



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board



**Division of Financial Assistance**  
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Arnold Schwarzenegger  
Governor

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STOP & SAVE, INC.  
SEAN KAPOOR  
461 MILPITAS BLVD S, #1  
MILPITAS, CA 95035

UNDERGROUND STORAGE TANK CLEANUP FUND (FUND), RECENT COURT CASE THAT EXPANDS THE AVAILABILITY OF UNDERGROUND STORAGE TANK (UST) PERMIT WAIVERS FOR CLAIMS INVOLVING SPECIFIC FACTS: CLAIM NUMBER 018281; FOR SITE ADDRESS: 20570 STANTON AVE, CASTRO VALLEY

Our records indicate that your claim to the UST Cleanup Fund was rejected because you did not comply with UST permitting requirements and you did not qualify for a permit waiver under Health and Safety Code (H&SC) section 25299.57 (d)(3)(B) or section 25299.58 (b)(3)(B).

Under existing law, UST permitting requirements may be waived if certain criteria are met. Waivers are generally available for permit noncompliance that occurred before January 1, 1990. There is a limited exception to this general rule. However, for claimants whose violations began before 1990 and continued beyond January 1, 1990, but who later paid thousands of dollars of UST storage fees into the UST Cleanup Fund for the UST that is the subject of the claim over a period of substantial permit compliance may be eligible. (*Kelsoe v. State Water Resources Control Board* (2007) 153 Cal.App.4<sup>th</sup> 569.)

After the *Kelsoe* Opinion was issued, your claim file was re-reviewed. Based upon information that was provided with your claim, it appears that your claim MAY fall within the exception established in the *Kelsoe* Opinion, and that you MAY be able to seek a permit waiver for permit noncompliance that continued beyond January 1, 1990. To seek a permit waiver for permit noncompliance that began before January 1, 1990, and continued past that date, ALL of the following must be met:

1. The claim was filed on or after January 1, 1994.
2. The claimant was subject to UST permit requirements (i.e., owner or operator of UST) before January 1, 1990.
3. After a period of noncompliance, the claimant obtained a UST permit issued under H&SC section 25284.
4. After obtaining the H&SC section 25284 UST permit, the claimant complied with UST permitting requirements for a substantial period of time.
5. The claimant paid thousands of dollars in UST storage fees into the Fund for the UST that is subject of the claim .

*California Environmental Protection Agency*

If a claimant falls within this fact pattern and the claimant satisfies the criteria for a permit waiver contained in H&SC sections 25299.57 and 25299.58 [as set forth in the enclosed Permit Waiver Request Form], then permit noncompliance that occurred before and after January 1, 1990, may be waived.

If you would like to request a permit waiver under the *Kelsoe* Opinion, please complete the enclosed Permit Waiver Request Form.

If you would like further information about the Permit Waiver Form, visit the UST Fund website at [www.waterboards.ca.gov/cwphome/ustcf/claimformsinfo.htm](http://www.waterboards.ca.gov/cwphome/ustcf/claimformsinfo.htm).

**NOTE:** Failure to respond to this request within thirty (30) calendar days from the date of this letter may result in an ineligibility determination of your claim.

If you have any questions, please contact me at (916) 341-5714.

Sincerely,

ISI

Shari Knieriem  
Claims Review Unit  
Underground Storage Tank Cleanup Fund

Enclosure: Permit Waiver Form (w/o)

cc: Ms. Donna Drogos  
Alameda County EHD  
1131 Harbor Bay Pkway, 2nd Fl.  
Alameda, CA 94502-6577