

March 18, 2012

Mr. Charles R. Hoppin, Chair
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Attn: Jeanine Townsend, Clerk to the Board

Comments Re: Draft Water Quality Control Policy for Low-Threat Underground Storage Tank Case Closure

Dear Mr. Hoppin,

I am forwarding this brief comment letter opposing the proposed UST Case Closure Policy (Policy). I have been involved with a number of independent groups that are providing separate, detailed technical and legal opposition to this proposed Policy so I will not repeat their numerous, valid points. I would like to provide comments on a couple of points:

1) This Policy creates a two-tiered closure track that is unfair and unjust.

While the authors of this Policy may have a reasonable goals for proposing this Policy, the primary force driving this change in existing guidance appears to financial in nature [i.e. 1) a fix to address USTCF program's decreasing ability to finance fuel release cleanups, and 2) a general fix for reducing cleanup budget for fuel related releases]. A consequence of this Policy is that it creates a two tier cleanup system rationale across the State; one for petroleum hydrocarbon releases and another for the rest of chemical releases. The SWRCB should continue to establish a rationale and guidance for all chemical releases instead of this unintended, or intended, tiered system that creates a separate closure path for an industry having a strong lobby, while other industries that do not have financial lobby monies must follow the "old" methodology in order to achieve site closure.

DTSC and Regional Water Board SLIC programs require the use Tier 1 CHHSLs/ESLs and/or *Site-Specific Risk Analysis* for releases they manage, including those that have fuel contamination in the subsurface. Already, there are documented cases of non-petroleum site Responsible Parties who are using the "leave elevated contaminants above current regulatory thresholds in-place" argument for requesting for reduced action, stating that since the SWRCB is proposing a leave-it-in-place Policy, the same logic should apply to non-fuel type contaminants. The Policy fails to consider conflicting domino effect on other State Agencies or the cumulate effect that may follow.

The two-tier closure policy, one for petroleum hydrocarbon fuel releases and another for non-fuel contaminant releases is not rationale or fair. The SWRCB should establish a single, State-wide closure policy based on a step-by-step rationale for all urban chemicals of concern (not just for those chemicals produced/handled by a well-funded industry); a policy that includes a rationale and a step-by-step approach to assessing risk. It would seem improper for one agency to abandon screening guidelines and site specific risk analysis approaches that are the basis for

site closure used by all other chemical release management agencies in the State just to protect the interests of a single, well funded industry.

2) The Substitute Environmental Document (“SED”) appears to violate CEQA

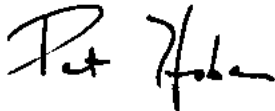
The Policy is a relaxation of more-stringent closure criteria currently established for UST sites. Despite this fact, the Policy considers only those environmental impacts that would occur after the Policy is in place. The Draft SED failed to reasonably, or properly, establish an environmental baseline for completing environmental analysis and has failed to adequately satisfy CEQA because the baseline should account for the numerous future environmental conditions that would occur if the current closure criteria were simply left in place.

As water quality is the primary goal of the SWRCB, a genuine analysis of the issue should be performed. The SED analysis provided does not come close to passing a “straight face” test. Potentially negative impacts not addressed include: 1.) Air Quality, 2.) Greenhouse Gas Emissions, 3.) Biological Resources, 4.) Hydrology and Water Quality, 5.) Land Use and Planning, 6.) Public Services, 7.) Hazards and Hazardous Materials, 8) cumulative impacts, or 9) alternatives to the Policy

Thank you for your consideration of these points,

Sincerely,

By



Pat Hoban, PG
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