Control Board the payee.

Now, therefore, [the owner or operator] and the Payee agree as follows:

Section 1. Definitions

As used in this Agreement:

- (a) The term "owner or operator" means either the owner or operator who enters into this Agreement and any successors or assigns of that owner or operator.
- (b) The term "Payee" means the SWRCB and any successor or assigns of the SWRCB.

Section 2. Identification of the Financial Assurance Mechanism

This Agreement pertains to the Certificate of Deposit.

Section 3. Effective Date and Expiration

This CD is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date.

Section 4. Payment for Corrective Action and/or Third-Party Liability Claims

The Payee shall appropriate monies from the CD to provide for the payment of the costs of taking corrective action and/or compensating third parties for bodily injury and property damage caused by either sudden accidental releases or nonsudden accidental releases or accidental releases arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Certificate of Deposit may not be drawn upon to cover any of the following:

- (a) Any obligation of [owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [owner or operator] arising from, and in the course of employment by [owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

The CD shall be drawn upon in accordance with the criteria established in 40 CFR 280.112. The signature of the Chief of the Division of Clean Water Programs or his designated representative is required for the payment of any funds out of the account. In the event the Payee, acting under the authority of 40 CFR 280.112 draws upon the CD prior to its maturity date, any penalties shall be paid by the owner or operator.

Section 5. Payments Comprising the Fund

Interest earned in association with this CD will be made payable to the owner or operator per a preliminary agreement entered into between the tank owner or operator and the financial institution retaining this CD.

Section 6. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the CD shall be paid by the owner or operator. All other expenses incurred by the Payee in connection with the administration of this CD, including fees for legal services rendered to the Payee, the compensation of the Payee to the extent not paid directly by the owner or operator, and all other proper charges and disbursements of the Payee shall be paid by the owner or operator.

Section 7. Replenishment of CD

If at any time after a withdrawal is made on the CD upon the instruction of the Payee, and the amount in the CD is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the CD:

- (a) Replenish the value of financial assurance to equal the amount of coverage required , or
- (b) Acquire another financial assurance mechanism for the amount by which funds in the CD has been reduced.

Section 8. Instructions to the Payee

All orders, requests, and instructions by the owner or operator to the Payee shall be in writing, signed by such persons as are designated in the this agreement or such other designees as the owner or operator may designate by amendment to this agreement. The Payee shall be fully protected in acting without inquiry in accordance with the owner or operator's orders, requests, and instructions. All orders, requests, and instructions by the financial institution retaining this CD to the Payee shall be in writing, signed by the Payee, and the Payee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Payee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the owner or operator or hereunder has occurred. The Payee shall have no duty to act in the absence of such orders, requests, and instructions from the owner or operator, except as provided for herein.

Section 9. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by the owner or operator and the Payee, or by the Payee if the owner or operator ceases to exist.

Section 10. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 9, this CD shall be irrevocable and shall continue until terminated at the written direction of the Payee. Upon termination of the CD, all remaining interest, less final CD administration expenses, shall be delivered to the owner or operator.

Section 11. Advice of Counsel

The Payee may from time to time consult with counsel, who may be counsel to the owner or operator, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Payee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the state of California, or the Controller of the Currency in the case of National Association banks.

Section 13. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

Section 14. Immunity and Indemnification

The Payee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this CD, or in carrying out any directions by the owner or operator issued in accordance with this Agreement. The Payee shall be indemnified and saved harmless by the owner or operator, from and against any personal liability to which the Payee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the owner or operator fails to provide such defense.

Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The owner or operator and the Payee hereby certify under the laws of the State of California that the foregoing is true and correct.

[Signature of owner or operator]
[Name of the owner or operator]
[Title]

[Signature of Payee]
[Name of the Payee]
[Title]