



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Division of Financial Assistance
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Arnold Schwarzenegger
Governor

DEC 15 2008
Ms. Janet Heikel
Olympian
1300 Industrial Rd. Suite 2
San Carlos, CA 94070

Alameda County
DEC 16 2008
Environmental Health

Dear Ms. Heikel:

UNDERGROUND STORAGE TANK (UST) CLEANUP FUND (FUND), FUND
MANAGER DECISION (FMD) FOR ELIGIBILITY DETERMINATION:
CLAIM NO. 017634; FOR SITE ADDRESS: 8515 SAN LEANDRO ST, OAKLAND

By a letter dated November 27, 2007, you requested an FMD for reconsideration of the Fund Staff Decision dated December 27, 2004. Fund Staff denied the claim because the local regulator had not determined that Olympian's site had an unauthorized release of petroleum from the USTs. Also, Olympian had not incurred any cleanup costs at the site.

Decision

Following my review of your letter and the supporting documents, I find that I must uphold the Staff Decision. The basis for my decision is as follows:

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), or *Petroleum Underground Storage Tank Cleanup Fund Statutes*, *California Health and Safety Code* (H&SC), Division 20, Chapter 6.75 (Fund Statutes); or *Underground Storage of Hazardous Substance Statutes*, H&SC, Division 20, Chapter 6.7 (UST Statutes).

Section 25299.57(d)(1) of the H&SC, reads in part:

"...the State Water Board may pay a claim to the Fund if "[t]here has been an unauthorized release of petroleum into the environment from an underground storage tank..."

Section 2804 of the Fund Regulations defines "Release" and "Underground storage tank" as follows:

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or residential tank into or on the waters of the state, the land, or the subsurface soils. The term does not include releases which are clearly attributable to spills or overfills occurring as a result of filling or emptying of an underground storage tank or residential tank."

"Underground storage tank," means an underground storage tank as defined in H&SC Section 25281, subdivision (y)..."

Section 25281(y)(1) of the H&SC reads, in part:

"Underground storage tank," means any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground."

"Underground storage tank" does not include any of the following:

(C) "Structures, such as sumps, separators, storm drains..."

Background

The site is an active fuel-card lock within the city of Oakland. A diesel and gasoline service station is currently operated by Nella Oil Company. In 2002, as part of a property transaction screen, a limited site assessment was completed.

In 2003, Olympian applied to the Fund to receive reimbursement for the cleanup of the contamination at the site. However, at the time of the submittal of the claim application, Alameda County, Health Care Services, Environmental Health Services, (ACEHS) had not determined that the site had an unauthorized release of petroleum from the USTs.

Fund Staff reviewed the claim application and determined that there was not an unauthorized release. On December 27, 2007, Fund Staff denied Olympian because there was no evidence that an unauthorized release came from the USTs.

Discussion

On November 1, 2006, ACEHS issued a directive letter to Olympian. Fund Technical Staff reviewed the supplemental information submitted, and determined that the unauthorized release is not from an eligible source. Based on the provided documentation and investigation reports, the USTs or associated piping do not appear to have been the source of the unauthorized release. The highest concentration of MTBE was detected in the vicinity of the oil/water separator tank. Contamination from the oil/water separator is not eligible for reimbursement.

In summary, pursuant to H&SC Section 25299.57(d)(1), the State Water Board may pay a claim to the Fund if "[t]here has been an unauthorized release of petroleum into the environment from an UST." Fund Staff have reviewed the data and there is no conclusive data that supports an unauthorized release occurred from an eligible source.

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:

Ms. Barbara L. Evoy, Deputy Director USTCF Claim No. 17634
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: Mr. Chuck Headlee
RWQCB, Region 2
1515 Clay Street, Ste. 1400
Oakland, CA 94612

Ms. Donna Drogos
Alameda County EHD
1131 Harbor Bay Pkway, 2nd Fl.
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