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Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: Comment re: Low-Threat UST Closure Policy

Dear Ms. Townsend;

I am an attorney whom has represented many gasoline station owners, consultants, commercial realtors, commercial appraisers and prospective purchasers of properties contaminated from underground storage tanks. I have been involved with the California Underground Storage Tank Cleanup Fund (USTCF) since the early 1990s. The following are some comments regarding the Low-Threat UST Closure Policy.

The current owners of the UST have been and are currently paying \$0.02 cents per gallon into the USTCF. Many of the sites are currently undergoing the various phases of assessment and cleanup – both soil and groundwater. The proposed Low-Threat UST Closure Policy would drastically change the current closure criteria for many of these properties.

My primary concern is if the site is granted “closure” under this new policy, what does that do to property values with elevated soil and groundwater contamination remaining? I have spoken with many commercial realtors, commercial property appraisers and banks – all who have agreed that the proposed Closure Policy would significantly de-value the property regardless of “closure” being granted.

Once the site is granted “closure” with elevated levels, the site is no longer eligible for reimbursement from the USTCF (unless there is a second, distinct release). These UST owners will continue to pay the \$0.02 per gallon into the USTCF, but will no longer be eligible for any cost reimbursement associated with potential claims/cleanups, etc. even if the property owner disagrees with the closure.

I always encourage my clients to perform detailed Phase I's on all commercial property transactions. If a site is found to have stored any potential hazardous material, I require/request a detailed Phase II to be performed. I know these costs are not eligible by the Fund, but if contamination is found from a UST site, then this should be eligible. With

this new "elevated" closure policy, I will still require a Phase II these UST sites regardless of when "closure" had been granted.

If the Phase II indicates the presence of soil or both soil and groundwater contamination, regardless of the new policy "closure" levels, I will recommend these finding to be reported to the appropriate agencies and a new claim be submitted to the Fund.

The regulatory agency will state the site is at/below new action levels based on this policy and the Fund will deny any claim. The prospective owner may, or may not care. The commercial realtors banks and commercial property appraisers that I have discussed this with all state that they will either want additional cleanup, a drastically reduced purchase price, or a substantial amount of money left in escrow to cover possible future cleanup cost (or combination of all of the above). Banks -- both local and national -- have stated that they are governed by federal standards and those federal maximum concentrations levels (MCLs) are what they are requiring. If a site is above federal MCLs, then most lending institutions will not approve the loan.

I agree that numerous sites will achieve site closure with this new policy, new California MCL's, but many of these closed sites will not be a marketable property. We recommend that you NOT approve the proposed Low-Threat UST Closure Policy.

Sincerely,



James V, DeMera III