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ASSEMBLY COMMITTEE ON
ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

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To: Members, Committee on Environmental Safety & Toxic Materials

From: Assemblyman Bob Wieckowski
Chair, Assembly Committee on Environmental Safety & Toxic Materials

Subject: California's regulation and management of leaking underground storage tanks

The Assembly Environmental Safety and Toxic Materials (AESTM) Committee is scheduled to hold an oversight hearing on the State regulation and management of underground storage tanks (UST) containing hazardous materials including petroleum. On Wednesday, November 30th beginning at 10 AM, the AESTM Committee will be meeting at the County of Santa Clara County Administration Building in San Jose to review the policies and actions of California state and local agencies needed to address the current and future demand for hazardous waste cleanup associated with leaking underground storage tanks.

In 2011, the Legislature acted on regulatory reforms and expanded financing for the state's UST program. These bills signed by the Governor, AB 291 (Wieckowski)[1] and AB 358 (Smyth)[2] established new standards for the timely closure of UST cleanup sites. The Committee will be reviewing action and progress that has resulted from the passage of those bills and examine the need for further legislative action.

At the November 30th hearing Assembly members will investigate the current UST regulation and cleanup program operated by the State of California and local agencies and gather information and suggestions on a wide range of related issues including:

- ✓ What is the current status of the State UST cleanup financing program, including current resources, pending cost recovery claims, the backlog of sites and claims and future funding needs?

- ✓ What is the ability of the state to insure that leaking USTs (LUST) sites are reminted in a timely fashion and in a fashion that adequately protect public health, groundwater resources and other environmental resources?

[1] Chapter 569, Statutes of 2011.
[2] Chapter 571, Statutes of 2011.

- ✓ Are there new strategies for the State to speed-up the cleanup process for LUSTs to address the backlog of sites?

- ✓ What are the long term financial mechanisms to insure that property owners can cleanup costly LUST sites to prevent groundwater and surface water contamination?

- ✓ What regulatory hurdles exist that prevent the timely cleanup and closure of existing LUST sites? Will more timely regulatory action provide greater consistency for property owners and potential property owners wishing to develop sites with legacy LUSTs?

Part 1. Leaking underground storage tanks in California.

Leaks from USTs represent a threat to California groundwater and land resources. Even a small amount of petroleum released from a LUST can contaminate groundwater. Between 40% to 50% of Californians who rely to some extent on groundwater supplies for their drinking water.

California's State Water Resources Control Board (SWRCB) has made significant progress toward LUST cleanup. According to the United States Environmental Protection Agency (US EPA), as of February 2009, SWRCB had completed 27,992 LUST cleanups, which is 73 percent of all known releases in the State. At the time of US EPA data collection, there were 10,274 releases remaining to be complete.[3]

As a regional example, in the San Francisco Bay area the rate and number of LUST sites yet to be cleanup or closed varies by county with Alameda County having 28% sites in their "backlog" as compared to 10% for Santa Clara County.

Table 1.
2011 - Underground Storage Tank Status in Selected Bay Area Counties[4]

County	Permitted USTs	Total LUST Sites	Closed LUST Sites	Currently Open LUST Sites
Alameda	608	2,479	1,780	699
Contra Costa	453	901	740	161
San Mateo	149	1,261	1,056	205
Santa Clara	563	2,625	2,358	267

[3] US, EPA, The National LUST Cleanup Backlog: A Study of Opportunities , (September 2011)

[4] **GeoTracker** is the SWRCB's data management system for managing sites that impact groundwater, especially those that require groundwater cleanup (Underground Storage Tanks, Department of Defense, Site Cleanup Program) as well as permitted facilities such as operating USTs and land disposal sites.

Part 2. California UST regulation and cleanup laws.

California has a multi-faceted UST regulation and cleanup law that provide the following:

1. The regulations of UST installation and operation. State regulations provide for underground tank construction, monitoring, repair, closure, release reporting, and corrective action (*Water Code* § *13304).*

2. The cleanup and remediation of leaking underground tanks. Current law authorizes the SWRCB, in consultation with the Department of Toxic Substances Control, to develop and implement a program to establish local oversight programs to oversee the management and cleanup of UST sites (Health and Safety Code §25297.1). Implementation of the UST program is unique in that it gives local agencies the authority to oversee investigation and cleanup of UST leak sites.

3. The financing of the cleanup and upgrading of USTs. The Barry Keene Underground Storage Tank Cleanup Fund Act of 1989 is administered by the SWRCB, to provide a means for petroleum UST owners and operators to meet the federal and state requirements and to have their cleanup costs reimbursed by the UST cleanup fund.

Part 3. Paying for the cleanup of leaking USTs.

The Barry Keene Underground Storage Tank Cleanup Act (Act) of 1989 establishes the Underground Storage Tank Cleanup Fund (Fund) for the deposit of fees collected pursuant to the Act (Health & Safety Code §25299.50) The Fund receives monies from the base storage fee of $0.014 (14 mils) for each gallon of petroleum placed in an underground storage tank with a temporary additional storage fee of $0.006 (6 mils) for a total of $0.02 per gallon.

The authorization for the Fund will expire on January 1, 2016 at which time the funds will no longer be available to cleanup UST sites and UST owners and operators will be required to meet their federal environmental insurance obligation through an alternative mechanism.

California state law authorizes the SWRCB to expend the monies in the Fund for various purposes, including the payment of claims to aid owners and operators of petroleum UST who take corrective action to cleanup unauthorized releases from those tanks, corrective actions undertaken by federal, State and local agencies, the cleanup and oversight of unauthorized releases at abandoned tank sites, and grants to small businesses to retrofit certain hazardous substance USTs.

Part 4. Underground tank cleanup financing backlog.

According to the SWRCB, since 1991 the State has paid over $2.2 billion to thousands of individuals and small businesses to help them cover the cost of cleaning up their gas stations and

other leaking tank sites. Another $500 million has been paid to local governments and large businesses.

Over 19,000 claims have been filed during this time period, 11,000 claims have been paid in part or in full, of which about 7,000 have been closed and about 4,000 remain active. Another 4,600 claims filed by major corporations and government agencies are on the priority list, awaiting activation. Individual payment transactions have numbered more than 66,000, for a long-term average payment of about $40,000/claim/year.

In 2008, the cash reserve built up in the early years of the program fell below prudent reserves, and the program experienced a cash shortage. Insufficient cash was available to service all of the active claims, and payments were and remain delayed by many months.

Table 2.
2011 Underground Storage Tank Cleanup Fund Status

Priority Claims	Total Claims Deemed Eligible	Claims Closed Before FY 10-11	Active Number of Claims	Claims Awaiting Activation	Claims Closed in FY 10-11
Priority A (residential tank owners)	475	381	48	4	40
Priority B (small California businesses, NPOs, and some governmental entities)	5,103	2,914	1,882	70	216
Priority C (certain California businesses, NPOs, and other governmental entities)	4,085	2,562	1,247	66	193
Priority D (all other claimants, typically large corporations)	6,133	1,107	455	4,522	40
TOTAL (all priorities)	15,796	6,964	3,632	4,662	489

The SWRCB reported to the Legislature in January of 2011 that "the *State Water Board has made, and continues to make, additional changes to improve the efficiency of processing reimbursement requests and closing or re-opening of claims….*

The backlog of reimbursement requests needing to be reviewed has been significantly reduced since June 2010. State Water Board Cleanup Fund staff has reduced the review time of a new reimbursement request to approximately 60 days (as required by Cleanup Fund Regulations). Using the revenue from the fee increase, as provided by Chapter 649/2009, the State Water Board expects to pay out the entire backlog of payments during fiscal year 2010-2011."[5]

Faced with a declining revenue source the SWRCB conducted an examination and generally found that there was the lack of incentive to get cases cleaned up quickly and efficiently. The effect of the delay in closing sites was ongoing monitoring and cleanup costs.

The SWRCB found that the lack of closure incentive applied to all three major parties:

1) The responsible party or claimant, whose site cleanup bills are paid by the Cleanup Fund;
2) The consultant, who can continue to bill hours as long as the case is active; and
3) The regulator, who generally prefers to close only cases that have minimal or no risk associated with the site closure.

Due, in part, to these disincentives, over 43 percent of the active claims have been open for ten years or more. One of the initiatives being pursued by the SWRCB to speed up the process of closing sites has been to standardize the cleanup standards for UST sites and encourage local agencies to follow these statewide standards for remediation.

According to the SWRCB, a Low-Threat Underground Storage Tank (UST) Closure Policy (Policy) has being developed by a stakeholder group for consideration by the SWRCB. The purpose of the proposed Policy is to establish consistent statewide closure criteria for low-threat leaking UST sites. The proposed Policy is intended to provide direction to responsible parties, their service providers, and regulatory agencies. The proposed Policy seeks to increase UST cleanup process efficiency.

Part 5. California UST legislation from the 2010 – 2011 legislative session.

AB 291 (Wieckowski - Chapter 569, Statutes of 2011). This bill extends for two years a temporary fee paid per gallon on motor vehicle fuel (petroleum storage fee) that the owner of an underground storage tank must pay from 1.4 mils to 2 mils per gallon through January 1, 2014. The SWRCB indicates that projected revenues from the extension of the supplemental tax will be about $180 million over two years.

AB 358 (Smyth - Chapter 571, Statutes of 2011). This bill streamlines the SWRCB process for completing the cleanup of USTs by establishing authority for the SWRCB to close sites overseen by local government as part of the SWRCB existing five-year review process. The bill expedites UST claims submittal, processing and payment. With limited exceptions, it establishes a one-year deadline for filing remaining claims on sites subject to a uniform closure letter issued by the lead agency. Requires the notification to the responsible

[5] SWRCB, Implementation of Underground Storage Tank Cleanup Fund Performance Audit Corrective Action, (January 2011),

party of the one year filing deadline. AB 358 generally limits the annual claims reimbursement for sites recommended for closure pursuant to the five-year review process at $10,000.

AB 1674 (Saldaña - Chapter 535, Statutes of 2010). This bill establishes requirements for USTs that are vaulted rather than buried, which means, in practice, that they can be visually inspected. The existing statutory requirements were written primarily for tanks physically surrounded by soil rather than below-grade tanks suspended in a concrete vault create confusion in the field during inspections.