
2006

State Water Resources Control Board
Division of Financial Assistance

**UNDERGROUND STORAGE TANK
CLEANUP FUND**

**LEGISLATIVE
ANNUAL
REPORT**

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Table of Contents

SUMMARY 3

FUND EFFECTIVENESS 3

FUND ACTIVITY..... 4

FUND IMPROVEMENTS 4

SIGNIFICANT ISSUES 4

THE FUND 6

HISTORY..... 6

PRIORITY SYSTEM 7

LETTER OF COMMITMENT (LOC) 7

REIMBURSEMENTS 8

COST PRE-APPROVAL..... 9

CLAIM CLOSURES 9

FUND SUBACCOUNTS 10

EAR ACCOUNT 10

COMMINGLED PLUME ACCOUNT..... 10

FIRE SAFETY AGENCY SUBACCOUNT 11

OSCA ACCOUNT 11

RESEARCH FUND ACCOUNT 12

FINANCIAL RESPONSIBILITY 13

FUND COMMITMENTS 14

CLAIMS REVIEW 14

PAYMENTS REVIEW 14

COST PRE-APPROVAL REVIEW 15

SETTLEMENTS REVIEW 15

ASSIGNMENT REVIEW 15

CLOSURE REVIEW 16

FISCAL STATUS REPORT 17

LEGISLATION 18

SIGNIFICANT ISSUES..... 22

Summary

The Underground Storage Tank (UST) Cleanup Fund (Fund) has been charged with the mission 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 Fund benefits a large number of small businesses and individuals by providing reimbursement for unexpected and catastrophic 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.

Fund Effectiveness

The key measure of effectiveness for the Fund is the number of claims processed and paid since the beginning of the Fund. Fund activity during the fiscal year ending June 30, 2006 and through the life of the Fund is shown in the following table.

Fund Activity

Activity	FY 2005-06	Life of Fund
Claims Received	285	18,627
Claims Approved for Priority List	246	14,928
Claims Reviewed for Letter of Commitment (Detailed Review)	184	11,942
New Letters of Commitment Issued	236	10,621
Value of Letters of Commitment	\$220 Million	\$2.055 Billion
Reimbursement Requests Processed	4,795	51,374
Value of Reimbursements	\$199 Million	\$1.970 Billion
Claims Closed	383	6,027

Another key measurement of effectiveness is the time it takes to process an application. 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 2005-06, the average time for initial review was 59 days.

Fund Improvements

During the past year, the Fund continues to implement improvements to its data management system, replacing an old decentralized set of databases with a new integrated system using up-to-date technology. The data system upgrades continue to improve data security, accuracy, and reliability. Since the accuracy of the data has greatly improved, some reported values might have changed compared to previous reports.

Significant Issues

Due to the State's ongoing fiscal problems, the Fund experienced a significant reduction in staffing during the past three years. With this reduction, the Fund suspended two statutorily mandated activities, cost pre-approval and review of five year-old claims, to

allow diversion of staff to reimbursements. However, even with these staff diversions, the Fund was not able to process reimbursement requests within the same timeframes as in the past. Reimbursement request processing time has grown to 70 days, exceeding the statutory limit of 60 days.

Health and Safety Code (H&SC) section 25299.57(c) and H&SC section 25299.38 requires that the Fund pre-approve or deny pre-approval of costs within 30 days of receipt of the request. As stated above, all pre-approvals of corrective action costs have been suspended and associated Fund staff has been diverted to process payments exclusively. Without cost pre-approval review, small business owners are at more risk of not receiving full reimbursement of costs, because there is a greater chance that issues may arise with regard to whether costs are eligible for reimbursement. For FY 2001-02, the last full year that the Fund processed cost pre-approvals, just over 2,600 requests were reviewed. The pre-approval activity will partially resume in FY 2006-07, limited to high cost corrective actions.

H&SC section 25299.39.2(a) requires the manager of the Fund to annually review the case history of all claims having a Letter of Commitment (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. In addition to being required by law, this review is beneficial to small businesses and individuals, because it provides for 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 being used at sites that warrant closure. Due to the Fund staff reduction this work has been deferred. The 5-year review activity will resume in FY 2006-07.

The Fund

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 assist eligible UST owners and operators meet the costs to cleanup 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.

Established by SB 299 in 1989, modified by SB 2004 in 1990, and other subsequent legislation, Fund statutes require every owner of a petroleum UST that is subject to regulation under the 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 to \$0.014 and currently generates in excess of \$240 million annually.

The State Water Resources Control Board (State Water Board) administers the Fund. On September 26, 1991, the State Water Board first adopted regulations for the Fund. 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, claim applications were mailed to more than 10,000 potential claimants. By January 17, 1992, over 6,200 claims had been received. 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 LOC in August 1992, and the first check was issued approximately one month later.

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 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; and 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 has crafted two exceptions to the priority system. In 1993, the Governor signed AB 1061 (Chapter 430, Statue of 1993), which 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). On July 19, 2000, Governor Davis signed AB 2872 (Chapter 144, Statues of 2001), which 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 ended on December 31, 2005.

Letter of Commitment (LOC)

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 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 slightly more than 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 an LOC amendment being required for almost all payments. Currently, approximately 4,597 claims have active LOCs.

Reimbursements

Once the Fund issues an 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) with the next reimbursement request, or upon request by the Fund.

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.

Cost Pre-Approval

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 starting the cleanup. If the proposed project activities are completed for the approved amount, full reimbursement is virtually assured.

While the Fund has found this to be a very effective way to provide certainty to the claimant and to reduce appeals, the activity has been suspended due to lack of staff and the need to divert staff to reimbursement payments. This activity will resume during the FY 2006-07, but will be limited to high cost corrective actions.

Claim Closures

Once cleanup is completed at a site or a claim is no longer eligible to receive reimbursement, the claim undergoes a final audit and a final payment is issued. Any unliquidated Funds are disencumbered. Through the life of the Fund, approximately 6,027 claims have been closed as of June 30, 2006.

Fund Subaccounts

Section 25299.50 of the H&SC provides the State Water Board with the statutory authority to modify or create accounts in the Fund that are 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: (1) Emergency, Abandoned, Recalcitrant (EAR) Account; (2) Commingled Plume Account; (3) Fire Safety Agency Subaccount; (4) Orphan Site Cleanup Account (OSCA); and (5) Drinking Water Treatment and Research Fund Account (Research Fund).

EAR Account

The EAR Account was established in 1991 by the State Water Board under authority provided by sections 25299.36 and 25299.50 of the H&SC. This account provides funding to Regional Water Boards and local agencies 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) the responsible parties are either unable or unwilling to take the required corrective action. All costs incurred are subject to cost recovery from the responsible party. The EAR Account has been approved for use at 104 sites, and \$7.2 million in funds have been expended.

Commingled Plume Account

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 that continue to be stalled or handled in a piecemeal, haphazard, or expensive manner. Unless performed in a coordinated manner, corrective action at commingled plume sites often proves to be ineffective.

The Commingled Plume Account was created by SB 562 (Chapter 611, Statutes of 1996) 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.

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 claims do not include soil contamination, unless it can be demonstrated that the contaminated soil is an immediate threat to groundwater.

The Commingled Plume Account has received 47 claim applications. Thirty-five (35) claims have received LOCs amounting to \$49.8 million and \$37.1 million has been paid out in reimbursement requests.

Fire Safety Agency Subaccount

The Fire Safety Agency Subaccount was created by AB 2872 (Chapter 144, Statutes of 2000). 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 has 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.

OSCA Account

OSCA was added to Chapter 6.75 of the H&SC effective January 1, 2005. The OSCA Program was created 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 ends January 1, 2008.

The OSCA Program has received 47 project applications. Thirty-one (31) projects have been determined eligible. OSCA has issued assessment and cleanup grants amounting to \$11.8 million.

Research Fund Account

The Fund, upon request, annually transfers up to \$5 million to the Department of Health Services (DHS) Research Fund account. The Research Fund is used by the DHS when a public drinking water well has been contaminated by a motor fuel oxygenate, usually methyl tertiary butyl ether (MTBE), and there is substantial evidence that the contamination was caused by a release from a UST.

The DHS can request the annual transfer when the unencumbered funds in the Research Fund are less than \$2 million.

A total of \$20 million has been transferred to date. The first transfer was in FY 2001-02. Subsequently, there has been an annual transfer, except in FY 2003-04. The Fund does not track the actual expenditures authorized by the DHS from the Research Fund.

Financial Responsibility

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 USTs containing petroleum.

In order for the Fund to be used as a financial responsibility mechanism, a person must: (1) be the owner or operator of a petroleum UST, (2) have a completed financial responsibility certificate on file, and (3) be 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.

Fund Commitments

The annual goal of the Fund is to distribute all allocated Funding by the end of each fiscal year. In order to accomplish this goal, the following tasks are necessary:

Claims Review

The Claims Review Unit is most often the first point of contact for claimants in the Fund. Claims reviewers, in accordance with statutes and regulations, determine claim eligibility, and issue LOCs to eligible claimants.

During FY 2005-06, 246 claims were added to the priority list. In addition, the Fund issued 236 new LOCs. Regulations require that claim applications be given an initial review and decision of eligibility within 60 days of receipt. During FY 2005-06, the average time for initial review was 59 days.

It is not possible to accurately predict the number of new claims that will be received in the future. However, based on past history, 217 new LOCs are expected to be issued in FY 2006-07, and the Fund will successfully perform initial reviews within the 60-day timeframe.

Payments Review

Subsequent to receipt of the LOC, the claimant may submit requests for reimbursement for the costs of their corrective action.

During FY 2005-06, the Fund received 5,462 reimbursement requests and processed 4,795 payments for a total of \$199,727,438. The average time for processing payments was 70 days.

During FY 2006-07, the Fund expects to receive and process approximately 5,500 reimbursement requests.

Cost Pre-Approval Review

In order to expedite payment processing time, the Fund pre-approves estimated corrective action costs to ensure that costs are eligible, reasonable and necessary.

Cost pre-approval was suspended due to Fund staffing reductions. This activity will resume in FY 2006-07, limited to high cost corrective actions.

Settlements Review

To ensure that payment from the Fund will not result in the claimant receiving double payment for eligible corrective action costs, all moneys received by the claimant from other sources (settlements, judgements, insurance, etc.) must be reviewed.

During FY 2005-06, Fund staff reviewed 30 claims involving settlement issues. Since the beginning of the Fund, 2,030 settlement claims have been reviewed, for a total savings to the Fund of \$74 million.

It is not possible to accurately project the number of future claims that will involve settlement issues. However, based on previous history, the Fund anticipates 35 claims will be reviewed in FY 2006-07.

Assignment Review

In April 2000, the State Water Board heard on appeal a request to allow assignment of a Fund claim to an otherwise ineligible party. (*In the Matter of the Petition of Lake Publishing Company*, Order: WQ 2000-06-UST (*Lake*)). The ability to assign a Fund claim or Fund eligibility has enabled claimants who may have sold their property or due to life's circumstances are no longer able to continue with their claim, are afforded the opportunity to assign their claim or eligibility.

During FY 2005-06, Fund staff reviewed 93 assignment agreements. Since 2000, 439 assignment agreements have been reviewed.

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.

In FY 2005-06, 383 claims were closed. The total amount disencumbered was \$3,016,883 and since the beginning of the Fund all disencumbrances total \$64,741,961.

During FY 2006-07, the Fund projects that 320 claims will be closed.

Fiscal Status Report

CASH BALANCE Fiscal Year End 2005-2006

	<u>05/06 Fiscal Year</u>	<u>Since Inception *</u>
FUNDS RECEIVED:		
- Mill Storage Fee Collected	\$237,184,201	\$2,441,336,242
- Net From Previous Fees		\$8,591,052
- Net Interest Earned	\$3,300,076	\$100,867,713
Total Funds Received:	\$240,484,277	\$2,550,795,007
FUNDS EXPENDED & COMMITTED:		
- Fund Administration	\$13,970,936	\$139,015,097
- Cleanup Oversight ¹	\$20,104,629	\$182,148,307
- Department of Trade & Commerce ²		\$75,565,206
- Rust Program		\$15,104,012
- Board of Equalization ³	\$2,159,000	\$21,923,068
- Claims Reimbursement	\$207,969,067	\$2,112,399,662
- Department of Health Services ⁴	\$5,000,000	\$20,000,000
- CalEPA	\$461,494	\$925,149
- Misc ⁵	\$679,085	\$907,144
Total Funds Expended & Committed:	\$250,344,211	\$2,567,987,645
NET FUNDS AVAILABLE:⁶		(\$17,192,638)

* Amounts from previous report have been adjusted to reflect actuals.

¹ Under authority provided in H&SC Section 25299.51, the State Water Board receives an annual appropriation to hire or contract for state and local government staff to oversee cleanups.

² From the inception of the Fund, through Fiscal Year 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.

³ The Board of Equalization receives an annual appropriation to cover the costs of collecting the Underground Storage Fee.

⁴ Under authority provided in H&SC Section 25299.99.1, the State Water Board annually transfers \$5,000,000 to the Department of Health Services for the Drinking Water Treatment and Research Fund.

⁵ Misc. includes accounts receivable abatements and various contracts.

⁶ This figure does not include funds reverted from previous year encumbrances.

Legislation

Senate Bill 2198 (Sher)(Chapter 997, Statutes of 1998): Approved by Governor Wilson on September 19, 1998, this bill created the Drinking Water Treatment and Research Fund (Drinking Water Fund) and directed the State Water Board to transfer \$5,000,000 annually from the Fund to the Drinking Water Fund maintained by the Department of Health Services. The purpose of the Drinking Water Fund is to address the contamination of public water supplies caused by oxygenates. The Drinking Water 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.

Senate Bill 665 (Sher)(Chapter 328, Statutes of 1999): Approved by Governor Davis on September 3, 1999, this bill made numerous technical and clarifying corrections to UST laws. Provisions of this bill include 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.

Senate Bill 989 (Sher)(Chapter 812, Statutes of 1999): Approved by Governor Davis on October 8, 1999, this bill 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.

Assembly Bill 2872 (Shelley)(Chapter 144, Statutes of 2000): Approved by Governor Davis on July 19, 2000, this bill created the Fire Safety Agency Subaccount in the Fund, transferring \$5 million from the Fund into the Subaccount, and authorized the State Water Board to expend the money in the Subaccount to pay claims filed by fire safety agencies.

Assembly Bill 2886 (Kuehl)(Chapter 727, Statutes of 2000): Signed by Governor Davis on September 25, 2000, this bill 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.

Assembly Bill 1465 (Nation)(Chapter 154, Statutes of 2001): Approved by Governor Davis on August 6, 2001, this bill 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 bill 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 Cleanup 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.

Senate Bill 526 (Sher)(Chapter 37, Statutes of 2002): Approved by Governor Davis on May 9, 2002, this bill provided that the requirement to designate a site as having no residual contamination only applies 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.

Assembly Bill 2481 (Frommer)(Chapter 997, Statutes of 2002): Approved by Governor Davis on September 27, 2002, this bill loosens 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 relocates 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) so that similar subject matters are in the same chapter making it more "user friendly" and promoting effective enforcement of corrective action requirements.

Assembly Bill AB 1218 (Dutra)(Chapter 689, Statutes of 2003): Approved by Governor Davis on October 9, 2003, this bill 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 requires 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 requires those encumbered Funds to be liquidated no later than December 31, 2006.

Senate Bill SB 1097 (Committee on Budget and Fiscal Review)(Chapter 225, Statutes of 2004): Approved by Governor Schwarzenegger August 16, 2004, this bill 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.

Assembly Bill AB 2701 (Runner)(Chapter 644, Statutes of 2004): Approved by Governor Schwarzenegger on September 21, 2004, this bill repealed unnecessary or obsolete California Environmental Protection Agency (CalEPA) reports, it 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.

Assembly Bill AB 2955 (McCarthy)(Chapter 649, Statutes of 2004): Approved by Governor Schwarzenegger on September 21, 2004, this bill among other things

established a new grant Fund to provide funding to certain small businesses that install USTs after July 1, 2004. The grants would be used to test the UST during and after installation and to purchase equipment needed for long-term leak detection monitoring.

Assembly Bill AB 1068 (Lui)(Chapter 624, Statutes of 2004): Approved by Governor Schwarzenegger on September 21, 2004, this bill extended the sunset date for the Replacement of Underground Storage Tanks (RUST) 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 (TTAC) to the State Water Board.

Assembly Bill AB 1906 (Lowenthal)(Chapter 774 Statutes of 2004): Approved by Governor Schwarzenegger on September 24, 2004, this bill 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 requires \$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

Significant Issues

Due to the State's ongoing fiscal problems, the Fund experienced a significant reduction in staffing during the past three years. With this reduction, the Fund has suspended two statutorily mandated activities, to allow staff to be diverted to payments. Even with suspension of these other activities, the Fund was not able to process reimbursement requests within the same timeframes as in the past. Reimbursement request processing time has been reduced from a high of 100 days for FY 2005-06 to a high of 84 days, however, still exceeding the statutory limit of 60 days.

H&SC section 25299.57(c) and H&SC section 25299.38 requires that the board pre-approve or deny pre-approval of costs within 30 days of receipt of the request. Currently, all pre-approvals of corrective action costs have been suspended and associated Fund staff has been diverted to process payments exclusively. Without cost pre-approval review, small business owners are at more risk of not receiving full reimbursement of costs, because there is a greater chance that issues may arise with regard to whether costs are eligible for reimbursement. For FY 2001-02, the last full year that the Fund processed cost pre-approvals, just over 2,600 requests were reviewed. This activity will partially resume in FY 2006-07, limited to high cost corrective actions.

H&SC section 25299.39.2(a) requires the manager of the Fund to annually review the case history of all claims having LOCs 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. In addition to being required by law, this review is beneficial to small businesses and individuals, because it provides for 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 being used at sites that warrant closure. Due to the reduction this work has been deferred. This activity will resume in FY 2006-07.

~ NOTES ~