

STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE  
OCTOBER 20, 2005

**ITEM 5**

**CONSIDERATION OF A RESOLUTION TO ADOPT EMERGENCY REGULATIONS  
NECESSARY TO IMPLEMENT THE ORPHAN SITE CLEANUP SUBACCOUNT  
ESTABLISHED BY ASSEMBLY BILL 1906 (LOWENTHAL)**

**DISCUSSION**

The Barry Keene Underground Storage Tank (UST) Cleanup Trust Fund Act of 1989 authorizes the State Water Resources Control Board (State Water Board) to administer a program to reimburse UST owners and operators for eligible costs incurred as a result of contamination from leaking petroleum USTs.

Assembly Bill 1906 (Lowenthal) established the UST Petroleum Contamination Orphan Site Cleanup Subaccount (Subaccount) within the Fund. Assembly Bill 1906 provides that \$10,000,000 per year for 2005, 2006, and 2007 shall be transferred from the Fund to the Subaccount to address petroleum contamination from USTs at sites that qualify as Brownfields. The proposed regulations implement the program created in AB 1906. Specifically, the proposed regulations define eligible sites, eligible applicants, and eligible costs, and establish eligibility requirements, ranking criteria, and funding limitations.

In order for the State Water Board to adopt the proposed regulations on an emergency basis, the State Water Board must find that the adoption is necessary for the immediate preservation of public peace, health and safety, or general welfare. Such a condition of emergency exists because this program will provide timely funding for the removal of leaking USTs and the ensuing cleanup at Brownfields.

**POLICY ISSUE**

Should the State Water Board adopt emergency regulations that implement a grant program that provides financial assistance for the removal of leaking USTs and cleanup of petroleum contamination from USTs at Brownfields?

**FISCAL IMPACT**

Adequate funds have been appropriated in the State Water Board's Fiscal Year 2005-2006 Budget.

**REGIONAL WATER BOARD IMPACT**

None.

## **STAFF RECOMMENDATION**

Staff recommends adoption of the proposed resolution declaring the existence of an emergency condition, approving the proposed emergency regulations, and authorizing the Executive Director to transmit them to the Office of Administrative Law.

STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. -

RESOLUTION ADOPTING EMERGENCY REGULATIONS NECESSARY TO IMPLEMENT THE ORPHAN SITE CLEANUP SUBACCOUNT ESTABLISHED BY ASSEMBLY BILL 1906 (LOWENTHAL)

WHEREAS:

1. Brownfields are abandoned or underused commercial or industrial properties where the redevelopment is impeded by contamination, and many Brownfields in California were former gasoline service stations. Petroleum contamination from underground storage tanks (UST) at these Brownfields pose a threat to human health and the environment;
2. The State Water Resources Control Board (State Water Board) implements the Petroleum UST Cleanup Fund (Fund), which provides financial assistance to UST owners and operators for cleanup costs. Some responsible parties at Brownfields or other persons interested in cleaning up and redeveloping Brownfields may not qualify for the Fund, and the substantial cost of cleanup is often an impediment to actual cleanup at a Brownfield;
3. Assembly Bill 1906 (Lowenthal) establishes the UST Petroleum Contamination Orphan Site Cleanup Subaccount (Subaccount). Pursuant to section 25299.50.2 of the Health and Safety Code, \$10,000,000 per year for years 2005, 2006, and 2007, is transferred from the Fund to the Subaccount to address petroleum contamination from USTs at sites that qualify as Brownfields;
4. The [proposed regulations](#) establish a grant program for the removal of leaking USTs and the investigation and cleanup of petroleum contamination from USTs at Brownfields. Specifically, the proposed regulations define eligible sites, eligible applicants, and eligible costs, and establish eligibility requirements, ranking criteria, and funding limitations. Adoption of the proposed regulations is necessary to begin issuing these grants;
5. Government Code section 11346.1 provides for the adoption of emergency regulations when necessary for the immediate preservation of the public peace, health, safety or general welfare; and
6. It is appropriate to adopt the proposed regulations on an emergency basis because expediting the removal of leaking USTs and the cleanup of petroleum contamination from USTs will preserve the public peace, health and safety or the general welfare.

THEREFORE IT BE RESOLVED THAT:

The State Water Board:

1. Determines that a condition of emergency exists for the purposes of Government Code section 11346.1, subdivision (b) justifying the immediate adoption of the proposed regulations in order to preserve the public peace, health and safety, and general welfare; and

2. Adopts on an emergency basis article 7 to [Title 23](#), California Code of Regulations, division 3, chapter 18, and authorizes the Executive Director to transmit article 7 to the Office of Administrative Law for filing with the Secretary of State.

#### CERTIFICATION

The undersigned, Clerk 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 October 20, 2005.

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Debbie Irvin  
Clerk to the Board