

**amicus**

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July 13, 2011



Mr. Charles R. Hoppin, Chairman  
State Water Resources Control Board  
P. O. Box 100  
Sacramento, California 95812-0100

Re: Low Threat UST Closure Policy

Dear Chairman Hoppin and Members of the Board,

First, thank you for the opportunity to serve the Low Threat UST Closure Policy working group. I have been active in UST policy issues since the Lawrence Livermore report was published 15 years ago – without question the advances made by this group and their immediate predecessors are the most substantial to date. While I believe work with respect to the regulatory system remains to be done, the formulation of a coherent policy to address Low Threat UST cases is an important step in a productive direction.

I served the working group as a representative of the environmental community. While I was not serving officially on their behalf (I served as a volunteer), I brought to the group what I believed to be most important from an environmental perspective and have kept the community current as the group did its work.

In my view, a cohesive, protective and practical policy was needed for several reasons. Perhaps most importantly, a policy that provided uniform guidance for closure of cases that had completed all that could practicably be accomplished would lessen the burden on the UST Cleanup Fund, a resource we believe is very important to the protection of human/ecologic health and water supplies. Additionally, a coherent policy would assist the redevelopment of UST Brownfield sites, properties often in underserved neighborhoods left idle simply because their case file had not yet been closed. Owners of these sites often lack the resources to pursue closure, and absent a clear policy this land languishes abandoned for years longer than it has to.

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The policy that will be delivered to the Board is a marked departure from the status quo. I believe the departure, while substantial, is protective, reasonable and overdue. The policy incorporates the evaluation of threat and risk on a media by media basis, but also requires the removal of the mass of contamination in the immediate vicinity of the release itself. In my 25 years as an environmental consultant I have found that this remedial attention, the removal or in-place destruction of the highest concentrations of contaminant mass, paves the way for the natural degradation of what remains.

One of the most interesting policy aspects with which the group grappled was the concept of “big numbers.” We recognized that a policy that reached a conclusion that permitted certain concentrations of contamination to remain in place might not be embraced by everybody in the regulatory/regulated/environmental community. We elected to forge ahead – as the harm caused by the status quo would be perpetuated by acting reluctantly in the face of reasonable science.

There are innumerable examples of sites that have received significant remedial attention, sites that have had virtually all of their original contaminant mass removed and consequently pose no threat to human or ecologic health, yet remain open simply because the concentrations of remnant contamination are higher than an arbitrary emotional threshold. In many cases there is no practical difference between a benzene concentration of 400 parts per billion and 4,000, yet the practitioner is reluctant to view them similarly because of the Big Number effect.

The policy focuses more on the threat posed by a contaminant than its numeric concentration. This said, the policy also allows the regulator the freedom and latitude to require action if the risk profile posed by the residual contamination is unreasonable.

Clearly, this policy is not intended as a panacea. In my view, it is but a badly needed first step. In addition to welcoming this policy and allowing its further progress (public comment, peer review), I urge the Board to not let our momentum go to waste. Instead, capitalize upon it to motivate the additional and badly needed changes. Help make the California UST program all it can be – progressive, protective, and a contributing factor to our economic recovery.

Thank you again for all your attention to this very important matter.

Most sincerely,

A handwritten signature in black ink, appearing to read 'Markus Niebanck', written in a cursive style.

Markus Niebanck, PG  
Principal

Cc Board Member Tam Doduc