

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION - DIVISION OF FINANCIAL ASSISTANCE  
APRIL 5, 2006**

**ITEM 4**

**SUBJECT**

CONSIDERATION OF A RESOLUTION ADOPTING THE PETROLEUM UNDERGROUND STORAGE TANK ORPHAN SITE CLEANUP PRIORITY LIST (PL) AND AUTHORIZING THE CHIEF OF THE DIVISION OF FINANCIAL ASSISTANCE TO ENTER INTO GRANT AGREEMENTS

**DISCUSSION**

The Barry Keene UST Cleanup Trust Fund Act of 1989 authorizes the State Water Resources Control Board (State Water Board) to administer a program to reimburse UST owners and operators for eligible costs incurred as a result of contamination from leaking petroleum USTs. Assembly Bill 1906 (Lowenthal, Chapter 774, Statutes of 2004) established the UST Petroleum Contamination Orphan Site Cleanup Subaccount (OSCA) within the Petroleum UST Cleanup Fund (Fund). This legislation provides that \$10,000,000 per year for 2005, 2006, and 2007 shall be transferred from the Fund to the OSCA to address petroleum contamination from USTs at sites that qualify as Brownfields. The State Water Board adopted emergency regulations that establish a grant program to pay for response actions at qualifying Brownfields. These regulations became effective on November 28, 2005, and are contained in Title 23 of the California Code of Regulations, Division 3, Chapter 18, Article 7 (OSCA regulations.)

The OSCA regulations provide that within 60 days of receipt of a complete OSCA application, the State Water Board will review the application for eligibility. If the application is eligible, the State Water Board will issue a Notice of Eligibility and place the application on the [PL](#). After that, the State Water Board and the applicant shall execute a grant agreement. This PL reflects the OSCA applications that have been determined eligible.

The OSCA regulations provide that the priority of OSCA applications will be based upon the date on which the State Water Board receives the application. However, if the State Water Board determines that sufficient funding to meet the demand for OSCA grants will not be available in a fiscal year, the State Water Board must consider three factors when establishing ranking. The estimated total demand for OSCA does not exceed the amount of OSCA funds available for fiscal year 2005/06, which is \$10,000,000, so the alternate priority-ranking system is not triggered.

In accordance with the OSCA regulations, applications that were received within 45 days of the effective date of the OSCA regulations (or January 12, 2006) are ranked as if received on the same date. Applications received after January 12, 2006, are ranked according to the date they were received. After the PL is adopted, the State Water Board may begin executing grant agreements with eligible applicants.

## **POLICY ISSUE**

Should the State Water Board adopt the OSCA PL to provide funding to eligible OSCA applicants? and

Should the State Water Board authorize the Chief of the Division or designee to enter into grant agreements and amendments for the expenditure of OSCA funds?

## **FISCAL IMPACT**

As authorized by statute, \$10 million has been allocated to the OSCA for fiscal year 2005-2006. This is sufficient to provide eligible funding for the eligible sites included on the OSCA PL.

## **REGIONAL WATER BOARD IMPACT**

Yes. Regional Water Boards and local agencies will oversee cleanup activities at these OSCA sites.

## **STAFF RECOMMENDATION**

That the State Water Board adopt a resolution to adopt the PL for the OSCA program, which will allow OSCA program staff to begin committing OSCA funds to eligible applicants and allow the Chief of the Division or designee to execute grant agreements and amendments for the expenditure of OSCA funds.

**STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2006-**

**CONSIDERATION OF A RESOLUTION ADOPTING THE PETROLEUM UNDERGROUND  
STORAGE TANK ORPHAN SITE CLEANUP PRIORITY LIST AND AUTHORIZING  
THE CHIEF OF THE DIVISION OF FINANCIAL ASSISTANCE TO ENTER INTO  
GRANT AGREEMENTS**

**WHEREAS:**

1. Assembly Bill 1906 (Lowenthal, Chapter 774, Statutes of 2004) establishes the OSCA within the Petroleum UST Cleanup Fund (Fund). Pursuant to section 25299.50.2 of the Health and Safety Code, \$10,000,000 per year for years 2005, 2006, and 2007, is transferred from the Fund to the OSCA to address petroleum contamination from USTs at sites that qualify as Brownfields;
2. To implement Health and Safety Code section 25299.50.2, the State Water Resources Control Board (State Water Board) adopted emergency regulations. These regulations became effective on November 28, 2005, and are contained in Title 23 of the California Code of Regulations, Division 3, Chapter 18, Article 7 (OSCA regulations);
3. Section 2814.29 of the OSCA regulations provides that within 60 days of receipt of a complete OSCA application, the State Water Board will review the application for eligibility. If the application is eligible, the State Water Board will issue a Notice of Eligibility and place the application on the PL. After that, the State Water Board and the applicant shall enter into a grant agreement for OSCA funding (OSCA regulations, § 2814.30);
4. Section 2814.27 of the OSCA regulations governs the priority ranking of OSCA applications. If the State Water Board determines that sufficient funding to meet the demand for OSCA grants will not be available in a given fiscal year, the State Water Board shall rank applications according to factors contained in section 2814.27, subdivision (b). If the State Water Board determines that sufficient funding is available to meet the demand for OSCA grants in a fiscal year, then section 2814.27, subdivision (a) requires that the State Water Board rank eligible applications based upon the date that the application is received;
5. Section 2814.27 also provides that applications received within 45 days of the effective date of the emergency OSCA regulations shall be ranked as if received on the same date and randomly ranked to determine their order of priority. Applications received after the 45-day period are ranked according to the date they are received. The emergency OSCA regulations became effective on November 28, 2005. The 45-day period ended on January 12, 2006;
6. The PL reflects the OSCA applications that have been determined eligible;

7. Sufficient funding to meet the demand for OSCA grants is available for fiscal year 2005/06 because the estimated demand does not exceed \$10,000,000, which is the amount available for fiscal year 2005/06;
8. Pursuant to OSCA regulations section 2814.27, the OSCA applications that were received on or before January 12, 2006, are randomly ranked to determine their order of priority and applications received after January 12, 2006, are ranked in accordance with the date that they were received; and
9. For efficient administration of the OSCA program, the State Water Board may delegate authority to the Chief of the Division or designee to execute grant agreements and amendments for the expenditure of OSCA funds.

THEREFORE BE IT RESOLVED THAT:

The State Water Resources Control Board:

1. Adopts the PL for the Petroleum UST Orphan Site Cleanup Account; and
2. Authorizes the Chief of the Division or designee to enter into grant agreements and amendments to those grant agreements with eligible OSCA applicants.

#### **CERTIFICATION**

The undersigned, Clerk 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 April 5, 2006.

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Clerk to the Board