

SUMMARY OF WATER QUALITY ORDER

ORDER NO.	WQ 2007-0011-EXEC
DATE ADOPTED	December 13, 2007
PETITION TITLE	In the Matter of the Petition of Murray Kelsoe
POPULAR NAME <i>[if applicable]</i>	N/A
REGIONAL BOARD	San Francisco Bay Regional Water Quality Control Board
FILE NO[S]	SWRCB/OCC File UST-208

NON-PRECEDENTIAL DECISION

The State Water Resources Control Board (State Water Board) adopted an order in the Kelsoe matter in October of 2004. In the *Kelsoe Order*, the State Water Board found that Kelsoe had not complied with permitting requirements because the subject Underground Storage Tanks (UST) had not been properly permitted at all times, beginning from when the local agency began issuing UST permits. The *Kelsoe Order* also held that permit waivers authorized under Health and Safety Code section 25299.57, subdivision (d)(3)(B) may only be used to excuse permit noncompliance that occurred before January 1, 1990. Kelsoe challenged the *Kelsoe Order* in court, and the matter ultimately reached the Court of Appeal.

The Court of Appeal's decision maintains the January 1, 1990, cutoff date for permit waivers (waiver may only be used to excuse permit noncompliance that occurred before January 1, 1990), except for fact patterns similar to Kelsoe. Fund claimants like Kelsoe (i.e, claimants whose violations began before 1990 and continued beyond January 1, 1990, but who later paid thousands of dollars into the Fund over a period of substantial compliance) may seek a permit waiver to excuse permit noncompliance that began before January 1, 1990, and that continued after that date. The matter was remanded to the State Water Board for the limited purpose of determining whether Kelsoe satisfies the requirements for a permit waiver.

State Water Board Order WQ 2007-0011-EXEC amends the State Water Board's *Kelsoe Order* and directs the Division of Financial Assistance to consider whether Kelsoe qualifies for a permit waiver under Health and Safety Code section 25299.57, subdivision (d)(3)(B).