Public Comment
Low-Threat UST Case Closure Policy
Deadline: 03/19/12 by 12:00 PM

Klinedinst
ATTORNEYS AT LAW

801 K Street, Suite 2800
Sacramento, California 95814
(916) 444-7573 Ext. 4203
(916) 444-7544 Fax
jscott@klinedinstlaw.com

W. Jason Scott, Esq.

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

Subject: Low-Threat UST Closure Policy

Dear Ms. Townsend:

I am an attorney who represents property owners of current UST gas stations, commercial realtors and commercial property appraisers. As you know, the State Water Board (Board) is reviewing (in public comment now) a "low risk" policy for petroleum contaminated sites. If this policy is approved in its current form, approximately 70% of petroleum contamination sites will be categorized as a "no further action required" site and closed by the State of California.

There are some environmental companies in favor of this policy (Antea Group, ERI, Stantec, CRA etc.), and it is well known that these companies have contracts with major oil companies. As for Antea Group, they have a state wide contract for all Conoco Phillips' contaminated sites where they have accepted the environmental liability for all cleanups valued at $10 million. If the "low risk" policy is approved, Antea Group will make approximately $6 million in profit over night. This type of windfall profiting is true with other environmental companies that have major oil contracts as well.

If a particular site is deemed closed under this new "low risk" policy, what does that do to property values with elevated soil and groundwater contamination remaining? I have talked to commercial property appraisers and they have said that this would substantially reduce the property value regardless of a "low risk" closure being issued. The bottom line is that people do not want to buy real estate that has any contamination, low risk or otherwise.

Once the site is granted "low risk" closure with these elevated levels, the site is no longer eligible for State Funding (unless they have a new release). These sites will continue to pay into the Fund (two cents per gallon fee) but will no longer be eligible for reimbursement of any costs associated with potential claims, cleanups, etc.

The UST Fund was initiated, in part, to help UST owners have their sites restored to pre UST conditions to save property values. Most UST clients that I have talked to are very nervous that this "low risk" policy will leave them with real property that is not free of petroleum contamination, thus diminishing their property values and resulting in potential ongoing liabilities.

Potential purchasers of these "low risk" sites will either want additional cleanup, a drastically reduced purchase price, or a substantial amount of money left in escrow to cover possible future cleanup costs. The few banks I have discussed this with are national banks and they have indicated that they are governed by federal standards which outline maximum concentrations levels (MCLs) for loans, etc. If a piece of property has MCLs that exceed the federal guidelines, then the banks will not approve loans, regardless if the State has issued a "low risk" closure order.

Obviously many sites will achieve site closure through the Fund given the proposed "low risk" policy. However, the issues and concerns noted above must be contrasted against the potential benefits of these closures. When viewed in conjunction with the overriding founding principals of the UST Fund, the analysis weighs heavily against approving the "low risk" closure policy.

Respectfully,

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W. JASON SCOTT

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