San Mateo County
Health System

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Division of Water Quality

Jennifer Scholte (jscholte@waterboards.ca.gov)
Division of Water Quality
State Water Resources Control Board
PO Box 2231
Sacramento, CA 95812

Subject: Comments on Low-Threat UST Closure Policy Scoping Document

Dear Ms. Scholte:

San Mateo County Environmental Health Services Division thanks the State Water Resources Control Board (SWRCB) staff for the opportunity to comment on the California Environmental Quality Act (CEQA) scoping document for the Underground Storage Tank Low-Threat Site Closure Policy dated September 15, 2011. The policy is an attempt to unify the closure conditions under which certain types of sites should be considered low-threat and closed. However, the scoping document appears to be too narrow in its scope by making several assumptions regarding background conditions and ignoring several potential impacts in answering the 18 required questions. San Mateo County Environmental Health has the additional concern that the policy itself has significant errors that need to be addressed that therefore does not allow the CEQA required impacts to be adequately evaluated currently. This leads San Mateo County Environmental Health to believe significant changes need to be made to both documents in order for the scoping document to be legally defensible, and to properly evaluate the policy's potential impact on the environment. Finally, several alternatives are presented to various aspects of the policy to help facilitate the evaluation of impacts. San Mateo County Environmental Health offers the following comments to the scoping document.

Responses to CEQA Required Questions

The policy will allow higher concentrations of contaminants to remain at the time of case closure than is likely allowed under the current regulatory environment (background conditions). The SWRCB argues that the background condition (the starting point for the CEQA analysis) is the fact that the contaminants at their current concentrations are already in the groundwater. However, we believe the background condition should be the regulatory response to certain concentrations of contaminants in groundwater (such as 3,000 ppb benzene), which could be to further investigate, if not remediate, the contaminants in groundwater. The fact that remediation will not occur (excluding natural attenuation) under this policy for contaminants at these concentrations, but may occur under the current regulatory environment, is a physical change that should be addressed in the CEQA scoping document. We recognize the change may be argued to be a difference in length of time of complete cleanup. However, this point should be addressed in the answers to the CEQA questions regarding biological resources (4), hazardous materials (8), degraded water quality (9f), and cumulative impacts (18b). In particular, this policy would clearly leave more degraded groundwater in place than what is currently accepted (background condition) or the policy wouldn't close one additional site above what is currently being closed today.

The CEQA scoping document appears to ignore the impacts this policy will have on sooner and increased (re)development throughout California. The scoping document mentions this in the Project Description as one of three indirect impacts of this policy, along with sooner well destruction and removal of waste drums and debris. However, in the detailed responses to the 18 CEQA required questions, only sooner well destruction and waste removal is discussed in terms of impacts. The lack of consistency within the document appears to be an error in the CEQA review of environmental impacts of this project.

The development that could result sooner from this policy could have impacts for conversion of agricultural and farming land adjacent to soon to be closed sites under this policy (2e), housing (13), public services (14), recreation (15), traffic (16), and utilities (17) individually or cumulatively (18b). Clearly the closure of multiple sites in this situation in close proximity, at roughly the same time, could cause a dramatic (and cumulative) increase in redevelopment from the baseline conditions today, being a potentially staggered clearing of environmental concerns for each of the sites. All but two of the sub-questions are listed as No Impact. We argue there will be an impact to each of these.

An additional impact that is not addressed in the scoping document is an analysis of the increase in residual contaminants left at sites closed under the proposed policy on future land use decisions and actions. The policy itself lacks any requirement of various permitting agencies regarding notification to the appropriate agencies of proposed changes in future land uses at sites with residual contamination. There is a chance that leaving more residual contaminants in place could increase the amount of interactions, potentially with higher concentrations, with the residual contamination prior to it fully degrading (8 hazardous materials and 9f water quality). This occurs when land use changes and the appropriate precautions are not taken, due to lack of notification or ineffectual notification processes, to protect the workers from the residual contamination. Even when the residual contamination is known and identified, the financial impacts of dealing with the residual contamination may significantly alter the proposed projects, if not completely deter them from occurring. Again this could have significant implications for housing (13).

<u>Errors in the Policy Affecting the Ability to Properly Evaluate Impacts under CEQA</u>
The policy itself references various studies and institutional knowledge gained over the last 20 years. For this specific reason, it seems to fail to recognize that fuel formulations have and will continue to change over time. In fact, ethanol is being blended into gasoline at higher percentages today than at any time in the specific time period referenced in the policy. This lack of accounting for future, and currently ongoing, fuel formulation changes and potential impacts this will have on contaminant behavior in the subsurface could lead to a similarly disastrous situation as when MtBE was introduced into fuel formulations. Because the policy has not been prepared to address recent or future changes in fuel formulations, it seems this CEQA scoping document can not appropriately evaluate several of the required topics, including biological resources (4), hazardous materials (8), degraded water quality (9f), and cumulative impacts (18b).

The current draft policy only takes into account currently-anticipated, near-future groundwater use. It does not account for changes in the future which could happen rapidly (i.e. earthquakes, change in pumping rates of existing wells) while the residual contamination is still degrading over a time frame of decades to hundreds of years. For the San Francisco Bay area, a majority of drinking water comes from piped water that traverses several major known faults that have a high probability (~70%) of a high magnitude earthquake in the next 30 years. Currently inactive wells could suddenly be re-activated, or new wells installed, and change the groundwater flow dynamics in close proximity to the more residual contaminants left in place under the proposed policy.

The first sentence of the first paragraph under Media-Specific Criteria of the policy describes how UST releases can impact human health and the environment. The technical justification for groundwater impact limits the contaminants to only benzene, MtBE, and TPH as gasoline. The thinking behind this was that benzene was the most carcinogenic, MtBE traveled the farthest, and TPHg could adequately represent all of the other dissolved constituents from a release of fuel. There appears to be an error in this reasoning. Benzene only represents the most carcinogenic compound to human receptors but not the most toxic to the environment. Several common components of fuel formulations, including but not limited to toluene, ethylbenzene, and xylenes, actually have more stringent screening levels under aquatic habitat goals than for drinking water impacts (RWQCB Region 2, ESLs). The lack of appropriate evaluation of all compounds associated with fuel formulations for toxic impacts to the environment seems to be a flaw in the policy that will not allow the impacts to biological resources (4) to be properly evaluated under CEQA.

Similarly to environmental risk, nuisance concerns are not accounted for in the policy. Clearly, nuisance concerns should be incorporated into any discussion regarding the release of contaminants to the waters of the state of California when the standard as stated in Resolution 68-16 is "a nuisance will not occur". Even Resolution 92-49 with all of its flexibility written into it, as noted by the authors of the policy, references nuisance as a concern that may require clean up. A quick review of the RWQCB Region 2 ESLs shows the ceiling value (odor or taste) to be more restrictive than the drinking water goal or vapor intrusion goal for total petroleum hydrocarbons as gasoline and diesel, benzene, ethylbenzene, toluene, xylenes, and MtBE. Nuisance concerns should clearly be incorporated into the media specific criteria for both groundwater and vapor intrusion, with justification for the most appropriate surrogate for total petroleum hydrocarbons as gasoline and diesel, benzene, ethylbenzene, toluene, xylenes, and MtBE. At this point, there appears to have not been enough justification for why a combination of benzene, naphthalene, and MtBE only would adequately account for this concern. Again, the lack of appropriate evaluation of all compounds associated with fuel formulations for impacts to nuisance concerns such as in water quality (9f) seems to be a flaw in the policy that will not allow the impacts to the environment to be properly evaluated under CEQA.

The policy chooses to evaluate only a few of all of the combination of chemicals found in petroleum hydrocarbons. This appears to be a gross oversimplification and goes against

guidance from various regulatory agencies to evaluate the cumulative impacts (18b) of contamination in a risk-based decision making process. In particular, the exclusion of toluene, ethylbenzene, total xylenes, and fuel oxygenates seems to go against years of training offered by the SWRCB in evaluating these contaminant plumes. The CEQA scoping document fails to address this issue of cumulative risk for all compounds in fuel formulations.

Alternatives Evaluation

The first paragraph of the Preamble references the UST Cleanup Fund. The mission of the SWRCB is "to preserve, enhance and restore the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations." The Fund does not appear to have any place in the SWRCB under its mission. The substitute environmental document (SED) should evaluate as an alternative, the separation of these two functions away from each other and the SWRCB.

The second paragraph implies the best way to use available resources is to eliminate the low threat sites. An equally feasible and potentially more environmentally-beneficial alternative, which should also be evaluated in the SED, would be to actually prioritize all of the currently existing sites for allocation of these limited resources based on need, from the most impacted or threatening down, rather than the current politically-derived, semi-prioritization by number of employees, gross revenue, and order of application submittal.

The reason given in the technical justification for not including TBA essentially is that due to the current regulatory climate, very low numbers of drinking water wells have been impacted by TBA. It seems illogical to use the current regulatory system's results to justify a relaxing of the current regulatory environment. In fact, one could argue this could only make impacts worse. This would seem to be a major issue in terms of the CEQA's alternatives evaluation.

Finally, the SED should also evaluate a no-action alternative, which appropriately evaluates actual current conditions (background). This would include additional investigation and potential remediation of impacted soil and groundwater, ongoing verification monitoring to evaluate natural attenuation, and consideration of closure based on site-specific information. This alternative would likely result in less residual contamination being left at sites (i.e. less degraded water, 9f) at the time of case closure.

Sincerely,

Dean D. Peterson, P.E.
Director,
San Mateo County
Environmental Health

Gregory J. Smith, P.G.
Supervisor,
Water Protection
Program

Charles Ice, P.G.
Program Lead,
Groundwater Protection
Program