

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
JUNE 7, 2006**

ITEM 6

SUBJECT

CONSIDERATION OF A RESOLUTION ADOPTING THE PERMANENT REGULATIONS THAT IMPLEMENT THE ORPHAN SITE CLEANUP ACCOUNT ESTABLISHED BY ASSEMBLY BILL (AB) 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.

AB 1906 established the UST Petroleum Contamination Orphan Site Cleanup Account (OSCA) within the Fund. AB 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.

Currently, the State Water Board implements the OSCA program pursuant to emergency regulations that were adopted by the State Water Board on October 20, 2005. The emergency regulations implement a grant program for the removal of leaking USTs and the investigation and cleanup of petroleum contamination from USTs at Brownfields. The emergency regulations became effective on November 28, 2005, the date they were approved by the Office of Administrative Law (OAL) as an emergency regulatory action. In accordance with statutory mandate, these emergency regulations will expire on July 27, 2006, unless the State Water Board complies with the regular rulemaking procedures of the California Administrative Procedure Act before that deadline. Therefore, it is necessary for the State Water Board to adopt the [proposed regulations](#) before the emergency regulations are repealed by operation of law on July 27, 2006.

The State Water Board published and distributed a Notice of Proposed Rulemaking and text of the proposed permanent regulations on February 10, 2006. The proposed permanent regulations are substantially the same as the existing emergency regulations. The 45-day public comment period ended on March 27, 2006. During the 45-day period, the State Water Board received written comments, but it did not receive any requests for public hearing.

After the 45-day comment period ended, the text of the permanent regulations was modified. The most significant change allows the payment of response costs where the response actions are performed voluntarily (in addition to cases where the work is actually ordered). These modifications and a Notice of Modified text were published and distributed on April 10, 2006, and interested persons were provided 15 days to comment on the modified text. The text of the proposed permanent regulations was not altered after the 15-day comment period. No additional notice or public comment period is required. Responses to all timely comments received on the proposed permanent regulations are contained in the Final Statement of Reasons.

POLICY ISSUE

Should the State Water Board adopt the proposed permanent 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

None. This action does not commit funds to any project. Availability of funds is determined at the time the Board approves updates to the program priority list.

REGIONAL WATER BOARD IMPACT

Yes, all regions.

STAFF RECOMMENDATION

Staff recommends adoption of the proposed resolution approving the proposed permanent regulations, and authorizing the Executive Director to transmit the proposed regulations to the OAL.

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2006 -**

**RESOLUTION ADOPTING PERMANENT REGULATIONS IMPLEMENTING
THE ORPHAN SITE CLEANUP ACCOUNT ESTABLISHED BY
ASSEMBLY BILL (AB) 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 (USTs) at these Brownfields pose a threat to human health and the environment;
2. The State Water Resources Control Board implements the Petroleum UST Cleanup Fund (Fund), which provides financial assistance to UST owners and operators for cleanup costs. Some responsible parties 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. AB 1906 establishes the UST Petroleum Contamination Orphan Site Cleanup Account (OSCA). 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 OSCA to address petroleum contamination from USTs at sites that qualify as Brownfields;
4. The State Water Board adopted emergency regulations for the OSCA program on October 20, 2005. The emergency regulations establish a grant program for the removal of leaking USTs and the investigation and cleanup of petroleum contamination from USTs at Brownfields. The existing emergency regulations will expire on July 27, 2006, unless the State Water Board submits to the Office of Administrative Law (OAL) the proposed permanent regulations, the rulemaking record, and a certification that the regular rulemaking procedures prescribed in Government Code sections 11346.2 to 11347.3, inclusive, were satisfied before the July 27, 2006, deadline;
5. The State Water Board published and distributed a Notice of Proposed Rulemaking and text of the proposed permanent regulations on February 10, 2006. The proposed permanent regulations are substantially the same as the emergency regulations. The 45-day public comment period ended on March 27, 2006. During the 45-day period, the State Water Board received written comments, but it did not receive any requests for public hearing. Responses to all timely comments received on the proposed permanent regulations are contained in the Final Statement of Reasons; and
6. After the 45-day comment period ended, the text of the permanent regulations was modified. These modifications and a Notice of Modified text were published and distributed on April 10, 2006, and interested persons were provided 15 days to comment on the modified text. The text of the proposed regulations has not been altered after the 15-day comment period. Responses to all timely comments received during this 15-day period are contained in the Final Statement of Reasons.

THEREFORE, IT BE RESOLVED THAT:

The State Water Board adopts the proposed permanent regulations for inclusion in California Code of Regulations, title 23, division 3, chapter 18, and the Executive Director is authorized to transmit the proposed permanent regulations to the OAL 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 Board held on June 7, 2006.

Song Her
Clerk to the Board