



Alameda County

APR 26 2012

Environmental Health



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

April 24, 2012

Oakland Unified School District  
Leroy Stokes  
955 High St  
Oakland, CA 94601

UNDERGROUND STORAGE TANK CLEANUP FUND (FUND), FINAL STAFF  
DECISION TO REJECT CLAIM: CLAIM NO. 019879; FOR SITE ADDRESS: 2607  
MYRTLE ST, OAKLAND

Your claim has been found to be ineligible for placement on the Priority List for the following reason:

You did not comply with the UST permitting requirements pursuant to H&SC Section 25299.57(d)(4)(A) and you do not meet the requirements for a permit waiver for claims to the Fund that were filed on or after January 1, 2008.

My decision is based on the following authority:

H&SC Section 25284 states:

(a)(1) Except as provided in subdivision (c), no person may own or operate an underground storage tank unless a permit for its operation has been issued by the local agency to the owner or operator of the tank, or a unified program facility permit has been issued by the local agency to the owner or operator of the unified program facility on which the tank is located.

Fund Regulations Section 2811 states:

(a) An owner or operator of an underground storage tank or residential tank for which a permit is required under section 25284 of the Health and Safety Code shall be entitled to reimbursement for eligible corrective action, regulatory technical assistance, and third party compensation costs if...

(2)(A) ...the claimant has complied with the permit requirements of

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

Chapter 6.7 (commencing with Section 25280).

Effective January 1, 2008, H&SC Section 25299.57(d)(4) reads, in part:

(A) Except as provided in subparagraphs (B) and (C), the claimant has complied with the permit requirements of Chapter 6.7 (commencing with Section 25280). A claimant shall obtain a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim when the claimant becomes subject to subdivision (a) of Section 25284 or when the applicable local agency begins issuing permits pursuant to subdivision (a) of Section 25284, whichever occurs later.

(B) A claimant who acquires real property on which an underground storage tank is situated and, despite the exercise of reasonable diligence, was unaware of the existence of the underground storage tank when the real property was acquired, has obtained a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim within a reasonable period, not to exceed one year, from when the claimant should have become aware of the existence of the underground storage tank, or when the applicable local agency began issuing permits pursuant to Section 25284, whichever occurs later.

(C) All claimants who file their claim on or after January 1, 2008, and who do not obtain a permit required by subdivision (a) of Section 25284 in accordance with subparagraph (A) or (B) may seek a waiver of the requirement to obtain a permit. The board shall waive the provisions of subparagraphs (A) and (B) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement, and upon becoming aware of the permit requirement, the claimant complies with subdivision (a) of Section 25284 or 25298 and the regulations adopted to implement those sections within a reasonable period, not to exceed one year, from when the claimant became aware of the permit requirement.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

NOTE: The sections cited are found in the Petroleum Underground Storage Tank Cleanup Fund Regulations, Title 23, Division 3, Chapter 18, of the California Code of Regulations, or Petroleum Underground Storage Tank Cleanup Fund Statutes, California Health and Safety Code (H&SC), Division 20, Chapter 6.75.

From documentation in your claim application, additional documentation received from your consultant, Susan Garner of EquoLogic, from the City of Oakland Fire Prevention Bureau, and from Alameda County Environmental Health, you acquired site in January of 1915, installed the 4,000 gallon Heating Oil UST in 1978, acquired a permit to operate the UST (dated September 16, 1988), applied for a UST removal permit (application dated November 26, 1996), and removed the UST on December 23, 1996 (under UST removal permit dated December 12, 1996). No additional permits have been provided, that are dated between your first permit to operate the UST (dated 9/16/88) and the removal permit (dated 12/12/96) to show that you maintained permit compliance.

You are requesting a permit waiver. Documentation provided shows that you were aware of the permit requirement as early as 1988 because you acquired a permit at that time. However, more than one year elapsed between the date of your first permit (dated 9/16/88) and the date of your permit removal application (dated 11/26/96).

Therefore, under H&SC Section 25299.57(d)(4), you are ineligible because you did not provide documentation to show you maintain permit compliance and you do not qualify for a permit waiver.

If you disagree with this Final Staff Decision, you may appeal to the Fund Manager pursuant to Section 2814 of the *Petroleum Underground Storage Tank Cleanup Fund Regulations*. If you would like review of the decision by the Fund Manager, please submit your request along with any additional documentation to:

Lisa Babcock, P.G., C.E.G., Fund Manager  
Claim No. 019879  
Underground Storage Tank Cleanup Fund  
State Water Resources Control Board  
Division of Financial Assistance  
P.O. Box 944212  
Sacramento, CA 94244-2120

A request to the Fund Manager should be submitted within thirty (30) calendar days from the date of this letter and must include, at a minimum: (1) a statement describing

Oakland Unified School District  
April 24, 2012  
Claim 19879

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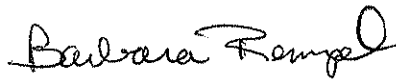
how the claimant is damaged by the prior Staff Decision; (2) a description of the remedy or outcome desired; and (3) an explanation of why the claimant believes the Staff Decision is erroneous, inappropriate or improper.

Should you decide to appeal this Decision, you must submit the following:

Documentation to show you maintained permit compliance between the dates of 1988 thru 1996.

If you have any questions, please contact me at (916) 341-5761.

Sincerely,



Barbara Rempel  
Claims Review Unit  
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.  
Alameda, CA 94502-6577

Susan Garner  
EquoLogic  
15936 Barry Lane  
Monte Sereno, CA 95030