

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT – Barbara Sieminski
MEETING DATE: April 13, 2011

- ITEM: **5D**
- SUBJECT: **Emergency, Abandoned, and Recalcitrant (EAR) Underground Storage Tank Account** – Adoption of Resolution Supporting Nominations to State Water Resources Control Board’s EAR Account
- CHRONOLOGY: April every year – Board adopts EAR resolution
- DISCUSSION: The Tentative Resolution (Appendix A) re-nominates two leaking underground fuel tank sites in our region for inclusion in the State Board’s EAR Account for fiscal year 2011-12.

EAR Program Description

The Health and Safety Code authorizes the State Board to provide limited funding to Regional Water Boards and local oversight programs for initiating direct cleanup of high-priority “emergency” leaking underground fuel tank sites requiring immediate corrective action to protect human health, safety, and the environment. The funding is also available for “abandoned sites” where the discharger cannot be located, or “recalcitrant sites” where the discharger is unable or unwilling to comply with corrective action directives. The State Board established the EAR Account for this purpose, and requests site nominations each year. For the State Board to consider a site for its EAR Account, a Regional Water Board resolution must be passed each fiscal year to nominate or re-nominate the site.

EAR Nominations from this Region

Over the past several years, this region has successfully nominated several leaking underground fuel tank sites to receive EAR funds. Most sites require funding for three to five years to complete investigation and cleanup. Last year we re-nominated one site (Panesar Beacon in Fremont), and nominated two new sites (Rainer Service Station in East Palo Alto, and All Star Service, Inc., aka All Star, Inc. in Concord). However, no environmental work has been performed at these sites during this fiscal year yet, because of late adoption of the 2010-11 fiscal year State budget and delays in selecting engineering contracting services for the EAR Account. We recommend the following sites be re-nominated:

Rainer Service Station (East Palo Alto)

This site is overseen by the San Mateo County Environmental Health Department. The site is already on the EAR list for \$150,000, and is being

re-nominated. Soil and groundwater impacts were discovered in 1999 and 2004. The property owners have not taken any action to cleanup or abate the effects of the unauthorized releases and have been unresponsive to regulatory directives from several agencies. The Department has requested \$150,000 for necessary investigation and cleanup work over the next two fiscal years.

All Star Service site (Concord)

This site is overseen by our agency. The site is already on the EAR list for \$200,000, and is being re-nominated. Soil and groundwater impacts were discovered in 1998. The responsible parties (tank operators and property owners) have a long-standing pattern of non-compliance with the Board's cleanup directives. This Board has imposed Administrative Civil Liability (ACL) on two separate occasions. We are requesting \$200,000, although additional funds may be needed.

The Panesar Beacon site does not need to be re-nominated for EAR funding this year. Recently, this site got a new owner due to foreclosure, and the Alameda County Water District assisted the new owner in getting the site into the Orphan Site Cleanup Account, an alternative source of cleanup funding.

Public Comments

We circulated the draft tentative resolution for public comment on February 24, 2011. We received one comment (Appendix B) pertaining to the All Star Service site, submitted on behalf of Mr. Kelly Engineer, one of the responsible parties for the All Star Service site. The comment indicates that Mr. Engineer is not interested in the EAR program (or the associated lien on his property) and would prefer to do the necessary work himself, using funding from the UST Cleanup Fund.

We evaluated this comment and offered to meet with Mr. Engineer to discuss the case but have not received a response as of this writing. Mr. Engineer would not have access to the UST Cleanup Fund until he pays off overdue ACL and settlement penalties totaling \$46,000. Based on Mr. Engineer's long-standing pattern of non-compliance with the Board's cleanup directives, we believe it is unlikely that Mr. Engineer will complete the necessary investigation and cleanup of the site. We conclude that the All Star Service site should remain on our list of nominated sites.

We expect this item to remain uncontested.

**RECOMMEN-
DATION:**

Adopt the Tentative Resolution

File Nos.
Appendices:

41-4063 (nk) and 07-0769 (bgs)
A. Tentative Resolution
B. Public Comments

Appendix A

Tentative Resolution

Appendix B

Public Comments