

INSIGHT (FOCUS & FORUM) • Jul. 30, 2009

Tank Program on Empty

By Chelsea Holloway

Budget issues are forcing California to take a closer look at the administration of several environmental programs including the Underground Storage Tank Cleanup Program. Since 1984, the State Water Resources Control Board has administered the petroleum Underground Storage Tank Cleanup Program to protect health, safety and the environment from releases of petroleum and hazardous substances from underground tanks. In 1989, the state Legislature created the Barry Keene Underground Storage Tank Cleanup Fund to raise revenue from a storage fee assessed on underground storage tank operators and to reimburse small businesses and individuals for unexpected or catastrophic costs associated with tanks leaking petroleum. Recently, the rising cost of cleanups, reduction in revenue and the total depletion of a long-term cash surplus have forced the program to function solely on annual income this fiscal year.

To counter these budgetary problems, the state board passed Resolution 09-42 on May 19 to implement several cost-saving actions. Resolution 09-42 expresses the board's intent to focus on closing low-priority sites that have been open for five or more years with little or no environmental benefit, and utilize limited resources on higher-priority underground storage tank cases that threaten drinking water supplies and other sensitive receptors. These changes are effective immediately and will result in changes to the administration of the cleanup program.

In the past, local agencies in charge of closing sites were required to attain either background water quality or best and most reasonable water quality if background quality cannot be achieved. A 1992 board resolution provides standards for selecting an alternative quality level but does not require that the requisite level of water quality be met at the time of site closure. Instead, it requires compliance with cleanup goals and objectives within a "reasonable time frame." The board determines this reasonable time period on a case-by-case basis and considers the water quality level's impact on current and anticipated beneficial use of affected water. The reasonableness standard has resulted in long-standing open cases administered by the Regional Water Quality Control Boards and the Local Oversight Program agencies. For example, 7,000 of the estimated 11,000 active cleanup cases have been open for over 10 years.

Resolution 09-42 explains that open cases create a significant financial burden to the fund as well as to tank owners. Accordingly, it expresses the board's intent to focus on closing low-priority sites that have been open for five or more years where little or no environmental benefit of continued investigation, remediation and monitoring can be demonstrated. Instead, the board intends to utilize limited resources on higher-priority cases that threaten drinking water supplies and other sensitive receptors. This new focus evidences a departure from the previous "reasonable time period" standard articulated in the 1992 resolution.

In order to implement Resolution 09-42's goals, Regional Water Boards and Local Oversight Program agencies are currently reviewing all cases in the cleanup program to determine the need to close sites. They will pay special consideration to those cases with active or suspended letters of commitment, that is, a letter that encumbers the fund to reimburse cleanup costs. During a case review, the local authority in charge will determine if the case is ready for closure. If not, the authority must document the impediments to closure, the specific environmental benefits of any incremental remediation work on the site and any sensitive receptors that are likely to be affected

by the site's contamination and the probable timeframe for those impacts to occur. By January 2010, the results of this review will be published by the Division of Water Quality on the board's Web site. In the meantime, Local Oversight Program agencies or Regional Water Boards cannot issue additional corrective actions until all site reviews have been completed unless site specific needs warrant otherwise.

Whereas the regional boards and oversight agencies conduct the caseload reviews discussed above, the fund manager will also be reviewing each claim with a letter of commitment that has been active for five or more years to determine whether a case should close and whether the current remediation is appropriate. The fund manager will consider the results of the caseload review, notify the regulatory staff and claimant of the manager's findings and post the results of the five-year review on GeoTracker, the board's environmental data Web site. In cases where the five-year review results in a closure recommendation and the regulatory staff of the local authority in charge of closure has not responded to such recommendation, a case will be elevated to the Regional Water Board executive officer or Local Oversight Program agency director. If there is disagreement about closing a case, then within six months, the fund manager will recommend the case to the board for a consideration of closure.

Regional Water Boards and Local Oversight Program agencies will reduce monitoring requirements from quarterly inspections to semiannual or less frequent inspections unless site-specific needs warrant otherwise (in which case the rationale for more frequent monitoring will be posted on GeoTracker). The Regional Water Boards and Local Oversight Program agencies will notify all responsible parties of these new monitoring requirements by Aug. 1.

The Divisions of Financial Assistance and Water Quality have created two task forces, as required by Resolution 09-42: a fund task force, which will make recommendations for improvements to the fund's administrative procedures and cash flow concerns and a Leaking Underground Fuel Tank or "LUFT task force," which will make recommendations to improve the cleanup program, including additional approaches to risk-based cleanup respectively. On June 11, the first general task force meeting was held and members of the task forces were selected. Issues raised during that meeting included developing statewide standards for case closure, establishing better communications procedures, updating policy documents and resolutions and improving coordination between the fund and the regulators. While members of both task forces have been selected, the board emphasizes that this process is public and invites all other interested parties to offer comments and suggestions at any time by emailing members or by attending the task force meetings. The task forces will submit final recommendations on to the board by Jan. 1, 2010.

While Resolution 09-42 clearly expresses the board's intent to focus on high-priority underground storage tank cleanup cases and close low-priority cases, it does not provide guidance on factors that the fund manager, regional board and/or Local Oversight Programs will consider in evaluating cleanup cases. As increased focus on high-priority sites could lead to increased mitigation and remediation requirements for underground storage tank owners and operators, participation in the stakeholder task forces appears to be an important opportunity for those owners/operators to stay informed of and provide input on the changes to the fund's administrative procedures and, more generally, the cleanup program.

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