

DRAFT

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
ORDER WQ 20XX-XXXX-UST

**In the Matter of Underground Storage Tank (UST) Case Closure
Pursuant to Health and Safety Code Section 25296.10 and the
Low-Threat Underground Storage Tank Case Closure Policy**

BY THE CHIEF DEPUTY DIRECTOR:1

By this order, the Chief Deputy Director directs closure of the UST case at the site listed below, pursuant to section 25296.10 of the Health and Safety Code.² The name of the responsible party(ies), the site name, the site address, the Underground Storage Tank Cleanup Fund (Fund) claim number, if applicable, current and former lead agencies, and case numbers are as follows:

Housel Family Trust (Responsible Party)

Dave's ARCO

1490 South Harbor Boulevard, La Habra, Orange County

Fund Claim No. CP0067

Orange County Health Care Agency, Division of Environmental Health, Case No. 09UT001

¹ State Water Board Resolution No. 2023-0036 delegates to the Executive Director the authority to close or require the closure of any UST case if the case meets the criteria found in the State Water Board's Low-Threat Underground Storage Tank Case Closure Policy adopted by State Water Board Resolution No. 2012-0016. Pursuant to Resolution No. 2023-0036, the Executive Director has delegated this authority to the Chief Deputy Director.

² Unless otherwise noted, all references are to the California Health and Safety Code.

DRAFT

I. STATUTORY AND PROCEDURAL BACKGROUND

Upon review of a UST case, the State Water Resources Control Board (State Water Board), or in certain cases the State Water Board Executive Director or Chief Deputy Director, is authorized to close or require closure of a UST case where an unauthorized release has occurred if the State Water Board determines that corrective action at the site is in compliance with all the requirements of subdivisions (a) and (b) of section 25296.10. Closure of a UST case is appropriate where the corrective action ensures that any residual petroleum constituents associated with the case pose a low threat to human health, safety, and the environment and where the corrective action is consistent with: 1) chapter 6.7 of division 20 of the Health and Safety Code and implementing regulations; 2) any applicable waste discharge requirements or other orders issued pursuant to division 7 of the Water Code; 3) all applicable state policies for water quality control; and 4) all applicable water quality control plans.

State Water Board staff have reviewed the UST case identified above and recommend case closure under the Water Quality Control Policy for Low-Threat Underground Storage Tank Case Closures (Low-Threat Closure Policy or Policy). This recommendation is based upon the facts and circumstances of this particular UST case. State Water Board staff prepared the attached UST Case Closure Summary, which is incorporated herein by reference. The State Water Board's recommendation is based on information in the UST case record available on GeoTracker.

GeoTracker Case Record: <http://geotracker.waterboards.ca.gov/?gid=T10000000812>

Low-Threat Closure Policy

The Policy became effective on August 17, 2012 and establishes consistent statewide case closure criteria for low-threat petroleum UST sites. The Policy applies to unauthorized petroleum releases from USTs, as defined in section 25281. In the absence of unique attributes or site-specific conditions that demonstrably increase the risk associated with residual petroleum constituents, cases that meet the general and media-specific criteria in the Policy pose a low threat to human health, safety, the

DRAFT

environment and are appropriate for closure under section 25296.10. If a regulatory agency determines that a case meets the general and media-specific criteria of the Policy, then the regulatory agency shall notify the responsible party(ies) and other specified interested persons that the case is eligible for closure. Unless the regulatory agency revises its determination based on comments received on the proposed case closure, the agency shall issue a uniform closure letter as specified in section 25296.10. Prior to issuance of a uniform closure letter, the following items must be completed: a 60-day public comment period; proper destruction or certification of continued maintenance of monitoring wells or borings; and removal of waste associated with investigation and remediation of the site. All activities must be conducted in accordance with applicable local and state requirements.

Health and Safety Code section 25299.57, subdivision (I)(1) provides that claims for reimbursement of corrective action costs that are received by the Fund more than 365 days after the date of a uniform closure letter or a letter of commitment, whichever occurs later, shall not be reimbursed unless specified conditions are satisfied.

Relief from Responsibility at Commingled Release Sites

In 2013, the State Water Board adopted State Water Board Order WQ 2013-0109 (*In the Matter of the Petition of James Salvatore*, hereafter *Salvatore*), which provides a test for relieving a party from responsibility where the party's unauthorized release has commingled with a release from another party. The *Salvatore* test acknowledges the relative contributions of the responsible parties and provides relief to the party whose release is not significant enough on its own to require corrective action. (*Salvatore*, p. 13.) Under this test, a party may be relieved from responsibility for a release if the party demonstrates that its release, considered separately from other commingled releases, meets case closure criteria and the site should be closed. (*Ibid.*) The party seeking removal of the responsible party status must demonstrate that the separate release for which the party is responsible has been adequately investigated and characterized, and that there are sufficient data to determine that the case based on the individual release meets case closure criteria. (*Id.*, pp. 13-14.) In addition, as a condition of closure, the party seeking relief must provide reasonable access to the

DRAFT

responsible party performing corrective action at the relieved party's site. (*Id.*, p. 14.) Finally, the State Water Board stated that this test is not applicable in circumstances where a financially responsible party has not been identified and removal of a party may result in the creation of an orphan site. (*Id.*, p. 19.)

II. FINDINGS

Pursuant to the *Salvatore* test, a party may be removed as a responsible party for a UST cleanup case where the responsible party's unauthorized release has commingled with a release from another party if the responsible party's unauthorized release has been adequately investigated and characterized and there are sufficient data to determine that the responsible party's release, when considered separately from other releases that have commingled with the responsible party's release, meets State Water Board closure policies and the case should be closed. There are sufficient data for the State Water Board to determine that this case should be closed, as summarized in the attached UST Case Closure Summary. As a condition of closure, the responsible party(ies) in this case must provide reasonable access, as needed, to the responsible party(ies) performing corrective action associated with the case with which this one is or was commingled. Based on the State Water Board's review, closure of the case will not create an orphan site.

Based upon information available in the UST case record on GeoTracker, as summarized in the attached UST Case Closure Summary, the State Water Board finds that the corrective action taken to address the unauthorized release of petroleum at the UST site identified below ensures any residual petroleum constituents associated with the case pose a low threat to human health, safety, and the environment and is consistent with chapter 6.7 of division 20 of the Health and Safety Code and implementing regulations, the Policy, and with other applicable water quality control policies and plans:

D R A F T

Housel Family Trust (Responsible Party)

Dave's ARCO

1490 South Harbor Boulevard, La Habra, Orange County

Fund Claim No. CP0067

Orange County Health Care Agency, Division of Environmental Health, Case No. 09UT001

This order directs closure for the petroleum UST case at the site. This order does not address non-petroleum contamination.

Pursuant to the Policy, notification of proposed case closure and a 60-day comment period were provided to all entities required to receive notice of the proposed case closure. Any comments received have been considered by the State Water Board prior to determining that the case should be closed.

Pursuant to section 21080.5 of the Public Resources Code, environmental impacts associated with the adoption of the Policy were analyzed in the substitute environmental document (SED) the State Water Board approved on May 1, 2012. The SED concludes that all environmental effects of adopting, and implementing, the Policy are less than significant. A Notice of Decision was filed August 17, 2012. No new environmental impacts or any additional reasonably foreseeable impacts beyond those that were addressed in the SED will result from adopting this order.

The UST case identified above may be the subject of orders issued by a Regional Water Quality Control Board (Regional Water Board) pursuant to division 7 of the Water Code. Any orders that have been issued by a Regional Water Board pursuant to division 7 of the Water Code, or directives issued by a Local Oversight Program (LOP) agency, for this case should be rescinded to the extent they are inconsistent with this order.

III. ORDER

IT IS THEREFORE ORDERED that:

DRAFT

A. The UST case identified in Section II of this order, meeting the general and media-specific criteria established in the Policy, be closed in accordance with the following conditions and after the following actions are complete. Prior to the issuance of a uniform closure letter, the responsible party(ies) is/are ordered to:

1. Prepare a Well Destruction Work Plan for any and all remaining monitoring wells and borings associated with the case and submit it for review and concurrence by the regulatory agency overseeing the case by uploading it to GeoTracker. The Well Destruction Work Plan shall follow the California Well Standards for monitoring wells³ and local agency requirements. The work plan shall be prepared by or under the direction of a California Professional Geologist (PG) or licensed Professional Civil Engineer (PE) and shall be signed by and stamped with the seal of the PG or PE in accordance with the California Business and Professions Code (BPC) sections 6735 and 7835;⁴
2. Properly destroy any and all monitoring wells and borings as detailed in the approved work plan, unless the owner of the real property on which the well or boring is located certifies that the wells or borings will be maintained in accordance with local or state requirements. All well destruction activities shall be conducted by a specialty contractor licensed as a C-57 Well Drilling Contractor⁵ as defined in BPC section 7058 and California Code of Regulations Title 16 section 832.57. All well destruction activities shall be overseen by a PG or PE;
3. Properly remove from the site and manage any and all waste piles, drums, debris, and other investigation- and remediation-derived materials in accordance with local or state requirements; and

³ California Well Standards: Water Wells, Monitoring Wells, Cathodic Protection Wells (Bulletin 74-90). California Department of Water Resources, June 1991.

⁴ Bus. & Prof. Code, §§ 6735, 7835.

⁵ Bus. & Prof. Code, § 7058; Cal. Code Regs., tit. 16, § 832.57.

DRAFT

4. Within six months of the date of this order provide the following information to the regulatory agency overseeing the UST case identified in Section II of this order as applicable:
 - i. If wells are to be destroyed, submit documentation stating that the tasks in subparagraphs (1) through (3) have been completed by uploading to GeoTracker a Well Destruction Report that describes the well destruction methods and provides documentation of waste removal including all fully signed hazardous waste manifests and non-hazardous waste manifests;
 - ii. If no wells are to be destroyed, provide confirmation by uploading to GeoTracker a report documenting that all waste associated with the corrective action has been removed including all fully signed hazardous waste manifests and non-hazardous waste manifests.
- B. The tasks in subparagraphs (1) through (3) of Paragraph (A) are ordered pursuant to Health and Safety Code section 25296.10, and failure to comply with these requirements may result in the imposition of civil penalties pursuant to Health and Safety Code section 25299, subdivision (d)(1). Penalties may be imposed administratively by the State Water Board or Regional Water Board.
- C. Within 30 days of receipt of proper documentation from the responsible party(ies) that requirements in subparagraphs (1) through (3) of Paragraph (A) are complete, the regulatory agency that is responsible for oversight of the UST case identified in Section II of this order shall notify the State Water Board that the tasks have been satisfactorily completed.
- D. Within 30 days of notification from the regulatory agency that the tasks are complete pursuant to Paragraph (C), the Deputy Director of the Division of Water Quality shall issue a uniform closure letter consistent with Health and Safety Code section 25296.10, subdivision (g) and upload the uniform closure letter to GeoTracker.

DRAFT

- E. Pursuant to section 25299.57, subdivision (I)(1), and except in specified circumstances, all claims for reimbursement of corrective action costs must be received by the Fund within 365 days of issuance of the uniform closure letter in order for the costs to be considered.

- F. Any Regional Water Board or LOP agency directive or order that directs corrective action or other action inconsistent with case closure for the UST case identified in Section II is rescinded, but only to the extent the Regional Water Board order or LOP agency directive is inconsistent with this order.

Chief Deputy Director

Date