

INTERNAL STAFF COMMENTS AND RECOMMENDATIONS
on the
SEPTEMBER 7, 2010, DRAFT
UNDERGROUND STORAGE TANK LOW-THREAT SITE CLOSURE POLICY

TO: Chuck Headlee, PG, UST Program Manager **DATE:** September 23, 2010
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Thank you for the opportunity to provide comments on the Draft Underground Storage Tank Low-Threat Site Closure Policy (Draft Policy). For a number of reasons, we oppose adoption of the proposed Draft Policy in its current form. We support the concept of a policy to provide guidance for UST case closures.

We are concerned about the overall tone of the Draft Policy and the technical and scientific validity of the recommendations contained therein. The mission of the State Water Board and Region 2 is to ... *preserve and enhance the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.* The Draft Policy downplays the many beneficial uses of groundwater. In addition, much of the potential future uses of groundwater are dismissed. The information used to support many of the statements and opinions in the Draft Policy was not provided or discussed in satisfactory detail.

There has been an insufficient amount of time granted to staff and local agencies to adequately review the Draft Policy, provide appropriate critical comment, and provide positive and necessary recommendations and modifications to the document. Given the brief review period, the purpose of internal staff comments and recommendations is to act as a place holder pending further detailed comments, and to provide our professional opinion that the Draft Policy needs further discussion and substantial revision before it would be considered technically acceptable by the licensed geological staff who has prepared this memorandum.

The Draft Policy does not appear to be either scientifically or technically defensible in its current form, nor is the Draft Policy very compatible with our understanding of State regulations governing groundwater quality. These significant deficiencies will make it exceedingly difficult to implement in a consistent manner throughout the State. As written, this latest version of the Draft Policy:

- Does not appear to be based on sound, peer-reviewed science;
- Does not reflect our experience and concerns, and removes professional judgment from the corrective action decision-making process;
- Does not reflect current knowledge, and may conflict with the standard-of-practice, in regard to petroleum hydrocarbon and fuel oxygenate releases to the environment;
- Is not protective of water quality, with the benefits of shallow groundwater quality being essentially devalued as a potential resource;
- May be in conflict with State Board and Regional Board regulations, resolutions, and policies (i.e., Porter-Cologne, our Basin Plan, Resolutions 68-16, 88-63, and 92-49, etc.);
- Does not consider key UST regulations pertaining to the investigation and cleanup of fuel releases (Health and Safety Code, Title 23 of CCR, etc.);
- Omits important UST references, including Region 2's January 5, 1996, Supplemental Instructions and Fact Sheet on low-risk petroleum hydrocarbon cleanups;
- May result in the inability of regulators to uphold the standard-of-practice required by the Geologist and Geophysicist Act to be protective of human health and the environment, and;
- May create multi-faceted conflicts, such as:
 - Potential regulatory discord within Cal/EPA, our sister agencies (DTSC and OEHHA), and many LOPs and LIAs;
 - Compliance/enforcement issues with respect to current Cal/EPA guidance and regulations (i.e., ESLs and CHHSLs);
 - The premature closing of thousands of UST cases where corrective actions have not been adequate to protect water quality, human health and the environment.

In our opinion, UST sites closed under the current Draft Policy are likely to leave concentrations of TPH, BTEXN, MtBE and TBA in soil and groundwater that are not protective of water quality, human health and the environment. Therefore, these sites may necessitate deed restrictions to control future groundwater use and proposed changes in land use. Considering the number of sites involved, this could create a substantial future burden on stakeholders and Regional Board staff alike, as sites are either considered for redevelopment or reuse and unforeseen beneficial uses become compromised.

Cleanup standards for soil and groundwater should conform to existing regulations. For groundwater, the Water Quality Objectives (WQOs) in our Basin Plan are reasonable, practical, technically achievable, and scientifically justifiable. The intent of developing and adopting WQOs is to protect public health and the environment, now and for future generations. Future groundwater use patterns are largely unknown, and shallow groundwater has other beneficial uses besides drinking water.

We believe a suitable Draft Policy should include input from technical staff at the nine Regional Boards, DTSC, and the local implementing agencies who work on UST cases throughout California. Considering the regulatory conflicts this Draft Policy may create within Cal EPA, feedback from DTSC and OEHHA (at least) should also be obtained.

We are planning to submit detailed review comments on the Draft Policy by September 30, 2010, the original deadline provided at our TCD meeting on September 14, 2010.