

June 30, 2015

*Via Email Transmission* ([gwquality.funding@waterboards.ca.gov](mailto:gwquality.funding@waterboards.ca.gov))

Elizabeth Babcock  
State Water Resources Control Board  
1001 I Street, 17th Floor  
Sacramento, CA 94814

**Re: SCAP Scoping Questions**

Dear Ms. Babcock:

In response to the State Water Resources Control Board's ("State Board") request for feedback on the scoping questions for the new Site Cleanup Account Program ("SCAP"), we have the following thoughts, requested modifications and recommendations to share with you.

**SCOPING QUESTION #1:** Of the considerations required in evaluating the projects, should some be weighted more than others?

Yes. We agree with the other commenters at the State Board meeting on June 4, 2015 who encouraged the State Board to prioritize those projects that present the highest risk to public health and safety. Although we believe the other considerations are important, the risk to public health and the environment should be paramount when prioritizing applications.<sup>1</sup> We further note that one category of sites, dry cleaning facilities in or impacting residential neighborhoods, seem to be burdened with a significant number of risk drivers which makes the need for funding stand out. While this is not an exhaustive list of the characteristics that increase risk at these sites, typically neighborhood dry cleaning facilities present the following characteristics:

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<sup>1</sup> These considerations are listed in California Health & Safety Code Section §25299.50.6 (c) and include the following five (5) priorities: 1) Significant threat to human health or the environment; 2) Disadvantaged or small community impact; 3) Cost and environmental benefit of project; 4) Lack of availability of alternate funding source(s); and 5) Other State Water Board considerations.

a) close proximity to sensitive receptors (residents); b) relatively high toxicity and increased potential impact to human health and the environment from tetrachloroethylene ("PCE") and its daughter products; c) the potential for sewer systems to release PCE off-site and increase the lateral extent of plume; and d) the high costs associated with remediating PCE to residential closure standards. Each of these challenges should be considered a prioritizing factor when evaluating applications and cumulatively they elevate this category of sites.

We also note that the number of uninvestigated dry cleaning sites demonstrates that this is a problem that existing funding programs have not been able to solve. We bring this to your attention since "whether there are other potential sources of funding for the investigation or cleanup" is a factor that elevates an application's priority for funding. As discussed below, the need for a funding program has been previously acknowledged by regulators and the State Board. To address this need, we believe that dry cleaning facilities in residential neighborhoods should be categorically recognized as possessing an elevated priority.

**SCOPING QUESTION #2:** Should projects that address certain *contaminants* be given **higher** priority than others?

Yes. Sites involving PCE from dry cleaners and threatening a residential community's health and safety should be categorically recognized as elevated other projects. PCE and its daughter product, trichloroethylene ("TCE"), are two of the most commonly detected pollutants in public supply wells and, as the State Board knows, PCE and TCE are environmentally persistent, do not readily degrade to safe compounds, and are a threat to indoor air quality.

As set forth in the State Board Fact Sheet on Chlorinated Solvents and other Volatile Organic Compounds Pollution in California Groundwater and Associated State Water Board Cleanup Programs dated June 12, 2014 (the "2014 Fact Sheet"):

"Dry cleaning business operations present a significant threat to groundwater quality. Past practices commonly employed by dry cleaners resulted in PCE being discharged onto the ground at the business site or to the sewer. As many as 15,000 dry cleaning facilities have operated in California. Most of these sites, past and present, are small businesses in urban areas. The owners of these facilities typically do not have the resources necessary to fund an investigation and, if necessary, the remediation to remove PCE. Therefore relatively few of the current and former dry cleaning sites have been investigated."

The threat PCE and TCE poses to water quality is further noted in the State Board's report to the legislature titled Communities That Rely on a Contaminated Groundwater Source for Drinking Water, dated January 2013 (the "AB 2222 Report"). The AB 2222 Report used water quality data from the California Department of Public Health (CDPH) database, and identified 600 public supply wells with two or more detections of principal contaminants<sup>2</sup> above drinking water standards between 2002 and 2010. CDPH found PCE in 168 of those active wells and TCE in 159 of said wells.

The harm to public health and safety because of the contamination caused by dry cleaning facilities is exacerbated by the number of sites and the lack of resources necessary to investigate and remediate as highlighted in both of these State Board documents.

SCAP could be the answer. With SCAP assistance, the PCE contamination caused by dry cleaning facilities, and threatening the public water supply of residential communities, could be investigated and/or remediated. This would be a monumental step forward on the path to addressing the concerns raised as early as 1992 in the report titled "Dry Cleaners – A Major Source of PCE in Ground Water," dated March 27, 1992 by Victor J. Izzo and approved by the California Regional Water Quality Control Board, Central Valley Region (the "1992 Report").

As set forth in the 1992 Report, "Ground water cleanup is required so that water supply agencies can continue to provide safe water. Deciding who should investigate and cleanup groundwater is complex political/legal issue since the PCE discharges from the dry cleaners were all approved, standard practice and those from the sewers were unsuspected. Because most dry cleaners are small businesses, which may not have financial capabilities to define the contamination plume and conduct cleanup, other resources may be needed. A statewide cleanup fund may be appropriate. If no one else cleans the groundwater, water supply agencies will have to do it by default."

The 1992 Report also points out the following:

"The main discharge point for dry cleaners is the sewer line. The discharge from most dry cleaning units contains primarily water with dissolved PCE, but also contains some pure cleaning solvents and solids containing PCE. Being heavier than water, PCE settles to the bottom of the sewer line and exfiltrates through it. This liquid can leak through joints and cracks in the line. PCE, being volatile, also turns into gas and penetrates the sewer wall. Sewer lines are not designed to contain gas. The PCE then travels through the vadose zone to the groundwater. . . Based on staff

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<sup>2</sup> A "principal contaminant" was defined as a chemical detected above a public drinking water standard on two or more occasions between 2002 and 2010.

field work and research, there are five likely methods by which PCE can penetrate the sewer line: (1) Through breaks or cracks in the sewer pipes, (2) Through pipe joints and other connections, (3) By leaching in liquid form directly through sewer lines into the vadose zone, (4) By saturating the bottom of the sewer pipe with a high concentration of PCE-containing liquid and then PCE volatilizing from the outer edge of the pipe into the soils; and (5) By penetrating the sewer pipe as gas.”

What the 1992 Report reminds us is what we have known for over a decade, that (i) PCE from dry cleaner facilities is a threat to public health and safety, (ii) state wide funding is needed to help pay for cleanup, and (iii) most, if not all, contaminated dry cleaning sites will also involve sewer lines, some of which are owned and maintained by cash-strapped public entities.

For all of the reasons explored above, sites involving PCE releases caused by dry cleaners and threatening a residential community’s health and safety should be prioritized over other projects.

**SCOPING QUESTION #3:** Should projects that propose (a) short-terms solutions, whether due to emergency or non-emergency, (b) ongoing operations and maintenance or (c) permanent solutions, be prioritized differently?

No. We have some concerns regarding prioritizing grants for remediation over grants for investigation or monitoring. Principally, our concern is that if a site investigation is delayed because of lack of funding, the contaminants can migrate from the site, impacting off site properties, creating new pathways of exposure and increasing the cost and complexity of the cleanup. We also acknowledge the key role that a site investigation plays in designing an effective remediation system and question whether it’s appropriate to make one stage compete against the other for funding. Last, we note that this program does not appear appropriate for emergency responses given the lengthy application process and uncertainty of the funding.

**SCOPING QUESTION #4:** Should the timing of project completion compared with the **timeline** for project benefits be prioritized differently?

No. The hard projects need funding too. In fact, it would seem that the converse would be true: the sites that are complicated and messy are in more need of funding than others because their issues are more difficult to untangle and resolve. Along these lines, we suggest that whether the site is a part of a *commingled plume* is a question that should be added to the application and those sites that are commingled should be prioritized over other sites. It is widely acknowledged that, “commingled plume sites represent a special problem to California’s groundwater protection efforts because they often represent more

serious water quality impacts, involve parties that disagree as to liability, and include cleanups which continue to be stalled or handled in a piecemeal, haphazard, expensive manner." A Guide to California's Petroleum Underground Storage Tank Cleanup Fund, Commingled Plume Account Program, May 1997, State Water Resources Control Board, California Environmental Protection Agency.

**SCOPING QUESTION #5:** What kind of limits should there be on grant funding amounts?

Again, we agree with the other commenters at the State Board meeting on June 4, 2015 who discouraged the State Board from allocating all available funding to one project. That doesn't appear to be consistent with the legislative intent for SCAP and would be a disservice to all of the other neighborhoods with impacted groundwater. We suggest that the type of contaminant, the concentrations of the contaminant, the proximity to sensitive receptors, the release mechanisms and their impact on the size of the plume, i.e., off-site sewer releases, the size of the plume, whether the plume is commingled and the presence of any free product should drive the limits on grant funding amounts. *We further suggest that additional information should be collected during the application process concerning the presence of free product, releases from sewer lines and whether impacts have been detected in residential neighborhoods<sup>3</sup>.* This additional information will allow the State Water to better understanding the funding needs of the project and what risks can be abated with such funding.

In addition, we recognize that private parties and environmental oversight agencies will be competing for SCAP dollars. Please consider reserving a portion of annual funding for private parties. If SCAP funding is available for these parties, the agency can encourage those parties to apply for the funds before endeavoring to take over the investigation and cleanup.

**SCOPING QUESTION #6:** What kind of technical assistance is needed?

The cost of preparing the application, obtaining eligibility documentation (up to \$5,000) and submitting reimbursement requests with the appropriate documentation should be a reimbursable cost.

**SCOPING QUESTION #7:** The responsible parties' lack of sufficient financial resources to pay for the required response actions is a grant requirement. How should the Board evaluate a responsible party's ability to pay?

SCAP cannot be structured so as to encourage parties to litigate since this delays and diverts attention from field work and does nothing to address or reduce the risk to public health and the environment. Further, given the current state of case law and

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<sup>3</sup> Although Question 7.10 asks what is the current use of the project location, this might not capture sites with impacts that have migrated from a commercial property into a residential neighborhood.

regulatory enforcement policies, SCAP may be the last remaining option for many dry cleaners. We recommend that SCAP follow the Orphan Site Cleanup Fund's guidance concerning how to evaluate a responsible party's ability to pay. The program has a very practical and time tested, approach. The Orphan Site Cleanup Fund requests the applicant to inform the Board if:

“(i) the Responsible party(ies) cannot be located,

(ii) Responsible party(ies) have been located and the responsible party(ies) have completed a Financial Worksheet,

(iii) Responsible party(ies) have been located and the applicant has made reasonable efforts to obtain information to evaluate the financial viability of the responsible parties,

(iv) The applicant is the only responsible party named by the regulatory agency, or

(v) Site Closed – Response work required as part of site development process.”

Orphan Site Cleanup Fund Application, dated October 2009, State Water Resources Control Board, Division of Financial Assistance.

With assistance from SCAP, responsible parties may be more likely to stop unfruitful litigation, and work together to investigate and remediate contaminated sites.

We greatly appreciate this opportunity to present our comments on the scoping questions and should you have any questions or concern, please do not hesitate to contact me.

Sincerely,

KING WILLIAMS & GLEASON LLP



Nicole R. Gleason