



## **STATE WATER RESOURCES CONTROL BOARD**

### **UNDERGROUND STORAGE TANK CLEANUP FUND**

**FISCAL YEAR 2008/2009**

### **ANNUAL REPORT**



**Water Boards**

STATE WATER RESOURCES CONTROL BOARD  
REGIONAL WATER QUALITY CONTROL BOARDS

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# Introduction

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This annual report was prepared pursuant to Chapter 6.75, Article 9, Section 25299.81(d) of the Health and Safety Code (H&SC), which requires the State Water Resources Control Board (State Water Board) to prepare an annual report for posting to the State Water Board website describing the status of the Underground Storage Tank (UST) Cleanup Fund (Fund) and discusses recent legislative changes to the Fund for improving the efficiency of the program, with special emphasis on expanding environmental cleanup and the distribution of monies from the Fund.

## Summary

The Barry Keene Underground Storage Tank Cleanup Fund Act of 1989 (Act) created the UST Fund. The Fund's mission is to contribute to the protection of California's public health, safety, and water quality through: (1) establishing an alternative mechanism to meet federal financial responsibility requirements for owners and operators of USTs, and (2) reimbursing eligible corrective action costs incurred for the cleanup of contamination resulting from the unauthorized release of petroleum from USTs. The Act sunsets on January 1, 2016.

The Fund benefits a large number of small businesses and individuals by providing reimbursement for expenses associated with the cleanup of leaking petroleum USTs. The Fund also provides money to the nine Regional Water Quality Control Boards (Regional Water Boards) and local regulatory agencies to abate emergency situations or to undertake corrective action at abandoned sites that pose a threat to human health, safety, and the environment, as a result of a petroleum release from a UST. For example, funds from the Emergency Abandoned Recalcitrant Account (EAR) were used to abate explosive gasoline vapors, abate the migration of highly contaminated groundwater to residential areas and nearby creeks, deliver potable water to residents whose private wells were contaminated with petroleum, and install well head treatment on impacted domestic wells. Funds from the Orphan Site Cleanup Account (OSCA) will be committed to lower income areas and provide opportunities for community improvements through the reuse or planned reuse of many of these sites for affordable housing.

To date the program has assisted in paying corrective action costs for 6,893<sup>1</sup> closed claims of which over 4,800 were completed cleanups, and is currently covering costs at approximately 3,000<sup>2</sup> active claims. A closed site (1) indicates the contaminants have been investigated, monitored, and removed to a level protective of health, safety, and the environment, and (2) allows the property to continue in its current use or return to productive use to benefit the community.

**Fund Effectiveness**

The key Fund effectiveness measure is the number of claims processed and paid since the beginning of the Fund. Fund activity during the Fiscal Year (FY) 2008-09, and since the inception is shown in the following table:

**Claims Processed**

<b>Activity</b>	<b>FY 2008-09</b>	<b>Inception of Fund Through FY 2008-09</b>
<b>Claims Received</b>	207	19,345
<b>Claims Approved for Priority List</b>	146	15,560
<b>Claims Reviewed for Letter of Commitment (Detailed Review)</b>	95	12,385
<b>New Letters of Commitment Issued</b>	28	10,974
<b>Claims Closed</b>	356	6,893

**Claims Paid**

<b>Reimbursement Requests Processed (Payments Made)</b>	2,533	63,483
<b>Value of Reimbursements</b>	\$124 Million <sup>1</sup>	\$2.5 Billion

<sup>1</sup> This figure includes claims that were closed by the Fund for 1) inactivity; 2) reaching the maximum reimbursement of \$1.5 million; 3) failure to provide the required information for reimbursement; and 4) sites with completed cleanups.

<sup>2</sup> This does not include approximately 1,350 previously active claims that have been suspended due to lack of funds.

Other key effectiveness measurements are the time it takes to (1) process an application and (2) process a reimbursement request. The Act establishing the Fund sets time limits for various stages of processing. One of these steps, initial review of new claim applications, requires an eligibility decision within 60 days of receipt. During FY 2008-09, the average time for initial review was 73 days. Another step, processing reimbursement requests, requires the payment of a claim within 60 days of receipt. Due to cash flow issues during FY 2008-09, the average time for processing reimbursement requests and placing the claim on hold until sufficient revenues are available to pay the claim, was 121 days.

Although eligibility determination and reimbursement request processing has exceeded the statutory limitations, the Fund continues to expend all available funds each fiscal year.

### ***Environmental Performance***

The 2008 update of the State Water Board strategic plan included a priority action to develop an approach to link Fund reimbursements with performance. Interim or first measures were established that link reimbursements with acreage of land that has been cleaned up using Fund dollars and the average per acre cost of cleanup. The completion of a cleanup is often needed to allow full utilization of land to occur, benefiting the community as well as environmental resources. The desirable trend is to reduce the cost per acre cleaned up to demonstrate improvements in the overall program efficiency. The measure will be calculated each year based on claims closed that year.

For FY 2008-09, data was available for 167 sites totaling 85.3 acres where the claim was closed and the cleanup completed. The reimbursements for these sites totaled \$41.58 million, for an average cost of \$487,000 per acre.

Fund staff will work with Cleanup Fund Task Force members to identify and evaluate other performance measures and will implement as appropriate.

### ***Fund Issues***

During FY 2008-09, the Fund experienced a cash shortage that was created by: 1) a reduction in revenues due to the downturn in the economy, 2) an increase in cleanup costs, 3) difficulties in moving cases to closure, 4) an increase in special account,

administrative, and regulatory oversight costs, and 5) the depletion of a long-standing cash surplus. As a result, substantial delays have occurred in reimbursing claimants for their eligible corrective action costs.

In response to the cash short-falls, the State Water Board initiated a variety of actions, including (1) suspending the Letters of Commitment (LOCs) for approximately 1,350 claims, (2) initiating a program and fiscal audit of the Fund, and (3) creating two Task Forces of external stakeholders which will recommend improvements to the Fund's administrative procedures and the Water Boards' UST cleanup process. These and other actions are further described below in the section titled Cash Flow Issues on page 21.

# The Fund

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## *History*

The Barry Keene Underground Storage Tank Cleanup Fund Act of 1989 (Act) created the Underground Storage Tank Cleanup Fund to help owners and operators of USTs satisfy federal and state financial responsibility requirements. To fulfill the federal financial responsibility requirements specified in 40 CFR, Part 280(H), the Fund is available to help eligible UST owners and operators meet the costs of cleaning up contaminated soil and groundwater caused by leaking petroleum USTs. The federal financial responsibility requirements also require the Fund to provide coverage for third-party liability due to unauthorized releases of petroleum from USTs.

The Act requires every owner of a petroleum UST that is subject to regulation under the Health and Safety Code (H&SC) to pay a per gallon storage fee into the Fund. This fee, which began to accrue on January 1, 1991, has increased over time from \$0.006 per gallon of petroleum stored to \$0.014 per gallon of petroleum stored and currently generates in excess of \$220 million annually.<sup>3</sup>

The State Water Board administers the Fund and first adopted regulations for the Fund on September 26, 1991. The Fund regulations have been revised periodically in response to new legislation and to address issues not anticipated when the initial regulations were written.

Following the approval of the regulations in 1991, the Fund mailed claim applications to more than 10,000 potential claimants. By January 17, 1992, the Fund received over 6,200 claims. Fund staff conducted a preliminary review of the initial claim applications and the State Water Board adopted the initial priority list containing 3,583 claims on July 16, 1992. The Fund awarded the first Letter of Commitment (LOC) in August 1992, and issued the first payment approximately one month later.

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<sup>3</sup> Chapter 649 Statutes of 2009, (AB 1188, Ruskin), will increase the fee to \$0.02 per gallon of petroleum stored for two years effective January 1, 2010. This increase, introduced to address the Fund shortfall, is expected to generate an additional \$96 million per year.

### ***Priority System***

The Act sets forth a claim priority system based on specified claimant characteristics relating to the claimant's ability to pay. The highest priority, designated as Class A, is reserved for residential tank owners. The second priority, Class B, is reserved for small California businesses, governmental agencies, and nonprofit organizations with gross receipts and employees below a specified maximum. The third priority, Class C, is for certain California businesses, governmental agencies, and nonprofit organizations not meeting the criteria for Class B. The fourth priority, Class D, is given to all other eligible claimants.

The Act requires that the State Water Board update the priority list at least annually; however, in practice the priority list is updated monthly. Claims from previous updates retain their relative ranking within their priority class, with new claims ranked in their appropriate class below those carried over from the previous list. New claims in a higher priority class must be processed before older claims in a lower priority class.

The Legislature crafted three exceptions to the priority system. Chapter 430, Statutes of 1993, (AB 1061, Costa) requires the Fund to award approximately 14-16 percent of the annual appropriation to any lower priority classes that would not otherwise be funded (i.e., Class C and D claimants each receive at least 14-16 percent of the annual funding). Chapter 144, Statutes of 2000, (AB 2872, Shelley) provided a one-time appropriation of \$5 million to immediately fund Fire Safety Agencies that submitted applications to the Fund before January 1, 2000. This Subaccount sunsetted on December 31, 2005. Chapter 644, Statutes of 2008, (AB 2729, Ruskin) created the School District Account which provides an appropriation of \$30 million over 3 years to fund Priority Class D school district claims. School District funds must be encumbered by July 1, 2012, and liquidated by June 30, 2014.<sup>4</sup>

### ***Letter of Commitment***

The LOC is the mechanism used by the Fund to award or encumber funds for reimbursement of eligible costs and to manage cash flow. When a claim is activated from the priority list, the eligibility requirements are verified with the appropriate regulatory

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<sup>4</sup> This bill was amended by Chapter 649/2009 to allow the monies in the School District Account to reimburse all school district claims, rather than priority D claims.



agency, and an LOC is issued. A claim is removed from the priority list when the Fund issues the claimant an LOC.

Initial LOCs are issued in an amount needed to cover the actual eligible costs incurred to date. As the cleanup proceeds, the LOC is amended as necessary to cover new costs. To ensure that Funds do not lie dormant, only a small, unliquidated balance is maintained for most claims. This results in a LOC amendment being required for almost all payments. Currently, approximately 3,000 claims have active LOCs. During FY 2008-09, LOCs for approximately 1,350 claims were suspended due to the Fund's cash short-fall. The suspended LOCs affected approximately 1,250 Priority Class C claims and 100 Priority Class D claims.

### ***Reimbursements***

Once the Fund issues a LOC, a claimant may submit a reimbursement request. Eligible costs include reasonable and necessary corrective action costs incurred after January 1, 1988, and court-approved amounts awarded to third parties against the claimant. Only costs paid by or on behalf of the claimant may be reimbursed. Reimbursement requests may be submitted not more often than once a month and for amounts not less than \$10,000.

To assist individuals and small businesses with cash flow burdens, the Fund will reimburse for costs incurred but not necessarily paid. Claimants must pay vendors within 30 days of receipt of funds and provide proof of payment (cancelled checks) within 60 days.

### ***Settlements***

Claimants are not entitled to double payment related to any corrective action or third-party compensation costs. Claimants are required to identify, under penalty of perjury, all funds received that relate to the UST release that is the subject of the claim. The claimant must identify funds from any source including insurance claims, legal judgments, contributions from other potentially responsible parties, or any other source, regardless of how the funds are characterized, including a discount on the purchase of the property. The Fund evaluates these funds and determines the proper offset to avoid double payment.

### **Assignments**

In April of 2000, the State Water Board adopted the *Lake Order (In the Matter of the Petition of Lake Publishing Company, Order: WQ 2000-06-UST)*. The *Lake Order* allows the Fund to honor a claimant's assignment of its rights to reimbursement from the Fund, under certain circumstances. In many respects, an assignment is very similar to the Fund's long-established practice of permitting "on behalf of" agreements. These "on behalf of agreements" are discussed in earlier State Water Board orders, *Quaker State and Hollis Rodgers (In the Matter of the Petition of Quaker State Corporation, Order WQ 97-06-UST; In the Matter of the Petition of Hollis Rodgers et al., Order WQ 99-02-UST)*.

### **Cost Pre-Approval**

Health and Safety Code (H&SC) Section 25299.38 requires that the Fund grant or deny pre-approval of costs within 30 days of receipt of the request. Cost pre-approval is a method by which a claimant and Fund staff can reach an understanding with regard to eligible reimbursable costs, prior to implementing the next phase of corrective action. If the proposed project activities are completed for the approved amount, full reimbursement is virtually assured. Cost pre-approvals were greatly reduced in 2003 due to lack of staff and the need to divert staff to review reimbursement requests. Continuing demands on Fund's technical staff resources, including startup of the dedicated Five-Year Review unit prevented full resumption of the Cost Pre-Approval program. The Fund plans to reinstate an improved pre-approval process during FY 2009-10.

### **Five Year Review**

H&SC Section 25299.39.2(a) requires the manager of the Fund to annually review the case history of all claims having a LOC active for more than five years, unless the owner or operator objects. The purpose of this review is to determine whether a recommendation for case closure is in order. This review is beneficial to individuals and small businesses because it provides a third-party check on the progress of the case relative to the expenditure of funds and reduces the chance that the responsible party will run out of funds before the case is cleaned up. It also provides an opportunity for the Fund to detect fraud and abuse if funds are used at sites that warrant closure.

There are currently over 3,250 claims in the Fund (including claims that now have a suspended LOC) that received their first LOC five or more years ago. Since re-implementing the five-year review process in the beginning of 2007, the Fund has completed five-year reviews for 1,767 claims as of June 30, 2009. Approximately 25 percent of the completed five-year reviews resulted with the Fund recommending that the case be closed. For 40 percent of the cases reviewed, the Fund recommended that additional cleanup be performed or that a change in the current course of action be considered to accelerate the progress of the case. The Fund is currently working with the Regional Water Boards and Local Oversight Program Agencies on those cases where the five-year review recommended additional work or case closure. This effort was successful in moving many of the cases ahead in the corrective action process. The Fund also plans to begin presenting cases to the State Water Board for consideration of closure where there continues to be disagreement between the Regulatory Agency and the Fund.

### ***Claim Closures***

Once cleanup is completed at a site, or a claim is no longer eligible to receive reimbursement, the Fund performs a final audit on the claim and issues a final payment. Any unliquidated Funds are disencumbered. Through the life of the Fund, approximately 6,893<sup>5</sup> claims were closed as of June 30, 2009.

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<sup>5</sup> This figure includes claims that were closed by the Fund for 1) inactivity; 2) reaching the maximum reimbursement of \$1.5 million; 3) failure to provide the required information for reimbursement; and 4) sites with completed cleanups.

## Fund Subaccounts

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H&SC Section 25299.50 provides the State Water Board the statutory authority to modify or create accounts in the Fund, determined to be appropriate or necessary for proper administration of the Fund. Accounts have been established through subsequent legislation. Accounts created under these authorities include the: (1) Emergency, Abandoned, Recalcitrant (EAR) Account; (2) Commingled Plume Account (CP); (3) Fire Safety Agency Subaccount; (4) Orphan Site Cleanup Account (OSCA); (5) Drinking Water Treatment and Research Fund (Research Fund); and (6) School District Account.

### ***Emergency Abandoned Recalcitrant Account (EAR)***

Pursuant to H&SC Sections 25299.36 and 25299.50, the State Water Board established the EAR Account in 1991. This account provides the Regional Water Boards and local agencies funding to undertake or contract for corrective action at UST sites that have had an unauthorized release if (1) the site requires immediate action to protect human health, safety and the environment, (2) a responsible party cannot be identified or located, or (3) responsible parties are either unable or unwilling to take the required corrective action. Since 1991, the State Water Board has spent \$9.8 million from the EAR Account to fund cleanups at 128 sites. The EAR Account led to the closure of 8 sites, and the State Water Board awarded \$1.1 million in emergency funds to abate serious threats at 15 sites caused by leaking petroleum USTs. The emergency funds are a critical resource and were used to abate explosive gasoline vapors, abate the migration of highly contaminated groundwater to residential areas and nearby creeks, deliver potable water to residents whose private wells were contaminated with petroleum, and install well head treatment on impacted domestic wells. All EAR Account costs are subject to cost recovery from the responsible parties.

During FY 2008-09, the State Water Board provided \$850,000 in funding from the EAR Account for cleanups at 16 sites. Several of these sites are close to being closed with no further action required.

### ***Commingled Plume Account (CP)***

A commingled plume is defined as the condition that exists when groundwater contaminated with petroleum from two or more discrete unauthorized release sites have mixed or encroached upon one another to the extent that the corrective action performed on one plume will necessarily affect the other. Commingled plume sites represent a special groundwater protection problem because they often represent more serious water quality impacts, involve parties that disagree as to liability, and include cleanups that are stalled or handled in a piecemeal, haphazard, or expensive manner. Unless coordinated, commingled plume site corrective action is often ineffective.

Chapter 611, Statutes of 1996, (SB 562, Thompson), created the CP Account to encourage responsible parties with commingled plumes to coordinate their cleanup efforts, avoid litigation, more rapidly address required cleanups, and significantly reduce the costs of cleanup.

Since its inception, the CP Account has received 53 claim applications, and there is growing interest in this Program. Of these claims, the State Water Board has issued \$65 million in LOCs for 37 claims, and has paid out \$50 million in reimbursement requests. Several funded sites are moving quickly toward site closure. A total of four sites have been closed under the CP Account and another four expect to receive site closure letters in the next year. This account remains active.

### ***Fire Safety Agency Subaccount***

Chapter 144, Statutes of 2000, (AB 2872, Shelley), created the Fire Safety Agency Subaccount (Subaccount). The bill transferred \$5 million from the Fund to the Subaccount and authorized the State Water Board to expend the money to pay claims that were filed by Fire Safety Agencies before January 1, 2000. The Fund issued 46 LOCs from the Fire Safety Agency Account, amounting to approximately \$4.9 million, \$4.1 million of which has been paid. This Subaccount ended on December 31, 2005.

### ***Orphan Site Cleanup Account (OSCA)***

Chapter 774, Statutes of 2004, (AB 1906, Lowenthal), added the OSCA Program to the Fund to encourage the cleanup of brownfield petroleum UST contaminated sites where there is no financially responsible party. These sites represent a special problem because they prevent and delay community redevelopment. The major component of the

OSCA Program is to assist and reimburse eligible applicants for cleanup efforts at these sites. The OSCA Program sunsetted on January 1, 2008.

The OSCA Program received 70 project applications and of those 52 projects were determined eligible. The State Water Board issued OSCA assessment and cleanup grants for 41 of these sites amounting to \$30 million. An encouraging benefit is the reuse or planned reuse of many of these sites for affordable housing. More than 70 percent of eligible applications qualified for environmental justice priority points ensuring a large portion of OSCA funds will be committed to lower income areas and provide opportunities for community improvements. Currently, 13 sites have been cleaned up and 28 additional sites are actively being cleaned up under the OSCA Program. Of those sites, seven of the closed sites were redeveloped into productive uses and 21 of the sites currently being cleaned up are planned for redevelopment.

Visit the following website to see some of the OSCA success stories:

[http://www.waterboards.ca.gov/water\\_issues/programs/ustcf/oscf/osca\\_success.pdf](http://www.waterboards.ca.gov/water_issues/programs/ustcf/oscf/osca_success.pdf)

### ***Orphan Site Cleanup Fund (OSCF)***

Chapter 616 Statutes of 2008, (SB 1161, Lowenthal), established the Orphan Site Cleanup Fund (OSCF) in the State Treasury effective January 1, 2009. The OSCF Program is a reauthorized program of OSCA to continue to pay for the cleanup of brownfield petroleum UST contaminated sites where there is no responsible party (orphan sites). The USTCF will transfer \$10 million annually for a total of \$30 million, during FYs 2008-2009, 2009-2010 and 2010-2011 to the OSCF. The OSCF will sunset on January 1, 2016.

The State Water Board also received \$15.6 million in federal stimulus money through the American Recovery and Reinvestment Act (ARRA) from the federal Leaking UST Trust Fund. The OSCF will use the \$15.6 million ARRA funds instead of transferring \$15.6 million from the USTCF to fund OSCF projects. The State Water Board will use existing regulations and procedures that are consistent with federal requirements to award and disburse ARRA funds for eligible OSCF projects. The OSCF will seek eligible applicants that meet established eligibility requirements and provide financial assistance on orphan site shovel ready projects.

The OSCF regulations became effective in October 2009.

### ***Drinking Water Treatment and Research Fund (Research Fund)***

Upon request by the California Department of Public Health (CDPH) the Fund annually transfers up to \$5 million to the CDPH Research Fund. CDPH uses the Research Fund for addressing public drinking water wells contaminated by a motor fuel oxygenate (usually methyl tertiary butyl ether (MTBE)), where there was substantial evidence that the contamination was caused by a release from an UST.

The CDPH may request an annual transfer when unencumbered funds in the Research Fund are less than \$2 million. A total of \$20 million was transferred to date during FY 2001-02, FY 2002-03, FY 2004-05, and FY 2005-06. The Fund does not track the actual expenditures authorized by the CDPH from the Research Fund.

This Account will sunset on January 1, 2010. Additional information on the Research Fund can be found at the CDPH web site:

<http://www.cdph.ca.gov/services/funding/Pages/DWTRF.aspx>

### ***School District Account***

Chapter 644, Statutes of 2008, (AB 2729, Ruskin), created the School District Account in the Fund. The bill transfers a total \$30 million over three years (FYs 2009-10, 2010-11 and 2011-12) from the Fund to the School District Account effective July 1, 2009. The funds will reimburse Priority Class D claimants that are school districts. The statute authorizing the School District Account will sunset on July 1, 2014.<sup>6</sup>

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<sup>6</sup> This bill was amended by Chapter 649/2009 to allow the monies in the School District Account to reimburse all school district claims, rather than priority D claims.

# Financial Responsibility

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The United States Environmental Protection Agency (USEPA) regulations (Section 280.90, 40 CFR Part 280, Subpart H- Financial Responsibility) published on October 26, 1988, require owners and operators of USTs to demonstrate, through insurance coverage or other acceptable mechanisms, that they can pay for cleanup and third-party damages resulting from leaks that may occur from their USTs. On June 9, 1993, USEPA approved California's Fund as a mechanism for meeting the federal financial responsibility requirements for petroleum USTs.

The Fund may be used as a financial responsibility mechanism if the person or entity: (1) is the owner or operator of a petroleum UST, (2) has a completed financial responsibility certificate on file, and (3) is in compliance with UST laws and regulations. The Fund works closely with local regulatory agencies to determine whether a claimant has made a good faith effort to achieve compliance with the regulations and relies heavily on the recommendation of the regulatory agency when evaluating eligibility for reimbursement of corrective action costs associated with releases from UST systems.



# Fund Commitments

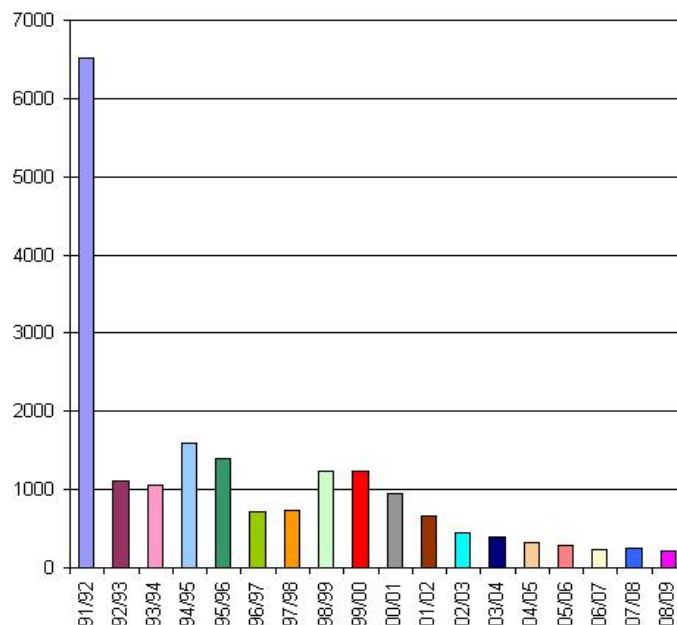
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The annual goal of the Fund is to distribute all allocated funding by the end of each fiscal year so corrective action can occur in a timely and efficient way. The following tasks are necessary to accomplish this goal:

## **Claims Review**

The Claims Review Unit receives and processes new claim applications to determine claim eligibility and the priority class of the claim in accordance with statutes and regulations. Claims determined to be eligible are placed on the priority list and issued a LOC when funds become available. During FY 2008-09, the Fund received 207 new claim applications, reviewed 204 claims and completed 196 claim reviews. During FY 2008/09, the Fund issued 28 new LOCs. The Fund continues to see a decline in new claims applications (see Figure 1). Regulations require that claim applications be given an initial review and decision of eligibility within 60 days of receipt. During FY 2008-09, the average time for initial review was 73 days.

Figure 1  
New Claims Applications Received



It is not possible to accurately predict the number of new claims that the Fund will receive in the future. However, based on past history and the Fund's current low cash balance, Fund staff do not expect to issue new LOCs in FY 2009-2010, except to Priority Class A and School District claims, and Fund staff expect to perform initial reviews within the 60-day timeframe successfully.

### ***Payments Review***

Subsequent to receipt of the LOC, the claimant may submit reimbursement requests for the costs of their corrective action. During FY 2008-09, the Fund received 5,681 reimbursement requests and processed 2,533 payments for a total of \$124,331,936. The remaining unprocessed reimbursement requests totaling approximately \$154,252,000 are pending until sufficient revenues are available to pay the reimbursement requests. Reimbursement requests processed for payment during the FY were significantly lower than the previous FYs because the Fund experienced cash flow issues.

Due to the cash flow issues, the Fund had to modify the review and payment process of reimbursement requests. Reimbursement requests are being reviewed in accordance with statute, regulations, and policies and procedures. However, the Fund is only able to make payment on reimbursement requests on a quarterly basis as adequate funds become available. Consequently, the Fund reviews reimbursement requests according to the claim's priority class and date of receipt of the reimbursement request and places the claim on hold pending the availability of cash. Payment of reimbursement requests are then made in order of the claim's priority class and date of receipt of the reimbursement request when sufficient revenues are available.

Fund regulations require a reimbursement request to be processed for payment within 60 days of receipt. However, due to the cash flow issues, the Fund cannot meet this requirement, although the Fund is continuously working to reduce the review time to place a reimbursement request on revenue hold to 60 days. The average time for reviewing reimbursement requests and placing them on revenue hold was 121 days.

During FY 2009-10, the Fund expects to receive and review approximately 4,000 reimbursement requests.<sup>7</sup>

### ***Cost Pre-Approval Review***

Pursuant to H&SC Section 25299.38, the Fund can pre-approve estimated corrective action costs to ensure that the proposed costs are eligible, reasonable, and necessary. Pre-approval is optional for claimants, however, pre-approval can reduce reimbursement request processing time if the corrective action is completed consistent with the pre-approval. In addition, the pre-approval process identifies ineligible costs ahead of time and can reduce the number of appeals after the costs have been incurred. Those appeals occur when Fund technical reviewers deem costs associated with corrective actions to be unreasonable and unnecessary after the projects are completed.

Due to Fund staffing reductions, the number of cost pre-approvals was greatly reduced beginning in 2003. During the current fiscal year, pre-approvals were limited to high cost corrective actions, such as major soil excavations or procurement and installation of remediation and treatment systems. All actual costs incurred for completed corrective actions are reviewed by the Fund staff to ensure the costs are eligible, reasonable, and necessary consistent with the Fund's cost guidelines and industry standard practices.

For FY 2009-10, the Fund will seek to increase pre-approval activity for high cost phases of corrective action work. The Fund completed 205 high-cost corrective action pre-approvals during FY 2008-09, for a total value of over \$22 million. The Fund projects approximately 750 pre-approvals will be processed in FY 2009-10. Fund staff is focusing on a Case Management approach during FY 2009-10. This Case Management project should greatly increase the number of cost pre-approvals. The pre-approval program will also be modified to one based on annual budgets, rather than specific high cost scopes of work. The Fund's long-term goal is to move the majority of cases to annual budgets which will be pre-approved on a yearly basis.

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<sup>7</sup> This does not include additional funds generated by the passage of AB1188 which increased the UST maintenance fee to \$0.006 per gallon for a total of \$0.02 per gallon. The fee increase is effective for two years from January 1, 2010 through December 31, 2011.

### **Settlements Review**

To ensure that payment from the Fund will not result in the claimant receiving double payment for eligible corrective action costs, Fund staff must review all moneys that the claimant received from other sources (settlements, judgments, insurance, etc.). During FY 2008-09, Fund staff reviewed 62 claims involving settlement issues. Since the beginning of the Fund, 2,313 settlement claims were reviewed, for a total savings to the Fund of \$39 million.

It is not possible to project accurately the number of future claims that will involve settlement issues. Based on previous history, the Fund anticipates reviewing 50 claims for settlement issues in FY 2009-10.

### **Ownership Assignment Review**

In April 2000, the State Water Board heard a request to allow assignment of a Fund claim to an otherwise ineligible party. As a result, the State Water Board adopted *In the Matter of the Petition of Lake Publishing Company*, Order: WQ 2000-06-UST (*Lake*). The *Lake* order allows the Fund to honor, under certain circumstances, a claimant's assignment of its rights to reimbursement from the Fund. Claimants are now able to assign their Fund claim or Fund eligibility in cases where they may have sold their property or are no longer able to continue with their Fund claim.

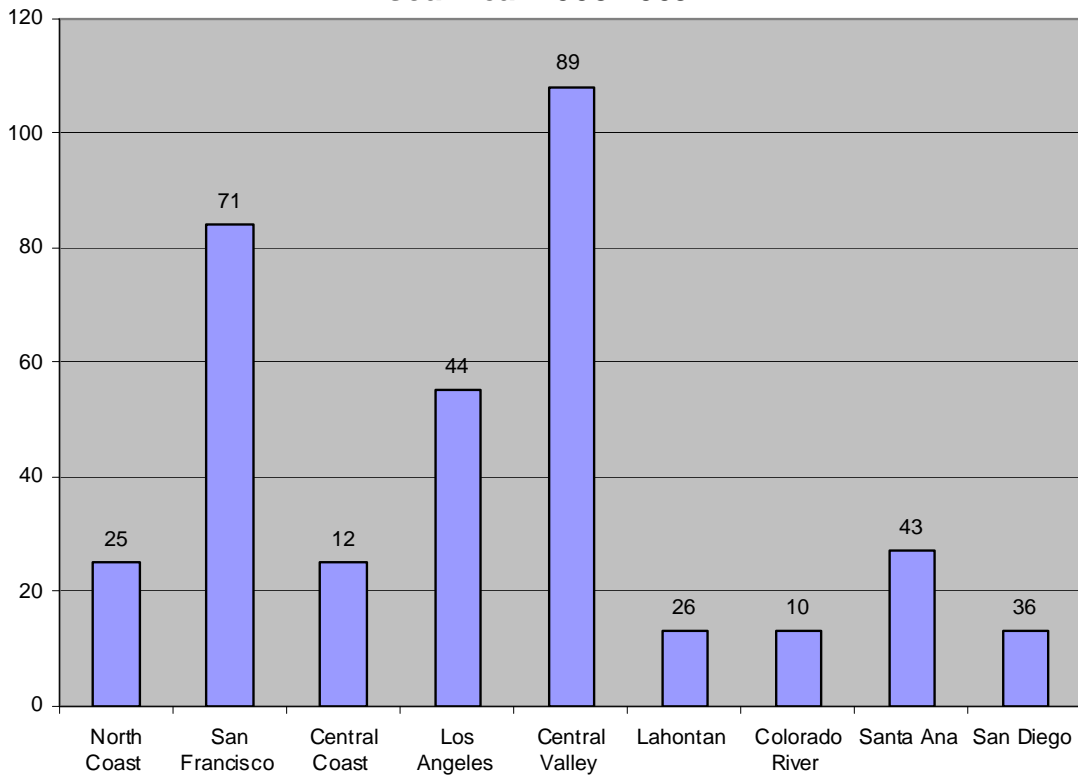
During FY 2008-2009, the Fund reviewed 67 assignment agreements. Since 2000, 617 assignment agreements have been reviewed. Based on previous history, the Fund anticipates that 70 ownership assignments will be reviewed in FY 2009-10.

### **Closure Review**

The Fund reviews claims that have concluded corrective action activity or are no longer eligible to receive reimbursement. This process allows previously reserved (encumbered) funds to be released (disencumbered) for use by other eligible claimants.

The Fund closed 356 claims during FY 2008-09. Figure 2 shows the number of claims closed, by region.

**Figure 2  
Closed Claims by Region  
Fiscal Year 2008-2009**



The Fund projects that 350 claims will be closed during FY 2009-10.

### ***Five-Year Review***

The Fund annually reviews the case history of all claims having an active LOC for more than five years, unless the owner or operator objects to the review. The purpose of this review is to determine whether a recommendation for case closure is in order. During FY 2008-09, Fund staff reviewed 1,519 claims for possible closure. During or following review by the Fund, the Regional Water Boards and Local Oversight Program Agencies closed 109 UST cases. The Fund projects that it will complete approximately 1,500 five-year reviews in FY 2009-10. During FY 2009-10, the Fund also plans to begin presenting cases to the State Water Board for consideration of closure where there is disagreement between the Regulatory Agency and the Fund in order to increase the opportunities for closing cases.

# Fiscal Status Report

## REVENUE / EXPENDITURES SUMMARY Fiscal Year End 2008-2009

	<u>08/09 Fiscal Year</u>	<u>Since Inception *</u>
<b>FUNDS RECEIVED:</b>		
- Mill Storage Fee Collected	\$227,725,257	\$3,165,793,217
- Net from Previous Fees		\$8,591,052
- Net Interest Earned	\$337,610	\$106,160,733
- Transfers/Misc.	\$2,581,281	\$2,581,281
<b>Total Funds Received:</b>	<b>\$230,644,148</b>	<b>\$3,283,126,283</b>
<b>FUNDS EXPENDED &amp; COMMITTED:</b>		
- Fund Administration <sup>1</sup>	\$19,553,053	\$193,789,925
- Cleanup Oversight <sup>2</sup>	\$23,517,224	\$249,006,656
- Department of Trade & Commerce <sup>3</sup>		\$75,500,000
- Rust Program		\$15,104,012
- Board of Equalization <sup>4</sup>	\$3,282,839	\$30,357,760
- Claims Reimbursement <sup>5</sup>	\$142,039,293	
<b>\$2,682,688,259</b>		
- Department of Health Services <sup>6</sup>		\$20,000,000
- CalEPA	\$799,792	\$3,408,220
- Misc <sup>7</sup>	\$27,467	\$5,844,063
<b>Total Funds Expended &amp; Committed:</b>	<b>\$189,219,668</b>	<b>\$3,275,698,895</b>
<b>NET FUNDS AVAILABLE:<sup>8</sup></b>		<b>\$7,427,388</b>

\* Amounts from previous report were adjusted to reflect actuals.

<sup>1</sup> Fund Administration includes prorata.

<sup>2</sup> Includes local oversight program costs. Under authority in H&SC Section 25299.51, the State Water Board receives an annual appropriation to hire or contract for local government staff to oversee cleanups.

<sup>3</sup> From the inception of the Fund, through FY 1998-99, the Department of Trade and Commerce received an annual appropriation to provide loans to small businesses for the upgrade and replacement of underground storage tanks. The Fund was transferred to the State Water Board in 2004.

<sup>4</sup> The Board of Equalization receives an annual appropriation to cover the costs of collecting the Underground Storage Fee.

<sup>5</sup> Claims Reimbursement includes Special Programs: Orphan Site Cleanup Fund; Emergency, Abandonment, Recalcitrant Account; and Commingled Plume Account.

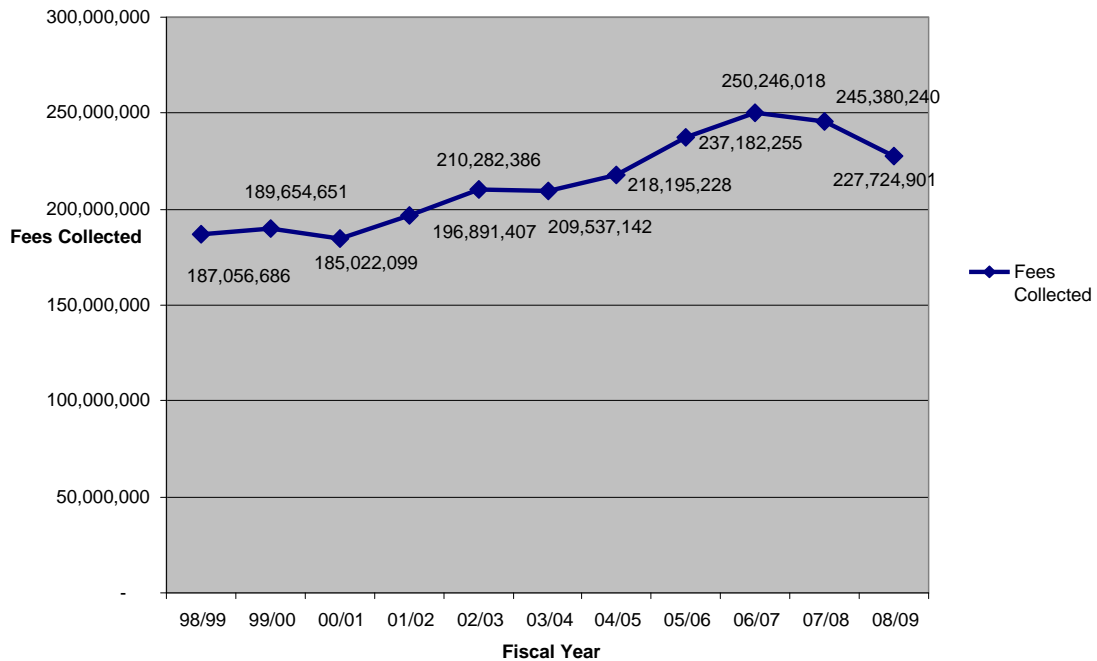
<sup>6</sup> Under authority provided in H&SC Section 25299.99.1, the State Water Board may annually transfer \$5 million to the Department of Public Health (Department of Health Services prior to July 1, 2008) for the Drinking Water Treatment and Research Fund.

<sup>7</sup> Misc. includes accounts receivable abatements, various contracts and loans.

# Cash Flow Issues

During FY 2008-09, the Fund experienced a cash shortage that resulted from: 1) a 9 percent reduction in revenues since a peak two years ago (UST maintenance fee collected quarterly by the BOE, see Figure 3), 2) an increase in cleanup costs (see Figure 4), 3) cleanups taking longer than anticipated to complete, 4) an increase in special account, administrative, and regulatory oversight costs (due in part to collective bargaining and new legislation, see Figure 5), and 5) the depletion of a long-standing cash surplus. As a result, substantial delays occurred in reimbursing claimants for their eligible corrective action costs.

Figure 3  
**STATE WATER RESOURCES CONTROL BOARD**  
**Actual Fees Collected**



<sup>8</sup> This figure does not include funds reverted from previous year encumbrances. Beginning FY 08/09, the Fund was over committed relative to the Funds available. In FY 08/09, the Fund adjusted the spending plan by aligning receipts with expenditures.

By letter dated October 23, 2008, the Fund first notified all claimants and interested parties of the anticipated delays for reimbursement and the need to suspend LOCs as a result of the cash flow issues.

Figure 4

Total Reimbursements Paid vs. Average Payment Amount

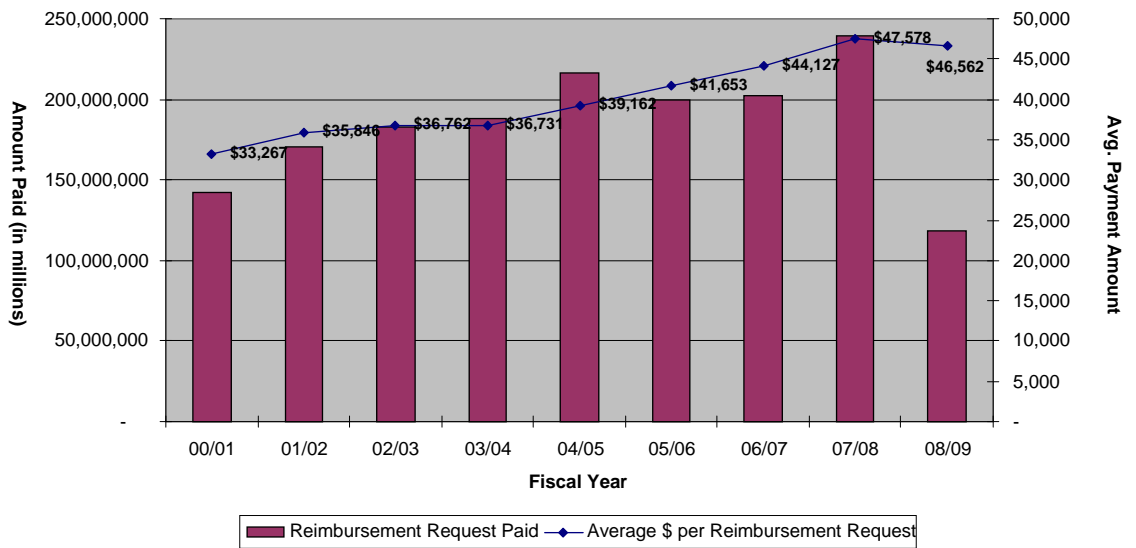
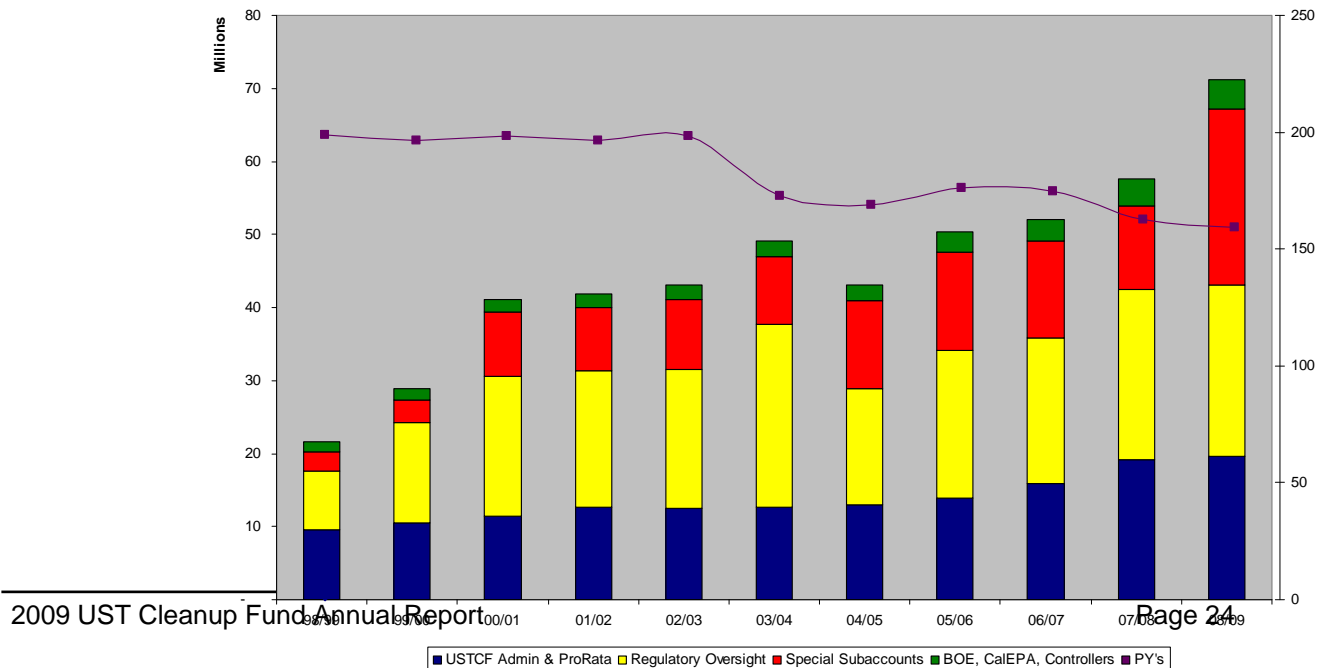


Figure 5

Costs for Special Accounts, Administration and Regulatory Oversight





During FY 2008-09, the Fund suspended the LOCs of over 1,350 Priority Class C and D claims due to the cash shortage. In addition, the Fund did not issue the first LOCs of approximately 50 new Priority Class B claims and 50 new Priority Class C claims on the Fund's Priority List.

The Fund's cash shortages mostly affected approximately 1,250 active Priority Class C claims. By letter dated November 7, 2008, the Fund suspended the LOCs for 612 Priority Class C claims, which had a claim application filing date of January 1, 2000, or later. By letter dated January 7, 2009, the Fund suspended the LOCs for another 617 Priority Class C claims, which had a claim application filing date of January 1, 1995, or later. By letter dated January 5, 2009, the Fund suspended the LOCs for 127 Priority Class D claims.

Payment issuance was also delayed due to the lack of revenue. Priority Class A claims had minor delays. Priority Class B payments were delayed 4 to 10 months. The Priority Class C payments were the most affected because their overall allotment was reduced to the statutory minimum of 14 percent of revenues available for claim reimbursement, after historically receiving about 35 percent. The projected payment delay for Priority Class C claims is up to 30 months.

In response to this situation, the State Water Board initiated several actions. First, it held a public workshop on March 9, 2009, to solicit comments and recommendations to reduce the financial impact on claimants and their consultants and as well as overall improvements to the Fund and the UST Cleanup Program.

The State Water Board adopted [Resolution No. 2009-0042](#) on May 19, 2009, which directed certain measures be undertaken to improve the administration of the Fund and the UST Cleanup Program. The Resolution directed an independent program and fiscal audit of the Fund and to annually thereafter complete a fiscal audit. It required the Fund task force to identify and recommend issues to be addressed in the audit by September 1, 2009.

[Resolution No. 2009-0042](#) also directed the regulatory agencies to take several actions to help reduce the financial impact on responsible parties, claimants, and the

Fund. First, it directed the regulatory agencies to conduct a case review of their sites to identify those ready for closure or identify the impediments to closure. This directive is to be completed by June 30, 2010. Second, it directed the regulatory agencies to reduce quarterly monitoring requirements to a semiannual or less frequent monitoring at all sites, unless site-specific conditions warrant otherwise. This directive is to be completed by August 1, 2009 and is expected to result in savings of \$40 million.

[Resolution No. 2009-0042](#) also created two task forces, one to address improvements to the UST Cleanup regulatory program (Program task force) and the second to address improvements to Fund administrative procedures and cash shortage (Fund task force). The Fund task force is composed of regulatory agencies, consultants, and UST owners and operators to make recommendations for improvements to Fund administrative procedures and response to the current cash shortage. The resolution also requires the task force to make recommendations for improving the UST Cleanup regulatory program. Both task forces are currently scheduled to meet about every other week through December 2009. The recommendations are due to the State Water Board by January 1, 2010.

Chapter 649, Statutes of 2009, (AB 1188 Ruskin), will increase the fee to \$0.02 for two years effective January 1, 2010. This increase, introduced to address the Fund shortfall, is expected to generate \$96 million annually, for a total of \$192 million.

## FY 2009-2010-Summary of Goals and Objectives

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The goals and objectives noted for FY 2009-2010 include actions taken in response to the [Board's Resolutions No. 2009-0042](#), adopted May 19, 2009 and [No. 2009-0081](#) adopted November 27, 2009. In addition, the Fund will respond to the independent audit scheduled to be posted to the Fund's web page by March 1, 2010 and respond to the task force recommendations submitted to the State Water Board in January 2010. As an ongoing effort, the Fund continues to take appropriate action to improve and streamline processes for program effectiveness. Following are actions underway or completed during the first half of FY 2009-2010:

- Enhanced the Fund's web page by posting additional information and continually updating the information. Specifically, providing payment status to allow claimants to estimate when payments are likely to occur.
- The Fund has implemented the following to reduce reimbursement request review time:
  - Eliminated LOCs for incremental funding increases.
  - Instituted a triage process to provide timely notification to claimants of reimbursement request deficiencies.
  - Redesigned the reimbursement request (RR) form to allow claimants to designate a contact for each RR.
  - Provided a form for certification of payment to a vendor.
- Eliminated the preparation and printing of payment letters and summaries at time of payment to expedite payment processing for reimbursement requests on revenue hold. The information is sent to the claimant when the reimbursement request is placed on hold.
- Lifted the suspension of LOCs effective January 1, 2010. The Fund sent letters on December 14, 2009, to the Priority Class C claimants whose LOCs had been suspended.

- Creating forms and procedures to pay carrying costs as specified in Chapter 649 States of 2009, AB1188, Ruskin.
- Creating forms and procedures to facilitate options for claimants to assign Fund reimbursements.
- The Five Year Review Unit projects it will complete approximately 1500 five year reviews to determine whether a recommendation for case closure is in order.
- The Fund began presenting cases to the State Water Board in January 2010 and plans to bring cases to the State Water Board three to four times per year for consideration of closure where there is disagreement between the regulatory agency and the Fund.
- The Technical Review Unit will reinstate an improved pre-approval process during FY 2009-10 using a Case Management approach. This Case Management approach will increase the number of cost pre-approvals to approximately 750.

## Legislation

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The following is a summary of legislative changes that have affected the Fund since its inception in reverse chronological order:

**Chapter 649 Statutes of 2009, (AB 1188, Ruskin)**, an urgency measure: 1) provides a \$0.006 increase to the USTCF or Fund fee, from January 1, 2010, until January 1, 2012; 2) requires the State Water Board to post on its web site the result of a program audit or a fiscal audit of the Fund within 90 days of completion of the audit; 3) requires that the annual transfer from the USTCF to the School District Account be made prior to the allocation of the money in the Fund for payment of claims by other UST owners or operators, and expand the type of school districts whose USTCF claims can be paid from the School District Account ; 4) allows claimants who have approved but unpaid claims to be reimbursed for costs related to obtaining other financing to cover “carrying costs” as defined; 5) makes a clarifying change to the grant awards process for the Replacing, Removing, or Upgrading Underground Storage Tanks (RUST) grants allowed pursuant to Chapter 69, Statutes of 2009, (AB 96, Ruskin).

**Chapter 644 Statutes of 2008, (AB 2729, Ruskin)**, provides for the following: This bill creates the School District Account in the Fund and transfers a total of \$30 million over three years from the Fund to the School District Account. AB 2729 authorizes the State Water Board to make expenditures from the School District Account to reimburse Priority Class D claimants that are school districts, and requires the State Water Board to consult with the State Department of Toxic Substance Control in allocating the funds to school districts.

**Chapter 616 Statutes of 2008, (SB 1161, Lowenthal)**, 1) extends for five-years the sunset date of the Underground Storage Tank Cleanup Trust Fund (USTCF or Fund) Act, to January 1, 2016 and 2) reauthorizes the Orphan Site Cleanup Fund (OSCA) to provide \$30 million from the USTCF to pay for the cleanup of brownfield sites that are contaminated with petroleum where there is no responsible party (orphan sites). In addition, the bill makes various technical changes to the USTCF program.

**Chapter 282 Statutes of 2007, (AB 1437, Aghazarian),** makes various clarifying changes to existing law pertaining to the Petroleum Underground Storage Tank Cleanup Fund (USTCF), and allows the State Water Board to waive certain requirements in current law to enable additional people to qualify for reimbursement from the USTCF.

**Chapter 774 Statutes of 2004, (AB 1906, Lowenthal),** increased the petroleum storage fee from \$0.012 per gallon to \$0.013 per gallon beginning January 1, 2005, and to \$0.014 per gallon beginning January 1, 2006. Additionally this bill established the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Subaccount (Subaccount) and required \$10 million to be annually transferred from the Fund into the Subaccount for Calendar Years 2005-2007 for costs to remediate petroleum contamination at specified sites.

**Chapter 624, Statutes of 2004, (AB 1068, Liu),** extended the sunset date for the Replacement of Underground Storage Tanks Program from January 1, 2004, to January 1, 2011. This bill also transferred the administration of the RUST Program from the former Technology, Trade and Commerce Agency (TTCA) to the State Water Board.

**Chapter 649, Statutes of 2004, (AB 2955, McCarthy),** established a new grant Fund to provide funding to certain small businesses that install USTs after July 1, 2004. The grants are to test USTs during and after installation and to purchase equipment needed for long-term leak detection monitoring.

**Chapter 644, Statutes of 2004, (AB 2701, Runner),** repealed unnecessary or obsolete California Environmental Protection Agency (CalEPA) reports, changes the reporting frequency of select reports from annual to biennial, and allows data rich or statistical reports to be posted directly on the web.

**Chapter 225, Statutes of 2004, (SB 1097, Committee on Budget and Fiscal Review),** transferred funds remaining in the Petroleum Underground Storage Financing

Account (PUSTFA) on January 1, 2004, and subsequent loan repayments issued under the Replacement of Underground Storage Tank (RUST) Program, to the General Fund.

**Chapter 689, Statutes of 2003, (AB 1218, Dutra)**, established procedures the State Water Board must follow when paying claims for work performed pursuant to a State Water Board-approved performance-based contract. The claims are limited to requests for reimbursement of corrective action costs incurred in response to an unauthorized release of petroleum from a UST. This law required the State Water Board to advertise the bidding for performance-based contracts, under certain circumstances. Additionally, the law extends the authority to encumber Funds in the Fire Safety Subaccount until June 30, 2005 and required those encumbered Funds to be liquidated no later than December 31, 2006.

**Chapter 997, Statutes of 2002, (AB 2481, Frommer)**, loosened the eligibility requirements to permit a claimant to the Fund who acquired a UST from an ineligible person to participate in the Fund, as long as the claimant is not affiliated with the ineligible person and the claimant otherwise meets eligibility requirements. AB 2481 also relocated the UST corrective action provisions of the H&SC from Article 4 of Chapter 6.75 to Chapter 6.7 (Sections 25296.10-25296.40).

**Chapter 37, Statutes of 2002, (SB 526, Sher)**, provided that the requirement to designate a site as having no residual contamination only applied to a site listed on the State Water Board's database system if, at the time a closure letter is issued for the site or at any time after a closure letter has been issued, the State Water Board determines that no residual contamination remains on the site.

**Chapter 154, Statutes of 2001, (AB 1465, Nation)**, revised the definition of "claim" to refer to all of the documents submitted to the Fund for reimbursement of costs incurred due to an occurrence, including, but not limited to, the application, reimbursement requests, and verification documents. The law amended the definition of "UST" to include non-residential heating oil tanks, thus subjecting owners of these heating oil tanks to the storage fee requirement and, assuming other eligibility conditions

are met, permitting the State Water Board to accept Fund claims from owners or operators of these heating oil tanks. In addition, this bill clarified the Fund's sunset provision. Finally, AB 1465 required claimants, as a condition of eligibility to the Fund, to demonstrate that they have paid all storage fees, interest, and penalties for the UST that is the subject of the claim.

**Chapter 727, Statutes of 2000, (AB 2886, Kuehl)**, clarified the use of the EAR Account and allows the Department of General Services, at the request of the State Water Board or the Regional Water Boards, to enter into contracts and act as an agent of the State Water Board or the Regional Water Boards in cleanups of EAR Account sites.

**Chapter 144, Statutes of 2000, (AB 2872, Shelley)**, created the Fire Safety Agency Subaccount in the Fund, transferring \$5 million from the Fund into the Subaccount, and authorizes the State Water Board to expend the money in the Subaccount to pay claims filed by fire safety agencies.

**Chapter 812, Statutes of 1999, (SB 989, Sher)**, increased the amount available for reimbursement of a corrective action claim to \$1.5 million per occurrence and extended the authorization of the Fund until January 1, 2011.

**Chapter 328, Statutes of 1999, (SB 665, Sher)**, made numerous technical and clarifying corrections to UST laws. Provisions of this bill included limiting reimbursement of regulatory technical assistance costs to \$3,000, revising procedures for pre-approval of corrective action costs, and clarifying that the Fund is a state entity entitled to claim the protection of sovereign immunity.

**Chapter 997, Statutes of 1998, (SB 2198, Sher)**, created the Drinking Water Treatment and Research Fund (Research Fund) and directed the State Water Board to transfer \$5,000,000 annually from the Fund to the Research Fund maintained by the CDPH. The purpose of the Research Fund was to address the contamination of public water supplies caused by oxygenates. The Research Fund is used for investigation,



cleanup, or treatment of groundwater or surface water, as well as replacement or alternative water supplies and research into treatment technologies.

**Chapter 611, Statutes of 1996, (SB 562, Thompson)**, required the State Water Board to make changes in the way the program funds may be used and tank owners may be reimbursed for cleanup costs. Following is a brief description of each of the bill's major provisions:

1. Changed the applicability date for an exemption for motor vehicle fuel tanks for conformance to specified installation requirements from January 1, 1984 to January 1, 1997.
2. Added the definition of "occurrence" and "site", and states that the changes are declaratory of existing law.
3. Permitted the State Water Board, under specific conditions, to suspend corrective action at sites until the Fund provides to the responsible party eligible for reimbursement with an LOC.
4. Required the State Water Board to implement a procedure that does not assess an owner, operator, or responsible party taking corrective action for the costs of a local oversight program. Also required the State Water Board to institute an internal procedure for assessing, reviewing, and paying those costs directly between the State Water Board and the authorized local agency. This provision discontinued the cost recovery of Local Oversight Program costs from the responsible party after January 1, 1997.
5. Removed the domiciliary and principal place of business requirements for Priority Class B and Priority Class C claimants.
6. Required the State Water Board to adopt a uniform closure letter.
7. Required regulatory agencies to work with responsible parties and the Fund to obtain pre-approval of corrective action costs. This provision required a process under which Regional Water Boards would be authorized to work with site owners, operators, responsible parties, and the Fund to seek pre-approval of corrective action costs.

8. Required the State Water Board make a determination of a claimant's eligibility within 60 days of receipt of the completed claim and prohibits that determination from being revoked except under specified conditions.
9. Required the Fund Manager to notify UST owners or operators who have an active LOC of five years or more that a review of their case history will be performed annually until closure, except under specified conditions. Authorized the Fund Manager to move for site closure and authorizes tank owners to seek closure where closure has not been granted by the local enforcement agency.
10. Required that the Fund issue a notice to the claimant and the lead agency at least 15 days before the State Water Board proposes to disapprove a claim for corrective action costs, which were incurred on the grounds that the costs were unreasonable or unnecessary.
11. Required the State Water Board to pay a claim for the costs of corrective action at a reopened site as specified and directs that a claim at a reopened site be reimbursed before any new claims to the Fund.
12. Required the State Water Board to develop, implement and maintain a system for storing and retrieving data from petroleum UST cases to allow regulatory agencies and the general public to use historic data in making permitting and land use decisions relative to impacted properties. Sites for which no residual contamination remains shall be removed from the database.
13. Required the Attorney General, upon request from the State Water Board, to recover costs of cleanup from responsible parties, UST owners and UST operators for corrective action undertaken or contracted by the Regional Water Boards or local agencies.
14. Established the Commingled Plume Account and authorized a joint claim for corrective action and cost recovery under the program as specified.

**Chapter 614, Statutes of 1996, (SB 1417, Kelley)**, allowed the City of Blythe to contract for the cleanup of leaking underground storage tanks and to submit a consolidated claim to the Fund.

**Chapter 1191, Statutes of 1994, (SB 1764, Thompson)**, made several changes to the Fund. Following is a highlight of the major provisions:

1. Required the State Water Board to develop a summary of expected costs for common remedial actions that may be used by claimants as a guide in the selection and supervision of consultants and contractors.
2. Required that effective July 1, 1995, the level of financial responsibility (deductible) be reduced; Priority Class A claimants were no longer responsible for a deductible; Priority Class B and Priority Class C claimants had their deductible reduced to \$5,000; and Priority Class D claimants remained the same at \$10,000.
3. The Fund was directed to provide increased technical assistance to claimants including helping the claimant through the process of obtaining and evaluating bids or estimates, and reviewing and approving costs prior to work being performed.
4. On January 1, 1995, the storage fee was increased by one mill for a total of \$0.007; January 1, 1996, the fee increased by two mill for a total of \$0.009; January 1, 1997, the fee increased another three mill, for a total of \$0.012.

**Chapter 296, Statutes of 1994, (SB 108, Kelley)**, directed the State Water Board to develop cleanup procedures and proposed regulations applicable to unauthorized releases of petroleum from multiple responsible parties, which are the result of commingled contamination of groundwater plumes. The Act established the Blythe Environmental Remediation Demonstration Project and the City of Blythe as the demonstration project for this purpose.

**Chapter 183, Statutes of 1994, (AB 2303, Richter)**, deleted the provision that UST owners or operators, who completed corrective action with regard to a release from a tank by October 2, 1989, be prohibited from filing a claim to the Fund.

**Chapter 432, Statutes of 1993, (AB 1061, Costa)**, amended the priority ranking for the Fund to include, in the second ranking, a city, county district, or nonprofit organization that has total annual revenues of less than \$7 million, and includes in the third ranking, a city, county, district, or nonprofit organization that employs fewer than 500 full-time and part-time employees. The Act required the State Water Board to allocate

approximately a minimum of 14-16 percent of the amount appropriated to Priority Class C and Priority Class D claimants. Also allows for claimants who meet specific criteria to request a waiver of the permit eligibility requirements.

**Chapter 874, Statutes of 1992, (AB 3188, Hauser)**, created the "Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989" and establishes the Fund in the State Treasury rather than the General Fund.

**Chapter 679, Statutes of 1992, (SB 1356, Greene)**, exempted the multiple bid requirement for tanks owned or operated by a public agency if the prospective costs are for private professional services within the meaning of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and those services are procured in accordance with the requirements of that chapter.

**Chapter 1033, Statutes of 1991, (AB 1699, Kelley)**, specified the type of expenses that the State Water Board can reimburse under third party claims, and redefines and clarifies the legislative intent for eligibility of residential USTs.

**Chapter 1366, Statutes of 1990, (SB 2004, Keene)**, recast the provisions of the Act and requires every owner of a petroleum UST, which is subject to regulation under the H&SC to pay a six mill (\$0.006) per gallon storage fee to the Fund. This fee began on January 1, 1991.

**Chapter 1442, Statutes of 1989, (SB 299, Keene)**, created the Underground Storage Tank Cleanup Fund Program to help owners and operators of USTs satisfy federal and state financial responsibility requirements, and to assist with the costs of cleanup of contaminated soil and groundwater caused by leaking petroleum tanks.