Howard S. Mehler, Ph.D., J.D. & Associates Incorporated

139 South Beverly Drive, Suite 235
Beverly Hills, California 90212

Telephone: (310) 271-0755
Fax: (310) 271-0167
Email: hmehler@mehler.com
Internet: www.mehler.com

RECEIVED
SEP 23 2011
DIVISION OF WATER QUALITY

September 15, 2011

Kevin L. Graves, P.E.
State Water Resources Control Board
Division of Water Quality
Chief UST Section
1001 I Street
Sacramento, CA 95812-0100

Re: Southern California Outreach Meeting
Proposed Low Threat UST Closure Policy

Dear Mr. Graves:

I represent the Landowners of a commercial parcel in Canoga Park CA at which there is presently an open MTBE groundwater contamination case (# 913240725A). I write to you to memorialize my oral comments today at the Southern California Outreach Meeting on the Proposed Low Threat UST Closure Policy.

I challenge the fundamental tenet of your proposed policy that:

"Water quality objectives will be obtained through natural attenuation within a reasonable time, prior to the need for use of any affected groundwater."

Our Canoga Park site has both onsite and offsite monitoring wells which intercept a groundwater MTBE plume (max [MTBE] = 200-400 ppb) estimated to be approximately 250 feet in length. As shown in the attached Figure of an MTBE plume longevity estimate at MW-1 (located at the southern property boundary), the upper bound confidence interval to achieve background water quality through natural attenuation is **260 years**. There is obviously considerable uncertainty as to whether background water quality (5 ppb) will ever be achieved in the impacted onsite and offsite areas. It may be reasonably likely that absent active remediation, the impacted groundwater will be permanently spoiled and can never be used as a source of drinking water. The proposed policy contradicts SWRCB 88-63 which considers all groundwaters of the state suitable for domestic water supply. Exception 1b to Resolution 88-63 cannot be construed to allow residual contamination in the groundwater where in fact contamination was absent prior to the land use that created the specific pollution incident, and it has not been adequately demonstrated that the residual contamination could not be eliminated or substantially reduced with reasonable effort.

Adjoining Landowners are also impacted by the groundwater plume emanating from our property wherein lies the secondary source (soil and groundwater MTBE contamination). As titleholders in fee simple, these adjacent property owners have subterranenan groundwater extraction rights. The emphasis of your Low Threat Closure Policy is on protection of municipal production wells (1000 ft buffer) however the potential use of groundwater for Domestic Wells is ignored. The implicit assumption of the policymakers is that there will be a cheap, plentiful and uninterrupted supply of municipal water for household consumption, forever. Acts of

Howard S. Mehler, Ph.D., J.D. & Associates Incorporated

139 South Beverly Drive, Suite 235
Beverly Hills, California 90212

Telephone: (310) 271-0755
Fax: (310) 271-0167
Email: hmehler@mehler.com
Internet: www.mehler.com

terrorism, water diversion by a neighboring state, draught or a host of other factors within the realm of the possible may cause a diminishment in supply and a spike in the price of municipal water which would make municipal water unaffordable to the average household. Private homeowners might then seek permits for construction of domestic water wells to supply water for drinking, washing and landscape irrigation. The domestic well option would be foreclosed to property owners impacted by MTBE contamination in excess of the taste and odor threshold (10-20 ppb). Impacted Landowners adjacent to our site who wanted to install a domestic water well would be deprived of the full use and enjoyment of their land because their groundwater would not be suitable for human consumption.

The foregoing observations contradict the fundamental tenet of your proposed Policy, and therefore the Low Threat Closure Policy should not be implemented as currently proposed.

In our specific case (#913240725A) three (3) directives to Take Corrective Action have been issued by the Southern California Regional Water Quality Control Board to the PRP(s), directing them to remediate to state mandated MCL's (soil MTBE 0.065 mg/kg; Groundwater MTBE 13 mcg/L), to submit a timetable for remediation and closure, and to submit to the Waterboard a list of names/addresses of impacted neighboring landowners for the purposes of notification. The SCRWQCB Directives have been largely ignored by the PRP(s) which in this case are major oil companies. Big Oil is playing a game of attrition with the State of California and it appears that with the Low Threat Closure Policy the State is the first to blink. My suggestion would be to conduct a cost/benefit analysis to determine exactly what benefits (in terms of UST Fund Dollar Savings) will accrue to the State by implementation of the policy in comparison to the the benefits that would accrue to Big Oil (hundreds if not thousands of case closures). My guess is that Big Oil will be the major beneficiary of the implementation of the Low Threat Closure Policy at the expense of impacted landowners who will be left holding the bag. Preferential treatment of one class at the expense of another does not constitute good policymaking.

I therefore request that the Proposed Low Risk Closure Policy not be implemented as currently proposed.

Respectfully Submitted

Howard S Mehler PhD JD & Associates Inc

By: _____
Howard S Mehler

// Enclosures
Figure 2; Linear Regression on Log Transformed MTBE Data Measured in well MW-1

Plume Longevity Estimates

The results of the linear regression on the log-10 transformed concentration data measured by the independent laboratory (Table 2) are shown in Figures 2 through 5. When using the upper 95% prediction confidence interval as a measure of time until the concentration reaches 10 ug/L, the plume longevity estimates for wells MW-1N, MW-2N, MW-3N, MW-4N, and MW-8 (Mehler MW-6 Bryant) are 260 years, 21 years, 0 years, 3 years, and 22 years, respectively.

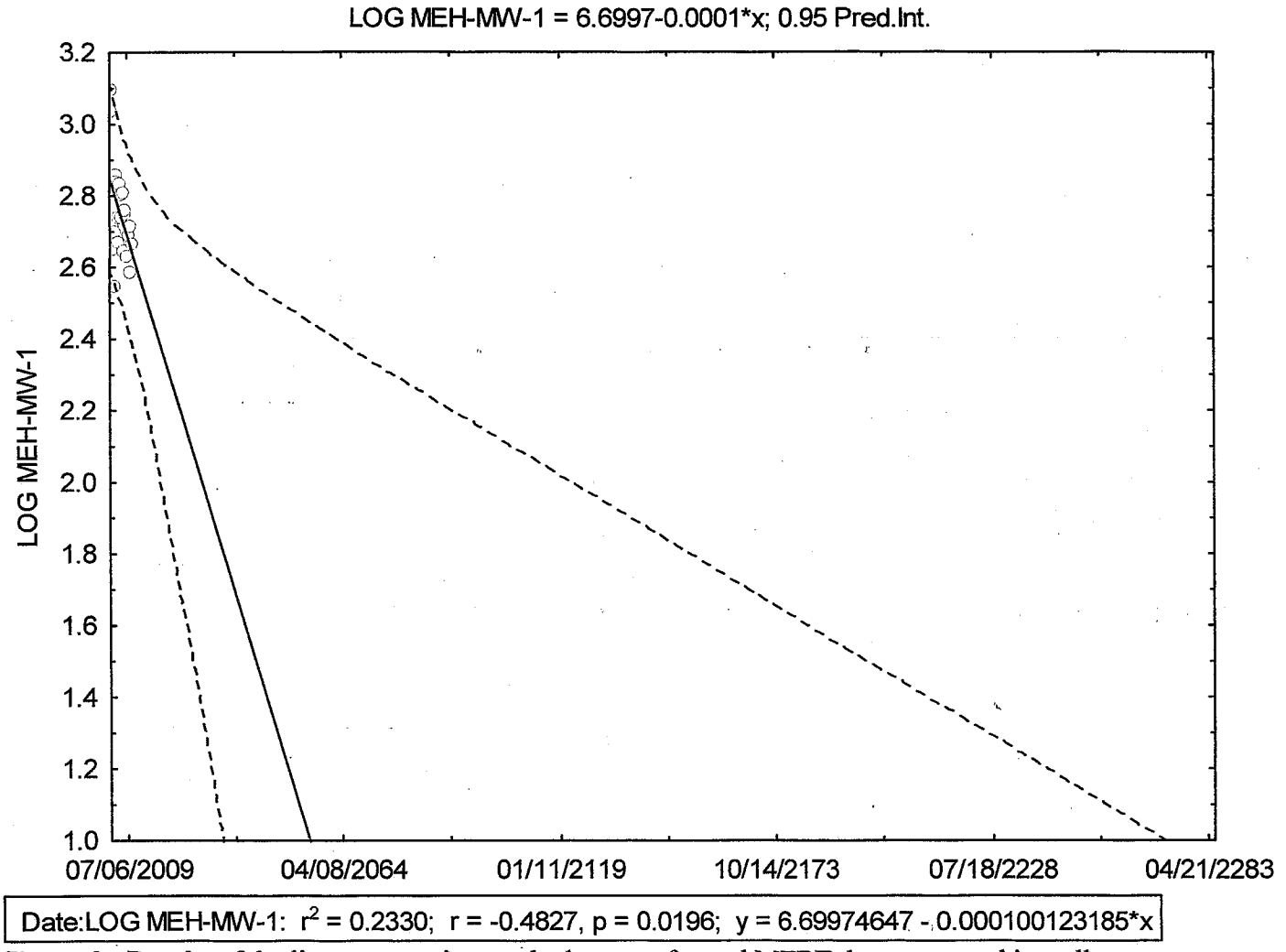

Figure 2: Results of the linear regression on the log-transformed MTBE data measured in well MW-1N. The time until MTBE concentrations reach 10 ug/L is approximately 260 years (year 2270), when using the upper 95% prediction confidence interval.