

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
JULY 17, 2012**

ITEM 5

SUBJECT

CONSIDERATION OF A RESOLUTION TO ADOPT THE PETROLEUM UNDERGROUND STORAGE TANK EMERGENCY, ABANDONED, AND RECALCITRANT ACCOUNT FISCAL YEAR 2012-2013 ANNUAL SITE LIST AND TO AUTHORIZE EXPENDITURE OF EMERGENCY, ABANDONED, AND RECALCITRANT ACCOUNT FUNDS

DISCUSSION

The State Water Resources Control Board (State Water Board) is authorized by Chapter 6.75 of Division 20 of the Health and Safety Code to provide funding from the Underground Storage Tank (UST) Cleanup Fund (Fund) through the Emergency, Abandoned and Recalcitrant (EAR) Account to Regional Water Quality Control Boards (Regional Water Boards) and Local Agencies to initiate corrective action at petroleum UST sites that have had an unauthorized release of petroleum. The EAR Account provides funding based on the following site types: (1) the release requires prompt action to protect human health, safety, or the environment (emergency site); (2) no responsible party has been identified or located (abandoned site); or (3) the responsible party is either unable or unwilling to take the required corrective action in response to a Regional Water Board or Local Agency corrective action order (recalcitrant site).

The State Water Board has established procedures for administering the EAR Account, which include the State Water Board's adoption of an Annual Site List of emergency, abandoned and recalcitrant sites recommended by a Regional Water Board for consideration of EAR Account funding.

Annually, the State Water Board requests the Regional Water Boards and Local Agencies to nominate sites for EAR Account funding. The Local Agencies submit their site nominations to their respective Regional Water Boards. The Regional Water Boards establish priorities within their regions and submit a prioritized list of recommend sites for the EAR Account Annual Site List.

Nine Regional Water Boards recommended a total of 62 sites for the State Water Board's FY 2012-2013 Annual Site List. Of the 62 sites, two sites did not meet the funding criteria. Regarding one ineligible site, located at 7891 Stockton Blvd., Sacramento (Fund No. 10777), cleanup action is still available under the UST Cleanup Fund and no responsible party has failed to comply with a final order for corrective action. The State Water Board will not approve EAR Account funding unless the responsible party has failed or refused to comply with a final order for corrective action. Regarding the second ineligible site, located at 348 Harding Way, Stockton (Fund No. 1714), the petroleum contamination has been substantially cleaned up and is residual and the remaining contamination at the site is chlorinated solvents, which are not eligible substances for the EAR Account because they are not a substance stored in petroleum USTs.

As a result, the EAR Account Manager prepared a proposed statewide priority list of 60 eligible UST sites and proposed annual amounts to be allocated to the listed sites. The expected FY 2012-2013 proposed budget for the Fund includes sufficient funding for all 60 eligible sites on the proposed FY 2012-2013 Annual Site List. The budget is \$5 million, and the Annual Site List is expected to use \$2,450,000.

Upon the State Water Board's adoption of the Annual Site List, the Regional Water Boards and Local Agencies will be sent a notification letter instructing them on the process for accessing the approved EAR Account funding.

POLICY ISSUE

Should the State Water Board:

1. Adopt the EAR Account FY 2012-2013 Annual Site List;
2. Authorize the Executive Director or designee to issue letters of award and to negotiate and execute contracts and amendments for the expenditure of EAR Account funds designated in the FY 2012-2013 Annual Site List; and
3. Authorize the Executive Director, or designee, to request Department of General Services, pursuant to section 25299.36 of the Health and Safety Code, to enter into contracts on behalf of the State Water Board or a Regional Water Board and to act as the agent of the State Water Board or a Regional Water Board for the expenditure of EAR Account funds designated in the Annual Site List?

FISCAL IMPACT

The State Water Board has designated \$5 million from the FY 2012-2013 UST Cleanup Fund appropriation for EAR Account projects. This is sufficient to provide the requested amounts for all eligible listed sites.

REGIONAL WATER BOARD IMPACT

The Regional Water Boards will administer 38 sites. The remaining 22 sites will be administered by Local Agencies.

STAFF RECOMMENDATION

That the State Water Board:

1. Adopt the EAR Account FY 2012-2013 Annual Site List;
2. Authorize the Executive Director or designee to issue letters of award and to negotiate and execute contracts and amendments for the expenditure of EAR Account funds designated in the FY 2012-2013 Annual Site List; and
3. Authorize the Executive Director, or designee, to request Department of General Services, pursuant to section 25299.36 of the Health and Safety Code, to enter into contracts on behalf of the State Water Board or a Regional Water Board and to act as the agent of the State Water Board or a Regional Water Board for the expenditure of EAR Account funds designated in the Annual Site List.

State Water Board Action on this item will assist the Regional Water Boards in reaching Goal 1 of the Strategic Plan Update: 2008-2012 to implement strategies to fully support the beneficial uses for all 2006 listed water bodies by 2030.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2012-

ADOPTING THE PETROLEUM UNDERGROUND STORAGE TANK EMERGENCY, ABANDONED, AND RECALCITRANT ACCOUNT FISCAL YEAR 2012-2013 ANNUAL SITE LIST AND AUTHORIZING THE EXPENDITURE OF EMERGENCY, ABANDONED, AND RECALCITRANT ACCOUNT FUNDS

WHEREAS:

1. Chapter 6.75 of Division 20 of the Health and Safety Code authorizes the State Water Resources Control Board (State Water Board) to provide funding to Regional Water Quality Control Boards (Regional Water Boards) and Local Agencies for initiating corrective action at petroleum Underground Storage Tank (UST) sites that have had an unauthorized release of petroleum: (1) which require prompt action to protect human health, safety, or the environment (emergency site); (2) for which no responsible party has been identified or located (abandoned site); or (3) where the responsible party is either unable or unwilling to take the required corrective action in response to a Regional Water Board or local agency corrective action orders (recalcitrant site).
2. Section 25299.36 of the Health and Safety Code authorizes the State Water Board to undertake or contract for corrective action at specified sites or to request the Department of General Services to act as the agent of and enter into contracts on behalf of the State Water Board or a Regional Water Board for corrective action at those sites;
3. The State Water Board has established administrative procedures for providing cleanup funds to Regional Water Boards and Local Agencies, which include adoption of an Emergency, Abandoned and Recalcitrant (EAR) Account Annual Site List;
4. Annually, the State Water Board requested the Regional Water Boards and Local Agencies to nominate sites for EAR Account funding. The Local Agencies submit their site nominations to their respective Regional Water Boards. The Regional Water Boards establish priorities within their regions and submit a prioritized list of recommend sites for the EAR Account Annual Site List;
5. Nine Regional Water Boards recommended a total of 62 sites of which 60 sites are eligible for the EAR Account funding;
6. The proposed EAR Account FY 2012-2013 Annual Site List includes the 60 eligible UST sites;
7. Sufficient funding is available to provide the requested amounts for all 60 eligible sites; and
8. For efficient operation of the EAR Account Program, the State Water Board may delegate authority to the Executive Director or designee to issue letters of award and to execute contracts and amendments for the expenditure of EAR Account funds, and to request the Department of General Services to enter into contracts on behalf of the State Water Board or a Regional Water Board for the expenditure of EAR Account funds designated in the EAR Account Annual Site List.

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THEREFORE BE IT RESOLVED THAT:

The State Water Resources Control Board:

1. Adopts the [EAR Account FY 2012-2013 Annual Site List](#);
2. Authorizes the Executive Director or designee to issue letters of award and to negotiate and execute contracts and amendments for the expenditure of EAR Account funds designated in the FY 2012-2013 Annual Site List; and
3. Authorizes the Executive Director, or designee, to request Department of General Services, pursuant to section 25299.36 of the Health and Safety Code, to enter into contracts on behalf of the State Water Board or a Regional Water Board or a Local Agency, and to act as the agent of the State Water Board or a Regional Water Board for the expenditure of EAR Account funds designated in the Annual Site List.

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 July 17, 2012.

Jeanine Townsend
Clerk to the Board