

A Guide To California's

Petroleum Underground Storage Tank Cleanup Fund

COMMINGLED PLUME ACCOUNT PROGRAM

Including Claim Application and Checklist



**STATE WATER RESOURCES CONTROL BOARD
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
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DEFINITIONS

The following are definitions of terms used throughout this guide.

"Commingled Plume" is the condition that exists when groundwater contaminated with petroleum from two or more discrete unauthorized releases have mixed or encroached upon one another to the extent that the corrective action performed on one plume will necessarily affect the other. A commingled plume does not include either of the following: (1) contaminated groundwater plumes resulting from unauthorized releases or discharges from a single site; or (2) soil contamination, unless it can be demonstrated that the contaminated soil is an immediate threat to groundwater.

"Site" means a parcel of real property or adjacent parcels under common ownership or control.

"Contributing Site" means a site on which an unauthorized release or discharge of waste has occurred or is occurring and has impacted or threatens to impact groundwater.

"Fund" refers to the Underground Storage Tank Cleanup Fund Program administered by the State Water Resources Control Board.

"H&SC" refers to the California Health and Safety Code.

"Joint Claimant" is any responsible party named in the commingled plume application who is participating in the cleanup of the commingled plume.

"Eligible Claimant" is any responsible party named as a joint claimant who is also a UST owner or operator who is eligible for payment of a claim pursuant to H&SC Section 25299.54.

"Regulatory Agency" means the SWRCB, a regional board, or any local, state, or federal agency which has responsibility or authority for regulating

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underground storage tanks or which has responsibility for cleanup or overseeing cleanup of unauthorized releases from underground storage tanks.

"SWRCB" *means the State Water Resources Control Board.*

"UST" *means an underground storage tank which is used for the storage of petroleum and which is substantially or totally beneath the surface of the ground.*

INTRODUCTION

The information in this booklet is intended as guidance to help you submit a claim to the Commingled Plume Account within the Underground Storage Tank Cleanup Fund Program (Fund).

While reading this material, remember that this program is governed by the California Health & Safety Code (H&SC), Chapter 6.75. The law is complex and subject to change. If there is a conflict between the law and the information contained in this Guide, any decisions will be based on the law and not this Guide.

The Commingled Plume Account was added to the H&SC, Chapter 6.75 by Senate Bill 562, effective January 1, 1997.

A claim to the Commingled Plume Account requires :

1. A commingled plume application signed by the joint claimants. The application must provide the information and documentation necessary for the Fund to determine that the claim meets all of the statutory conditions for reimbursement of eligible costs contained in Chapter 6.75, Article 11 (commencing with H&SC Section 25299.90).

AND

2. A separate Fund application for each of the underground storage tank (UST) owners or operators eligible for payment of a claim pursuant to H&SC Section 25299.54.

The Commingled Plume Account is a new part of the Fund. If you have questions about submitting a claim or completing the application, please call (800) 813-FUND and leave a message for the Commingled Plume Account Coordinator.

SECTION I - COMMINGLED PLUME ACCOUNT

General

The Commingled Plume Account was created to encourage responsible parties with commingled plumes to coordinate their cleanup efforts, avoid litigation, more rapidly address required cleanup, and significantly reduce the costs of cleanup.

Unauthorized releases from USTs are a major source of petroleum contaminated groundwater commingled plumes. Commingled plume sites represent a special problem to California's groundwater protection efforts because they often represent more serious water quality impacts, involve parties that disagree as to liability, and include cleanups which continue to be stalled or handled in a piecemeal, haphazard, expensive manner. Unless corrective action is performed in a coordinated manner, corrective action of commingled plumes could be ineffective.

Some of the benefits of the Commingled Plume Account are:

1. Identified responsible parties that contributed to the plume may file one joint claim;
2. Responsible parties eligible for reimbursement from the Fund and responsible parties not eligible for reimbursement from the Fund can be joint claimants on a commingled plume claim if specified requirements are met. Reimbursement will not be impacted because of non-UST owners or non-petroleum substances so long as at least 85% of the plume is comprised of petroleum contamination from an unauthorized release from a UST whose owner or operator is eligible for payment of a claim pursuant to H&SC Section 25299.54;

3. The maximum funding per commingled plume claim is up to \$1 million per occurrence for which a UST owner or operator named in the commingled plume claim is eligible for reimbursement pursuant to H&SC Section 25299.54; and
4. Commingled plume claims have their own priority that is separate from the priority of individual claims to the Fund.

Eligibility Requirements

A claim may be submitted for reimbursement of corrective action costs associated with a commingled plume if all of the following conditions are met:

1. **Each person named in the joint claim is an owner, operator, or other responsible party ordered to perform corrective action or remedial action. (25299.93(a)(1) H&SC)**
2. **After performing a soil and water investigation in accordance with California Code of Regulations, Title 23, Division 3, Chapter 16, Article 11, the joint claimants have demonstrated to the satisfaction of the local or regulatory agency and the SWRCB that a commingled plume exists and that every identified unauthorized release or discharge has contributed substantially to the commingled plume. (25299.93(a)(2) H&SC)**
3. **At least 85% of the plume is comprised of petroleum contamination resulting from an unauthorized release from a UST whose owner or operator is eligible for payment of a claim pursuant to H&SC, Section 25299.54. (25299.93(a)(3) H&SC)**

If the commingled plume does not meet the 85% criteria, a claim will not be accepted. However, many benefits to a

coordinated cleanup by the responsible parties still exist. Where a commingled plume exists and the responsible parties conduct a coordinated cleanup effort, the parties that are eligible to be reimbursed from the Fund can still file individual claims to the Fund for their share of the eligible costs that they have incurred and paid.

- 4. At least two contributing sites involve an unauthorized release. (25299.93(a)(4) H&SC)**
- 5. The joint claimants have coordinated corrective action as soon as practicable. (25299.93(a)(5) H&SC)**
- 6. The joint claimants have agreed to seek pre-approval of corrective action costs in accordance with H&SC, Section 25299.57 subdivision (c). (25299.93(a)(6) H&SC)**
- 7. The joint claimants have entered into a written agreement that provides for a coordinated corrective action plan. The written agreement shall do the following:**
 - A. Appoint one of the joint claimants to represent all joint claimants for the purpose of interacting with the regulatory agency and the SWRCB.**

*The Commingled Plume Account requires that the written agreement appoint a representative to interact with the regulatory agency and the SWRCB. If the joint claimants want to give the appointed representative the power to sign and file documents to the Fund on their behalf, an "**Authorized Representative Designation**" form must be completed and submitted with the application. Otherwise, the appointed representative named in the agreement does not have the power to sign and file documents on the joint claimants' behalf.*

- B. Permit the joint claimants reasonable access to contributing sites as necessary to perform corrective action.**
- C. Identify any corrective action costs incurred at contributing sites and assess if any of those costs may be eligible for reimbursement under Chapter 6.75 of the H&SC.**
- D. Estimate responsibility among the joint claimants and describe a formula or method for apportioning costs that are not eligible for reimbursement under Chapter 6.75 of the H&SC or which exceed the maximum reimbursement limitations prescribed in Section 25299.94 of the H&SC.**
- E. Identify all money or other compensation received by any joint claimant which is related to contamination at a contributing site or the commingled groundwater plume. (25299.93(a)(7)H&SC)**

SECTION II - CLAIMS PROCESSING

Priority List

Commingled plume applications will be accepted after January 1, 1997, and prioritized based on the receipt date of the completed application. The Fund will consider an application complete for the purpose of placement on the priority list when the joint claimants submit:

1. An agreement signed by all joint claimants meeting all of the conditions specified in H&SC Section 25299.93 (a)(7);
AND
2. Documentation that the applicable regulatory agency is in agreement that a commingled plume exists which meets the definition contained in H&SC Section 25299.91.

If more than one claim is received on the same date, they will be randomly ranked. Claims submitted by the City of Blythe will be paid before all other claims pursuant to H&SC, Chapter 8.5.

Rejection of Claims

Any commingled plume claim or joint claimant determined ineligible will be notified in writing of the reasons for the ineligibility determination. Appeal rights will be described in the written notification.

SECTION III - REIMBURSABLE COSTS

Maximum Reimbursement

The maximum reimbursement under a commingled plume claim is \$1 million per occurrence for which a UST owner or operator named in the claim is eligible for reimbursement pursuant to H&SC, Chapter 6.75. Reimbursement will be less the aggregate deductibles and any reimbursement made to eligible claimants on their individual claims.

Deductible (Level of Financial Responsibility)

The deductible amounts for the Commingled Plume Account Program are the same as those specified for the UST Cleanup Fund Program. Refer to Page 14 of this guide for the specific amounts.

The deductible that is applied to a commingled plume claim is the aggregate of the deductibles applicable for each eligible claimant as named in the application. If an eligible claimant has also submitted an individual claim to the Fund and has received reimbursements under that claim, the eligible claimant is not subject to another deductible for the same occurrence.

Double Payment

The Fund must determine that commingled plume joint claimants have not and will not receive double payment. Joint claimants are not entitled to double payment of any corrective action or third party compensation claim costs. The SWRCB will not reimburse joint claimants for any eligible costs for which the joint claimant has been or will be compensated by another party.

The agreement requires all joint claimants named in the commingled plume claim to identify all monies or other compensation received which is related to the

contamination at any contributing site or the commingled groundwater plume. Joint claimants must also complete and sign a "Certification of Non-Recovery From Other Sources" form which identifies all monies received or to be received from any source including lawsuits, settlements, judgments, contributions from other potentially responsible parties, insurance claims, etc., no matter how the funds are characterized. Even if any of the joint claimants received money or may possibly receive money in the future for purposes other than to clean up the site, this information must be disclosed.

Pre-Approval of Corrective Action Costs

Joint claimants are required to obtain pre-approval of corrective action costs from the Fund. Refer to the Fund's Cost Guidelines for more information on seeking pre-approval of costs. A copy of the Cost Guidelines and a Pre-Approval Request form is available by calling (800) 813-FUND.

Third Party Compensation Claim Costs

Only third party compensation claim costs imposed upon an eligible claimant can be reimbursed under the Commingled Plume Account. Third party compensation claims must also meet the requirements set forth in H&SC Section 25299.58. Third party compensation claim costs will not be reimbursed until corrective action costs determined eligible for reimbursement have been paid.

Other Claims to the Fund

Costs Incurred PRIOR to Written Agreement

With the exception of costs incurred by UST owners and operators, reimbursement is limited to those costs incurred after executing a written agreement pursuant to H&SC Section 25299.94 (d). UST owners or operators named in the

commingled plume claim who incurred corrective action costs for cleanup at a contributing site prior to the written agreement may request reimbursement by:

1. Filing or maintaining an individual claim to the Fund in accordance with H&SC Article 6; or
2. Requesting reimbursement in a Commingled Plume Account application.

Any reimbursements received from the Fund by a UST owner or operator on their individual claim will be applied toward the reimbursement limit for the commingled plume claim.

Costs Incurred AFTER Written Agreement

Joint claimants who incur corrective action costs after the execution of the written agreement may request reimbursement from the Commingled Plume Account.

Corrective action costs associated with a non-contributing unauthorized release may be reimbursed from the Commingled Plume Account only if the non-contributing release is part of the same occurrence as a contributing unauthorized release.

UST owners or operators named in the commingled plume claim may not request reimbursement from both the Commingled Plume Account and the Fund for the same costs. When a UST owner or operator named in the commingled plume claim is approved for funding under the Commingled Plume Account, any individual claims submitted to the Fund for the same site and occurrence will be withdrawn. If a UST owner or operator withdraws a claim filed under the Commingled Plume Account, the UST owner or operator may submit or resubmit an individual claim to the Fund. The individual claim submitted will be treated as a new claim and will be assigned to a priority class and ranked in accordance with UST Cleanup Fund

Regulations. An eligible claimant may file an individual claim for costs that associated with a separate occurrence at a contributing site.

SECTION IV - REQUIRED DOCUMENTATION

Documentation must be submitted with the Commingled Plume Account application demonstrating that the claim meets all eligibility requirements. The application includes a checklist of the documents required.

An application must have both of the following items to be considered complete for the purpose of placement on the priority list:

1. A written executed agreement signed by all joint claimants meeting all the conditions specified in H&SC Section 25299.93;

AND

2. Documentation that the regulatory agency is in agreement that a commingled plume exists that meets the definition in H&SC Section 25299.91.

For purposes of determining eligibility, additional documents must be submitted with the application. If the additional documents are not included with the application, the joint claimants will be contacted and asked to submit them. You can help expedite the review process by ensuring that your application contains complete information and includes all required documents. For a complete list of required documentation, refer to the application checklist in this guide.

SECTION V - UST CLEANUP FUND APPLICATION

General

Each joint claimant who is a UST owner or operator eligible for reimbursement from the Fund pursuant to H&SC Section 25299.54 must submit a Petroleum Underground Storage Tank Cleanup Fund Application. The application is required to determine:

1. If at least 85% of the commingled plume is comprised of petroleum contamination resulting from an unauthorized release from a UST whose owner or operator is eligible for payment of a claim pursuant to H&SC Section 25299.54;
2. The maximum reimbursement under the commingled plume claim which is based in part on the number of occurrences from USTs whose owners or operators are eligible for reimbursement from the Fund;

AND

3. The amount of the deductible applicable to each eligible claimant and accordingly to the commingled plume claim. Deductible amounts are as follows:

<u>Priority Class</u>	<u>Deductible</u>	<u>Deductible with permit waiver</u>
Class A	\$0	\$0
Class B & C	\$5,000	\$10,000
Class D	\$10,000	\$20,000

Priority Classes

Priority Class B is given to small businesses. A small business is one which is not dominant in its field of operation and is independently owned and operated. In addition, the business, including affiliates, cannot have annual receipts for the preceding three years that exceed the maximum receipts specified for the claimants industry group. Claimants who request Priority Class B must submit three years of complete federal tax returns. The tax returns are reviewed in order to determine whether the claimant meets the gross receipts limits established for the claimant's industry group.

Priority Class C is given to owners or operators of a business that employ fewer than 500 full time and part time employees, is independently owned and operated, and not dominant in its field of operation. Claimants in Priority Class C must provide documentation supporting the number of full time and part time employees.

Priority Classes of Commingled Plume Eligible Claimants

Since the deductible is the same for Priority Classes B and C, and most small businesses employ fewer than 500 employees, the Fund recommends that commingled plume claimants who qualify for Priority Class B apply for Priority Class C and submit documentation verifying that the business employs less than 500 employees. This recommendation is made to eliminate review of tax records and expedite the claim review process.

If your business employs more than 500 employees, but you believe you would qualify as a small business, contact the Commingled Plume Account Coordinator for details on gross receipts limits and the tax returns required to qualify for Priority Class B.

UST Cleanup Fund
COMMINGLED PLUME ACCOUNT

**CLAIM
APPLICATION**

I

SITE IDENTIFICATION

LIST EACH SITE WITH AN UNAUTHORIZED RELEASE THAT CONTRIBUTED TO THE COMMINGLED PLUME:

SITE ADDRESS

CITY

ZIP CODE

SITE ADDRESS

CITY

ZIP CODE

SITE ADDRESS

CITY

ZIP CODE

SITE ADDRESS

CITY

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SITE ADDRESS

REGULATORY AGENCY

Local UST Permitting Agency

REGIONAL WATER QUALITY CONTROL BOARD (RWQCB)

LEAD AGENCY PROVIDING OVERSIGHT OF CLEANUP

(1) RWQCB

(2) LOCAL AGENCY

(3) JOINT

LEAD AGENCY CONTACT PERSON

TELEPHONE NO.

APPOINTED REPRESENTATIVE

IDENTIFY THE PARTY THAT HAS BEEN APPOINTED TO REPRESENT ALL CLAIMANTS TO THIS COMMINGLED PLUME CLAIM:

NAME: _____

C/O: _____

MAILING ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE NO.: _____ FAX NO.: _____

DO THE APPOINTED REPRESENTATIVE HAVE THE POWER TO SIGN AND FILE DOCUMENTS ON BEHALF OF ALL JOINT CLAIMANTS IDENTIFIED IN THIS APPLICATION ?

YES

NO

IF **YES**, ATTACH A COMPLETED AUTHORIZED REPRESENTATIVE DESIGNATION FORM. IF **NO**, THE APPOINTED REPRESENTATIVE IS BEING DESIGNATED AS A CONTACT PERSON ONLY.

(Use this side for additional information as needed)

(Use this side for additional information as needed)

UST Cleanup Fund
COMMINGLED PLUME ACCOUNT

APPLICATION CHECKLIST

II

COMMINGLED PLUME ACCOUNT APPLICATION CHECKLIST

This Checklist is to assist Commingled Plume Account applicants to ensure that all required documentation is submitted with the claim application. Each document is to be labeled with the exhibit number noted.



JOINT CLAIM NAME

Identify on the application the name you wish to use to process the Commingled Plume Claim. This could be the names of all the Joint Claimants, an abbreviation of the Joint Claimants, or any name with less than 35 characters including spaces (e.g., Blythe Commingled Plume Trust Fund #1). List the mailing address and provide a federal tax identification number under which reimbursement of the claim will be processed.



JOINT CLAIMANTS

Identify on the application each UST owner, operator or other responsible party named in the joint claim. There must be at least one responsible party participating in the joint claim from each contributing site. Provide the name, mailing address, phone number, and fax number. Identify the site name and address for each joint claimant. Each joint claimant must complete and sign Page 3 of the application.



CONTRIBUTING SITES

Identify on the application a complete address for each site with an unauthorized release that contributed substantially to the commingled plume.



REGULATORY AGENCY

Identify on the application the name of the Regional Water Quality Control Board with jurisdiction over the site that is the subject of the claim. Indicate the agency providing the oversight of the cleanup, and list the name of the contact person at the agency and their telephone number.



UST OWNERS & OPERATORS

Identify on the application each of the responsible parties named in the joint claim that are applying as a UST owner or operator eligible pursuant to Section 25299.54 H&SC.



EXHIBIT I - WRITTEN AGREEMENT & REQUIREMENTS

Submit a copy of the joint claimant's written agreement that provides for a coordinated corrective action plan and complies with each of the requirements in 25299.93(a)(7). The written agreement must:

- ☞ Appoint one of the joint claimants to represent all joint claimants for the purpose of interacting with the local or regulatory agency and the Board pursuant to Section 25299.93(a)(7)(A) of the H&SC.
- ☞ Permit the joint claimants reasonable access to contributing sites as necessary to perform corrective action.
- ☞ Identify any corrective action costs incurred at contributing sites and assess whether any of those costs may be eligible for reimbursement under Chapter 6.75 of the H&SC.
- ☞ Estimate responsibility among the joint claimants and describe a formula or method for apportioning costs that are not eligible for reimbursement under Chapter 6.75 of the H&SC or which exceed the maximum reimbursement limitations prescribed in Section 25299.94 of the H&SC.
- ☞ Identify all money or other compensation received by any joint claimant which is related to contamination at a contributing site or the commingled groundwater plume.

EXHIBIT II - REGULATORY AGENCY DIRECTIVES

Submit copies of the orders or directives issued by the regulatory agencies to each of the parties named in the joint claim application. Include a copy of all directives issued specific to each contributing site and to the coordinated commingled plume cleanup.

EXHIBIT III - COMMINGLED PLUME CONFIRMATION

Submit documentation that the regulatory agency is in agreement, and the basis for that agreement, that a commingled plume that meets the definitions in Section 25299.91 of the H&SC exists. Submit copies of all investigation and monitoring reports. The reports must identify each site and each unauthorized release or discharge that has contributed substantially to the commingled plume. Each joint claimant should include a one to two page chronology of corrective action activities up through the time the joint claim is submitted.

EXHIBIT IV - CALCULATIONS

Submit copies of all calculations made to determine that at least 85% of the plume, utilizing all technical data generated in the soil and groundwater investigation and corrective action costs, resulted from an unauthorized release from a tank whose owner or operator is one of the joint claimants and eligible pursuant to Section 25299.54.

EXHIBIT V - UST CLEANUP FUND CLAIMS

A UST Cleanup Fund application must be submitted for each UST owner or operator who is a joint claimant. If a joint claimant has already submitted a UST Cleanup Fund claim, provide a photocopy of the application. Identify each eligible UST owner or operator who has filed an individual claim with the Fund. Provide the claim number and indicate whether a Letter of Commitment has been issued. Identify any corrective costs incurred by an eligible UST owner or operator prior to execution of the written agreement between the joint claimants. Indicate whether reimbursement for these costs will be requested under the joint claim or the individual claim.

EXHIBIT VI - ESTIMATE OF CORRECTIVE ACTION COSTS

Summarize eligible corrective action costs incurred to date for which reimbursement will be requested on the first reimbursement request. Provide an estimate of costs to complete the corrective action.

EXHIBIT VII - SITE MAP

Provide a site map, drawn to scale, for each joint claimant's site which includes all structures, access paths, public roads, and other onsite appurtenances (existing USTs, pump islands, etc.) and a site map which shows the commingled plume and each site contributing to the plume.

EXHIBIT VIII - NON-RECOVERY FROM OTHER SOURCES DISCLOSURE CERTIFICATION FORM

Submit a signed and completed Non-Recovery From Other Sources Disclosure Certification form for each joint claimant identifying any money or other compensation received or to be received by any joint claimant that relates to unauthorized releases at the contributing sites.