

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER QUALITY
MAY 1, 2012**

ITEM 3

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION TO APPROVE A SUBSTITUTE ENVIRONMENTAL DOCUMENT AND ADOPT A PROPOSED WATER QUALITY CONTROL POLICY FOR LOW-THREAT UNDERGROUND STORAGE TANK CASE CLOSURE

DISCUSSION

A proposed Water Quality Control Policy for Low-Threat Underground Storage Tank (UST) Case Closure (Policy) was developed by a stakeholder group for consideration by the State Water Resources Control Board (State Water Board). Following consultation with other state agencies and the public, scientific peer review, and review of the Policy as required by California Environmental Quality Act (CEQA), State Water Board staff have made revisions to the Stakeholder drafted Policy, as appropriate. The purpose of the proposed Policy is to establish consistent statewide case closure criteria for a subset of low-threat petroleum UST sites. The proposed Policy is intended to provide direction to responsible parties, their service providers, and regulatory agencies. The proposed Policy seeks to increase UST cleanup process efficiency.

A benefit of improved efficiency is the preservation of limited resources for mitigation of releases posing a greater threat to human and environmental health.

POLICY ISSUES

Should the State Water Board approve the Substitute Environmental Document and the proposed Policy.

FISCAL IMPACT

If the State Water Board adopts the proposed Policy, there will be costs associated with its implementation. However, these costs will be offset by savings as sites are closed. Further, some of these costs are already associated with administration of the petroleum UST Cleanup Program. These administration costs are expected to be absorbable.

REGIONAL WATER BOARD IMPACT

Yes. The State Water Board, Regional Water Boards, and local agencies will be responsible for implementing the Policy.

STAFF RECOMMENDATION

Approve the Substitute Environmental Document and adopt the proposed Policy.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012 to enhance consistency. In particular, approval of this item will assist in fulfilling Objective 6.1 to target consistency improvements in process and policy for Water Board enforcement activities to promote compliance.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2012-

APPROVE A SUBSTITUTE ENVIRONMENTAL DOCUMENT AND ADOPT A PROPOSED WATER QUALITY CONTROL POLICY FOR LOW-THREAT UNDERGROUND STORAGE TANK CASE CLOSURE

WHEREAS:

1. Water Code section 13140 provides that the State Water Resources Control Board (State Water Board) shall formulate and adopt state policy for water quality control.
2. The State Water Board is authorized to administer the petroleum Underground Storage Tank (UST) Cleanup Program, which was enacted by the Legislature in 1984 to protect human health, safety and the environment, and the petroleum UST Cleanup Fund (Cleanup Fund), which was enacted by the Legislature in 1989 to assist UST owners and operators in meeting federal financial responsibility requirements and to provide reimbursement to those owners and operators for the high cost of cleaning up unauthorized releases of petroleum caused by leaking USTs.
3. Several statutory and regulatory provisions provide the State Water Board, Regional Water Quality Control Boards, and local agencies with broad authority to require responsible parties to clean up a release from a petroleum UST (e.g., Health & Saf. Code, § 25296.10; Wat. Code, § 13304, subd. (a).) The State Water Board has promulgated regulations specifying corrective action requirements for petroleum UST cases, and these regulations are contained in article 11 of chapter 16 of division 3 of title 23 of the California Code of Regulations.
4. Closure of a UST case pursuant to Health and Safety Code section 25296.10 is appropriate where the corrective action ensures the protection of human health, safety, and the environment, is compliant with applicable corrective action regulations, and where the corrective action is consistent with: (1) chapter 6.7 of the Health and Safety Code and implementing regulations; (2) any applicable waste discharge requirements or other order issued pursuant to Division 7 of the Water Code; (3) all applicable state policies for water quality control; and (4) all applicable water quality control plans.
5. [State Water Board Resolution 92-49](#), *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304* is a state policy for water quality control and applies to petroleum UST releases, in addition to other wastes.
6. State Water Board Resolution 92-49 directs that water affected by an unauthorized release attain either background water quality or the best water quality that is reasonable if background water quality cannot be restored. Any alternative level of water quality less stringent than background must be consistent with the maximum benefit to the people of the state, not unreasonably affect current and anticipated beneficial use of affected water, and not result in water quality less than that prescribed in the water quality control plan for the basin within which the site is located. Resolution No. 92-49 does not require that the requisite level of water quality be met at the time of case

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closure; it specifies compliance with cleanup goals and objectives within a reasonable time frame.

7. The State Water Board has adopted numerous orders closing UST cases after applying relevant statutes and regulations referenced above and State Water Board Resolution 92-49. In these orders, several factors were considered, such as: (1) whether remaining petroleum constituents would migrate beyond a limited spatial extent, (2) the presence and location of drinking water wells in the area, (3) the likelihood that the impacted groundwater will be used in the foreseeable future; and (4) the protective nature of standard well-construction practices.
8. The State Water Board provided direction to improve the administration of the UST Cleanup Program and the Cleanup Fund Program through [Resolution 2009-0042](#) and [Resolution 2009-0081](#).
9. In Resolution 2009-0042, the State Water Board stated that the issues identified in the resolution are of an ongoing nature and the State Water Board will take further appropriate action to improve the UST Cleanup Program and the Cleanup Fund Program. A State policy for water quality control that establishes criteria for closure of UST cases that present a low threat to human health, safety, and the environment are necessary for consistency and will facilitate the appropriate closure of UST cases and improve both the UST Cleanup Program and the Cleanup Fund Program.
10. On July 19, 2011, the nine-member UST Low-Threat Closure Policy Stakeholder Group (representing two Regional Water Quality Control Boards, a Local Oversight Program agency, a water district, responsible party representatives from the Western States Petroleum Association and California Independent Oil Marketers Association, two participants from non-government organizations, and one UST consultant) presented its recommendations, including a "Draft Low-Threat UST Closure Policy, 7-14-11," to the State Water Board.
11. Members of the stakeholder group held public outreach meetings to discuss technical and practical aspects of its recommended Policy on August 31, 2011, in Oakland, September 15, 2011, in Los Angeles and Riverside, September 16, 2011, in San Diego and September 23, 2011, in Rancho Cordova.
12. The State Water Board circulated the July 14, 2011, draft Low-Threat UST Closure Policy and a "Low-Threat UST Closure Policy Scoping Document" for public comment on September 21, 2011.
13. State Water Board staff held California Environmental Quality Act (CEQA) public scoping meetings on September 28, 2011, in Riverside, and September 29, 2011, in Oakland.
14. Written comments on the July 14, 2011 draft Low-Threat UST Closure Policy and the Low-Threat UST Closure Policy Scoping Document were received. The stakeholder group made revisions to the July 14, 2011 draft Low-Threat UST Closure Policy and the revised version of the draft policy is dated November 10, 2011.
15. The scientific basis for the November 10, 2011 draft "Low-Threat UST Closure Policy" was subjected to an independent, external peer review, pursuant to the requirements of Health and Safety Code section 57004.

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16. The State Water Board circulated a draft Proposed Water Quality Control Policy for “Low-Threat Underground Storage Tank Case Closure” (Policy) and supporting “Draft Substitute Environmental Document” dated January 31, 2012, for public comment on February 3, 2012. The deadline for the submission of written comments was March 19, 2012.
17. The proposed Policy establishes consistent statewide case closure criteria for a subset of low-threat petroleum UST sites and does not describe the conditions at all low-threat sites in the state.
18. The proposed Policy is intended to provide direction to responsible parties, their service providers, and regulatory agencies. The proposed Policy seeks to increase UST cleanup process efficiency. A benefit of improved efficiency is the preservation of limited resources for mitigation of releases posing a greater threat to human and environmental health.
19. State Water Board staff revised the proposed Policy in response to comments provided by the peer reviewers, or provided written responses that explained the basis for not incorporating other proposed changes in accordance with Health and Safety Code section 57004.
20. State Water Board staff has responded to significant written comments and made revisions to the proposed Policy and the Draft Substitute Environmental Document as appropriate.
21. The State Water Board conducted a public hearing on the proposed Policy and Draft Substitute Environmental Document on April 17, 2012, and responded to significant environmental issues as appropriate.
22. The Natural Resources Agency has approved the State Water Board’s water quality control planning process as a “certified regulatory program” that adequately satisfies the CEQA requirements for preparing environmental documents. State Water Board staff has prepared a “Substitute Environmental Document” for this project that contains the required environmental documentation under the State Water Board’s CEQA regulations. (California Code of Regulations, title 23, section 3773, et seq.)
23. In preparing the Substitute Environmental Document, the State Water Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187 and section 15252.
24. Consistent with CEQA, the Substitute Environmental Document does not engage in speculation or conjecture but, rather, analyzes the reasonably foreseeable environmental impacts related to methods of compliance with the draft Policy.
25. The State Water Board finds that no significant adverse impacts to the environment will result from adoption of the proposed Policy.
26. A policy for water quality control does not become effective until adopted by the State Water Board and until the regulatory provisions are approved by the Office of Administrative Law (OAL).

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THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the final [Substitute Environmental Document](#), which was prepared in accordance with the requirements of the State Water Board's certified regulatory CEQA process (as set forth in California Code of Regulations, title 23, section 3775, et seq.), Public Resources Code section 21159, and California Code of Regulations, title 14, section 15187, and directs the Executive Director or designee to transmit the Notice of Decision to the Secretary for Natural Resources.
2. After considering the entire record, including oral comments at the public hearing, adopts the [Water Quality Control Policy for Low-Threat Underground Storage Tank Case Closure](#).
3. Authorizes the Executive Director or designee to submit the Low-Threat Underground Storage Tank Case Closure Policy to OAL for review and approval.
4. Directs the Executive Director or designee to make minor, non-substantive modifications to the language of the Policy, if during the OAL approval process, OAL determines that such changes are needed for clarity or consistency, and inform the State Water Board of any such changes.
5. Directs the Regional Water Boards and local agencies, to review all cases in the petroleum UST Cleanup Program using the framework provided in the Policy. This review shall be accomplished within existing budgets and be performed no later than 365 days from the effective date of this Policy.

These case reviews shall, at a minimum, include the following for each UST case:

- a. Determination of whether or not each UST case meets the criteria in the Policy or is otherwise appropriate for closure based on a site-specific analysis.
- b. If the case does not satisfy the criteria in this Policy or does not present a low-risk based upon a site-specific analysis, impediments to closure shall be identified.
- c. Each case review shall be made publicly available on the State Water Board's GeoTracker web site in a format acceptable to the Executive Director.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 1, 2012.

Jeanine Townsend
Clerk to the Board