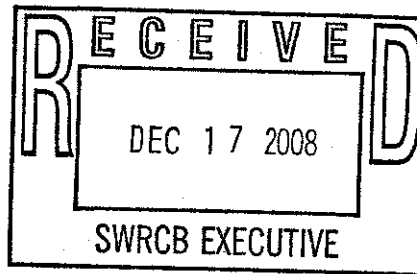


December 17, 2008

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Subject: Comments to California State Water Resources Control Board regarding State Board Resolution No. 68-16 "Statement of Policy with Respect to Maintaining High Quality of Waters in California."

Dear Ms. Townsend:

Kinder Morgan Energy Partners, L.P. (KMEP) appreciates the opportunity to provide comments to the State Water Resources Control Board (Board) proposed review of State Board Resolution No. 68-16 ("the Anti-degradation Policy") and the implementation of that policy in California. KMEP is an energy transportation and storage company that operates a system of petroleum distribution pipelines and terminal facilities throughout California.

KMEP has worked closely with many of the SWRCB Regional Boards and other Stakeholders on the investigation and remediation of petroleum hydrocarbon releases throughout California. Our work on these sites has included large-scale active remediation of groundwater, groundwater monitoring, and management. Additionally, we have worked closely with regulatory agencies to achieve case closure for several of these sites with various Regional Boards throughout California.

Through our extensive involvement with these sites, KMEP has developed an understanding of Resolution No. 68-16, and how that resolution is being applied and enforced in the context of groundwater cleanups in California. In this letter, we identify key concerns that we have regarding the current implementation of Resolution No. 68-16, and provide our recommendations for improving the application of this resolution to the regulatory decision-making process.

Issues

In KMEP's experience, the application of Resolution No. 68-16 to groundwater cleanups in California is inconsistent, which makes it difficult to plan and design appropriate cleanups. In some regions and regulatory programs, Resolution No. 68-16 has been interpreted as requiring active remediation to achieve non-detectable levels of constituents in groundwater. In instances where current or reasonably potential future beneficial uses of groundwater are absent, this interpretation has required very expensive and energy-intensive remediation efforts that do not result in reduction of risk, and do not result in an appreciable increase in the protection of drinking water resources.

Resolution No. 68-16 includes language that was intended to balance water quality protection with other considerations. The Resolution includes balancing clauses that allow water quality changes when such changes are "consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water" and to allow waste discharges provided that "the highest water quality consistent with maximum benefit to the people of the State will be maintained". KMEP believes that these balancing clauses were intended to allow balancing of economic and other interests along with resource protection goals. We believe that consideration of the following could result in a more consistent and effective implementation of the intent of Resolution No. 68-16 with respect to groundwater cleanups at petroleum release sites.

Groundwater Quality

Application of Resolution No. 68-16 to surface waters includes the use of a three-tiered classification system for rating of surface water quality, with different requirements for the different tiers. However, no such tiered system has been established for groundwater. As a result, in some regions, the same "Tier I" standard is being applied to all groundwaters, regardless of the potential for potable beneficial use of that groundwater. A tiered classification system for groundwater would allow the highest standards of protection to be applied to the highest quality groundwater resources, and would focus restoration resources and efforts in those areas with the highest quality groundwater.

Remediation Timeframes

Resolution No. 68-16 does not specify a timeframe for achieving water quality objectives. At many petroleum sites, groundwater objectives are expected to be reached via natural attenuation mechanisms (e.g., biodegradation). However, the timeframe for achieving water quality objectives using these mechanisms may be decades, or longer. While the SWRCB has indicated that cleanup sites may be closed even when water quality goals have not been achieved, but are expected to be achieved through the continued action of natural processes¹, other Agencies and Regional Boards have not fully incorporated this concept into case closure decisions at cleanup sites.

The use of remediation timeframes that are consistent with the timeframe for likely future use of the resource would further promote the selection of cost effective, appropriate, and sustainable remediation approaches. For example, in settings where it is highly unlikely that shallow groundwater will be utilized in the foreseeable future, an acceptable remediation timeframe might be on a longer term timescale. Over this timescale, natural attenuation is likely to achieve remediation goals consistent with the resource protection intent of Resolution No. 68-16. KMEP

¹ Walker Case Appeal Decision, SWRCB Order WQ 98 - 04 UST

has found that efforts to achieve remediation goals over short timescales (within a few years) require very expensive energy-intensive active remediation systems that are often times only marginally more effective than natural processes.

Consideration of the Assimilative Capacity of Groundwater

Application of Resolution No. 68-16 to surface waters acknowledges the presence of a mixing zone, where constituents of concern may be present above background levels. This application acknowledges the assimilative capacity of surface water, that is, the ability of a water body to handle certain quantities of discharges without suffering an overall degradation in water quality.

However, application of Resolution No. 68-16 inconsistently considers the assimilative capacity of groundwater to accept certain discharges while maintaining overall groundwater quality. For example, groundwater discharges from septic systems and certain agricultural practices may result in local groundwater quality degradation, yet cleanup orders are rare in such instances, because natural processes are expected to restore groundwater quality over time and distance.

There have been many advances in the understanding of natural attenuation processes in groundwater over the past 20 years, especially with respect to the ability of naturally-occurring biota to degrade petroleum constituents in groundwater. At some petroleum release sites, groundwater quality objectives are exceeded over a limited zone, somewhat analogous to a "mixing zone" in surface water. At a certain distance downgradient from this zone, naturally-occurring biota and other processes can reduce the concentrations of the petroleum constituents of concern to levels that are at or below natural background concentrations. Current regulatory application of Resolution No. 68-16 does not often consider the natural assimilative capacity of groundwater in cases where biodegradable constituents have been released.

Recommendations to Revise Implementation of Resolution No. 68-16

KMEP recognizes that developing policy regarding the implementation of Resolution No. 68-16 in California is a complex matter that requires careful consideration. Given the complexity of this issue, and the variety of parties that will be affected by the manner in which Resolution No. 68-16 is implemented in the future, KMEP recommends that the SWRCB formulate a stakeholder group that can focus on how this resolution is applied to groundwater. This stakeholder group would ideally include industries, regulatory agencies, subject matter experts, and water purveyors. KMEP also recommends that the SWRCB actively solicit participants in order to ensure broad representation of the affected parties.

Issues for the stakeholder group to address should including the following:

- Strategies developing a tiered classification for groundwater, analogous to the existing tiered system for surface water.

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- Strategies for implementing risk-based approaches for identifying and protecting potentially vulnerable, high-value water supplies.
- Approaches for evaluating the costs and benefits of remediation options and methods for selection of sustainable remediation alternatives.
- Evaluation of the need for long-term monitoring at sites where natural attenuation has been demonstrated to be an effective restoration technology.
- Identification of effective institutional controls for sites with longer remediation timeframes.

It is KMEP's position that modifications to the current implementation of Resolution No. 68-16 is implemented in California will result in more cost-effective and timely cleanups of groundwater, thereby protecting and restoring California's groundwater resources more efficiently and effectively.

Sincerely,



Scott E. Martin, P.G.
Manager, EHS - Remediation

cc: Nancy Van Burgel, KMEP