



Public Comment
UST Case Closure—Geremia Pool
Deadline: 9/17/10 by 12 noon

Countywide Services Agency

Environmental Management
Department

Environmental Compliance Division
Elise Rothschild, Acting Chief

County of Sacramento

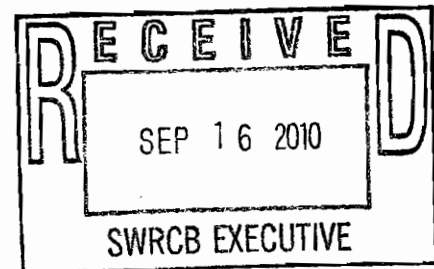
Steven C. Szalay, Interim County Executive
Bruce Wagstaff, Agency Administrator
Val F. Siebal, Department Director

September 15, 2010

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
Sacramento, CA 95814
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Sacramento, CA 95812-0100
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Dear Ms. Townsend:

**SUBJECT: October 19, 2010 Board Meeting
UST Case Closure
Geremia Pools, Inc.
3264 Ramona Street, Sacramento, CA
USTCF Claim No. 15879**



The Sacramento County Environmental Management Department (EMD) is writing to provide comments on the proposed UST case closure cited above. Our comments are both general and specific and are presented following.

General Comments

Previous State Water Resource Control Board (SWRCB) UST closure petition decisions have relied on the concept, first expressed in the 1998 *Walker* decision that:

“The approximate time period in which the requisite level of water quality for dissolved petroleum hydrocarbons and oxygenate compounds will be met is estimated to be decades to hundreds of years. Though the requisite level of water quality has not been met, water quality objectives will be achieved via natural attenuation in decades to hundreds of years. This is a reasonable period in which to meet the requisite level of water quality because the affected groundwater is not currently being used as a source of drinking water and it is highly unlikely that the affected groundwater will be used as a source of drinking water in the future.”

We interpret "decades to hundreds of years" to mean "less than a thousand years". In the Geremia Pools, Inc. case, at the present time, a declining trend cannot be demonstrated. One well appears to have an increasing trend. In addition, a human health risk assessment has not been completed. Because some hydrocarbon concentrations in groundwater are increasing, it is impossible to predict with any certainty that the requisite water quality objectives will be met within decades to hundreds of years. Therefore it would appear to be illegal to close the site.

Conflict of Interest

It presents the appearance of a conflict of interest that the SWRCB, which administers the UST Cleanup Fund, and is under pressure to limit expenditures from the Cleanup Fund due to revenue shortfalls, is also the Agency evaluating site closure. Objectivity can be lost when the Agency disbursing Fund revenue (SWRCB) is also the agency closing the site (SWRCB). We suggest legislation to transfer the administration of the UST Cleanup Fund to another State Agency to avoid conflict of interest. We also request that the State Office of Administrative Law (OAL) render an opinion on this apparent conflict of interest, and that the SWRCB suspend consideration of all Cleanup-Fund-Manager recommended closures until OAL rules on the conflict of interest issue. Of course, if OAL has already ruled on this issue and we are unaware of it, conflict may be moot.

As an example of reasoning that may be in conflict of interest, SWRCB staff, in commenting to your board on a closure petition wrote:

"To remove all traces of residual petroleum constituents at the site would require significant effort and cost. If complete removal of detectable traces of petroleum constituents becomes the standard for UST corrective actions, however, the statewide technical and economic implications would be enormous. For example, disposal of soils from comparable areas of excavation throughout the state would greatly impact already limited landfill space. In light of the precedent that would be set by requiring additional excavation at this site and the fact that the beneficial uses are not threatened, attaining background water quality at this site is not feasible" (Petition of Marvin Shulman, Former Gasco Station, 505 30th Street, Sacramento).

Conflict with SWRCB Resolution 96-79, Containment Zone Policy

SWRCB resolution 96-79, amending Resolution 92-49, established a containment zone policy for sites where it was deemed not feasible to attain background water quality. Containment zone sites are required to perform monitoring to assure that contaminant plumes are not migrating beyond the site boundaries. It appears that with the current proposed closure, the SWRCB is creating a de facto containment zone without requiring all

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the requisite steps required by resolution 96-79. As stated in the California Regional Water Quality Control Board, San Francisco Bay Region April 2, 2008 *Executive Officer's Report*

"The "non-attainment area" policy was established by the Board in a 1995 Basin Plan amendment. Its purpose was to cope with groundwater contamination that resisted cleanup, despite reasonable cleanup efforts. The policy was set aside by the State Board in 1996 when it established a "containment zone" policy to take the place of similar efforts by various regions....as a practical matter, very few VOC-impacted sites make use of non-attainment areas or containment zones, and they have been supplanted by in-place cleanup methods as well as "monitored natural attenuation" approaches (emphasis mine)"

If SWRCB believes that impacted groundwater like the subject case are not worth the cost of protecting at the present time and are unlikely to impact more immediately useable aquifers, then it seems a better resolution is to de-designate such groundwater as a potential drinking water source, revise the Porter-Cologne Act, adopt a formal resolution regarding "low-risk" sites, or follow the containment zone policy established by Resolution 96-79. While some of these solutions would require more time and effort than administrative solutions, it would solve the problem of closing sites where groundwater cannot reasonably be projected to meet WQOs before use.

If you have any questions regarding the above comments, you may contact me by telephone at (916) 875-8506, or by e-mail at marcusb@saccounty.net.

Sincerely,



Barry Marcus, P.G.
Supervising Environmental Specialist
Local Oversight Program

BIM:bm

c: Cori Condon, CVRWQCB
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