



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board



Arnold Schwarzenegger  
Governor

## Division of Financial Assistance

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JUN 26 2009

Mr. Michael J. Veiluva  
Alborg, Veiluva, & Epstein LLP  
200 Pringle Ave., Suite 410  
Walnut Creek, CA 94596-7380

Dear Mr. Veiluva:

UNDERGROUND STORAGE TANK (UST) CLEANUP FUND (FUND), FUND  
MANAGER DECISION (FMD) FOR PRIORITY RECLASSIFICATION ELIGIBILITY:  
CLAIM NO. 11496; FOR SITE ADDRESS: 2008 1ST ST, LIVERMORE

By a letter dated January 23, 2009, you requested an FMD on behalf of your clients, Balaji Angle and Chhaya Angle, for reconsideration of the current priority classification. Claim No. 11496 is currently a Priority Class "C" and you are requesting a change to a Priority Class "B".

### Decision

Following my review of your letter and supporting documents, I find your clients do not meet the qualifications for a Priority Class "B" (small business). The basis for my decision is summarized below:

### Applicable Authority

The following sections cited are excerpted from the *Petroleum Underground Storage Tank Cleanup Fund Regulations*, Title 23, Division 3, Chapter 18, of the *California Code of Regulations* (Fund Regulations) (commencing with Section 2803), the *Petroleum Underground Storage Tank Cleanup Fund Statutes*, *California Health and Safety Code* (H&SC) Division 20, Chapter 6.75 (Fund Statutes) (commencing with Section 25299.10), Section 14837 of the *California Government Code* and the regulations implementing that section, Title 2, Division 2, Chapter 3, Subchapter 8, Office of Small Business Procurement and Contracts of the *California Code of Regulations* (Small Business Regulations).

Section 2804 of the Fund Regulations defines:

"Residential tank" means a tank, as defined in Health and Safety Code section 25281, subdivision (u), including pipes connected thereto, that satisfies all of the following conditions:



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- (A) An owner or operator of a tank that is a small business, by meeting the requirements of subdivision (d) of Section 14837 of the Government Code. An owner or operator that meets that definition of small business, but who is domiciled or has its principal office outside of the state, shall be classified in this category if the owner or operator otherwise meets the requirements of subdivision (d) of Section 14837 of the Government Code with regard to the number of employees and the total annual revenues received.
- (B) An owner or operator that is a city, county, district, or nonprofit organization that receives total annual revenues of not more than seven million dollars (\$7,000,000). In determining the amount of a non-profit organization's annual revenues, the board shall calculate only those revenues directly attributable to the particular site at which the tank or tanks for which the claim is submitted are located. . . .

Government Code Section 14837(d) defines "small business," in relevant part, as:

(d)(1) "Small business" means an independently owned and operated business that is not dominant in its field of operation, . . . and that, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 100 or fewer employees.

The Small Business Regulations implement Government Code Section 14837(d) by establishing current small business standards. Section 1896.12(a), of the Small Business Regulations describes, in relevant part, the current qualifying criteria for small business certification as follows:

- (a) To be eligible for certification as a small business, a business must meet all of the following qualifying criteria:
- (1) It is independently owned and operated; and
  - (2) . . . [business location requirement not relevant for Fund purposes]
  - (3) . . . [business owners' domicile requirement not relevant for Fund purposes]
  - (4) It is not dominant in its field of operation(s), and
  - (5) It is either:
    - (A) A business that, together with all affiliates, has 100 or fewer employees, and annual gross receipts of twelve million dollars (\$12,000,000) or less as averaged for the previous three tax years, as adjusted by the Department pursuant to Government Code Section 14837(d)(3); or

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- (B) A manufacturer as defined herein that, together with all affiliates, has 100 or fewer employees...

Discussion

The claimants have failed to provide three years of taxes for the period immediately preceding the date of the claim application. For the purposes of assignment to a Priority Class "B" the claimant, together with affiliates, cannot exceed \$12 million average annual gross receipts over the last three years prior to the date of the claim application. The claim application was received by the Fund on February 20, 1996. Therefore, taxes for the years of 1993, 1994, and 1995 are required to demonstrate that the claim meets the Priority "B" Classification requirements.

According to the letter dated April 22, 2009, the Internal Revenue Service advised your clients that the records are unavailable because they do not have records extending that far back.

In addition to having to provide the appropriate tax years, the claimants must provide their employment records from the Employment Development Department for the last four quarters of the tax year 1995 to demonstrate that they had less than 100 employees. The employment records that were provided with the appeal were for the last four quarters of 2008, which is not acceptable. Fund Staff has determined that we do not have the tax and employment information necessary to make a determination of eligibility to change this claim to Priority Class "B".

Your appeal also requested a change to a Priority Class A. Fund Staff had previously explained that Priority Class A covers USTs at a residence used for dwelling purposes. The April 22, 2009, letter indicates that you understand that the Fund cannot change the priority from Priority Class C to Priority Class A. The USTs located at the site do not meet the definition of a "residential tank" as cited in Section 2804 of the Fund Regulations.

Appeal Process

This represents an FMD in this matter. In accordance with Section 2814.1 of the Fund Regulations, if you are not in agreement with this FMD, you may request a Final Division Decision (FDD). The appeal must be received by the Deputy Director of the Division of Financial Assistance within 60 days of the date of this letter. If you do not request an FDD within those 60 days, this decision will become final and conclusive. The request should be sent to:

Mr. Michael J. Veiluva  
Claim No. 11496

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Ms. Barbara L. Evoy, Deputy Director   USTCF Claim No. 11496  
Division of Financial Assistance  
State Water Resources Control Board  
P.O. Box 944212  
Sacramento, CA 94244-2120

The request for an FDD must include, at a minimum: (1) a statement describing how the claimant is damaged by this FMD; (2) a description of the remedy or outcome desired; and (3) an explanation and supporting documentation of why the claimant believes the action or this FMD is erroneous, inappropriate, or improper.

If you have any questions, please call Ms. Shari Knieriem at (916) 341-5714.

Sincerely,



Ronald M. Duff, P.E., Fund Manager  
Underground Storage Tank Cleanup Fund

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

Balaji Angle and  
Chhaya Angle  
35584 Cononvan Lane  
Fremont, CA 94536

Ms. Dorothy Rice, Executive Office (Via E-mail only)

Ms. Patty Zwarts, CalEPA (Via Email only)