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

DIVISION OF WATER QUALITY

March 5, 2012

STATE WATER RESOURCES CONTROL BOARD
Attn: Charles R. Hoppin, Chair
1001 I Street
Sacramento, CA 95812-0100



Re: Low Threat UST Closure Policy

Dear Mr. Hoppin:

Over the past 20 plus years, I have represented over 500 independent service station owners/operators throughout California. I presently represent 138 ExxonMobil Dealers in their acquisition of their service stations from Exxon Mobil. Litigation has been filed to prevent ExxonMobil from usurping the rights of my clients under both State and Federal law.

In order to obtain a level playing field, I must also take exception to the proposed Low Threat UST Closure Policy ("Policy") that will allow residual contamination to remain on site for a very long period of time. It is clear that ExxonMobil is going to use the Policy to hide from their obligations to cleanup the contaminated service stations. While you may not intend to favor ExxonMobil over the Dealer, your proposed policy will do exactly that.

Given the current conditions of the economy, it is difficult for my clients to obtain financing to purchase their sites. Given the proposed policy to allow residual contamination to remain on-site for a long period of time, it may be impossible to obtain financing. The lenders are concerned.

As retail marketers of motor fuels, my clients do not exist in a vacuum. My clients first need to exercise their rights to purchase their service stations sites under reasonable terms and conditions from ExxonMobil. In addition, my clients need to obtain reasonable financing to continue to operate businesses they have operated for many years while building "good will" with the motoring public. Literally thousands of hours of sweat equity and hundreds of thousands of dollars have been invested by my clients. Trying to accomplish these twin goals is being made far more difficult, if not impossible, by the proposed Low Threat UST Closure Policy.

It is unconscionable to have an oil company own/operate UST's at a location stretching over decades and then attempt to contract away their legal obligations. If the Retailer does not

agree to the non-negotiable terms and conditions, the Retailer is faced with a loss of his/her initial investment in his/her business and a loss of his /her income generated by the business. I oppose such shifting of environmental obligations by designated Responsible Parties.

While I realize that you are concerned with the efficiency of the UST Cleanup Fund, at some point you need to be aware of the social and economic environment that will be impacted by your actions and the actions of ExxonMobil. In addition, the cumulative effects of the proposed Policy need to be examined.

EXXONMOBIL SALE AND PURCHASE AGREEMENT

It is no secret that the oil companies have the upper hand in negotiations with individual service station Dealers. The one-sided contracts, entitled Sale & Purchase Agreements, shift the burden of environmental cleanup to the independent service station retailer. One of the pivotal issues in our discussion with ExxonMobil is whether or not the "base line" environmental reports are accurate in order to differentiate between "old" contamination caused by the oil company and "new" contamination that may be caused by the Dealer after he/she has purchased the site. This is compounded by the Policy's recommendation to consider existing contamination as "baseline" for the purposes of implementing the Policy.

To give you an idea of what the Dealer's are up against in their negotiations with ExxonMobil, I offer you the following so that you may understand the "environment" in which the independent retail service station dealers operate. I apologize for the long list of issues summarized below; but, they do serve to highlight the draconian terms and conditions under which an independent service station operator is forced to operate after purchasing a site from ExxonMobil.

- a) ExxonMobil will not provide a Phase II report on the site; however, they will allow the Dealer to fund a Phase II to define "existing" contamination.
- b) ExxonMobil will not provide any information on waste oil tanks, hoists or clarifiers.
- c) ExxonMobil will only take action to cleanup a site if and when an agency "directs" or "orders" a cleanup. The Dealer is contractually barred from negotiating with the agency regarding remediation activities.
- d) ExxonMobil specifically excludes "orphan tanks".
- e) An assumption is that the Dealer can access GeoTracker to obtain all relevant records. In practice, this is not always the case. Not all documents have been loaded on GeoTracker so the Dealer has a false sense of security when he/she locates no or minimal records on GeoTracker.

f) The Dealer must indemnify ExxonMobil for all contamination other than the documented "Baseline Contamination". This exposes the Dealer to migration of non-petroleum contamination or petroleum contamination from an off-site source.

g) ExxonMobil is transferring their environmental responsibility to Circle K, who will serve as a distributor for ExxonMobil. The Dealers will no longer have an agency designated Responsible Party to turn to for assistance; rather, they will have to negotiate with Circle K for cleanup of existing contamination. ExxonMobil will have no responsibility for contamination.

h) The Dealer is required to execute a "release" with ExxonMobil that precludes any legal action to recover damages for contamination, diminution of value, or environmental liability. Specifically excluded are consequential damages.

i) Absent proof that existing contamination is present, ExxonMobil and Circle K will accept no responsibility for "unknown contamination".

j) Engineering and Institutional controls may be placed on the site by ExxonMobil. These controls limit development and potentially negatively impact the ability to finance the property. These decisions may be arbitrary. There is no process for a Dealer to appeal. The time frame for the restrictions is 99 years.

k) The Dealers may have the added burden of replacing the UST.

l) If the Dealer performs "Elective Work", he/she becomes the generator of any waste. This is particularly unfair given that MTBE has not been stored or sold by the Dealer at any time during his/her ownership of the property.

SWRCB CEQA SED

I am deeply concerned with the limited scope of the CEQA Scoping "Substitute Environmental Document" as it fails to account for the indirect economic and social changes and the cumulative effects resulting from the direct change brought about by the recommendation to allow residual contamination above water quality standards to remain in site to naturally attenuate over what appears to be a very long period of time.

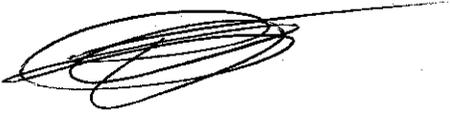
According to the material published in the SED and in the proposed Policy, levels of contamination in excess of published water quality standards will remain after the Low Threat UST Closure at a given site. This is unacceptable given the fact that a "reasonable time frame" remains elusive and undefined.

CONCLUSION

In order to protect my clients' rights, I need to ensure there is no violation of CEQA, water quality and/or policies as published by the SWRCB.

Absent a reasonable resolution of the imperfections of the proposed Policy, on behalf of my clients, I will reserve the right to pursue all remedies at law or at equity.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Thomas P. Bleau", written over a horizontal line.

Thomas P. Bleau, Esq.

Cc: Frances Spivey-Weber, Vice Chair
Tam M. Doduc, Member
Thomas Howard, Executive Director
Michael A. M. Lauffer, Chief Counsel
Kevin Graves, UST Program Manager