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UNDERGROUND STORAGE TANK LOCAL OVERSIGHT PROGRAM PROCEDURES AND CRITERIA FOR CERTIFICATION

I. INTRODUCTION

Assembly Bill No. 1701 (Stats. 2012, ch. 536), revised previous law such that on and after July 1, 2013, a local oversight program (LOP) may be implemented only by a city or county that the State Water Resources Control Board (State Water Board) has certified as qualified to implement a program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks (UST). The State Water Board may enter into an agreement with a certified local agency to implement the LOP.

Pursuant to Health and Safety Code section 25297.01, this document establishes State Water Board LOP procedures and certification criteria adopted to evaluate whether a local agency is qualified to oversee or perform the abatement of unauthorized releases of hazardous substances from USTs. The following sections describe a summary of LOP agency roles and responsibilities, LOP agency certification criteria, LOP agency certification denial or withdrawal, periodic LOP agency certification review, case transfer provisions, and dispute resolution.

II. SUMMARY OF LOP AGENCY ROLES AND RESPONSIBILITIES

For those UST cleanup cases for which the State Water Board Executive Director, or designee, has identified the local agency as the lead agency, the LOP agency shall perform, or cause to be performed, any cleanup, abatement, or other corrective action necessary to remedy the effects of a release of hazardous substances from an UST. The implementation of the cleanup, abatement, or other action shall be consistent with existing statutes, regulations, State Water Board precedential decisions, policies, plans, resolutions, and LOP procedures. LOP agencies shall close cases in accordance with the Low-Threat Underground Storage Tank Case Closure Policy, State Water Board Resolution No. 92-49, Resolution No. 2012-0062, which approved the Plan for Implementation of Low-Threat Underground Storage Tank Case Closure Policy and Additional Program Improvements, and State Water Board precedential decisions, as applicable. The California leaking Underground Fuel Tank (LUFT) Manual provides information that may be used to help the LOP agency conduct adequate corrective action.

Corrective action efforts should be focused on higher threat cases such as those that impact drinking water wells, cause human health exposure, and result in sources of free product still remaining in place, as well as other cases where corrective action is critical for best use of available resources. All LOP agencies shall implement corrective action with procedures and strategies that will achieve the following results:

A. Minimize the number of open UST cleanup cases, particularly those without viable responsible parties, that will remain at the time the Underground Storage Tank Cleanup Fund (UST Cleanup Fund) sunsets;
B. Minimize the number of water supply wells whose beneficial uses are impacted by releases from USTs;
C. Control human health exposure to releases from USTs as soon as feasibly possible;
D. Minimize the cost of compliance with LOP agency regulatory directives; and
E. Minimize the agency response time to closure requests, work plan approvals, and other related items.

III. LOP AGENCY CERTIFICATION CRITERIA

The State Water Board Executive Director, or designee, may certify a local agency if the State Water Board Executive Director, or designee, determines that the local agency is qualified to implement a program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from USTs. Statute specifies the following minimum criteria be considered when determining whether a local agency is qualified:

A. Past performance in implementing and enforcing corrective action requirements;
B. Adequacy of the technical expertise possessed by the local agency;
C. Adequacy of staff resources;
D. Adequacy of budget resources and funding mechanisms;
E. Training requirements; and
F. Recordkeeping and accounting systems.

The following subsections describe the certification criteria. A list of the the application submittal requirements is provided in the LOP Application Submittal Requirements Checklist (Attachment A.)

A. Past Performance in Implementing and Enforcing Corrective Action Requirements

<u>Applicable to Each Certification</u>

Compliance with State Water Board precedential decisions, policies, plans, resolutions, and LOP procedures.
This factor may be measured by data present in GeoTracker, information presented by the Regional Water Boards, and other available information. Particular attention will be given to progress in the expeditious movement of cases to closure, and focus on high-priority cases (such as impacted beneficial uses of drinking water wells, other human health impacts, and sources of free product.)

<u>Applicable Only to Certification for Fiscal Year 2013-2014</u>

i. Cost effective workload
Minimum Number of Open-Active Cases – The local agency is required to have had a workload of a minimum of 70 open-active cases in GeoTracker as of August 17, 2012, the date the Low-Threat Underground Storage Tank Case Closure Policy went into effect.

The State Water Board Executive Director, or designee, may waive this criterion, if the State Water Board Executive Director, or designee, determines that it is cost effective to certify the local agency for a limited number of years and the local agency has submitted an adequate plan to phase out the LOP.

ii. Expeditious movement of cases to closure
Minimum Closure Rate – The local agency is required to have had an average case closure rate greater than 9% for at least one of the following periods, as recorded in GeoTracker as of December 3, 2012.

a) Between 8/18/2007 and 8/17/2012 (5 years); or
b) Between 8/18/2009 and 8/17/2012 (3 years); or
c) Between 8/18/2011 and 8/17/2012 (1 year).

The State Water Board Executive Director, or designee, may waive this criterion, if the State Water Board Executive Director, or designee, determines that it is cost effective to certify the local agency and the local agency has submitted an adequate plan specifying how the agency will raise their average case closure rate to at least 10% for fiscal year 2013-2014. This certification will automatically expire on June 30, 2014, if the LOP agency does not achieve an average case closure rate of at least 10% in fiscal year 2013-2014.

B. Adequacy of the Technical Expertise Possessed by the Local Agency

The LOP agency is required to maintain adequate technical expertise to review and approve geologic and technical interpretations, oversee or perform corrective action requirements, optimize remediation systems, and to ensure compliance with existing statutes, regulations, State Water Board precedential decisions, policies, plans, resolutions, and LOP procedures. The LOP agency is required to have a LOP Director and person(s) in responsible charge as defined below:

i. LOP Director – The LOP Director is required to be an Environmental Health Director (or equivalent) and to have signature authority for a uniform closure letter and the LOP Agency Application for Certification (Attachment B). The LOP Director, or designee, shall sign LOP agency regulatory directives. The LOP Director shall provide staff leadership to ensure compliance with existing statutes, regulations, State Water Board precedential decisions, policies, plans, resolutions, and LOP procedures.

ii. Responsible Charge – At least one person is required to be in responsible charge of the geologic and technical aspects of the LOP, including work performed by other caseworkers. The person(s) in responsible charge is required to have the following qualifications:
   a) Current registration in California as a Professional Civil Engineer, (Business and Professions Code, §6700 et seq.) or a Professional Geologist (Business and Professions Code, §7800 et seq.). The person in responsible charge may be a LOP agency employee or a contract employee; and
   b) Have a minimum of two consecutive years of experience overseeing or performing site investigation and remediation of unauthorized releases of hazardous substances from USTs.

C. Adequacy of Staff Resources

The LOP agency is required to maintain adequate staff resources for those UST cleanup cases for which the LOP agency is the lead agency. LOP agency staff resources must be sufficient to permit the performance of tasks necessary to implement the LOP, including, but not limited to, responding to responsible party (RP) and RP consultant requests in a timely manner, maintenance of case data, records, and reports of site activities in GeoTracker, responding within 60 days to work plans and requests for case closure by RPs and RP consultants, responding to UST Closure Petition comment requests within 20 days, and responding in a timely manner to 5-Year Review comment requests from the UST Cleanup Fund.

D. Adequacy of Budget Resources and Funding Mechanisms

The LOP agency is required to maintain adequate budget resources and funding mechanisms to oversee or perform corrective action requirements and to ensure compliance with existing statutes, regulations, State Water Board precedential decisions, policies, plans, resolutions, and LOP procedures. The LOP agency is required to maintain adequate budget resources to respond to RP and RP consultant requests in a timely manner, and maintain case data, records, and report site activities in GeoTracker.

E. Training Requirements

LOP Director, or designee(s), must attend State Water Board quarterly roundtable meetings and periodic policy and performance sessions scheduled during the year and must transmit relevant meeting information to appropriate LOP agency management and staff.

F. Recordkeeping and Accounting Systems.

The LOP agency is required to implement recordkeeping and accounting systems that are appropriate to track activities and costs involved in its performance of the abatement of, or oversight of the abatement of, unauthorized releases of hazardous substances from USTs.

The agency is required to maintain case data, records, and report site activities in GeoTracker in sufficient detail so that:

i. All appropriate data fields for each case are current; and

ii. A conceptual site model (CSM) that assesses the nature, extent, and mobility of the release could be developed for each site.

The LOP agency should encourage RP compliance with electronic submittal of information (ESI).

IV. LOP PROCEDURES

A. LOP AGENCY CERTIFICATION DENIAL OR WITHDRAWAL

The State Water Board Executive Director, or designee, may deny certification, or withdraw certification for a local agency if the State Water Board Executive Director, or designee, determines that the local agency is not qualified to implement the LOP. The State Water Board Executive Director, or designee, shall consider all of the factors described in Criteria A through F in Section III when determining whether a local agency is qualified or no longer qualified to implement a LOP.

The State Water Board Executive Director, or designee, shall notify the LOP Director in writing of the intent to deny or withdraw the certification of the local agency. The LOP Director shall have 30 days to respond. The State Water Board Executive Director, or designee, shall review any response by the local agency and determine whether to certify, deny certification, or withdraw the certification of the local agency. If certification is denied or withdrawn, any remaining local agency lead cases shall be transferred to the appropriate Regional Water Board or local agency as described in Section IV.C.

An agency may elect to cease functioning as a LOP agency, whereupon the LOP Director shall notify the State Water Board Executive Director, or designee, in writing of an intent to withdraw from the LOP. This notification is required to be provided at least 60 days prior to the withdrawal date. The LOP agency lead cases shall be transferred to the appropriate Regional Water Board or another LOP agency as described in Section IV.C.

B. PERIODIC LOP AGENCY CERTIFICATION REVIEW

The State Water Board Executive Director, or designee, shall review, at least every three years, the ability of the LOP agency to implement the LOP, including meeting the performance measures required by State Water Board Resolution No. 2012-0062. The State Water Board Executive Director, or designee, shall consider, as criteria for determining the ability of the LOP agency to implement the LOP, all of the factors described in criteria A through F in Section III.

Upon completion of a LOP agency certification review, the State Water Board Executive Director, or designee, shall notify the LOP Director in writing of the results of the review. The State Water Board Executive Director, or designee, may withdraw the certification of a LOP agency as described in Section IV.A.

C. CASE TRANSFER PROVISIONS

The State Water Board Executive Director, or designee, may transfer LOP agency lead cases to another LOP agency or Regional Water Board. A Regional Water Board may also transfer LOP agency lead cases to the Regional Water Board.

The State Water Board Executive Director, or designee, or the Regional Water Board Executive Officer, shall notify the LOP Director of a decision to transfer cases. Within 30 days of the notice, the LOP Director shall transfer all relevant case files to the receiving agency.

The receiving agency shall notify the RP and interested parties in a timely manner of the new lead agency that has been assigned to the case.

D. DISPUTE RESOLUTION

Any dispute relating to the performance of LOP agency responsibilities that cannot be resolved at the staff level may be presented in writing to the Executive Director, or designee. The Executive Director, or designee, shall issue a decision in writing which shall be final and conclusive, unless determined by a court of competent jurisdiction to have been arbitrary, capricious, or not supported by any substantial evidence.

ATTACHMENTS

A – LOP Application Submittal Requirements Checklist

B – LOP Agency Application for Certification

ATTACHMENT A
LOP APPLICATION SUBMITTAL REQUIREMENTS CHECKLIST

This attachment provides a list of the submittal requirements that must be provided by the city or county applicant. Refer to Section III of the document, "UST LOP Procedures and Criteria for Certification" for details. For convenience, a reference to the section of the document is provided for each submittal requirement.

Section Reference	Submittal Requirements
III.A-F	LOP Agency Application for Certification (Attachment B) signed by the local agency Director.
III.A.i	Any agency requesting a waiver of the requirements of Section III.A.i must include a plan to phase out the LOP.
III.A.ii	Any agency requesting a waiver of the requirements of Section III.A.ii must include a plan outlining how the agency will raise their average annual case closure rate to greater than 10% for fiscal year 2013-2014.
III.B	An organization chart identifying the LOP Director, person(s) in responsible charge, and all staff and subcontractors of the LOP agency performing work in the LOP.
III.B	Resume(s) for the person(s) in responsible charge with Professional Civil Engineer, or Professional Geologist license numbers.
III.D	Budget for the 2013-2014 fiscal year, which describes anticipated sources of income to fund LOP activities (e.g., State Water Board contract or cost recovery).

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ATTACHMENT B
LOP AGENCY APPLICATION FOR CERTIFICATION

I, _____ [printed name], am authorized to act for _____ [city or county] which seeks certification pursuant to section 25297.01 of the California Health and Safety Code to implement a program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks (UST).

By submission hereof, I warrant that the following statements are true and correct:

1. The city or county (local agency) agrees to perform local oversight program (LOP) roles and responsibilities in compliance with applicable statutes, regulations, State Water Board precedential decisions, policies, plans, resolutions, and LOP procedures.
2. The local agency is familiar with "UST LOP Procedures and Criteria for Certification" and verifies that the agency meets the standards established in that document.
3. The local agency agrees to maintain compliance with the standards established in "UST LOP Procedures and Criteria for Certification" throughout the period for which the agency is certified to implement a program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from USTs.
4. The local agency acknowledges that established LOP standards include, but are not limited to, those summarized as follows:
   a. The local agency is required to maintain adequate technical expertise to review and approve geologic and technical interpretations, oversee or perform corrective action requirements, optimize remediation systems, and to ensure compliance with applicable statutes, regulations, State Water Board precedential decisions, policies, plans, resolutions, and LOP procedures.
   b. The local agency is required to have a LOP Director and person(s) in responsible charge.
   c. The local agency is required to maintain adequate staff resources to oversee or perform corrective action requirements and to ensure compliance with applicable statutes, regulations, State Water Board precedential decisions, policies, plans, resolutions, and LOP procedures. Local agency staff resources must be sufficient to permit the performance of tasks necessary to implement the LOP, including, but not limited to, responding to responsible party (RP) and RP consultant requests in a timely manner, maintenance of case data, records, and reports of site activities in GeoTracker, responding within 60 days to work plans and requests for case closure by RPs and RP consultants, responding to UST Closure Petition comment requests within 20-days, and responding in a timely manner to 5-Year Review comment requests from the UST Cleanup Fund.
   d. The local agency is required to maintain adequate budget resources and funding mechanisms to oversee or perform corrective action requirements and to ensure its compliance with applicable statutes, regulations, State Water Board precedential decisions, policies, plans, resolutions, and LOP procedures. Budget resources must be sufficient to enable the local agency to respond to RP and RP consultant requests in a timely manner, and maintain case data, records, and reports of site activities in GeoTracker.

e. The LOP Director, or designee(s), must attend State Water Board quarterly roundtable meetings and periodic scheduled policy and performance sessions, and must transmit relevant meeting information to appropriate agency management and staff.
f. The local agency is required to implement recordkeeping and accounting systems that are appropriate to track activities and costs involved in its performance of the abatement of, or oversight of the abatement of, unauthorized releases of hazardous substances from USTs. The agency must maintain case data, records, and report site activities in GeoTracker so that all appropriate data fields for each case are current and permit the development of a conceptual site model that assesses the nature, extent, and mobility of the release for each site.
g. The local agency is required to comply with applicable statutes, regulations, State Water Board precedential decisions, policies, plans, resolutions, and LOP procedures.
h. A local agency that seeks LOP certification for fiscal year 2013-2014 must meet the following additional requirements: 1) have had at least 70 open-active cases in GeoTracker as of August 17, 2012, unless this requirement has been waived while LOP responsibilities are being phased out, and 2) have achieved an average annual case closure rate greater than 9% for at least one of the periods between 8/18/2007 and 8/17/2012, or between 8/18/2009 and 8/17/2012, or between 8/18/2011 and 8/17/2012, as recorded in GeoTracker as of December 3, 2012, unless this requirement has been waived for fiscal year 2013-2014.

5. The local agency acknowledges that the State Water Board Executive Director, or designee, or a Regional Water Board Executive Officer may transfer LOP agency lead cases from that agency upon 30 days written notice.
6. The local agency is aware that LOP certification will be reviewed by the State Water Board Executive Director, or designee, at least every three years, and certification may be denied or withdrawn if the local agency does not maintain its qualifications for certification.
7. The local agency agrees that any dispute between the local agency staff and staff of the State Water Board or Regional Water Board relating to the performance of local agency responsibilities may be presented to the State Water Board Executive Director, or designee, for resolution as provided by LOP procedures, and the decision of the Executive Director, or designee, shall be final and conclusive.

I declare that I am authorized to act for the local agency which through this application seeks to be certified to implement a LOP for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from USTs, and I certify that all of the statements contained herein are true and correct.

Signature	Date
Printed Name and Title	Agency

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