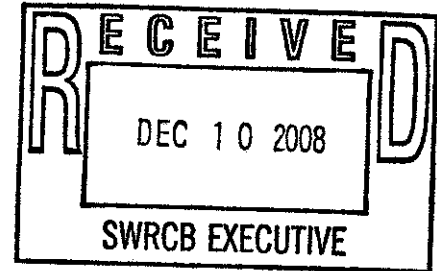


Dave Zedrick  
ENVIRONMENTAL RESOURCE COUNCIL  
PO Box 7010  
Santa Rosa, CA 95407  
(707) 528-3677  
[Davezdps@aol.com](mailto:Davezdps@aol.com)

December 3, 2008

Via E-mail  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



**Re: Comments Concerning Resolution 68-16**

Dear Ms. Townsend:

On behalf of the Environmental Resource Council (ERC), we are writing to provide comments regarding the State Board's review of Resolution 68-16. In general, we do not believe the policy needs to be changed. If anything, it simply needs some guidance in its implementation. If it is changed or a guidance document is prepared, we offer the following commentary.

#### **The Interests of the ERC**

The ERC is a non-profit, non-partisan, public interest, grass roots, public-private partnership dealing with the issue of leaking underground storage tanks. While the ERC was very active in educational, legislative and policy efforts in the 1990s, in recent years, the ERC's activities have been significantly limited.

However, ERC members continue to monitor statewide cleanup goals and objectives for the purpose of providing relevant educational comment and insight into the regulatory process. The ERC's core view is that history has a strange way of repeating itself and, if policies are not monitored, mistakes of the past may be repeated.

The ERC's primary goal in its active mode was to advocate good science and common sense in the implementation of California's underground fuel tank cleanup programs. The type of educational programs ERC advanced included risk-based corrective action, where sites representing the greatest risk to public health and the environment were elevated to a higher priority for cleanup than sites representing little

or no risk. Likewise, the ERC advanced the concept that good science should be employed in the process, and, as new technological and scientific advances are discovered, they are implemented into cleanup programs.

One of the difficulties the ERC faced in advancing its educational perspective was staff implementation of Resolution of 68-16. The way Resolution 68-16 was interpreted and implemented by many regional boards and other regulators was as an absolute and inflexible policy. Basically, everything in the groundwater had to be cleaned up to non-detect, no matter what the risk and no matter what the cost. Good science and common sense were not given a seat at the table.

Furthermore, all cleanup sites were treated the same; there was no such thing as a high-risk or low risk site. They were all considered high-risk sites. Any test results above the drinking water level standard would require that the site be cleaned. Again, risk was ignored, as was common sense.

ERC's initial concern related to the lack of actual benefit being observed in the implementation of many of these policies, coupled with clear cases of significant environmental detriment. For example, ERC pointed out that the use of what was then the preferred technology, dig and haul, provided many more problems than solutions.

As a practical matter, all that people did was engage in expensive and dangerous constructions activity to load lightly contaminated soil into trucks, where it was trucked hundreds of miles away (often to low income neighborhoods) to be deposited in someone else's backyard. Along the way, the real risks of the "remediation" were significant, whereas the benefits of the claimed remediation were often nonexistent.

After extensive educational, legislative and policy-making efforts over a number of years, many of the state's policies were revised to reflect a more "good science and common sense" oriented approach, rather than a strict "anything at any cost" approach. However, as time has passed, it appears we risk falling back into the same unproductive approach that led to the problems the ERC sought to quell.

In that regard, the ERC offers the following written comments, which were presented orally at the board workshop in Sacramento on November 17, 2008, by Hans Herb.

#### **The Need for Analysis of Net Environmental Benefit**

Throughout its 18-year history, the ERC has witnessed many an environmental travesty. However, some of the worst environmental travesties have been committed in the name of "environmental protection."

As an example, for many years, the preferred solution to groundwater contamination was to remove the contamination from the groundwater and place it into the air. Indeed, most of the accepted groundwater treatment programs relied heavily, if not exclusively, on contaminants being released into the atmosphere.

Sometimes the cleanup was by simple aeration, but other times it was done by things like dirt burning, vapor extraction, catalytic oxidization, etc. The point is, because we were worried about water, and not worried about the air, we simply moved our mess (contaminated groundwater) to someone else's media (the air).

Perhaps not willing to be outdone, the air people did the same thing. Through their efforts, MTBE was introduced into our fuel, which caused massive contamination of California's groundwater supply. Again, the reason was simple. The air board was worried about the air and not worried about the groundwater.

Interestingly, both the air and water people did a great job of contributing heavily to our carbon footprint and the global warming problem. At an earlier time, when groundwater people promoted the use of equipment such as dirt burners to clean up toxic soil, agencies over at the air board required the fumes from dirt burners be superheated before they are discharged. This resulted in exponentially much higher levels of fossil fuels needing to be used to generate the types of heat necessary to destroy the soil vapors. The net impact was that both the water protection and air protection people did a great job of enhancing the current global warming problem.

The bottom line should be that any policy we adopt that is purportedly designed to protect the environment must consider the net overall environmental benefit. We need to stop looking at problems at a micro level and start looking at problems at a macro level. The question should not be whether something could be done to address the immediate problem, but while considering alternatives and the long-term consequences of the fix, should something be done at all?

If one looks at a global perspective and determines that the cure is worse than the problem, then we should make every effort to make sure we do not implement a policy that makes the world a worse place, while waiving our environmental banner.

Assuming that Resolution 68-16 will be revised (without commenting as to whether or not it should be revised), if it is revised (or if a guidance document is issued concerning its implementation), the policy should clearly delineate that all impacts must be considered when relying Resolution 68-16 for its core environmental message. In other words, if someone is going to say, "I'm protecting the environment by using 68-16 to require a particular solution, let's make sure that 'solution' isn't creating a new or different problem for some other agency or individual and certainly not for our society at large."

### The Need for Cleanup Prioritization

One of the unfortunate aspects of Resolution 68-16 is its failure to recognize any type of priority scheme. Imagine if we lived in a world where the word "cancer" had one connotation – the person was going to die. It did not matter whether it was a small melanoma that could be easily removed in a doctor's office or a malignant pancreatic tumor that was likely to result in the death of the patient. Does it really make sense to treat all cancers the same? We don't think so.

Life represents a complex scheme of different risks. Some are more significant than others. Some are more worthy of protection than others. As a practical matter, our world is full of risk and yet full of risky activity. The question then becomes why we engage in risky conduct: the answer is that a certain amount of risk is acceptable because the risk is outweighed by the benefits.

Let's start with an obvious risk that we can all relate to – the automobile. By all accounts, the automobile has become the absolute worst offender of the environment. Everything about the automobile screams out environmental harm. Whether it is digging mines in the west to harvest ore and other raw materials to be transported back to the coal-fired plants in the east to make the steel for cars, the cutting down of rain forests for the raw materials they provide, or the human error problems such as the Exxon-Valdez oil spill in Alaska that occurred while delivering crude oil needed to support the use of the automobile (not to mention hundreds of thousands of underground storage tanks needed to store the crude oil), it is clear that the invention and use of the automobile has led to the creation of a monumental and very complex disaster for our environment.

More importantly, even when operated normally in our society, automobiles kill almost 50,000 people in the United States every year. Clearly, if someone wanted to apply a risk analysis, the answer to this problem would be simple – eliminate the automobile and a huge number of problems will be solved. The question then becomes, why don't we?

The answer, of course, is that the car also provides a large number of benefits, so we weigh the harm caused by the automobile against the benefit created by the automobile, and we ultimately conclude that we are going to continue to drive our cars, notwithstanding the harm that will be created by this activity. Does it not make sense to use the same benefit/harm analysis when evaluating a potential environmental cleanup that is associated with the use of the automobile?

True, good clean water is valuable and should be protected to the maximum extent feasible. But, should we pollute the air, kill people on the highways and dump contaminants onto someone else's property to fix the problem? Moreover, shouldn't we

treat the groundwater resource the same way doctors treat sick patients? In other words, shouldn't we treat the sickest patients first? Unfortunately, Resolution 68-16 requires the state to do the opposite. All patients are treated the same, whether they are having a heart attack, choking to death or have a cut finger. Everything that is not well needs to be addressed, and all of them receive the same level of care and priority.

Clearly, the present policy interpretation of Resolution 68-16 is not sound environmental policy, nor is it good public policy. Sound environmental policy and public policy are not components of Resolution 68-16. However, in our view, they should be.

In the ERC's opinion, there are a couple of changes that either should be made to the resolution, or put into a guidance document. The changes we would propose are that Resolution 68-16 should recognize the value of providing a common sense application and a prioritization process, which means we will do no harm to others to "fix" our problems. Further, the most dangerous and risky problems are the ones to be addressed first, and the ones of lesser concern and importance are the ones to be addressed later and as resources permit.

### **Science and Common Sense**

Part of the problem of black and white, yes and no, for/against policies is that they fail to incorporate good science and, most of all, common sense. There are many things we do as a society. Some of them make a lot of sense. Many do not. However, one of the reasons we have boards, commissions, courts and others is for them to interpret and apply the human factor of common sense into our decision-making activities. If all we needed were rules, we could eliminate a whole body of administrators, administrative law, courts, judges, juries, etc. We simply would have a rule and the police. You either follow the rule or are picked up and punished for violating the rule.

Unfortunately (or fortunately), because we live in a constitutional democracy and have a right to due process, we cannot solve all of our problems by merely writing rules. At some level, we are forced to rely on human judgment and common sense in the decision-making process. It is unfortunate that human judgment and common sense are exactly what are missing in Resolution 68-16.

The rule, on its face, recites the generic need to consider other factors, and then seems to ignore them with its broad sweeping application of an absolute unbalanced direction. While the goals of Resolution 68-16 are laudable, its implementation seems to be a wholly irrational failure.

A good example of the irrational failure might be two tanks buried next to each other in the ground. One tank contains waste affluent from a home (a septic tank). The other tank contains fuel to heat that home. If one tank leaks, even a little bit, we throw a regulatory conniption fit. We provide up to \$1.5 million in state funding to begin immediately addressing the cleanup.

At the same time, the tank directly next to it is designed but for one purpose – to leak. It is a system of intentionally spreading waste throughout the ground. We provide no funding for the cleanup of the septic tank because, supposedly, that is a “good” discharge,” whereas the discharge from the heating oil tank is a “bad” discharge.

From a purely scientific standpoint, this entire concept is insane. If creating a condition of waste or nuisance in the groundwater from a leaking tank is something that needs to be addressed, then it needs to be addressed. If it is not something that needs to be addressed, then the same is true.

The idea that we would spend millions of dollars cleaning up one type of release, while at the same time continuing to install and operate adjoining tanks designed for creating a very similar type of release, is almost beyond comprehension. Yet, that is exactly what happens every day in California.

Simply put, if we agree that some discharges from septic tanks are okay, then we should agree that some discharges from fuel tanks are okay. On the other hand, if we conclude that no discharges from fuel tanks are okay, then we certainly should not allow any discharge from septic tanks. To do anything else flies in the face of science and common sense.

The ERC is not suggesting people be allowed to take irrational or foolish actions. The ERC is suggesting that the state adopt a policy of adding the logical and common sense step of approaching each situation from a rational decision-making process. While we should do all we can to minimize impacts to our water supply, we must do so with the idea of always using the best available science and the most logical of common sense.

### Conclusion

The ERC and our members believe in sound environmental cleanup policies. We understand and recognize a need to maintain adequate drinking water supplies, as well as adequate water resources for all of the needs of our society. What we disagree with about many of the current policies is the absence of good science and common sense.

The ERC believes all environmental programs should be analyzed from a net environmental impact approach. Simply put, let's make sure the cure is not worse than the problem.

Second, the ERC believes that all environmental programs need to be prioritized for the best public benefit. The most serious problems are the ones that should receive regulatory and financial attention first. Only when those are resolved, should we put our efforts into lower risk problems.

The incorporation of science and common sense into California's anti-degradation policy will benefit all Californians in a better and more logical way today and into the future.

The ERC wishes to thank the Board for the opportunity to comment on this important issue.

Respectfully submitted,

A handwritten signature in black ink that reads "Dave Zedrick" with a stylized flourish at the end.

Dave Zedrick

Cc: ERC Members

SWRCB.Ltr re 68-16.112408