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State Water Resources Control Board Members:

Chair, Charlie Hoppin  
Vice Chair, Frances Spivy-Weber  
Board Member, Tam Doduc

State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

*Via E-mail c/o Jeanie Townsend, Clerk of the Board*



Subject: **Strong Support** for the Proposed Low-Threat UST Closure Policy

Honorable Water Board Members:

The approximately 400 members of the California Independent Oil Marketers Association (CIOMA) wish to register their **strong support** of the Proposed Low-Threat UST Closure Policy ("Policy") as presented for public comment, January 31, 2012 version. CIOMA represents independent marketers who purchase gasoline and other petroleum products from refiners and sell the products to independent gasoline retailers, businesses, and government agencies, as well as representing branded "jobbers" who supply branded retail outlets, especially in rural areas. Our members are primarily small, family owned businesses who encounter unique difficulties in meeting California's complex and increasingly expensive requirements. Many of our members have filed claims with the State's UST Fund program, and others are environmental consultants who represent our members, among others, in remediating state UST sites. Therefore, we have a direct and vested interest in the passage of this highly essential Policy.

### **Background**

CIOMA - both as an association and through the active involvement of its membership - has been a guiding force in the evolution of the state's programs relating to the cleanup of sites and the tangential funding programs. Indeed, the creation of those programs was fostered by CIOMA members who have continuously complied with the ever-changing regulatory environment regarding the maintenance and cleanup of petroleum products from tanks. As an association our primary concern has been to assure continuing remediation efforts by our members to prevent/restrain possible contamination from leaking fuel vessels.

We are proud of a record that exemplifies our outstanding success, with negligible pollution of state waterways and water systems from petroleum products. When compared with the enormous amount of petroleum products distributed yearly in this state (*approximately 15 billion gallons of gasoline and 3 billion gallons of diesel in 2011*), the amount of product that escapes containment is miniscule. And the amount of product that results in actual

contamination of water sources is even less than miniscule. This significant record of achievement is often overlooked in the exaggerated headlines and press reports on petroleum product handling.

### **CIOMA Motivation**

A primary motivation for CIOMA to stay heavily engaged in the prevention and containment of contamination is that our members are primarily small, family-run businesses. The enormous liability and significant cleanup costs surrounding UST leaks and cleanup can easily swamp even our mid-sized or large members. These extreme costs and expenses can cause businesses to go bankrupt and property to be confiscated. Ultimately, the State winds up with an ownership that needs significant resources before it can be made useful again. The State's UST programs have been *critical* in escaping that scenario, while assuring continuing cleanup of contaminated sites, which protects the public and the environment. This is truly a win-win-win situation.

### **2008 Wake-Up Call**

This Policy continues the evolution of the state's UST cleanup and funding programs into a finely-tuned and appropriately-resourced contamination prevention and remediation program. We all had a wake-up call in late 2008 when financial planning problems were encountered with the UST Fund program. Over 1300 Class C claims (primarily our members) were suspended indefinitely. Unfortunately, this occurred just as we were entering the Great Recession. Since that time, CIOMA has devoted a huge amount of resources – especially for a small organization and membership - into identifying and resolving not only the problems that led to the funding suspension, but to the more difficult root problems that have created a bloated and unwieldy cleanup and reimbursement condition. This Policy is absolutely one of the core ingredients to the success of a positive new direction for the Fund, claimants, consultants, and the general public.

A key question that the 2008 situation raised was: “Why are we [the public] spending so much for sites that have not created a serious health, safety, or environmental problem?” One answer could be that the expenditure of over \$2 billion in cleanup costs “saved the day”. But to those who have had a long and detailed involvement with the Fund and cleanup programs, the pat-answer did not hold water (*pun intended*).

The harder-to-solve issues, after much investigation, stakeholder input, and an independent audit, then became more obvious:

- Too much was being spent on excessive and expensive monitoring of sites.
- The claims process was not finely tuned to the needs of site cleanup and closure.
- Claims processing was unwieldy and created too much effort to make simple reimbursement decisions.
- Liberal approval of claims created an “entitlement” environment for spending at sites.
- Local oversight agencies were not focused on getting sites closed, and there were legal impediments to resolving arguments over closure.
- The Water Board had not been proactive in investigating why sites remained open for excessive periods of time.

- Much better financial planning was needed to develop Fund expenditure budgets, *and one of the largest issues:*
- There was a highly uneven decision-making process for closing sites, due to lack of solid, central policy direction.

So, while substantial progress has been made in a number of these issues areas, the last, central cog in UST cleanup evolution has been a work-in-progress. That work is now before you in the proposed Low Risk Policy. *We urge that it be adopted in the form presented to you.*

### **Blue Ribbon Work Group**

In December of 2010, Water Board (“Board”) staff began a process to develop a Low Risk Policy worthy of presentation to the Board. Staff correctly determined that a group of dedicated individuals with substantial background in UST cleanup policy and programs should be convened as a working group to help frame the policy and provide the substantive background materials and underpinnings needed to assure the policy was based on the best science and objective information available. After hundreds of hours of diligent effort, this working group made a presentation of the draft policy to the Board in July of 2011.

The importance of this effort cannot be understated. It took the group over seven months of twice-monthly meetings, hundreds of email conversations, and untold more hours of research and outside-the-room efforts to put together a package that addresses all aspects of contamination from UST’s and integrates the most up-to-date knowledge and science in establishing a deeply-founded low risk policy proposal. The underpinnings of the policy are explained in attachments; all of which is being peer-reviewed.

This is NOT a “spit-wad on the wall” proposal. Each element - in fact each word - has been carefully reviewed and each criteria thoroughly researched. Unfortunately, the science on migration of petroleum products and health consequences is not perfect. So, some criteria were developed using the best available information and involved the learned debate of working group members, expert support from Water Board staff, and input from others to craft a workable, first-time-ever, policy statement outlining criteria on how to determine a low threat UST site.

### **Yard Stick, Not Micrometer**

CIOMA anticipates a number of complaints will be lodged against the Policy by local agencies who are worried about it usurping their authority. The working group, which included local and regional agency participants, spent numerous hours of discussion on this very point and worked through the policy carefully to allow abundant opportunity for local/regional oversight entities to keep legitimate work continuing. An important distinction here is that the oversight agency must now make compelling arguments on why it should remain open. To date they have, for the most part, only had to withhold site closure.

CIOMA also anticipates arguments claiming that the numeric values in the Policy are not strict enough. First, we believe that any such arguments *need compelling and well-documented*

*alternative proposals*, not mere claims that values are “not strict enough”. Further, CIOMA believes that the Policy is not an end-all determinant. This state is too geographically and geologically diverse to have a one-size-fits-all policy. The Policy provides a measuring tool that can be used in evaluating a variety of variables at sites and provides the ability to integrate that information in determining the legitimate need for ongoing remediation (and expenditure). The Policy is intended to be a yardstick, not a micrometer, in determining a site’s risk characteristics. So in response to claims that the values are not precise, the Policy is intended to provide parameters for consideration, not specific indicators for each site in the state.

As previously mentioned, we strongly recommend that the Policy be adopted as written in the January 31 draft.

### **Values of the Policy**

The reasons for quickly adopting the Policy are numerous:

- The absence of clear a low-risk site definition has been a significant culprit in maintaining sites in an active condition for too long. Current policy has created wide discrepancies in the estimated threat of sites to health, safety, and the environment, and the lack of good policy directions has become an all-too-convenient excuse to keep sites open. This Policy will fill that void.
- The Policy brings together a strategic set of criteria, vetted by expert and experienced parties, which will act as an eminently-defensible package of best-knowledge and best-science reasoning.
- A significant number of sites, nicknamed “deadwood” by some, are currently draining limited resources from the UST Fund by remaining open and active. Water Board staff have estimated that about 30% of the sites currently receiving funding should be closed. On the other hand, about 30% of the sites should be receiving more funding. The Policy will help in providing a clear litmus test for the sites that should no longer be open, thereby limiting the drain on a revenue-constrained reimbursement program.
- The Policy furthers the evolution of knowledge on petroleum contamination sites, where there is *scant evidence* of such contamination creating discernible public health issues or significant environmental impact.
- It will help in directing limited resources to the areas of most need and will help eliminate squandering of scarce dollars on locations where further expenditure makes no discernible difference in societal protection. *In the end, this is the most important aspect of the Policy.*

### **Urge Swift Approval**

CIOMA urges swift adoption of the policy as presented to the Board. We will vigorously continue our corollary efforts on other aspects of the cleanup and remediation programs, but without this key policy adoption, those efforts will yield only marginal results. At risk in that situation is the demise of an exemplary environmental protection program, and worse yet, the loss of small business efforts in keeping a clean environment and a healthy economy.

On behalf of the CIOMA membership,

A handwritten signature in black ink, appearing to read "Jay McKeeman". The signature is fluid and cursive, with a large initial "J" and "M".

Jay McKeeman, Vice President of Government Relations & Communications

cc: The Honorable Bob Wieckowski, Chair, Environmental Safety & Toxic Materials  
Committee  
The Honorable Cameron Smyth, State Assembly  
The Honorable Joe Simitian, Chair, Senate Environmental Quality Committee  
Governor Jerry Brown  
Mr. Matt Rodriguez, Secretary, Cal/EPA  
Mr. Tom Howard, Executive Director, SWRCB  
Kevin Graves, SWRCB