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SWRCB
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P.O. Box 100
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Re: Water Quality Policy for Low-Treat Underground Storage Tank Closure – Comments on Draft

Dear SWRCB

On behalf of my many past, existing and future clients and as a part of the private sector environmental industry in general, I am firmly opposed to the above draft policy for the following reasons:

General comments

1. The stated legislative intent of the UST Cleanup Fund is to “clean up” legacy petroleum contamination of public and private properties; to restore and protect groundwater; to stimulate the state and local economies by creating jobs in the environmental sector; and to ease the burden on the state courts by eliminating the need for environmental litigation stemming from the legacy contamination. The legacy contamination stems from the United States transition to the use of liquid fossil fuels in early and mid 1990s without proper environmental safeguards in place to prevent leaks from underground storage tank systems.
2. The proposed policy is inconsistent with all four of the above legislative intents of the underlying statute. It is a proposal to leave sites heavily contaminated whenever possible; to let Mother Nature take care of the impacted groundwater rather than protecting and restoring it; it is specifically intended to take jobs away from the private sector; and the policy will inevitably increase the burden on the state courts.
3. The SWRCB’s proposed “policy” is aptly considered an attack on the free-enterprise system of government and part of a very alarming nationwide trend towards a more socialistic brand of democracy with private sector jobs replaced with government jobs and an ever-increasing government presence in private affairs, in this case property ownership.
4. The SWRCB has had a low risk soil and groundwater policies in place since the mid 1990s that are sufficient to deal with the “how clean is clean” conundrum.

5. The SWRCB policy as written was not recommended by the accountants that authored the FUND audit. In fact, the Audit report findings and conclusions clearly show that the policy should not be adopted because it will make the cash flow problem much worse. With the focus on "high risk" sites, rather than distributed evenly among low and high, the average costs of reimbursement requests will soar.
6. There is no legislative directive for the adoption of this policy. This is a measure the Board is undertaking on its own volition in an ill-advised effort to resolve FUND cash flow problems by imposing more government control over the free enterprise system. It is the same very dubious policy the Board was recommending in correspondence circulating the highly controversial Lawrence Livermore Lab report of December 1995.
7. The audit report shows that the cash flow crisis was created by the SWRCB not trusting the free enterprise system with the task of investigating and cleaning up LUFT sites. The audit report shows that the cash flow crisis is a direct result of the SWRCB efforts, commencing in the late 1990s, to adopt and implement policies that allowed government employees to more carefully control and regulate the methods by which LUFT sites are investigated and remediated, thereby diverting cleanup dollars to oversight and endless investigation and evaluation.
8. The audit report shows that during the first 8 years of the USTCF program, the private sector/free enterprise system was efficiently and effectively cleaning up LUFT sites at an average cost of about \$150,000 per site with an average time of about two years to achieve closure. The record shows that it was the SWRCB's dissatisfaction over this rate of expenditure and the associated "reining in" of the private sector that led to the current cash flow problems.
9. In the late 1990s, the SWRCB insisted that local agencies with FUND-financed local oversight programs (LOPs) employ state registered geologists to oversee cleanup programs and "put the brakes" on the free enterprise system cleanups. The results were predictably disastrous with oversight and site investigation related costs soaring as the regulators began routinely rejecting proposed interim remedial actions and demanded implementation of a formal process of site investigations, feasibility studies, conceptual models, risk assessments, community response, and finally preparation of a formal site corrective action plan: workplan after workplan after workplan after workplan after workplan after workplan after workplan after workplan with the regulators attempting to school the private sector every step of the way and making a complete mess of the cleanup programs in the process.
10. The authors of the FUND audit were at a loss to explain why it now costs three to four times as much to clean up a CA LUFT site than it did ten years ago and currently does in most other states. I observed it happening.
11. According to the audit report, due to the effects of Board "policies" to effect increasing government control, at this point it takes in the order of \$400,000-\$500,000 on average to bring a LUFT site to closure and eight years or more time.

In the meantime, the percentage of USTCF dollars going to state and local agencies has increased from less than 15 percent in the late 1990s to approaching 40 percent as we near 2012. The percentage of USTCF dollars going to investigations, risk assessments, conceptual models versus actual digging/cleanup has gone from roughly about 20 percent to 80 percent (best guess). The FUND money is being squandered due to SWRCB "policies" such as the one proposed with this one taking the cake as far as being anti free-enterprise system.

Quasi-Technical Comments

1. Addressing a LUFT site by applying a layer of cover over a tank pit is aptly characterized as "sweeping the problem under the rug." It is not creating a "biozone." Experience has shown the soil venting does not work. There needs to be very substantial soil moisture for effective in-situ bioremediation of the vadose zone. Moreover, migrating vapors follow preferential pathways in the vadose zone that defy prediction/characterization/generic resolution.
2. As already explained to the SWRCB by the EPA when they were asked to review the controversial recommendations of the Lawrence Livermore Lab report in 1996, it is foolish and inappropriate for the Board to advance overly simplistic generic approaches to addressing LUFT sites. As required by state law including the CA professional code, the Board should allow private sector consultants to investigate a given site and develop an appropriate response taking all relevant site specific factors into consideration in meeting statutory cleanup and waste discharge requirements.
3. I have been personally coordinating the investigation and cleanup of LUFT sites for 30 plus years for private and public properties. LUFT sites are relatively easy to resolve except in California since approximately year 2001. Those in the private sector who know what they are doing use interim remedial measures (IRMs) to quickly and efficiently address the vast majority of LUFT sites, or would if they were allowed to. In 95 percent of cases you can get a LUFT site with significant impacts to groundwater investigated and remediated within three years and \$300,000 using IRMs. The vast majority of LUFT sites are appropriately remediated by digging and/or sparging enhanced vapor extraction. These are appropriately considered IRMs. Formal CAPs are typically not needed for actively remediating LUFT sites.

Recommendations to resolve the cash flow crises that are considered much better than what is currently proposed

1. End the LOP program and beef up the regional boards; the LOPs are too expensive, not really needed, and hindering rather than helping in many cases. Get total oversight and FUND costs back down to 15%.
2. Drop the updated LUFT manual; you are making a mountain out of a mole hill.

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3. If property owners prefer to leave their sites contaminated while they are active service stations, let them.
4. Allow all permitted landfills to accept LUFT site soils for use as intermediate cover material.
5. Trust the free enterprise system and allow the use of IRMs. Go back to where we were in the mid 1990s when CA had perhaps the best LUFT site program in the country.

Sincerely



Brian Kelleher

Project Coordinator/Court Consultant