

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
NOVEMBER 6, 2012**

ITEM 6

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION DIRECTING ADDITIONAL ACTIONS TO IMPROVE THE UNDERGROUND STORAGE TANK PROGRAM

DISCUSSION

The proposed Resolution is to approve a Plan ([Attachment](#)) that: (1) implements the Low-Threat UST Closure Policy (Low-Threat Closure Policy) adopted by the State Water Board under [Resolution No. 2012-0016](#), and (2) summarizes other actions to improve the administration of the Underground Storage Tank (UST) Program. The Plan is intended to provide consistent application of the Low-Threat Closure Policy and consistent implementation of the UST program in general, throughout the state. The Plan's major elements related to implementing the Low-Threat Closure Policy are to specify the roles and responsibilities of the agencies in implementing the Low-Threat Closure Policy. The Plan's major elements related to UST Program improvement are to provide: (1) focus on high-priority cases (such as impacted drinking water wells, other human health impacts, and sources of free product still remaining in place), and (2) for development of Path to Case Closure Plans for each open case, including specific milestones and timelines.

The proposed Resolution also directs State Water Board staff and regulatory agencies (Regional Water Boards, local oversight program agencies, and other local agencies) to aggressively implement the Plan and to take a number of additional actions to improve the UST Program.

POLICY ISSUE

Should the State Water Board adopt the proposed Resolution approving the Plan and directing additional actions to improve the UST Program?

FISCAL IMPACT

The costs of the actions specified in the proposed Resolution are expected to be absorbable.

REGIONAL BOARD IMPACT

Yes, all Regional Boards.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed Resolution.

State Water Board action on this item will assist the Water Boards in reaching Goal(s) 2, 5, and 6 of the Strategic Plan Update: 2008-2012 to improve and protect groundwater quality in high-use basins by 2030, improve transparency and accountability, and enhancing consistency across the Water Boards to ensure our processes are effective, efficient and predictable.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2012-

DIRECTING ADDITIONAL ACTIONS TO IMPROVE THE UNDERGROUND STORAGE TANK CLEANUP PROGRAM

WHEREAS:

1. [Resolution Nos. 2009-0042](#) and [2009-0081](#) were adopted by the State Water Resources Control Board (State Water Board) on May 19, 2009, and November 17, 2009, respectively, and directed numerous actions to improve the administration of the Underground Storage Tank (UST) Cleanup Program finding that UST cleanups are taking too long to complete.
2. [Resolution No. 2012-0016](#) was adopted by State Water Board on May 1, 2012 adopting the Low-Threat Underground Storage Tank Case Closure Policy (Low-Threat Closure Policy), which is a state policy for water quality control. The Low-Threat Closure Policy became effective on August 17, 2012. Corrective action directed pursuant to Health and Safety Code section 25296.10 must be consistent with state policies for water quality control, including the Low-Threat Closure Policy.
3. Chapter 16 of Title 23 of the California Code of Regulations (UST Regulations) contains corrective action requirements. The UST Regulations require that Corrective Action Plans (CAPs) submitted to Regional Water Boards and local agencies by responsible parties include cost-effective methods for cleanup of unauthorized releases. Regional Water Boards and local agencies shall concur with CAPs that adequately protect human health, safety and the environment, and beneficial uses of water or direct that the CAP be modified. The implementation of the CAP consists of carrying out the cost-effective method for cleanup.
4. Under Health and Safety Code authority, the Regional Water Boards and local agencies, including Local Oversight Program (LOP) agencies (collectively, "regulatory agencies"), direct corrective actions to remediate soil and groundwater at petroleum UST sites that have had unauthorized releases.
5. A number of regulatory agencies have already made significant progress in closing their low-threat cases.
6. Water Code section 13360 prohibits Regional Water Boards from specifying, but not from suggesting, methods that a responsible party may use to achieve compliance with cleanup requirements.
7. Improvements to the UST cleanup program are necessary and must be verified and tracked with performance measures and appropriate reporting.
8. The Health and Safety Code section 25299.39.2 requires that the State Water Board's manager of the UST Cleanup Fund perform reviews of claims open for five years or more and recommend case closure to the State Water Board for appropriate cases. It also provides for closure by the State Water Board of these UST cases.

DRAFT

9. The State Water Board has the authority to review and close petroleum UST cases under its own authority, pursuant to Health and Safety Code section 25296.10.
10. The Low-Threat Closure Policy is intended to increase UST cleanup process efficiency, to preserve limited resources for the mitigation of releases posing a greater threat to human and environmental health. The Low-Threat Closure Policy defined criteria for closure of low-threat UST cases.
11. There are limited resources available for cleanup of USTs. The UST Cleanup Fund is the primary funding source for regulatory oversight of UST cleanups by (1) Water Board staff as direct funding, (2) LOP agencies through contracts, and (3) other local agencies through reimbursement of their fees to Fund claimants. More than \$597 million have been expended to date for regulatory oversight and UST Cleanup Fund administration, with a current annual cost of more than \$43 million.
12. In addition, the UST Cleanup Fund reimburses reasonable and necessary costs for corrective action of those cases that are eligible for the UST Cleanup Fund. More than 15,500 claims have been found eligible over the 20-year life of the UST Cleanup Fund. Of the eligible claims, more than 8,000 have been closed, with a total reimbursement of approximately \$1.4 billion (average \$180,000/case). More than 3,400 claims are currently active and have been reimbursed \$1.8 billion (average \$500,000/case) to date. The UST Cleanup Fund has reimbursed the closed and currently active claims \$3.2 billion over 20 years.
13. Projected UST Cleanup Fund costs to reimburse claims total about \$3.5 billion. This includes projected reimbursements to close out the currently active claims of \$1 billion. This is in addition to the \$1.8 billion expended to date for a total of \$2.8 billion (estimated average \$750,000/claim). The projection also includes reimbursement of more than 4,500 claims that are on the Priority List (waiting list for claim activation) at a cost of about \$2.5 billion. The UST Cleanup Fund is scheduled to sunset on January 1, 2016. The projected funds available for claim reimbursement through the sunset date is about \$660 million, so the unmet demand for reimbursement of corrective action costs is about \$2.84 billion. The current approach to corrective action contributes significantly to the high corrective action costs.
14. U.S. EPA data indicate that the average UST case has been open 17 years. For UST cases with claims active for over five years, reviews by the UST Cleanup Fund manager recommend that approximately one-third pursue the current work phase, approximately one-third take additional corrective action to address UST releases, and approximately one-third pursue closure. Cases that are appropriate for closure remain open, unnecessarily burdening responsible parties and the UST Cleanup Fund. Appropriate closure also makes available resources to agency staff to oversee necessary corrective action. Remaining funds should reimburse corrective action for releases that have affected beneficial uses of public supply wells and domestic wells, and other uses that significantly affect human health.
15. The ultimate disposition of all cleanup sites is case closure when they no longer pose a significant impact on human health, safety or the environment. In the very short term, regulatory agencies should focus on evaluating cases under the Low-Threat Closure Policy, closing those that meet the Policy as soon as they do. The goal is to clean up their higher-threat cases so that they become low-threat cases that can then be closed.

DRAFT

16. Regulatory agencies, which perform direct oversight of corrective action at these sites, are in the best position to ensure that case closure related activities required by the Policy, such as monitoring well destruction, are completed.
17. AB 1701 (chapter 536, statutes of 2012) will take effect January 1, 2013.
18. AB 1715 (chapter 237, statutes of 2012) will take effect January 1, 2013. It limits new directives by regulatory agencies for cases that the Fund Manager has recommended for closure.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the [Plan for Implementation of Low-Threat Underground Storage Tank Case Closure Policy and Additional Program Improvements](#) (Plan).
2. Directs the Executive Director or designee to update the Plan as appropriate and to inform the State Water Board of each update.
3. Directs State Water Board staff to:
 - a. Aggressively implement the Plan.
 - b. Review the regulatory agency's decision when a regulatory agency has denied a closure request submitted by a responsible party pursuant to the Low-Threat Closure Policy, and propose closure as appropriate within six months of the update to GeoTracker indicating closure denial.
 - c. Implement performance measures as follows:
 - i. In consultation with regulatory agencies, develop performance measures for the implementation of Resolution No. 2012-0016 as well as additional elements contained in the Plan, including measures for timely oversight of monitoring well destruction and waste removal;
 - ii. By means of GeoTracker, track performance measures; and
 - iii. Report results to the State Water Board on the performance measures on a quarterly basis in the Executive Director's report and in the semi-annual UST updates directed by Resolution No. 2009-0042.
 - d. Notify regulatory agencies regarding the enactment of AB 1715 (chapter 237, statutes of 2012) and AB 1701 (chapter 536, statutes of 2012).
 - e. Take all appropriate steps to implement AB 1701 and AB 1715.

DRAFT

4. Repeals Resolved Clause No. 5 of Resolution No. 2012-0016 and adopts the following:

Directs the regulatory agencies to review all cases in the petroleum UST Cleanup Program using the framework provided in the Low-Threat Closure Policy, except those cases that a Review Summary Report has recommended be considered for closure. This first annual review shall be accomplished within existing budgets and be performed no later August 16, 2013. These case reviews shall, at a minimum, include the following for each UST case:

 - a. Determination of whether or not each UST case meets the criteria in the Low-Threat Closure Policy or is otherwise appropriate for closure based on a site-specific analysis. Documentation of this determination in GeoTracker is required if the case is not closed by August 16, 2013; and
 - b. If the case does not satisfy the criteria in the Low-Threat Closure Policy or does not present a low-risk based upon a site-specific analysis, impediments to closure shall be identified using the "Online Checklist" in GeoTracker, which is publicly available on the State Water Board's web site.
5. Commends those regulatory agencies that have already made significant progress in closing their low-threat UST cases, and directs all regulatory agencies to:
 - a. Aggressively implement the State Water Board Low-Threat UST Case Closure Policy and the Plan; and
 - b. Pursuant to AB 1715, upon receipt of UST Cleanup Fund manager Review Summary Report recommending case closure, refrain from issuing new corrective action directives or enforcing existing directives at the site before the State Water Board issues a decision on closure, unless one or more of the conditions in Health and Safety Code section 25299.39.2(a)(4)(A-D) is met.
6. Additionally directs each Regional Water Board and LOP to:
 - a. Proactively manage each case under its jurisdiction as set forth in the Plan. It is the responsibility of each agency to ensure that all UST cleanup cases have a Path to Closure Plan, with milestone dates by calendar quarter, which will achieve site cleanup and case closure in a timely and efficient manner that minimizes the cost of corrective action.
 - b. Implement procedures and strategies that will achieve the following results:
 - i. Minimize the number of open UST cleanup cases that will remain at the time the Fund sunsets;
 - ii. Minimize the number of water supply wells whose beneficial uses are impacted by releases from USTs;
 - iii. Control human health exposure to releases from USTs as soon as feasibly possible;
 - iv. Minimize the cost of compliance with agency directives; and
 - v. Minimize the agency response time to closure requests, workplan approvals, and other related items.

DRAFT

- c. Assist responsible parties by providing technical assistance when requested, including assistance with identifying cost-effective cleanup methods that may be used to achieve compliance with regulatory cleanup requirements.
- d. Prior to issuing new directives, review the Policy criteria and, for cases that are eligible for the UST Cleanup Fund, the most recent Review Summary Report and the annual UST Cleanup Fund budget for the case.
- e. Submit to the Executive Director of the State Water Board a UST oversight agency self-evaluation report on compliance with this resolution semi-annually by January 1 and July 1 of each year that reports its performance in meeting the requirements of this resolution.
- f. Oversee closure activities including monitoring well destruction so that they are completed within six months after the State Water Board orders case closure.
- g. For cases where the regulatory agency recommends closure based on the review required by Resolution No. 2012-0016, promptly close each case.
- h. For cases where the regulatory agency does not recommend closure:
 - i. Develop a Path to Closure Plan by December 31, 2013, that addresses the impediments to closure identified pursuant to Resolution No. 2009-0042;
 - ii. After the appropriate field has been created in GeoTracker, use GeoTracker to promptly identify cases that receive a closure request from a responsible party; and
 - iii. Prioritize cases as follows:
 - Cases where beneficial uses of drinking water wells have been affected or there are significant impacts to human health;
 - Cases where the sources of free product are still in place; and
 - Other cases where corrective action is critical prior to sunset of the UST Cleanup Fund (i.e., high-threat cases with no viable responsible party).

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 6, 2012.

Jeanine Townsend
Clerk to the Board