

LOW THREAT UST CLOSURE POLICY
RECOMMENDED MODIFICATIONS OF L. S. TURNER
SEPTEMBER 28, 2011
C.E.Q.A SCOPING MEETING

The following represents the Real Property Stakeholder "perspective" on the proposed policy. Comments and observations are offered, and, where appropriate, specific modifications, indicated with "bold" and "underlined" text, have been inserted into the proposed policy.

Preamble [page 1 paragraph 6]

The purpose of this policy ... is intended to provide clear direction to responsible parties, their service providers, **property owners, tenants, lenders, real estate brokers/agents,** and regulatory agencies.

Criteria for Low-Threat Case Closure [page 2, paragraph 1]:

Cases that meet the criteria in this policy do not require further corrective action and shall be issued **an authoritative** uniform closure letter consistent with Health and Safety Code section 25296.10 **certifying the site is in compliance. The authoritative uniform closure letter may be relied upon by the environmental community stakeholders, to include all governmental agencies, responsible parties, property owners, tenants, lenders, real estate brokers/agents, and service providers.** Periodically, or at the request of the responsible party, **property owner, tenant, or service provider** conducting the corrective action ...

Media Specific Criteria:

1. Groundwater – Section (3) (e) [page 6]

NOTE: The recommendation is to delete the entire section to eliminate any requirement for a Deed Restriction.

NOTE: Section 1 (b) needs to define or limit "free product".

2. Petroleum Vapor Intrusion to Indoor Air [page 7]

NOTE: Repeat paragraph 3 (c) from 3. Direct Contact and Outdoor Air Exposure [page 8]

"As a result of controlling exposure through the use of mitigation measures or through the use of institutional or engineering controls ... "

NOTE: The term "institutional" needs to be defined.

Low Threat Case Closure [page 8]:

a. Notification Requirements – Public water supply agencies with jurisdiction over the water impacted by the unauthorized petroleum release, governmental regulatory agencies with environmental jurisdiction over the land affected by the unauthorized petroleum release, owners and/or tenants of the real property, and owners and occupants of all adjacent parcels that are impacted by the unauthorized petroleum release shall be notified of the proposed Low-Threat Case Closure and provided a thirty (30) day period to comment. The comments may include environmental and non-environmental considerations for review by the regulatory agency having jurisdiction. The regulatory agency shall issue a recommendation within a reasonable period of time following the filing of the request.

b. Monitoring Well Destruction – All wells and borings installed for the purpose of investigating, remediating, or monitoring the unauthorized release shall be properly destroyed prior to case closure unless a responsible party or a property owner certifies they will keep and maintain the wells or borings in accordance with the applicable local or state requirements. The number of wells or borings should be reduced to a reasonable number required to monitor the historic problem areas. Under no circumstances shall a well or boring be left in place if the regulatory agency determines that the wells or borings create a threat to the environment by remaining on site. The cost of maintaining the wells or borings will be the responsibility of the responsible party or the property owner based upon their contractual obligations. Any agreement between the responsible party and the property owner shall have a reasonable “sunset” provision not to exceed five (5) years.

d. In the event a Low-Threat Case Closure site is ordered to be reopened by the regulatory agency having environmental jurisdiction, the responsible party or property owner shall be assigned a case number that dates back to the date of case closure in order to allow the closed case to be reinstated to active status without penalty to the responsible party or real property owner.

NOTE: In the event a regulatory agency with jurisdiction over environmental matters notifies a non-environmental agency, such as Planning, Building or Architectural (design review), of a “hold” on a project based upon environmental considerations, the “hold” cannot exceed thirty (30) days.

NOTE: In the event disputes arise over the administration of a case closure request, prior to applying for a review by a RWQCB of the SWRCB, the parties should be directed to Alternate Dispute Resolution (“ADR”) before either an arbitrator or mediator.