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Members of the Senate Environmental Quality Committee:

Senator S. Joseph Simitian [Chair]

Senator Loni Hancock

Senator George C. Runner [Vice-Chair]

Senator Alan S. Lowenthal

Senator Roy Ashburn

Senator Fran Pavley

Senator Ellen M. Corbett

State Capitol

Sacramento, CA 95814

Subject: **URGENT NEED** for Underground Storage Tank (UST) Program Legislation
AB 1188 (Ruskin); as amended 9/2/09

Senators:

This letter is being written to inform you that one of California's longest running "green" economies is about to perish. Due to no fault of their own, hundreds of claimants and consultants working on UST remediation have had their reimbursements from the state's Underground Storage Tank Fund (USTF) indefinitely suspended, due to an \$80 million over-expenditure by the Water Board. This means that millions of dollars of work, already performed, is not being reimbursed. The category in which the suspensions has occurred (Category C) is comprised of small business owners and small consulting firms. Even in solid economic times these entities would not have the resources to withstand this huge financial crisis. Today, things are even worse.

What is at risk:

- Hundreds of small, "green" consulting firms are likely to declare bankruptcy, leaving the state's well-regarded and essential environmental remediation capability in shambles.
- Hundreds, if not thousands, of environmental remediation green-employees (engineers, geologists, technicians, well drillers, concrete contractors, laboratories, etc.) have been or will be laid off.
- Hundreds of small businesses who own property being remediated will face foreclosure or bankruptcy through inability to pay their contractors. Not only will they lose their property, their businesses, such as fuel retailers, property management firms, petroleum wholesalers, etc, will suffer irreparable harm. And, their employees will be laid off or encounter significant reductions in pay and benefits.
- Lawsuits between consultants and property owners will explode as the tangled mess heads to the courts.
- Lawsuits against the state for malfeasance and negligent fiduciary responsibility are highly likely.
- Gridlock will occur on much-needed administrative reforms to the UST program.
- The state will gain title to numerous properties remaining in need of further remediation.
- Necessary remediation will grind to a halt, creating potential health and safety problems.

Legislation is URGENTLY NEEDED to avoid this catastrophe. Several simple changes to state law will assure that the UST Fund remains adequately funded, and that claimants have the ability to find short-term financing to weather the storm. **AB1188 (Ruskin)**, which represents a consensus package between industry and the Administration, is being amended to do the following:

- Increases the UST fee charged on motor fuels stored in underground storage tanks from 1.4 cents/gallon to 2 cents/gallon (6 tenths of one cent/gallon increase) for two years.

- Provides language that allows the Water Board to unsuspend over 1300 UST claims in the "C" class (CIOMA members) that are currently suspended indefinitely. This action has barred them from trying to get third-party bridge financing to assist in their continuing remediation obligations.
- Allows the 1300+ suspended claimants to file for reimbursement of bridge financing costs, within specified parameters. This is compromise language developed by the Water Board and accepted by CIOMA.
- Requires the Water Board to post the results of an independent audit they are having done on the UST Fund and program on their web site.
- Moves a program for remediation of school locations (created in AB 2729-'07 (Ruskin)) from accessing funds from the "D" category account, to accessing funds in the general claims account.

This package of amendments will infuse the Fund with needed revenue, making up for an \$80-million-over-expenditure by the State Water Board which resulted in the indefinite suspension of over 1300 UST remediation claims. And it will provide needed legislation to reduce Fund expenses and allow claimants, currently hand-cuffed, the ability to find third-party assistance in meeting their obligations.

It is important to note that this legislation is limited in scope. A separate and vigorous effort is underway at the Water Board to:

- make the claims system lean and mean,
- to reduce claims deadwood from the system, and
- to assure that remediation is being finalized when reasonable, science-based cleanup objectives are met.

However, these efforts may take several years to fully institute – for suspended claimants and their consultants this will mean certain economic death. The legislation contained in AB 1188 is needed NOW.

We ask you to vote "AYE" on AB 1188 (Ruskin) to keep the measure moving to approval by the end of the session. There were indications that this issue was going to be handled in the Budget, but those efforts never came to fruition.

Sincerely



Jay McKeeman, Vice President, Government Relations & Communications

cc: Assemblymember Ira Ruskin
John Moffatt, Legislative Director, Governor's Office
Dorothy Rice, Executive Director, State Water Board
Caroll Mortensen, Consultant, Senate Environmental Quality Committee
Lance Christensen, Senate Republican Caucus