

NOTICE OF PROPOSED RULEMAKING

TITLE 23. WATERS
DIVISION 3. RESOURCES CONTROL BOARD
CHAPTER 18. PETROLEUM UNDERGROUND STORAGE TANK CLEANUP
FUND
ARTICLE 7. ORPHAN SITE CLEANUP ACCOUNT

NOTICE IS HEREBY GIVEN that the State Water Resources Control Board (State Water Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The State Water Board proposes to add Article 7 to chapter 18, division 3, title 23 of the California Code of Regulations (commencing with section 2814.20), relating to the Orphan Site Cleanup Account (OSCA).

PUBLIC HEARING

A public hearing has not been scheduled for this proposed action. A public hearing will be held if any interested person, or duly authorized representative of an interested person, submits a written request for a public hearing to the State Water Board no later than 15 days before the close of the written comment period. If a request for a public hearing is made, the State Water Board shall provide notice of the time, date and place of the hearing by in accordance with Government Code section 11346.4 by mailing the notice to every person who has filed a request for notice with the State Water Board. In addition, as prescribed by Government Code section 11340.85, notice may be provided by means of electronic communication to those persons who have expressly indicated a willingness to receive notice by this means.

WRITTEN COMMENT PERIOD

The State Water Board requests comments from interested persons to present any statements, arguments, or contentions relating to the proposed regulatory action. The comments must be submitted in writing and received by the State Water Board before the close of the written comment period in order to be considered by the State Water Board before it adopts the proposed regulations. **The written comment period begins February 10, 2006, and closes at 5:00 p.m., Pacific Standard Time, on Monday, March 27, 2006.**

Comments may be hand delivered, or submitted by U.S. mail, facsimile transmission, or electronic mail. Comments delivered by hand should be taken to 1001 I Street,

Sacramento, California, and addressed to the attention of Judy Reid, Division of Financial Assistance, 17th Floor, State Water Resources Control Board. Comments submitted by U.S. mail should be addressed as follows:

Judy Reid
Special Programs Unit
Division of Financial Assistance
State Water Resources Control Board
P.O. Box 944212
Sacramento, CA 94244-2120
(916) 341-5760
E-mail address: jreid@waterboards.ca.gov

Comments sent by facsimile should be sent to the following facsimile phone number: (916) 341-5806. Comments submitted by electronic mail should be sent to the following e-mail address: Jreid@waterboards.ca.gov.

To be added to the mailing list for this rulemaking and to receive notification of updates of this rulemaking, please notify Judy Reid at the mailing address or e-mail address indicated above. Also, you may subscribe on the internet at http://www.waterboards.ca.gov/lyrisforms/swrcb_subscribe.html; the name of the electronic mailing list is "AB 1906 Orphan Site Cleanup Account." **Persons who receive this notice by mail or electronic mail are already on the mailing list.**

AUTHORITY AND REFERENCE

Health and Safety Code section 25299.77 authorizes the State Water Board to adopt regulations to implement Chapter 6.75 of the Health and Safety Code. References to specific code sections are identified in the proposed regulations for the OSCA program.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 authorizes the State Water Board to administer a program to reimburse underground storage tank (UST) owners and operators for eligible costs incurred as a result of contamination from leaking petroleum USTs. The State Water Board has been administering the Petroleum Underground Storage Tank Cleanup (Fund) for about 14 years. There are, however, numerous legislatively-imposed eligibility requirements, and many responsible parties, including some at brownfield sites, are ineligible for this funding.

Assembly Bill 1906 (Lowenthal) established the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Subaccount (OSCA) within the Fund. (See Health and Safety Code, section 25299.50.2.) Assembly Bill 1906 provides that \$10,000,000 per fiscal 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 proposed regulations implement and make specific the program created in AB 1906. Specifically, the proposed regulations establish eligibility requirements, a priority system for paying eligible applicants, funding limitations and define the types of costs that qualify for funding.

There are federal funds available for assessment and cleanup at petroleum brownfields. On January 11, 2002, the President signed into law the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Law). The Brownfields Law provides federal financial assistance for brownfield revitalization, including grants for site assessment and remediation. (See 42 USC 9604(k).) The United States Environmental Protection Agency (EPA) administers this grant program. The Brownfields Law allows EPA to award brownfield grants for activities related to petroleum-contaminated sites, including UST sites, that: (1) EPA or the state determines are of relatively low risk compared to other petroleum-related sites in the state; (2) EPA or the state determines there is no viable responsible party and that the site will be assessed or cleaned up by a person that is not a potentially-responsible party; and (3) are not subject to an order issued pursuant to the Resource Conservation and Recovery Act. Under the EPA program, an applicant may apply for an assessment grant (not to exceed \$200,000 per site, unless a waiver is granted and then the maximum amount is \$350,000) and/or a cleanup grant (not to exceed \$200,000 per site).

FISCAL IMPACT ESTIMATES

Mandate on Local Agencies or School Districts

The State Water Board has determined that the proposed regulations do not impose a mandate on local agencies or school districts. The State Water Board has determined that the proposed regulations will not result in any additional cost or savings to 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.

Cost or Savings to any State Agency: The State Water Board has determined that the regulations will involve no additional costs or savings to any state agency.

Other Non-discretionary Cost or Savings Imposed on Local Agencies: The State Water Board has determined that there is no cost or savings imposed on local agencies as a result of the proposed regulations.

Cost or Savings in Federal Funding to the State: The State Water Board has determined that there is no cost or savings in federal funding to the state as a result of the proposed regulations.

ECONOMIC IMPACT STATEMENTS

Statement of Significant Statewide Adverse Economic Impact Directly Affecting Business: The State Water Board has made the initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons Or Businesses: The State Water Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Creation Or Elimination of Jobs within California: The State Water Board has determined that the proposed regulatory action will have no effect on the creation or elimination of jobs within California.

Effect On Creation of New Businesses or Elimination of Existing Businesses within California: The State Water Board has determined that the proposed regulatory action will have no effect on the creation of new businesses or the elimination of existing businesses within California.

Effect On Expansion of Businesses Currently Doing Business within California: The State Water Board has determined that the proposed regulatory action will have no effect on the expansion of businesses currently doing business within California.

Effect on Small Businesses: The State Water Board has determined that the proposed regulatory action does not adversely affect small businesses in that they will derive a benefit from the implementation of the regulations. Small businesses are among applicants that will be able to participate in the new OSCA grant program.

Consideration of Alternatives: In accordance with Government Code section 11346.5, subdivision (a)(13), the State Water Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons that the proposed action.

The State Water Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at any hearing that may be requested or during the written comment period.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The State Water Board has prepared an Initial Statement of Reasons for the proposed action. The Initial Statement of Reasons includes the specific purpose of the regulations

proposed for adoption and the rationale for the State Water Board's determination that adoption is reasonably necessary to carry out the purpose for which the regulations are proposed. The Initial Statement of Reasons, the express terms of the proposed regulations, and all information on which the proposals are based are available from the agency contact person named in this notice.

The rulemaking file is available for inspection and copying through the rulemaking process at the Division of Financial Assistance, 1001 I Street, 17th floor, Sacramento, California. As of the date that this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the express terms of the proposed regulations, the Initial Statement of Reasons, and the rulemaking file for the emergency OSCA regulations that became effective on November 28, 2005.

The rulemaking file will also be published and made available at the following Division Internet website: <http://www.waterboards.ca.gov/cwphome/ustcf/osca.htm>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding any hearing that is requested and considering all timely and relevant comments received, the State Water Board may adopt the proposed regulations substantially as described in this notice. If the State Water Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) days before the State Water Board adopts the regulations as modified. A copy of any modified regulations may be obtained by contacting Ms. Judy Reid, the primary contact person identified below. The State Water Board will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting either of the persons listed below. A copy may also be accessed on the State Water Board website previously identified.

CONTACT PERSONS

Inquires concerning the proposed action may be directed to:

Ms. Judy Reid
Special Programs Unit
Division of Financial Assistance
State Water Resources Control Board

P.O. Box 944212
Sacramento, CA 94244-2120
(916) 341-5760
E-mail address: jreid@waterboards.ca.gov

The backup contact person for these inquiries is:

Ms. Pat Preslar
Special Programs Unit
Division of Financial Assistance
State Water Resources Control Board
P.O. Box 944212
Sacramento, CA 94244-2120
(916) 341-5756
E-mail address: ppreslar@waterboards.ca.gov

Questions regarding the substance of the proposed regulations may be directed to either contact person.

Please direct to Judy Reid requests for copies of the proposed text (the “express terms”) of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or any other information upon which this proposed rulemaking is based.