



Ms. Jeanine Townsend:

The Alameda County Water District (ACWD) wishes to thank you for the opportunity to comment on the proposed Resolution “directing additional actions to improve the Underground Storage Tank Program,” and the associated “Plan for Implementation of Low-Threat Underground Storage Tank Case Closure Policy and Additional Program Improvements” (Implementation Plan). We have reviewed the draft Resolution and Implementation Plan and would appreciate your consideration of the following comments:

I. State Water Board Staff Actions

D. State Water Board Staff Case Review Activities

1. Non-Cleanup Fund Cases:

- c. Review the regulatory agency’s decision when a regulatory agency has denied a closure request submitted by a responsible party pursuant to the Low-Threat Closure Policy, and propose closure as appropriate within six months of the update to GeoTracker indicating closure denial.*

Comment: The most critical element in this section pertains to what is considered an acceptable closure request. The State Board must provide very clear, detailed guidance on requirements for “closure requests” (see comment II.A.4, below). Semiannual sampling reports that simply contain a sentence requesting closure do not warrant a response under the Policy. Currently the Policy provides for a regulatory agency to perform the low-threat closure review within one year; however, the Implementation Plan appears to encourage RPs to “request closure,” thereby placing an artificially higher priority on that case. This will greatly shorten the time frame (six months) for closure review by the regulatory agency, and will likely place an undue burden on the regulatory agency’s ability to perform an adequate closure review for all cases.

2. Cleanup Fund Cases:

There are a number of cases which have previously been reviewed through the Five-Year Review process and recommended for closure consideration.

- a. State Water Board staff will review these cases for compliance with Policy requirements. It is anticipated that these reviews will be completed by late January 2013.*

Comment: If State Board staff concludes that the case meets the LTCP criteria, we recommend that State Board staff notify the regulatory agency of their decision and allow the agency to submit comments for those cases where closure may not be appropriate prior to the State Board staff “finalizing” the LTCP checklist on Geotracker. This is especially critical for cases where State Board staff may not have access to historical reports and data not in Geotracker.

- b. *These cases do not require review by the regulatory agencies. It is anticipated that this will reduce duplication of efforts between the regulatory agencies and the Fund, and will reduce costs to the UST Cleanup Fund.*

Comment: Clarification is needed regarding the statement “*these cases do not require review by the regulatory agencies.*” We understand that the term “review” refers to completion of the LTCP checklist on Geotracker. In order to further reduce costs to the Cleanup Fund, we recommend that State Board staff do not complete the LTCP checklist for those cases that the regulatory agency has agreed to proceed with case closure.

II. Regulatory Agency Implementation Actions

A. Policy Implementation

4. *Notify the State Water Board staff of cases where the responsible party has requested closure. This notification should take place as soon as possible after the request for closure has been received. GeoTracker will be modified to allow this notification to be made electronically. Higher priority for reviews should be given to cases where the responsible party has formally requested closure from the regulatory agency.*

Comment: The most important element in this section pertains to what is considered an acceptable closure request. The State Board must provide very clear, detailed guidance on requirements for “closure requests.” Semiannual sampling reports that simply contain a sentence requesting closure does not warrant a notification to the State Board. In addition, simply filling out the LTCP Checklist to indicate that all eight General Criteria and three Media-Specific criteria have been met does not constitute an acceptable closure request. It is critical that all closure requests be in sufficient detail to support each criteria. We recommend that a LTCP report be submitted with the request for closure, which includes the rationale explaining how the case meets the Policy. The LTCP report should also include sufficient detail regarding the historical investigation and cleanup activities conducted at the site, including summary tables for all data (soil, groundwater, vapor, and surface water), cross-sections, contaminant concentration graphs, site plans (showing monitoring well and boring locations), and other pertinent information, as appropriate. If this information is not provided in the LTCP report, a reference to other reports containing the information should be provided.

5. Address removal of the impediments to closure identified by the regulatory agencies in the 2012-2013 case reviews required by State Water Board Resolution No. 2012-0016;
 - a. Create a Path to Closure Plan in GeoTracker for each appropriate site. GeoTracker will be modified to allow the regulatory agency staff to create a brief Path to Closure Plan for each site with impediments to closure.

- b. Identify regulatory agency actions needed to remove the impediments, including identifying actions responsible parties need to take; and
- c. Include specific milestones and timelines for removal of impediments including goal date for closure as part of the Path to Case Closure for all open cases.

Comment: In general, the identification of required investigation and cleanup activities to achieve closure has already been transmitted to the responsible party (RP) for all UST cases. However, the impediments to closure are most often related to the RP's reluctance or unwillingness to perform the required work. It is one thing to identify required actions that the RP needs to take, but including milestones and timelines for the RP to perform the required work solely depends on the RP's willingness to complete the work. Therefore, the RP should be required to identify the milestones and timelines necessary to address all impediments to closure. Once the RP satisfactorily identifies the milestones and timelines, the regulatory agency could then update the Path to Closure in Geotracker.

State Board Resolution No. 2012-xx

Resolve 6. Additionally directs each Regional Board and LOP to:

- f. Oversee closure activities including monitoring well destruction so that they are completed within six months after the State Board orders case closure.

Comment: In general, the majority of UST cases complete the required monitoring well destruction activities within six months of notification by the regulatory agency that the case will be closed pending proper destruction of all monitoring wells at the site. However, there are numerous cases that are not closed within six months due to the fact that the responsible party has not destroyed the remaining monitoring wells for a variety of reasons (e.g., cost, access to the property, and recalcitrance), which are beyond the control of the regulatory agency. This is especially true for cases that are not in the Cleanup Fund. Therefore, we recommend that this "directive" be stated as a goal, recognizing that there will be impediments to well destruction that may require a longer period of time before the case can be officially closed.

If you have any questions regarding the above comments, please contact Thomas Berkins, Groundwater Protection Program Coordinator, at (510) 668-4442, or by email at tom.berkins@acwd.com

Sincerely,

Thomas J. Berkins
Groundwater Protection Program Coordinator