



# San Mateo County Health System

1/8/13 Bd. Mtg. Item 5  
UST Local Oversight Programs  
Deadline: 1/2/13 by 12 noon

January 2, 2013

State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100



**SUBJECT: Comments to Underground Storage Tank Local Oversight Program  
Procedures and Criteria for Certification**

Thank you for the opportunity to comment on the Underground Storage Tank Local Oversight Program (LOP) Procedures and Criteria for Certification to be considered by the State Water Resources Control Board (SWRCB) on January 8, 2013. San Mateo County participated in the agency roundtable of December 19, 2012 in order to gain more insight as to the justification for the criteria selected to be used to evaluate LOPs and to provide informal comments to SWRCB staff. Unfortunately, the justification provided by SWRCB staff for the criteria used to judge LOPs performance in the past and anticipate their ability to perform in the future was not justification but more accurately arbitrary “breaking points” as termed by SWRCB staff. In addition several suggestions that were provided in the roundtable that were justified were not apparently accepted by SWRCB staff for inclusion into this final version for public comment. Therefore, the criteria used by SWRCB staff seems intentionally directed at certain agencies rather than a justified process laid out that would enable an unbiased evaluation of which agencies have and will likely continue to perform appropriately on behalf of the SWRCB.

The first issue San Mateo County would like to address is the retroactive application of any criteria only after it is being established. This comes into play regarding the criteria for the closure rate of agencies over the past 1-, 3-, and 5-year time intervals. At no point in time has the SWRCB ever stated to the local agencies what would be an acceptable closure rate. To now implement a closure rate and to then potentially eliminate an agency for not meeting that rate in the past is an unfair application of a performance criteria. A performance criteria should only be used to evaluate an agency after it has been established and known to the agencies. Therefore, a closure criteria should only be used in the future audits outlined in the procedures.

The closure rate itself is one of the most troubling aspects of the criteria. When questioned about the specific value (9%) of the closure criteria SWRCB staff stated that when all of the local agencies are “lined up” there was a “nice breaking point at 9%”. Nowhere in AB1701 does it state that there needs to be a “breaking point” established in order to cut off certain existing agencies. This “breaking point” is clearly arbitrary. San Mateo County actually suggested in the roundtable a closure rate of 7%. This closure rate was justified by the fact that the USEPA lists this value as their own target closure

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rate in their Annual Agency Status Report (Federal Fiscal Year 2011/2012) as Footnote 3 which is displayed on your own website. In fact, this has been the case in each of the USEPA's Annual Agency Status reports since at least the first half of Federal Fiscal Year 2009/2010 if not earlier. The fact that the SWRCB gets its authority to oversee the Leaking UST Program from the USEPA it would seem to provide more than enough justification for using USEPA's 7% as the acceptable closure rate of local agency's past performance particularly in light of a dearth of communication from the SWRCB on this issue in the past. If the SWRCB wishes to use a higher closure rate such as 9% in the future during audits, then that should be stated potentially here in the procedures and criteria.

It is more than noteworthy to point out that should the proposed closure rate criteria be applied to all agencies overseeing leaking USTs then 3 out of the 9 Regional Water Quality Control Boards (RWQCBs) would fail to meet the criteria. We point this out to say that while a majority of the public, in the form of groups like CIOMA, state the locals are the problem, the reality is that the locals seem to mirror, if not outperform according to the USEPA's Annual Agency Status Report for 1- and 5-year closure rates, the work of the RWQCBs. Therefore, if the goal is to make sure the SWRCB had the best agencies working for it, then some sites would actually be transferring to local agencies from RWQCBs rather than the other way around. It doesn't make sense to transfer cases from an agency that the SWRCB determines is not performing to another agency that is potentially doing worse.

There is also the issue that elimination of specific agencies, and their caseworkers, would create a larger work load for the remaining agencies and caseworkers. In addition, any institutional knowledge an agency or case worker had for a site would be immediately lost with the new agency and staff having to start from the very beginning in order to provide appropriate professional oversight of the case. This does not appear to be in the best interest of the SWRCB if the true intent is to reduce the overall number of cases prior to the sunset of the Fund.

The date of August 17, 2012 for the cutoff point of the 1-, 3-, and 5-year closure rates, and the measurement of case loads, seems to have been used so that none of the agencies could obtain a benefit from the recently passed Low Threat UST Closure Policy. Again, this goes to the issue of retroactively applying a criteria while adding on top of that not using the most current data. It seems more than appropriate and justified to use the calendar year (January 1, 2013) to get the most up to date data as the cutoff date. Otherwise, the SWRCB staff again seems to have arbitrarily and unjustifiably selected a cutoff date to specifically target certain agencies.

The other criteria San Mateo County had questioned the SWRCB staff on in terms of justification was the case load minimum of 70. The SWRCB staff's answer was simply that this was the number that the SWRCB staff thought would be appropriate to start with if the agency maintained a 9% closure rate and at the end of the 3-year cycle, until the Fund is currently set to expire, would still have enough cases for at least one full time person working on remediation cases. Unfortunately, the math just doesn't add up and this line of thinking shows the SWRCB staff does not have a solid grasp of what all the local agencies do in terms of oversight of remediation sites.

Currently and according to data provided by the SWRCB in the UST LOP Certification Requirements tables, the average caseload per worker across the entire state is 41.5. Therefore, a more accurate starting caseload assuming a 9% closure rate over the next 3 years and still ending with an average caseload is 55. In addition, the SWRCB was apparently unaware up to and including during the agency roundtable of the fact that a majority of LOPs and some Local Implementing Agencies (LIAs) also have Voluntary Cleanup Programs under Health and Safety Code Section 101480 for sites that would typically fall into the RWQCBs' Site Cleanup Programs. Therefore, if an agency would not be certified either due to the closure criteria or the case load minimum, then more sites than just leaking USTs would be transferring to the RWQCBs. Again, a tremendous burden would be placed on the remaining agencies and case workers which does not seem to be in the best interest of the SWRCB to close more sites prior to the Fund sunseting.

Finally, the SWRCB staff's analysis of which agencies fell below their arbitrarily set value of 70 cases did not account for the fact that currently certain agencies only oversee the soil aspect of leaking UST cases while the corresponding RWQCB oversees the groundwater portion. If a local agency were to take over all of the leaking UST cases within their geographic boundary then they may actually be above the 70 case load minimum. For instances, Santa Cruz County is listed in the UST LOP Certification Requirements tables as having only 17 leaking UST sites as of August 18, 2012. However, a check of all open leaking UST sites within Santa Cruz County as of today actually shows 91 cases with another 8 Voluntary Cleanup Program cases. Therefore, we request the SWRCB staff to reevaluate the potential leaking UST case load of each of the local agencies. In addition, several agencies were not listed in the UST LOP Certification Requirements tables that could potentially qualify even though they did not have a LOP program in the last year.

The only significant change between the draft version discussed during the agency roundtable and the final version for public comment is the inclusion of a waiver from the closure criteria at the discretion of the SWRCB Executive Director. This change does not appropriately address the arbitrary nature of the selected criteria used to determine which

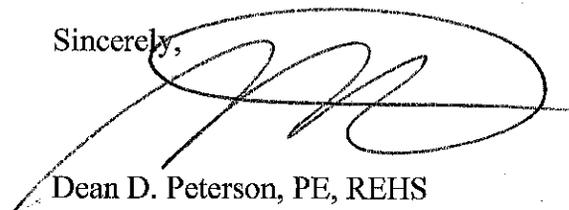
agencies could get certified or appropriately address any of the comments raised during the agency roundtable or in this letter. It still leaves certain agencies arbitrarily on the outside fighting to get in. The procedures and criteria should be clearly laid out and justified in order to ensure an unbiased evaluation of the local agencies occurs. San Mateo County agrees the waivers can be useful but the original criteria needs to be justified and known ahead of time for clarity. Unfortunately the procedures and criteria seem to have been written in an arbitrary manner in order to achieve a desired outcome. This is very similar to many risk assessment reports regulators see in which a desired outcome is known and the input parameters are adjusted accordingly to achieve the desired outcome.

In summary, San Mateo County believes the procedures and criteria should be modified so that:

- closure rate criteria is not applied retroactively but rather only in future audits
- the justified USEPA closure rate of 7% should be used
- cases should not be transferred from one agency to another with a worse performance history
- case transfers should be kept to a minimum to avoid an increase in the loss of institutional knowledge
- the date for calculation of closure rates and case loads should be January 1, 2013
- case loads should be calculated to include all leaking UST and voluntary cleanup sites
- the case load minimum should be around 55 total cases of all types
- the waivers should remain but are not justification for ignoring all of the other issues

I appreciate the opportunity to comment on the proposed resolution and look forward to working cooperatively with the State Water Board on these very important issues. If you wish to discuss any of these topics, or any other topics, about the UST Cleanup Program, then please contact myself or my staff.

Sincerely,



Dean D. Peterson, PE, REHS  
Director  
San Mateo County Environmental Health