



Office of the City Manager

March 21, 2013

To: Honorable Mayor and Members of the City Council
From: Christine Daniel, City Manager *CD*
Subject: Transfer of Oversight of Property Remediation

This memo describes changes following a new law (Health & Safety Code Section 25297.01) requiring the State Water Quality Control Board (State Board) to certify all local fuel cleanup agencies by July 1, 2013. In January 2013, the State Board adopted a criterion of a minimum of 70 open fuel contaminated underground storage tank sites per local agency before it could apply for certification as an Local Oversight Program (LOP). The certification process requires staffing, funding, qualified personnel, training etc. The intent of the new code is to move all remaining contaminated sites to agencies that have adequate resources and to speed up site closures. This threshold of 70 open fuel contaminated sites will eliminate six county and 15 city cleanup agencies. With only 42 open cleanup sites the City's Toxic Management Division (TMD) cannot apply for LOP certification.

The TMD has implemented the cleanup program since the late 1980s based on a verbal agreement with the Regional Water Quality Control Board and later on with local authority of BMC Title 15.12.100 and Health & Safety Code Section 25404 which allows minor cleanup authority as a Certified Unified Program Agency. The TMD does not have authority under the Clean Water or the Porter Cologne Water Quality Control Acts and hence had to work with the Regional Board for enforcement purposes.

TMD will continue to work on six sites that can be closed by the July 1, 2013 deadline. The owners and/or operators (responsible parties) of the remaining open cases (fuel and non-fuel) will be approached by TMD staff to explain the transition process and their options. Ultimately, all fuel sites within Berkeley must be transferred to one of two agencies to be determined by the State Board, namely, Alameda County LOP (assuming the County gets certified), or the Regional Board (which does not need certification by the State Board).

Some local agencies are requesting short extensions (up to one year) to allow time for local closure of sites. Berkeley TMD can manage the closure of the six sites locally by the deadline and has decided it does not need an extension to close them.

In addition to the fuel sites, TMD has 14 non-fuel sites. It is not efficient for the TMD to continue to handle only the more complex non-fuel sites given the amount of research, training and expertise needed to maintain the required knowledge in-house. Therefore, in keeping with the new laws, TMD plans to communicate with all parties to inform and assist them during the transition phase.

Apart from Regional Board and the Alameda County LOP, the Department of Toxic Substances Control can oversee non-fuel cleanup cases. From our experience, the County LOP may prove to be more responsive to City needs. Staff will work with local and state parties to facilitate the transition of all cleanup sites.

During deliberations of the Health & Safety Code Section 25297.01, the City informed the State Board about the advantages of leaving the cleanup program in local hands. For example, local agencies are more protective of shallow groundwater not associated with municipal drinking wells. In addition, it has been useful to have the program within the Planning Department because local staff provides support during the development review process. TMD staff has advised City agencies when projects encounter contamination and on purchase and sale of real-estate.

If you have any questions, please let contact Planning Director Eric Angstadt at 981-7401.

cc: William Rogers, Deputy City Manager
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