

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
NOVEMBER 6, 2012**

ITEM 5

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION DELEGATING AUTHORITY TO THE EXECUTIVE DIRECTOR FOR CERTAIN UNDERGROUND STORAGE TANK SITE CLOSURES

DISCUSSION

[Resolution No. 2002-0104](#) delegates authority to the Executive Director to conduct and supervise the activities of the State Water Resources Control Board (State Water Board). Resolution No. 2002-0104 specifically precludes the Executive Director from closing or requiring the closure of underground storage tank cases. However, the State Water Board has now adopted a Low-Threat Underground Storage Tank Closure Policy (Low-Threat Closure Policy) that contains criteria for closure of underground storage tank cases. The Low-Threat Closure Policy went into effect on August 17, 2012. The proposed resolution would revise the existing delegation to authorize the Executive Director to close or require the closure of any underground storage tank case if the case meets the criteria found in the Low-Threat Closure Policy.

POLICY ISSUE

Should the State Water Board delegate to the Executive Director the authority to close or to require the closure of underground storage tank cases if the case meets the Low-Threat Closure Policy criteria?

FISCAL IMPACT

None

REGIONAL BOARD IMPACT

The Regional Boards will continue to have the opportunity to comment on case closure, albeit to the Executive Director rather than to the State Water Board.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed Resolution.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012 to enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable. In particular, approval of this item will assist in fulfilling Objective 6,1 to target consistency improvements in process.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2012-

DELEGATION OF AUTHORITY TO THE EXECUTIVE DIRECTOR FOR CERTAIN UNDERGROUND STORAGE TANK SITE CLOSURES.

1. The Executive Director is delegated the authority to conduct and supervise the activities of the State Water Board.
2. Such activities include, but are not limited to, noticing Board meetings and hearings, management of the staff, meeting with other agency officials, implementing the State Water Board's policies and regulations, meeting with Regional Water Quality Control Board (Regional Water Board) Executive Officers, approval of Clean Water Act section 205, subdivision (j)(2) project final products and grant closures, and the actions identified in 4 through 9, below.
3. Except as otherwise provided in 4 through 9 below, the Executive Director is specifically precluded from taking the following actions:
 - 3.1 Adopting regulations; except that emergency regulations, once adopted by the Board, may be revised or readopted by the Executive Director;
 - 3.2 Adopting state policy for water quality control;
 - 3.3 Adopting or approving water quality control plans or plan amendments;
 - 3.4 Any final action pursuant to Water Code section 13320, subdivision (c) finding that a Regional Water Board action was inappropriate or improper;
 - 3.5 Any final action closing a tank case or requiring closure of a tank case pursuant to Health and Safety Code section 25299.39.2 or section 25296.40;
 - 3.6 Adopting an order issuing or declining to issue a stay in a proceeding where the Board holds a hearing to consider a stay in connection with a petition, or the Board's review on its own motion, pursuant to Health and Safety Code section 25297.1, subdivision (h) or Water Code section 13320, subdivision (e).
4. The Executive Director may issue a final written determination on an appeal filed by a project applicant, under Public Resources Code section 71035.6, subdivision (e)(3).
5. The Executive Director may issue a decision or order by settlement of the parties under Government Code section 11415.60.
6. The Executive Director may set aside a State Water Board decision or order, in whole or in part, as commanded by a peremptory writ of mandate issued to the State Water Board.

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7. The Executive Director may close or require the closure of any underground storage tank case if the case meets the criteria found in the State Water Board's Low-Threat Underground Storage Tank Closure Policy adopted by State Water Board [Resolution No. 2012-0016](#).
8. The Executive Director may amend, modify, rescind, or revoke any permit, license, certificate, waste discharge requirements, decision, or order if an appellate court opinion published in the official reports establishes that the State Water Board has a ministerial duty to do so.
9. The Executive Director, after consultation with the Board Chairperson, may select the hearing officer for hearings and investigations covered under Water Code section 183.
10. The Executive Director may further delegate his or her functions, in writing, as the Executive Director deems appropriate.
11. In exercising the authority herein delegated, the Executive Director is directed, without restricting the authority specified, to bring the following matters to the attention of the members of the Board at workshop or by other appropriate communication:
 - 11.1 Matters of a unique or unusual nature;
 - 11.2 Matters that appear to depart from the policies of the Board;
 - 11.3 Matters involving significant policy questions;
 - 11.4 Highly controversial matters;
 - 11.5 Matters that involve a substantial risk of litigation;
 - 11.6 Any matter involving the execution of a contract or amendment thereto for which authority has not been expressly delegated by Board resolution;
 - 11.7 Any matter that a Board Member requests to be brought to the attention of the Board; and
 - 11.8 Any matter that, in the judgment of the Executive Director, should be brought to the attention of the Board.
12. The Board may revoke in whole or in part any specific or implied delegation to the Executive Director.

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13. This resolution supersedes Board [Resolution No. 2002-0104](#).

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 November 6, 2012

Jeanine Townsend
Clerk to the Board