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Division of Water Quality

Ms. Jennifer Scholte
Division of Water Quality
State Water Resources Control Board
P.O. Box 2231
Sacramento, CA 95812-2231

Subject: Humboldt County Local Oversight Program Comments Addressing The Criteria For Low-Threat Case Closure Policy

Dear Ms. Scholte,

The purpose of this letter is to provide comments regarding the final draft of the *Low Threat UST Closure Policy*. Humboldt County Local Oversight Program (HCLOP) is pleased to have the opportunity to comment on this important document. Please find our comments following selected quotations from the policy document.

Criteria for Low-Threat Case Closure

Page two, paragraph four-

"In the absence of site-specific conditions that demonstrably increase the risk associated with residual petroleum constituents, cases that meet the general and media-specific criteria described in this policy do not pose a threat to human health, safety or the environment and are appropriate for UST case closure pursuant to Health and Safety Code section 25296.10."

HCLOP Comment:

The policy excerpt above indicates that the regulatory agency would be responsible for allowing a groundwater contaminant plume to remain. If natural attenuation is relied upon to reduce remaining concentrations, there would be no method to verify it as all monitoring wells will be destroyed.

The above passage demonstrates a change in the basic assumption being made by the SWQCB that now puts the burden of proof on the regulatory agency. The burden of proof should remain with the Responsible Party (RP) to demonstrate that a site has been remediated to meet the conditions required in statute.

Page two, paragraph five-

"This policy relies on the regulatory agency's use of the conceptual site model to identify the special attributes that would require specific attention prior to the application of low-threat criteria. In these cases, it is the regulatory agency's responsibility to identify the conditions that make closure under the policy inappropriate."

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HCLOP Comment:

Relying on the conceptual site model places added significance on the accuracy of the site conceptual model. We cannot stress strongly enough that CSM attributes must be supported with demonstrable, site-specific data to substantiate site conditions. If the site conceptual model is inaccurate, evaluation will be similarly inaccurate.

Page two, paragraph six-

"In these cases, it is the regulatory agency's responsibility to identify the conditions that make closure under the policy inappropriate"

Again, the SWQCB now places the burden of proof on the regulatory agency, a fundamental shift in the foundation of this program. Such proof should remain with the RP to demonstrate that a site has been remediated.

General Criteria

Criteria a:

The release is located within the service area of a public water system. New water supply wells are unlikely to be installed in the shallow groundwater near former UST release sites.

HCLOP Comment:

Only current beneficial uses will be considered as opposed to "potential future uses." The policy, as written, does not acknowledge the importance of considering future uses.

Criteria e:

A conceptual site model has been developed. The Conceptual Site Model (CSM) is a fundamental element of a comprehensive site investigation. The CSM is relied upon by practitioners as a guide for investigative design and data collection. The CSM is dynamic and unique to each individual release site.

HCLOP Comment:

The wording of this section places exceptional importance / significance on the Conceptual Site Model, but does not require the model be accurate or technically defensible. If the site conceptual model is inaccurate, evaluation of risk will similarly be inaccurate. More precise standards should be added to insure that the CSM's veracity is maintained.

Criteria f:

Secondary source removal has been addressed Unless site attributes prevent secondary source removal (e.g. physical or infrastructural constraints exist whose removal or relocation would be technically or economically infeasible), petroleum-release sites are required to undergo secondary source removal to the extent practicable as described herein.

HCLOP Comment:

- This section states "*petroleum-release sites are required to undergo secondary source removal to the extent practicable...*" which means implementing a cost-effective corrective action and which removes or destroys-in-place the most readily recoverable fraction of source-area mass. The use of the term "practicable" needs to be more precisely defined in order to provide clear guidance for Responsible Parties and regulatory agencies.
- This section should clearly state what is necessary to demonstrate feasibility or infeasibility of mass removal.

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- Greater emphasis is needed on site-specific information in order to develop adequate and technically defensible conclusions.

Media-Specific Criteria

1. Groundwater.

Page five, paragraph six-

It is a fundamental tenet of this low-threat closure policy that if the closure criteria described in this policy are satisfied at a release site, water quality objectives will be attained through natural attenuation within a reasonable time, prior to the need for use of any affected groundwater.

HCLOP Comment:

The term “within a reasonable (amount of) time” is unclear and inadequately defined. Neither the RP, nor the regulatory agency can take definitive direction from such wording.

Page five, paragraph seven-

If groundwater with a designated beneficial use is affected by an unauthorized release, to satisfy the media-specific criteria for groundwater, the contaminant plume that exceeds water quality objectives must be stable or decreasing in areal extent, and meet all of the additional characteristics of one of the five classes of sites listed below. A plume that is “stable or decreasing” is a contaminant mass that has expanded to its maximum extent: the distance from the release where attenuation exceeds migration.

HCLOP Comment:

This policy may result in costs and land use restrictions to people other than the Responsible Party if they wish to install a water supply well within 250 or 1,000 feet of a previously closed site.

General and Overall HCLOP Comments:

The draft policy allows groundwater contaminant plumes at concentrations exceeding WQOs, to stay in place for an excessive period of time. We recommend the Low-Risk Policy be revised. We recommend emphasis be placed on developing technically defensible conclusions and highlight the need for site-specific information.

The general theme throughout the Draft Low Risk Policy is that natural attenuation will reduce the remainder of soil contaminant as demonstrated on page one, paragraph three, “*It has been well-documented in the literature and through experience at individual UST release sites that petroleum fuels naturally attenuate in the environment through adsorption, dispersion, dilution, volatilization, and biological degradation.*” This statement is presented as an obvious truth, but does not acknowledge that the rate of attenuation may vary drastically depending on site-specific conditions.

The Humboldt County Local Oversight Program appreciates this opportunity to offer input into the Low-Threat UST Closure Policy. We hope that this document will provide additional clarification for all parties involved in underground storage tank closure effort as well as placing increased significance on the need for site-specific measurements and observations to evaluate and support the opinions and interpretations of all parties involved in this important process.

Low-Threat UST Closure Policy Comments

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Respectfully Submitted,

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