



March 19, 2012

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



Comment re: Low-Threat UST Closure Policy

Dear Ms. Townsend:

The EquoLogic Group (EquoLogic) respectfully submits the following comments regarding the State Water Resources Control Board's (Board's) Draft Low-Threat Underground Storage Tank (UST) Closure Policy and the associated Substitute Environmental Document (SED).

Low-Threat UST Closure Policy

EquoLogic agrees that it is appropriate for the Board to establish standardized closure criteria for certain types of sites with unauthorized releases of petroleum from USTs that present a low threat to human health, safety, and the environment. However, EquoLogic recommends that the following comments be addressed prior to approval of the draft Low-Threat Closure policy.

The draft Low-Threat Closure policy references California Health and Safety Code Section 25296.10 as the basis for low-threat closure. However, the draft policy does not clearly require compliance with HSC Section 25296.10 or the regulations promulgated by that section, including those contained in Title 23 CCR Chapter 16, which clearly prescribe the necessity for the proper development and implementation of a corrective action plan (CAP) prior to closure. Without this specific requirement, there is some likelihood that the Board will be asked to close many sites for which a CAP has never been developed or implemented, and for which an appropriate evaluation and scheduled implementation of corrective action alternatives has never been completed. The policy does reference the importance of Site Conceptual Models (SCMs), which can be contained in a CAP, but a SCM does not constitute a CAP, and neither do any of the other general criteria recommended for consideration in the draft policy.

Another important aspect of requiring compliance with HSC Section 25296.10 is the fact that this statute also requires compliance with the regulations adopted pursuant to HSC Section 25299.3 (i.e. 23 CCR Chapter 16), and that prior to closure, corrective action has been consistent with *"any applicable waste discharge requirements or other order issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, and all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code."* This requirement is important to preventing abuse of the policy, particularly for cases in which there has been a demonstrated pattern of recalcitrance.

The draft policy should specifically require compliance with HSC Section 25296.10, including the preparation and implementation of a Corrective Action Plan. Approval of the draft policy in its current form, without specifically requiring compliance with HSC Section 25296.10 and 23 CCR Chapter 16, would threaten to undermine the statute and regulation that form the basis of the policy, and would no doubt lead to abuse of the policy, and litigation, as a basis for non-compliance.



The draft Low-Threat Closure policy has considered the effects of vapor intrusion and the potential impacts to air quality. However, it is not clear whether all appropriate regulatory agencies and stakeholders have been consulted in developing the draft policy. It would be unfortunate for the Board to approve a program without proper consultation, only to find out later that it inadvertently overlooked some fundamental aspect of the program, similar to when the California Air Resources Board (CARB) inadvertently overlooked the transport of MTBE in groundwater when it approved MTBE as a fuel oxygenate, without properly consulting the Board or the appropriate experts and stakeholders. The Board should require and verify proper consultation with CARB, the Air Pollution Control Officer's Association, the Department of Toxic Substances Control, and any other appropriate regulatory agency and/or expert stakeholder.

The Board should require that a standard institutional control mechanism be employed for all Low-Threat Closures. Without proper institutional control, there is a high likelihood that disclosures will not be properly made during property transfers, and that the effects of residual contamination will be ignored until a negative impact has been inadvertently exposed.

The Board should require that a reserve account be created and maintained in the California UST Cleanup Fund (Fund) in order to mitigate the potential impacts of Low-Threat Closures (as further discussed in the next section of this letter). This reserve fund should be used to study the long term impact of low-risk closure and the issues created by Low-Threat Closure, including SCM and fate and transport verification, land usage issues, liability issues, and the success or failure of institutional controls.

Substitute Environmental Document (SED)

The draft Substitute Environmental Document (SED) seems to overlook potentially significant impacts (or at least unknown impacts) of the policy, individually and cumulatively, as described in CEQA checklist Items 8 (Hazards), 9 (Water Quality), and 10 (Land Use). The Board should require Mitigation Funding to fund the study and mitigation of potential impacts of the Low-Threat Closure policy. A Low-Threat Closure account could be set up within the UST Cleanup Fund to finance the appropriate mitigation efforts. A residual reserve could be set aside for eligible claimants, and ineligible claimants could self-fund a mitigation off-set for individual Low-Threat Closures.

Specifically, Item 8 (b), "Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?" has not been documented through an analysis of available facts, and should require mitigation to at least study the effect and impacts of Low-Threat Closures. Similarly, impacts in the context of Items 9 (b) and 10 (b) are currently undocumented but likely on at least an individual - if not a cumulative - scale, and each may require mitigation, which will also require funding.

Thank you for considering these comments provided by EquoLogic. Please do not hesitate to call or contact us at (408) 679 2314 with any questions you may have.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erin Garner", written over a light blue circular stamp.

Erin Garner, PG, HG
Principal Geologist
The EquoLogic Group