

**Proposed Amendments  
to the  
California Code of Regulations  
Title 23. Waters  
Division 3. State Water Resources Control Board  
and Regional Water Quality Control Boards  
Chapter 18. Petroleum Underground Storage  
Tank Cleanup Fund  
Article 7. Underground Storage Tank Petroleum  
Contamination Orphan Site Cleanup Fund**

**FINAL  
STATEMENT OF REASONS**

**May 2009**

**State of California  
State Water Resources Control Board  
Division of Financial Assistance**

**CHAPTER 18.           Petroleum Underground Storage Tank Cleanup Fund**  
**Article 7.             Underground Storage Tank Petroleum Contamination Orphan**  
**Site Cleanup Fund**

**UPDATE OF INITIAL STATEMENT OF REASONS**

The State Water Resources Control Board (State Water Board) has determined that there is no need to update the Initial Statement of Reasons. Although the State Water Board made some minor grammatical changes to the regulations after they were noticed for public comment on February 13, 2009, all of these changes were non-substantial in nature. (Cal. Code Regs., tit. 1, § 40.) Consequently, no additional notice or public comment period was required. (Gov. Code, § 11346.8, subd. (c).)

**SUMMARY OF AND RESPONSE TO COMMENTS RECEIVED ON PROPOSED RULEMAKING**

**Commenter 1.           Chet Mazur, Northern California Partners I, LLC**

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Comment 1.1: “Pages 14-32 of [http://www.swrcb.ca.gov/water\\_issues/programs/ustcf/docs/oscf/proposed%20regs.pdf](http://www.swrcb.ca.gov/water_issues/programs/ustcf/docs/oscf/proposed%20regs.pdf) are blank.”

Response 1.1: State Water Board staff responded by providing Mr. Mazur with the correct link to the proposed regulations at [http://www.waterboards.ca.gov/water\\_issues/programs/ustcf/oscf.shtml](http://www.waterboards.ca.gov/water_issues/programs/ustcf/oscf.shtml) and sending him a PDF copy of the proposed regulations.

Comment 1.2: “Other than in the section entitled ‘Business Impact/Small Businesses’, we didn’t find any reference of small business ‘set aside’, preference or use (it was a quick read). Specifically, SECTION 2814.23. ELIGIBLE APPLICANTS. of the proposed language doesn’t mention small business.”

Response 1.2: Health and Safety Code section 25299.50.2, which establishes the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund (Orphan Site Cleanup Fund), does not require applicants to be a small business. Nor is there any statutory preference for small businesses. Therefore, while small businesses will be among the eligible applicants to the Orphan Site Cleanup Fund, the State Water Board does not propose to give any preference to small businesses.

Comment 1.3: “Being involved in in-fill and re-development, We would be most interested in reviewing or even participating in the points system proposed by 8. ‘Infill development”

Response 1.3: The priority system is established in section 2814.27 of the proposed regulations. Applicants who applied for and received a grant from the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Subaccount (OSCA), but

did not receive sufficient funds to complete site assessment and cleanup, are given first priority, if they apply for a grant from the Orphan Site Cleanup Fund on or before 45 days after the effective date of the regulations. Applicants who applied for and were placed on the last priority list for receiving an OSCA grant, but did not receive an OSCA grant, are given second priority, if they apply for a grant from the Orphan Site Cleanup Fund on or before 45 days after the effective date of the regulations. Finally, all other applications received by the State Water Board on or before 45 days after the effective date of the regulations will be given third priority. The applications that are given third priority will be randomly ranked, unless there are insufficient funds to meet demands on the Orphan Site Cleanup Fund, as discussed in more detail below.

Applications that are received more than 45 days after the effective date of the regulations will be ranked on a first-come, first-served basis, unless there are insufficient funds to meet demands on the Orphan Site Cleanup Fund. If the State Water Board determines that sufficient funding to satisfy the demand for Orphan Site Cleanup Fund grants will not be available in a given fiscal year, the State Water Board will transition to a ranking system that prioritizes applications based upon three factors. These three factors are: (1) water quality concerns – 40 percent; (2) income level of applicable census tract – 30 percent; and (3) smart growth potential for affordable housing and/or infill development – 30 percent.

It is the State Water Board's position that the water quality factor should be afforded the most weight when ranking eligible applications. Therefore, if the unauthorized release that is the subject of the Orphan Site Cleanup Fund application is located within 1,000 feet of a drinking water well or a surface water body used as a source of drinking water, then the application will receive 40 of the possible 100 priority points.

The second factor relates to the income level in the census tract in which the eligible site is located. An application will receive 30 priority points if the eligible site is located in a census tract with median household income (MHI) of less than 80 percent of the statewide MHI based on the most recent census data collected by the United States Census of the Bureau.

The third factor incorporates smart growth principles in that the application will receive 30 priority points if there is potential for the project (cleanup and planned future development) to result in development of affordable inner city housing or otherwise promote inner city infill development. The State Water Board believes that awarding priority points for inner city projects is consistent with the objectives of section 25299.50.2.

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**Commenter 2. Rob Hansen, ALTA EM, Inc.**

Comment 2.1: "Who might typically be eligible to apply to this fund? Local Oversight agencies with known orphan sites only?"

Response 2.1: Eligible applicants may include local agencies, redevelopment agencies, nonprofit organizations, developers, and other public and private parties. Although a Local Oversight Program (LOP) may be eligible for a grant from the Orphan Site Cleanup Fund, an LOP will typically seek funding for “orphan” sites through the USTCF’s Emergency, Abandoned and Recalcitrant Account, not the Orphan Site Cleanup Fund.

**Commenter 3. Nathaniel Allen, Allterra Environmental, Inc.**

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Comment 3.1: “I had a quick question regarding public comment on the proposed regulatory action, is there a formal comment process or is an email sufficient. If a email is sufficient please accept the following question regarding Orphan Site Cleanup Fund funding:”

Response 3.1: State Water Board staff responded by informing Mr. Allen that the State Water Board had accepted his e-mail as a public comment on the Orphan Site Cleanup Fund's proposed regulations.

Comment 3.2: “I have been working with small business owners who qualify for UST Cleanup Fund funding as either Priority Class Bs or Cs. Many of my clients cannot afford to finance or pay for environmental costs and are dependent on USTCF funding. Why are priority class C claims with RPs who paid into the USTCF and maintained compliance with agency directives suspended while orphaned sites with property owners who could not take responsibility for their UST unauthorized releases funded with USTCF revenue? Is there any chance that Orphan Site Cleanup Fund funding could be obtained from other avenues or suspended until the USTCF has enough revenue to reimburse claims in good standing with the LOP, RWQCB, and USTCF? Seems unfair and unjust to fund orphaned sites instead of sites in good standing.”

Response to Comment 3.2: Health and Safety Code section 25299.50.2 requires that the Underground Storage Tank Cleanup Fund (USTCF) transfer \$10 million for each of the 2008-09, 2009-10, and 2010-11 fiscal years to the Orphan Site Cleanup Fund to address petroleum contamination from underground storage tanks (USTs) at sites that qualify as brownfields. The Orphan Site Cleanup Fund and the USTCF are two distinct funds. The State Water Board cannot use the money in the Orphan Site Cleanup Fund to reimburse USTCF claimants for their corrective action costs. If you feel this result is unfair, you should direct your concerns to the Legislature since the Legislature must amend the statutes to allow the State Water Board to use the moneys in the Orphan Site Cleanup Fund to reimburse USTCF claimants for their corrective action costs.

**LOCAL MANDATE**

The State Water Board has determined that the proposed action will not impose a mandate on local agencies or school districts. Additionally, the State Water Board has determined that the proposed action will not result in costs or savings to any state agency or any local agency or school district that is required to be reimbursed under

part 7 (commencing with section 17500) of division 4 of the Government Code, other nondiscretionary costs or savings imposed on local agencies, or costs or savings in federal funding to the State.

## **ALTERNATIVES DETERMINATION**

The State Water Board has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

The State Water Board has determined that the proposed regulations will not have a significant adverse economic impact on business. The Orphan Site Cleanup Fund provides grants to eligible applicants to pay for costs of removing leaking USTs and investigating and cleaning up unauthorized releases of petroleum from USTs. In addition to other types of entities, eligible applicants include businesses and small businesses. Thus, the proposed regulations provide financial assistance to eligible applicants, including businesses and small businesses.