



Linda S. Adams
Acting Secretary for
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California Regional Water Quality Control Board North Coast Region

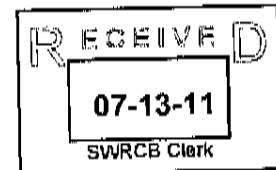
Geoffrey M. Hales, Chairman

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Edmund G. Brown Jr.
Governor

July 11, 2011



Mr. Charles R. Hoppin, Chairman
State Water Resources Control Board
P. O. Box 100
Sacramento, California 95812-0100

SUBJECT: LOW THREAT UST CLOSURE POLICY

Dear Mr. Hoppin:

The purpose of this letter is to provide comments regarding the final draft of the Low Threat UST Closure Policy. I was privileged to have been asked to serve on the task force for the development of this policy at the request of the State Water Resources Control Board (SWRCB). The UST Low Risk Task Force was charged with the development of a policy to evaluate UST sites for low risk closure through a uniform and consistent process in California. This is an important policy that is greatly needed and will be of great benefit. The policy offers consistent application of regulation which can be then uniformly applied throughout the state. The policy will also expedite the overall process of oversight and approach to UST release sites resulting in expedited characterization and closure of applicable sites. I agree with much of the policy as formulated and presented to you.

My personal disagreement with the existing policy is the use of exceedingly high groundwater concentrations of groundwater contaminants that would constitute low risk. The allowance of 3,000 parts per billion (ppb) of benzene and 1,000 ppb of methyl tert-butyl ether (MtBE) are particularly of note. Current drinking water maximum contaminant limits (MCL) for benzene and MtBE as defined by Title 22 of the California Code of Regulations for benzene and MtBE are 1 ppb and 13 ppb, respectively. MtBE has a secondary MCL of 5 ppb based on taste and odor thresholds. The policy correctly states that benzene is a driver for most UST cleanup sites based on the fact that benzene is a known human carcinogen. I find it troubling that the policy would allow for potentially thousands of UST sites to close with heavily impacted groundwater with essentially no expectation of restoring the beneficial use of that groundwater within any realistic time frame.

The policy as it is presented from the Task Force includes criteria for impacted media from the release of a UST that would qualify as low threat and thereby be eligible for regulatory agency closure with no further action required. Once a site meets the general criteria, the environmental risk is evaluated around three media specific classes including vapor intrusion to indoor air, direct contact and outdoor air exposure and groundwater concentrations. The criteria for several of these classes are based on accepted State and Federal regulatory agency guidance documents. The criteria for the groundwater specific concentrations and plume lengths that are being proposed by this task force to you as a regulatory body and which you will be considering to adopt would be in conflict with state law with limited foundation in existing laws and regulations. The groundwater contaminant concentrations that are being proposed as being low risk are far greater than any currently used on a statewide basis and are a vast departure from state law and regulations on many levels.

For the past 23 years UST release sites have been regulated by State and Federal laws and regulations including SWRCB Resolution 68-16, SWRCB Resolution 92-49, SWRCB Resolution 88-63, California Health & Safety Code and the California Code of Regulations among others. These laws and regulations have been incorporated into Water Quality Control Plans (Basin Plans) for regional water quality control boards and for the past 23 years 30,000+ UST sites have been investigated, remediated and closed using the developed regulatory framework.

The policy proposes groundwater concentrations of petroleum hydrocarbons measured as benzene, MtBE and Total Petroleum Hydrocarbons as gasoline (TPH-g) that are many orders of magnitudes greater in concentration than what has been allowed under general statewide closure criteria. The tradeoff in the proposed policy is that there are buffer distances to sensitive receptors, including water supply wells and surface water, which extend up to 1,000 feet from the edge of the remaining groundwater impact plume. The policy then relies upon time for natural degradation of impacted groundwater to remediate itself through natural attenuation. Time frames for natural attenuation to restore the beneficial use of groundwater under the policy can be decades to hundreds of years. The policy itself however has the perhaps unintended consequence of encumbering and limiting land uses outside of the source property while at the same time vesting no land use authority or use controls to the SWRCB, regional water boards or other regulatory agencies to ensure that the closure criteria are maintained until the restoration of the beneficial use of the affected groundwater.

The State of California has long recognized the importance of protecting groundwater as a valuable public resource. In addition there continues to be ongoing development and use of groundwater for consumptive use throughout all areas of the state. The California Department of Water Resources (DWR) indicates in the 2003 update of Bulletin 118 there has been an average of 9,115 water wells annually installed in California. Of these, over 80 percent were installed for domestic use. In addition DWR recognizes the ongoing trend of increasing use and reliance of groundwater for

consumptive supply based on the long term trend of projected population growth throughout California that estimates a population of 46 million people by 2020. DWR further recommends the long term management and protection of all groundwater basins for current and future beneficial uses.

It has been my experience as a consultant working on UST sites for the past 16 years that these sites can be remediated to a point that natural degradation can restore groundwater to Water Quality Objectives within a truly reasonable amount of time. It has also been my experience that consideration of a site for low risk closure is something that is done at the end of the site investigation and remediation cycle where it can truly be demonstrated that water quality is restored and protected. My concern is that the policy would allow for sites to be closed that are far from complete and the result will be impairment of urban groundwater for the foreseeable future.

There has been a great amount of collected effort that has been expended to develop the policy that is now before you. It is not my intent to be an outlier to the final draft of this policy; however given the proposed groundwater concentrations, lack of land use control and the affect on the important beneficial use of groundwater, I find myself unable to fully support the policy. I leave you with the recommendation to consider submitting the policy for peer review specifically to look at groundwater conditions that would apply to all of California that would constitute low risk conditions. The SWRCB could then evaluate the proposed policy following this review.

I thank you for opportunity to participate in this process and provide these comments. Please feel free to contact me directly if you wish to discuss these issues in greater detail.

Sincerely,



David Noren, Vice Chair
North Coast Regional Water Quality Control Board

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cc: Board Member Tam Doduc, Tdocuc@waterboards.ca.gov
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