

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION 2001 - 035

APPROVAL OF SETTLEMENT AGREEMENT BETWEEN THE DIVISION OF
CLEAN WATER PROGRAMS AND CHEVRON PRODUCTS COMPANY

WHEREAS:

1. The Underground Storage Tank Cleanup Fund (Fund) was created by the Barry-Keene Underground Storage Tank Cleanup Fund Trust Act of 1989 (Act). The State Water Resources Control Board's (SWRCB) Division of Clean Water Programs (Division) administers the Fund.
2. Owners and operators of petroleum underground storage tanks (USTs) who meet certain statutory and regulatory requirements may request reimbursement from the Fund for certain costs that they incur cleaning up contamination from USTs.
3. Except as specifically provided, the Act prohibits the SWRCB from reimbursing a claimant if the total amount paid to the claimant for claims in a fiscal year is greater than five percent of the total amount appropriated by the Legislature from the Fund for the payment of claims for that fiscal year.
4. The SWRCB may exempt claims from the five-percent limitation if the SWRCB determines that: (1) the exemption would provide for an equitable and timely use of available fund moneys; (2) the exemption would help to ensure an efficient petroleum underground storage tank cleanup program that adequately protects public health and safety and the environment; and (3) all claims subject to the exemption are awarded in accordance with the priority rankings established pursuant to section 25299.52 of the Act.
5. Chevron U.S.A. Inc., dba Chevron Products Company, (Chevron) has submitted numerous claims to the Fund, and the Fund began reimbursing Chevron claims in fiscal year 1993/94. The Fund made payments to Chevron that exceeded the five-percent limitation in fiscal years 1997/98, 1998/99, and 1999/2000, and the sum of these excessive payments for all three years is \$19,934,361. The Division and Chevron dispute the propriety of these payments that exceed the five-percent limitation (Disputed Payments).
6. Members of the Fund staff became aware of the fiscal year 1997/98 Disputed Payments in July or August of 1998, after that fiscal year ended, and of the fiscal year 1998/99 and 1999/2000 Disputed Payments in May of 2000.
7. Disputed Payments made to Chevron reduced the number of Letters of Commitment that could have been issued for other claims in Priority Class D and, to a lesser extent, deferred actual payments to claims in all priority classes.

8. In a Final Division Decision (FDD) dated July 14, 2000, the Division determined that the criteria for an exemption were not met in any of the fiscal years involved and, therefore, the Division did not grant an exemption from the five-percent limitation for Chevron claims in fiscal years 1997/98, 1998/99, and 1999/2000. The FDD also sought repayment of the entire \$19,934,361 in Disputed Payments made to Chevron.
9. On August 16, 2000, Chevron filed a petition for SWRCB review of the FDD contending that an exemption from the five-percent limitation applies to payments on Chevron claims for all three fiscal years that are in dispute.
10. Settling the matter will avoid costly litigation and a timely resolution of the matter will benefit those claimants who were negatively impacted by the Disputed Payments made to Chevron.
11. Effecting repayment of Disputed Payments through offsetting future Chevron payments, rather than by recovering a cash repayment, is more beneficial to other claimants because offsets can be implemented quickly thereby allowing funds to be committed to other claimants expediently.
12. The Division and Chevron have agreed to, but not yet executed, the attached Settlement Agreement. Pursuant to the terms of the Settlement Agreement, the Division would not attempt to recover \$2,397,862, and Chevron would repay the remaining \$17,536,499 by offsetting payments that Chevron would otherwise be eligible to receive in fiscal years 2000/01, 2001/02, and 2002/03. If the SWRCB approves the attached Settlement Agreement, the Division and Chevron intend to execute the Settlement Agreement. The Settlement Agreement, by its own terms, is not effective unless approved by the SWRCB and executed by the parties.
13. The SWRCB recognizes that there is an outstanding petition for SWRCB review filed by another large oil company that, while factually dissimilar, also involves the applicability of the five-percent limitation contained in the Act. The SWRCB's approval of this Settlement Agreement shall not prejudice the SWRCB or any petitioner when the SWRCB reviews any other petition that involves the five-percent limitation. The Settlement Agreement shall not be relied on as precedent in the SWRCB's review of any petition.

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THEREFORE BE IT RESOLVED:

1. The SWRCB approves the Settlement Agreement that is attached to this resolution. The SWRCB also authorizes the Division of Clean Water Programs to make necessary non-substantive modifications to the Settlement Agreement before execution thereof.

CERTIFICATION

The undersigned, Administrative Assistant 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 March 7, 2001.

/s/

Maureen Marché

Administrative Assistant to the Board

For a copy of the Agreement, contact Lori Senite Brock at (916) 341-5185