



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: 13-0444, **Version:** 1

Receive and accept a report that explains staff's decision to transfer oversight responsibilities for remediation of leaking Underground Storage Tanks from the Environmental Health Bureau to the Regional Water Quality Control Board.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

Receive and accept a report that explains staff's decision to transfer oversight responsibilities for remediation of leaking Underground Storage Tanks from the Environmental Health Bureau to the Regional Water Quality Control Board.

SUMMARY:

Over the past 25 years the Environmental Health Bureau (EHB), as Local Implementing Agency, has performed the role of lead regulatory agency for investigation and cleanup of leaking Underground Storage Tanks (USTs) that have impacted only the surrounding soils. Recent legislation (AB 1701) requires that, starting July 1, 2013, all local agencies that oversee remediation and cleanup of leaking USTs must be certified by the State Water Resources Control Board (SWRCB) as a Local Oversight Program (LOP), or must transfer oversight responsibilities for remediation of leaking USTs to the Regional Water Quality Control Board (RWQCB). Careful study of the requirements for certification, and the circumstances under which this must be done, lead EHB staff to the conclusion that the County will be better served by the decision not to apply for LOP status.

DISCUSSION:

Over the past 25 years the EHB, as Local Implementing Agency, has performed the role of lead regulatory agency for investigation and cleanup of leaking USTs that have impacted only surrounding soils and are not expected to negatively impact potentially potable groundwater aquifers in the future. These leaking UST cases are also referred to by the State as "low threat" leaking USTs. All cases where leaking USTs actually contaminated potentially potable groundwater have already been referred to the Central Coast RWQCB for cleanup oversight.

Recent legislation (AB 1701) requires that, starting July 1, 2013, all local agencies that opt to continue to oversee remediation and cleanup of low threat leaking USTs must be certified by the SWRCB as an LOP. Otherwise, pending cases of low threat leaking USTs must have oversight responsibilities for remediation transferred to the RWQCB.

Certification requirements for a LOP are as follows:

- The SWRCB requires a minimum of 70 open cases to become certified. Monterey County currently has only 33.
- The SWRCB also requires the LOP applicant to demonstrate a closure rate of at least 9% over one of three time periods (last 5 years, last 3 years, and last 1 year). The EHB *is* able to demonstrate such a closure rate.
- The local agency must provide evidence of technical expertise, with at least one person in responsible charge who is a Registered Professional Civil Engineer or Geologist. To meet this eligibility element EHB

would have to hire or contract with such a registered professional.

- The agency must also provide evidence of adequate budget and staff resources, staff training capabilities, and accounting and recordkeeping competence. Although EHB staff is also able to meet these requirements, the costs would be burdensome.

Projected Costs of LOP Certification:

- Annual expenditures for a contracted Registered Professional Civil Engineer or Geologist: \$17,000.
- Annual expenditures for additional staff time: \$26,000.
- Total Annual Projected Costs: \$43,000.

Disadvantages of LOP Certification:

- Certification will be temporary, lasting no more than two years. The State plans to de-certify LOP agencies once their caseload is reduced.
- LOP certification, and the on-going necessary review and oversight of UST cleanup activities, attendance at required SWRCB roundtable meetings and policy and performance sessions, and necessary on-going staff training, will require additional staff resources and funding that would likely impact other HMMS priorities such as routine inspections.
- Preparation of the LOP certification application itself, and the necessary contracting activities for a professional civil engineer or geologist, will require additional staff resources.
- EnvisionConnect, EHB's information and accounting database, will need to be configured to provide the necessary accounting and reporting information required by the SWRCB.
- Adequate funding of the activities of this program, typically provided by permit fees and regulatory fines, is uncertain because the responsible parties may not pay invoices for work conducted, resulting in EHB having to absorb costs of this program out of its budget. Historically, approximately 50% of invoiced expenses are not reimbursed by responsible parties.

Advantages of Certification:

Although it may be possible to obtain an exemption from SWRCB for the 70 case load requirement referred to above, the only advantage for EHB to become an LOP is the ability to retain local jurisdiction over UST remediation projects. However, it is anticipated that LOP certification will come to an end rather quickly if the State follows through on its plans to de-certify LOP agencies within two years.

Staff of EHB have opted not to pursue certification as an LOP because of the limited number of remaining low-threat UST cleanup cases, the high costs of contracting for a professional civil engineer or geologist, and the extra staff time that would be associated with the LOP program itself. Additionally, the SWRCB has stated that they would prefer to consolidate outstanding cases within an RWQCB which they believe would expedite case closure.

It is anticipated that transfer of the remaining UST cases to the Central Coast RWQCB would result in savings of staff time, estimated at 200 hours per year, representing a substantial resource that will be available for redirection to other priorities. However, EHB staff will continue to oversee cleanup and remediation of non-UST contamination sites, including dry cleaners, auto wrecking yards, highway accidents and spills, and staff will also monitor the environmental and public health impacts of all UST sites that are transferred to Central Coast RWQCB.

OTHER AGENCY INVOLVEMENT:

None

FINANCING:

There is no General Fund contribution resulting from this Board action.

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Attachments:

Attachment 1 - UST LOP Procedures and Criteria for Certification is on file with the Clerk to the Board