



March 19, 2012



Ms. Jeanine Townsend (commentletters@waterboards.ca.gov)
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: Comments re: Proposed Low-Threat UST Closure Policy

Dear Ms. Townsend:

Thank you for the opportunity to comment on the State Water Resources Control Board (State Board) Low-Threat Underground Storage Tank Case (UST) Closure Policy dated January 31, 2012. The Santa Clara Valley Water District (District) is the groundwater management agency for Santa Clara County and also provides flood protection, stream stewardship, and water supply for the nearly two million residents of the county.

Nearly half of the water used in the county comes from groundwater, and in the southern portion of the county, it is the sole drinking water supply source. Most public water systems in the county do not require wellhead treatment and the District works to aggressively protect groundwater in accordance with District Board policy.

The District served as the county's Local Oversight Program agency until 2004, when it was transferred to the Santa Clara County Department of Environmental Health. The District supports closing sites that do not pose a significant threat to human health or the environment, but believes that significant changes to the proposed policy are necessary to provide adequate groundwater protection.

A statewide policy that closes contamination sites based on fixed numeric targets does not adequately address local concerns and conditions.

The District agrees that the development of consistent principles is appropriate in providing guidance for the closure of low-threat UST cases. However, rather than providing broad criteria (e.g., a stable or shrinking plume and complete conceptual site model), the policy serves as more of a checklist by assigning fixed numeric criteria for case closure based on few considerations, including plume length, contaminant concentration, and distance to water supply wells. By establishing fixed targets for case closure, this policy severely limits the consideration of local conditions and concerns. In many instances, this may lead to residual contamination being left in place simply because it meets the numeric targets, even though additional cleanup may be feasible, cost-effective, and warranted to protect groundwater resources.

The policy directly acknowledges that site-specific conditions may make case closure inappropriate even when the criteria are met but places the burden on the oversight agency to prove that the



case should remain open. The District believes that the statewide policy should establish the principles and criteria to be used for consideration of case closure, but that numeric targets would be more appropriately incorporated into the Leaking Underground Fuel Tank Guidance Manual. Local oversight agencies should also retain the flexibility to consider local conditions, including groundwater use and vulnerability, in evaluating whether additional investigation and cleanup is necessary.

The District does not believe this policy is adequately protective of groundwater resources.

The policy allows residual contamination 80 to 3,000 times higher than drinking water standards. In high-quality, high-use groundwater basins such as ours, residual contamination at these levels is a serious concern. The policy allows high levels of contamination to remain based on the assumptions that shallow groundwater will not be used for drinking water and that natural attenuation will occur within a reasonable time frame (which is not defined). However, according to the San Francisco Regional Water Board Basin Plan, all groundwater is considered suitable, or potentially suitable, for municipal and domestic supply. Allowing higher levels of contamination to remain in groundwater over unknown periods of time increases the risk that beneficial uses could be impacted.

The State Board recognizes that cleanup by natural processes alone may take decades to hundreds of years. However, the policy assumes that site conditions will not change during this time frame and does not contain protocols for dealing with residual contamination at closed sites when site conditions do change due to redevelopment, construction of underground utilities or structures, or groundwater usage.

The policy states that:

"It is a fundamental tenet of this low-threat closure policy that if the closure criteria described in this policy are satisfied at a petroleum unauthorized release site, attaining background water quality is not feasible, establishing an alternate level of water quality not to exceed that prescribed in the applicable Basin Plan is appropriate, and that water quality objectives will be attained through natural attenuation within a reasonable time, prior to the expected need for use of any affected groundwater."

The numeric criteria presented in the policy do not control whether attaining background water quality is feasible or how long it may take to achieve water quality objectives through natural attenuation. The District believes that the determination of whether the attainment of water quality objectives is feasible should rely on a good conceptual site model and should account for all relevant data, not simply the plume length and concentration.

This policy does not adequately address off-site cleanup.

This policy allows closure of sites with plumes up to 1,000 feet long and with benzene concentrations up to 3,000 times higher than the drinking water standard. The policy also prevents oversight agencies from requiring cleanup of off-site plumes if sources directly below the primary source have been removed, unless there is a demonstrated threat to human health. This fails to address threats to water resources and does not consider whether off-site cleanup is feasible or would aid in achieving water quality objectives in a timelier manner. We agree that it is often not

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cost-effective to cleanup to background levels. However, responsible parties should not be permitted to leave gross contamination in place when it could be cost-effectively removed.

The policy inappropriately shifts the burden of proof from the responsible party to others, including the local oversight agencies and taxpayers.

The policy states that:

“This policy relies on the regulatory agency’s use of the conceptual site model to identify the special attributes that would require specific attention prior to the application of low-threat criteria. In these cases, it is the regulatory agency’s responsibility to identify the conditions that make closure under the policy inappropriate.”

This provision requires the local oversight agencies to demonstrate that a site does not meet the low-threat criteria in order to keep it open. This inappropriately shifts the responsibility from the responsible party to the oversight agency, and ultimately the taxpayers. The burden to demonstrate that the site does not pose a threat to human health or water resources should remain with the responsible party.

Summary

The District supports development of a policy that provides consistent principles to guide decisions and achieve rational outcomes for the closure of UST sites based on site-specific analysis and demonstrated low risk to human health and the environment. The District believes that statewide policy should not dictate the outcome based on fixed numeric standards that do not allow for consideration of local conditions.

The implementation of this policy will result in residual contamination (both on-site and off-site) in groundwater that may not adequately be protective of beneficial uses. We are concerned that this policy will set a dangerous precedent for polluters by allowing residual contamination to remain in groundwater, even in cases where it may be feasible and cost-effective to perform additional cleanup. The District recommends that this policy be revised to remove the fixed numeric cleanup targets and allow for greater consideration of local conditions to ensure the beneficial uses of groundwater are adequately protected.

Thank you for considering our comments. If you have any questions, please contact me at (408) 265-2607, extension 2073.

Sincerely,



Joan Maher
Deputy Officer
Water Supply Division

cc (via email): Michael Balliet, Santa Clara County Department of Environmental Health
Eileen Chan, Alameda County Water District
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