

---

**2007**

---

State Water Resources Control Board  
Division of Financial Assistance

**UNDERGROUND STORAGE TANK  
CLEANUP FUND**

**LEGISLATIVE  
ANNUAL  
REPORT**

---

**New Series No. 17  
Fiscal Year 2006/2007  
State Water Resources Control Board**

---

*Table of Contents*

**SUMMARY ..... 3**

FUND EFFECTIVENESS ..... 3

FUND ACTIVITY..... 4

FUND IMPROVEMENTS..... 4

**THE FUND..... 6**

HISTORY..... 6

PRIORITY SYSTEM ..... 7

LETTER OF COMMITMENT (LOC)..... 7

REIMBURSEMENTS ..... 8

COST PRE-APPROVAL..... 9

5 YEAR REVIEW ..... 9

CLAIM CLOSURES..... 9

**FUND SUBACCOUNTS ..... 10**

EAR ACCOUNT ..... 10

COMMINGLED PLUME ACCOUNT..... 10

FIRE SAFETY AGENCY SUBACCOUNT ..... 11

OSCA ACCOUNT..... 12

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 ..... 16

CLOSURE REVIEW ..... 16

5-YEAR REVIEW..... 17

**FISCAL STATUS REPORT ..... 18**

**LEGISLATION..... 19**



**Linda S. Adams**  
Secretary for  
Environmental Protection

# State Water Resources Control Board

---

**Division of Financial Assistance**  
1001 I Street • Sacramento, California 95814  
P.O. Box 944212 • Sacramento, California • 94244-2120  
(800) 813- FUND, FAX (916) 341-5806 ♦ [www.waterboards.ca.gov/cwphome/ustcf](http://www.waterboards.ca.gov/cwphome/ustcf)



**Arnold Schwarzenegger**  
Governor

## PREFACE

*Pursuant to Chapter 6.75, Article 9, Section 25299.81(d) of the Health and Safety Code (H&SC), the State Water Resources Control Board (State Water Board) shall prepare an annual report for posting to the State Water Board website describing the status of the Underground Storage Tank (UST) Cleanup Fund (Fund). This annual report 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.*

*Ronald M. Duff, P. E., Fund Manager*  
*Underground Storage Tank Cleanup Fund*

---

*California Environmental Protection Agency*

 *Recycled Paper*

# Summary

---

The Barry Keene Underground Storage Tank Cleanup Fund Act of 1989 (Act) created the Underground Storage Tank (UST) Cleanup Fund (Fund). The Fund is 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.

To date the program has assisted in paying for completed cleanups at over 6,200 sites and is currently covering costs at another 4,600 sites. A closed site indicates the contaminants have been investigated, monitored and removed to a level protective of health, safety and the environment, and allows the property to continue in its current use or return to productive use to the benefit the community.

## ***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, 2007 and since the inception of the Fund through June 30, 2007 is shown in the following table.

### ***Fund Activity***

<b>Activity</b>	<b>FY 2006-07</b>	<b>Inception of Fund</b>
<b>Claims Received</b>	231	18,874
<b>Claims Approved for Priority List</b>	174	15,237
<b>Claims Reviewed for Letter of Commitment (Detailed Review)</b>	213	12,155
<b>New Letters of Commitment Issued</b>	171	10,793
<b>Value of Letters of Commitment</b>	\$214 Million <sup>1</sup>	\$2.246 Billion
<b>Reimbursement Requests Processed</b>	4,586	55,928
<b>Value of Reimbursements</b>	\$202 Million <sup>1</sup>	\$2.169 Billion
<b>Claims Closed</b>	265	6,292

Key measurements of effectiveness are the time it takes to process an application and 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 2006-07, the average time for initial review was 46 days. Another step, processing reimbursement requests, requires the payment of a claim within 60 days of receipt. During FY 2006-07, the average time for processing reimbursement requests was 76 days.

Although reimbursement request processing has exceeded the statutory limitations, the Fund continues to expend all funds allotted each fiscal year by the Legislature.

### ***Fund Improvements***

During the past year, the Fund continued 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

---

<sup>1</sup> These figures do not include the Emergency, Abandoned, Recalcitrant (EAR) Account, Commingled Plume Account or the Orphan Site Cleanup Account (OSCA).

improve data security, accuracy, and reliability. Since the accuracy of the data is continually improving, some reported values might have changed compared to previous reports.

# 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 to 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.

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 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 to \$0.014 and currently generates in excess of \$240 million annually.

The State Water Resources Control Board (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, 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 Letter of Commitment (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. AB 1061 (Chapter 430, Statutes of 1993) 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).

AB 2872 (Chapter 144, Statutes of 2001) 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 4,501 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***

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.

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, this activity was suspended in 2003 due to lack of staff and the need to divert staff to reimbursement payments. This activity resumed during FY 2006-07, but is limited to high cost corrective actions.

### ***5 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 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 Fund staff reductions in 2003, this work was deferred. Full staffing for this activity was not available until mid-way through FY 2006-07. 5-year review activities are currently underway.

### ***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 6,292 claims have been closed as of June 30, 2007.

## Fund Subaccounts

---

H&SC Section 25299.50 provides the State Water Board 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 H&SC sections 25299.36 and 25299.50. 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 110 sites, and \$7.6 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 (Thompson) 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 received 47 claim applications. Thirty-seven (37) claims received LOCs amounting to \$59 million and \$41 million has been paid out in reimbursement requests.

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

The Fire Safety Agency Subaccount was created by AB 2872 (Shelley), 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***

The OSCA Program was added by AB1906 (Lowenthal) Chapter 774, Statutes of 2004. 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 received 66 project applications. Forty-six (46) projects were determined eligible. The State Water Board issued OSCA assessment and cleanup grants amounting to \$17.1 million.

### ***Research Fund Account***

The Fund, upon request, annually transfers up to \$5 million to the California Department of Public Health (CDPH) Research Fund account (CDPH was created effective July 1, 2007, as part of the reorganization of the Department of Health Services (DHS)). The Research Fund is used by the CDPH 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 CDPH may 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 and FY 2006-07. The Fund does not track the actual expenditures authorized by the DHS from the Research Fund. Additional information on the Research Fund can be found at the CDPH web site: <http://www.cdph.ca.gov/services/funding/Pages/DWTRF.aspx>

## 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 determine claim eligibility, and issue LOCs to eligible claimants in accordance with statutes and regulations.

During FY 2006-07, 174 claims were added to the priority list. In addition, the Fund issued 171 new LOCs. Regulations require that claim applications be given an initial review and decision of eligibility within 60 days of receipt. During FY 2006-07, the average time for initial review was 46 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, 153 new LOCs are expected to be issued in FY 2007-08, 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 2006-07, the Fund received 5,448 reimbursement requests and processed 4,586 payments for a total of \$202,368,407. Regulations require that a reimbursement request be processed for payment within 60 days of receipt. The average time for processing payments was 76 days.

During FY 2007-08, the Fund expects to receive and process approximately 5,500 reimbursement requests.

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

Pursuant to H&SC section 25299.57(c) and 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 not a requirement. However, pre-approval can reduce reimbursement request processing time if the corrective action is completed consistent with the pre-approval. Also, pre-approvals can reduce the number of appeals concerning ineligible costs associated with completed corrective actions that were determined by Fund technical reviewers after the fact not to be reasonable or necessary.

Since it is not a requirement, cost pre-approval was suspended in 2003 due to Fund staffing reductions. This activity resumed in FY 2006-07, and is limited to high cost corrective actions, such as major soil excavations or procurement and installation of remediation and treatment systems. Because of limited staffing, pre-approvals are generally not accepted or processed for routine, lower cost activities such as quarterly soil and groundwater monitoring events. 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.

Approximately 100 high cost corrective action pre-approvals were completed during FY 2006-07. The Fund projects approximately 200 pre-approvals will be processed in FY 2007-08.

### ***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, judgments, insurance, etc.) must be reviewed.



During FY 2006-07, Fund staff reviewed 53 claims involving settlement issues. Since the beginning of the Fund, 2,176 settlement claims have been reviewed, for a total savings to the Fund of \$36 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 40 claims will be reviewed in FY 2007-08.

### ***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 2006-07, Fund staff reviewed 82 assignment agreements. Since 2000, 446 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 2006-07, 270 claims were closed. The total amount disencumbered was \$827,547 and since the beginning of the Fund all disencumbrances total \$63,993,717.

During FY 2007-08, the Fund projects that 320 claims will be closed.

## ***5-Year Review***

The Fund reviews the case history of all claims having an active Letter of Commitment (LOC) for more than five years, unless the owner or operator objects. The purpose of this review is to determine whether recommendation for case closure is in order. Staffing for this activity was not available until mid-way through FY 2006-07. During FY 2006-07, Fund staff reviewed 247 claims for possible closure. The Regional Boards closed a total of 48 UST cases associated with the reviewed claims either during or following review by the Fund. The Fund projects approximately 960 5-year reviews will be completed in FY 2007-2008.

# Fiscal Status Report

---

## CASH BALANCE Fiscal Year End 2006-2007

	<u>06/07 Fiscal Year</u>	<u>Since Inception *</u>
<b>FUNDS RECEIVED:</b>		
- Mill Storage Fee Collected	\$250,246,722	\$2,692,663,992
- Net From Previous Fees		\$8,591,052
- Net Interest Earned	\$3,243,064	\$104,110,777
<b>Total Funds Received:</b>	<b>\$253,489,786</b>	<b>\$2,805,365,821</b>
<b>FUNDS EXPENDED &amp; COMMITTED:</b>		
- Fund Administration	\$15,899,685	\$154,990,855
- Cleanup Oversight <sup>1</sup>	\$19,960,160	\$202,108,466
- Department of Trade & Commerce <sup>2</sup>		\$75,513,821
- Rust Program		\$15,104,012
- Board of Equalization <sup>3</sup>	\$2,169,853	\$24,109,068
- Claims Reimbursement	\$215,267,501	\$2,334,728,942
- Department of Health Services <sup>4</sup>		\$20,000,000
- CalEPA	\$705,979	\$1,722,510
- Misc <sup>5</sup>	\$465,802	\$3,121,253
<b>Total Funds Expended &amp; Committed:</b>	<b>\$254,468,980</b>	<b>\$2,831,398,927</b>
<b>NET FUNDS AVAILABLE:<sup>6</sup></b>		<b>(\$26,033,106)</b>

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

<sup>1</sup> 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.

<sup>2</sup> 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.

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

<sup>4</sup> Under authority provided in H&SC Section 25299.99.1, the State Water Board may annually transfer \$5,000,000 to the Department of Public Health (Department of Health Services prior to July 1, 2007) for the Drinking Water Treatment and Research Fund.

<sup>5</sup> Misc. includes accounts receivable abatements, various contracts and loans.

# Legislation

---

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

**SB 299 (Keene), Chapter 1442, Statutes of 1989**, created the Underground Storage Tank Cleanup Fund Program to help owners and operators of underground storage tanks 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.

**SB 2004 (Keene), Chapter 1366, Statutes of 1990**, recast the provisions of the Act and requires every owner of a petroleum underground storage tank 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.

**AB 1699 (Kelley), Chapter 1033, Statutes of 1991**, specifies 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 tanks.

**SB 1356 (Greene), Chapter 679, Statutes of 1992**, exempts 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.

---

<sup>6</sup> This figure does not include funds reverted from previous year encumbrances.

**AB 3188 (Hauser), Chapter 874, Statutes of 1992**, creates 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.

**AB 1061 (Costa) Chapter 432, Statutes of 1993**, amends 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, and requires the State Water Board to allocate approximately 15 percent of the amount appropriated to Class C and Class D claimants. Also allows for claimants who meet specific criteria to request a waiver of the permit eligibility requirements.

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

**SB 108 (Kelley), Chapter 296, Statutes of 1994**, directs 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 Blythe Environmental Remediation Demonstration Project will be established and the City of Blythe is to be used as the demonstration project for this purpose.

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

1. The State Water Board was tasked 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. Effective July 1, 1995, the level of financial responsibility (deductible) was reduced; Class A claimants are no longer responsible for a deductible; Class B and Class C

claimants have had their deductible reduced to \$5,000; Class D claimants remain the same at \$10,000.

3. The Fund has been 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 1 mill for a total of \$0.007; January 1, 1996, the fee was increase by 2 mill for a total of \$0.009; January 1, 1997, the fee will increase another 3 mill for a total of \$0.012.

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

**SB 562 (Thompson), Chapter 611, Statutes of 1996**, requires 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. Changes 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. Adds the definition of "occurrence" and "site", and states that the changes are declaratory of existing law.
3. Permits the State Water Board, under specific conditions, to suspend corrective action at sites until the Fund has provided the responsible party eligible for reimbursement with a Letter of Commitment.
4. Requires the State Water Board to implement a procedure which does not assess an owner, operator, or responsible party taking corrective action for the costs of a local oversight program and requires 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 discontinues

the cost recovery of local oversight program costs from the responsible party after January 1, 1997.

5. Removes the domiciliary and principal place of business requirements for Priority Class B and Priority Class C claimants.
6. Requires the State Water Board to adopt a uniform closure letter.
7. Requires the regulatory agencies to work with the responsible parties and the Fund to obtain preapproval of corrective action costs. This provision requires a process under which regional boards would be authorized to work with site owners, operators, responsible parties, and Fund staff to seek preapproval of corrective action costs, and is designed to give claimants more assurance that their reimbursement claims will be paid from the Fund.
8. Requires the State Water Board to 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. Requires the Fund Manager to notify tank owners or operators who have an active Letter of Commitment of five years or older that a review of their case history will be performed annually until closure except under specified conditions. Authorizes 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. Requires 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 have been incurred on the grounds that the costs were unreasonable or unnecessary.
11. Requires the State Water Board to pay a claim for the costs of corrective action at a reopened site as specified and specifies that a claim at a reopened site be reimbursed before any new claims to the Fund.
12. Requires the State Water Board to develop, implement and maintain a system for storing and retrieving data from cases involving discharges of petroleum from USTs 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 data base.

13. Declares that the cost of site cleanup, if not conducted by the owner or appropriate responsible party and performed by the State Water Board, shall be recovered by the Attorney General.
14. Establishes the Commingled Plume Account and authorizes a joint claim for corrective action and cost recovery under the program as specified. Commingled plumes of petroleum contaminated groundwater present a serious problem to responsible parties and to the regulating agencies relative to appropriate distribution of costs and the need to coordinate the remedial programs to the extent that the cleanup of a source cannot be perfected without impacting the other source(s) and the programs that may be in place relative to that source. This provision is designed to address complex sites where multiple responsible parties may be involved. Such sites have presented difficulties for regulatory agencies in determining the appropriate distribution of costs and coordination of remedial programs. The \$10 million Commingled Plume Account is intended to promote efficient use of the trust fund by authorizing submission of joint claims for reimbursement from the Fund and by encouraging cooperation, rather than confrontation, between responsible parties and regulators

**SB 2198 (Sher), Chapter 997, Statutes of 1998**, 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 CDPH. 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.

**SB 665 (Sher), Chapter 328, Statutes of 1999**, 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.



**SB 989 (Sher), Chapter 812, Statutes of 1999,** increases 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.

**AB 2872 (Shelley), Chapter 144, Statutes of 2000,** creates 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.

**AB 2886 (Kuehl), Chapter 727, Statutes of 2000,** clarifies 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.

**AB 1465 (Nation), Chapter 154, Statutes of 2001,** revises 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 amends 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 clarifies the Fund's sunset provision. Finally, AB 1465 requires 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.

**SB 526 (Sher), Chapter 37, Statutes of 2002,** provides 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.

**AB 2481 (Frommer), Chapter 997, Statutes of 2002,** 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.

**AB 1218 (Dutra), Chapter 689, Statutes of 2003,** establishes 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.

**SB 1097 (Committee on Budget and Fiscal Review), Chapter 225, Statutes of 2004,** transfers 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.

**AB 2701 (Runner), Chapter 644, Statutes of 2004,** repeals 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.

**AB 2955 (McCarthy), Chapter 649, Statutes of 2004,** among other things establishes 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.

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

**AB 1906 (Lowenthal), Chapter 774 Statutes of 2004,** increases 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 establishes 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.

~ NOTES ~