

**STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

ORDER WQ 2010-0010-UST

**In the Matter of the Petition for Review of Denial of
Petroleum Underground Storage Tank Case Closure**

BY THE BOARD:

The petitioners, listed below, seek review of the decision that rejects closure of petitioner's case involving an unauthorized release of petroleum from an underground storage tank (UST). The name of each petitioner and the applicable site address is as follows:

1. American Auto Wreckers; Mr. Freeberg and Mr. Feroz (Petitioner);
3744 Depot Road, Hayward

I. STATUTORY AND REGULATORY BACKGROUND

Owners and operators of USTs and other responsible parties may petition the State Water Resources Control Board (State Water Board) for a review of their case if they feel the corrective action plan for their site has been satisfactorily implemented, but closure has not been granted. (Health & Saf. Code, § 25296.40, subd. (a)(1).)¹

In response to a petition, the State Water Board may close the case or remand the case to the regulatory agency if the case is under the jurisdiction of a regional water quality control board (Regional Water Board) or a local agency that is implementing the local oversight program pursuant to Health and Safety Code section 25297.1. (Health & Saf. Code, § 25296.40, subd. (a)(2).)

Several statutory and regulatory provisions provide the State Water Board, Regional Water Boards, and local agencies with broad authority to require responsible parties to clean up a release from a petroleum UST. (E.g., Health & Saf. Code, § 25296.10; Wat. Code, § 13304, subd. (a).) The State Water Board has promulgated regulations specifying corrective action requirements for petroleum UST cases. (Cal. Code Regs., tit. 23, §§ 2720-2728.) The regulations define corrective action as "any activity necessary to investigate and analyze the effects of an unauthorized release, propose a cost-effective plan to adequately protect human

¹ To the extent that the State Water Board may lack authority to review a petition under Health and Safety Code section 25296.40, subdivision (a)(1) because petitioner did not submit a corrective action plan for the site, the case is being reviewed by the State Water Board pursuant to Health and Safety Code section 25296.10, subdivision (g) or section 25297.1, subdivision (d) and [State Water Board Resolution 88-23](#). These provisions also authorize the State Water Board to close a UST case.

health, safety and the environment and to restore or protect current and potential beneficial uses of water, and implement and evaluate the effectiveness of the activity (ies)." (Cal. Code Regs., tit. 23, § 2720.)

Closure of a UST case is appropriate where the corrective action ensures the protection of human health, safety, and the environment and where the corrective action is consistent with: 1) Chapter 6.7 of the Health and Safety Code and implementing regulations; 2) Any applicable waste discharge requirements or other order 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 Resolution 92-49](#), *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304* is a state policy for water quality control and applies to petroleum UST cases. State Water Board Resolution 92-49 directs that water affected by an unauthorized release attain either background water quality or the best water quality that is reasonable if background water quality cannot be restored. (State Water Board Resolution 92-49, Section III.G.) Any alternative level of water quality less stringent than background must be consistent with the maximum benefit to the people of the state, not unreasonably affect current and anticipated beneficial use of affected water, and not result in water quality less than that prescribed in the water quality control plan for the basin within which the site is located. (*Ibid.*) Resolution 92-49 does not require, however, that the requisite level of water quality be met at the time of site closure. Resolution No. 92-49 specifies compliance with cleanup goals and objectives within a reasonable time frame. (*Id.* at section III.A.) Therefore, even if the requisite level of water quality has not yet been attained, a site may be closed if the level will be attained within a reasonable period.

Regional Water Boards adopt Regional Water Quality Control Plans (Basin Plans) for their respective regions and Basin Plans are approved by the State Water Board. Basin Plans include beneficial uses of water for the applicable region and water quality objectives to protect specific beneficial uses of water. The UST Case Closure Summary identifies relevant beneficial uses and water quality objectives from the applicable Basin Plan.

II. CONTENTIONS AND FINDINGS

The petitioners contend that the corrective action performed at their site ensures the protection of human health, safety and the environment and that case closure is appropriate. Case-specific contentions are contained in the UST Case Closure Summary.

Based upon the UST Case Closure Summary dated July 21, 2010 and attached hereto as [Exhibit 1](#) the State Water Board finds that corrective action performed at the UST release site listed below ensures protection of human health, safety and the environment and is consistent with Chapter 6.7 of the Health and Safety Code and implementing regulations, State Water Board Resolution 92-49, and applicable water quality control plans.

1. American Auto Wreckers; Mr. Freeberg and Mr. Feroz (Petitioner);
3744 Depot Road, Hayward

Any orders that have been issued by Regional Water Boards pursuant to Division 7 of the Water Code for these cases that are inconsistent with case closure should be rescinded.

III. ORDER

IT IS THEREFORE ORDERED that:

- A. The UST case identified in Section II of this Order is closed and no further action related to the UST case is required.
- B. The Deputy Director of the Division of Water Quality issue a closure letter consistent with Health and Safety Code, section 25296.10, subdivision (g) and upload the closure letter and UST Case Closure Summary to Geotracker.
- C. Any Regional Water Board order issued pursuant to Division 7 of the Water Code that directs corrective action or other action inconsistent with case closure for a UST case identified in Section II is rescinded.

CERTIFICATION


The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 21, 2010.

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Arthur G. Baggett, Jr.
Board Member Tam M. Doduc
Board Member Walter G. Pettit

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board