
2008

State Water Resources Control Board
Division of Financial Assistance

**UNDERGROUND STORAGE TANK
CLEANUP FUND**

**LEGISLATIVE
ANNUAL
REPORT**

**New Series No. 18
Fiscal Year 2007/2008
State Water Resources Control Board**

Table of Contents

SUMMARY 3

FUND EFFECTIVENESS 3

FUND ACTIVITY..... 4

FUND IMPROVEMENTS..... 5

THE FUND..... 6

HISTORY..... 6

PRIORITY SYSTEM 7

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

REIMBURSEMENTS 8

COST PRE-APPROVAL..... 8

FIVE YEAR REVIEW 9

CLAIM CLOSURES..... 9

FUND SUBACCOUNTS 10

EAR ACCOUNT 10

COMMINGLED PLUME ACCOUNT..... 11

FIRE SAFETY AGENCY SUBACCOUNT 11

OSCA ACCOUNT..... 11

GISH APARTMENTS, SAN JOSE, CA 13

GISH APARTMENTS, SAN JOSE, CA 14

DRINKING WATER TREATMENT AND RESEARCH FUND (RESEARCH FUND) 15

FINANCIAL RESPONSIBILITY 16

FUND COMMITMENTS..... 17

CLAIMS REVIEW..... 17

PAYMENTS REVIEW..... 17

COST PRE-APPROVAL REVIEW 17

SETTLEMENTS REVIEW 18

ASSIGNMENT REVIEW 18

CLOSURE REVIEW 19

FIVE-YEAR REVIEW 20

FISCAL STATUS REPORT 21

LEGISLATION..... 22



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/water_issues/programs/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 UST Fund. The Fund's mission is to contribute to the protection of California's public health, safety, and water quality through: (1) establishing an alternative mechanism to meet federal financial responsibility requirements for owners and operators of USTs, and (2) reimbursing eligible corrective action costs incurred for the cleanup of contamination resulting from the unauthorized release of petroleum from USTs. The Act sunsets on January 1, 2011.

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 approximately 4,600 active sites. A closed site (1) indicates the contaminants have been investigated, monitored, and removed to a level protective of health, safety, and the environment, and (2) allows the property to continue in its current use or return to productive use to benefit the community.

Fund Effectiveness

The key Fund effectiveness measure is the number of claims processed and paid since the beginning of the Fund. Fund activity during the 2007-08 Fiscal Year (FY), and since the inception is shown in the following table:

Fund Activity

Activity	FY 2007-08	Inception of Fund Through FY 2007-08
Claims Received	248	19,121
Claims Approved for Priority List	174	15,414
Claims Reviewed for Letter of Commitment (Detailed Review)	182	12,290
New Letters of Commitment Issued	153	10,946
Value of Letters of Commitment	\$201.9 Million ¹	\$2.448 Billion
Reimbursement Requests Processed	4,926	60,364
Value of Reimbursements	\$234 Million ¹	\$2.410 Billion
Claims Closed	363	6,655

Other key effectiveness measurements are the time it takes to (1) process an application and (2) process a reimbursement request. The Act establishing the Fund sets time limits for various stages of processing. One of these steps, initial review of new claim applications, requires an eligibility decision within 60 days of receipt. During FY 2007-08, the average time for initial review was 49 days. Another step, processing reimbursement requests, requires the payment of a claim within 60 days of receipt. During FY 2007-08, the average time for processing reimbursement requests was 78 days.

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

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

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

The Act sunsets on January 1, 2011. SB 1161 (Lowenthal), was passed by the Legislature during the 2008 session and is awaiting the Governor's approval. The bill would, among other things, extend the program sunset date to January 1, 2016.

To better assess the effectiveness of the Fund in cleaning up contamination, the State Water Board will develop and implement during FY 2008-09 a plan to link Fund reimbursements to measurable environmental results. These measures will demonstrate benefits to both the environment and public health. This commitment is included in the Water Boards' recently adopted strategic plan.

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 help eligible UST owners and operators meet the costs of cleaning up contaminated soil and groundwater caused by leaking petroleum USTs. The federal financial responsibility requirements also require the Fund to provide coverage for third-party liability due to unauthorized releases of petroleum from USTs.

Established by SB 299 (Keene), Chapter 1442, Statutes of 1989, modified by SB 2004 (Keene), Chapter 1366, Statutes of 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 Act sunsets on January 1, 2011.

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

Following the approval of the regulations in 1991, claim applications were mailed to more than 10,000 potential claimants. By January 17, 1992, over 6,200 claims were 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. 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 4,315 claims have active LOCs.

Reimbursements

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

To assist individuals and small businesses with cash flow burdens, the Fund will reimburse for costs incurred but not necessarily paid. Claimants must pay vendors within 30 days of receipt of funds and provide proof of payment (cancelled checks) 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 25299.38 requires that the Fund grant or deny pre-approval of costs within 30 days of receipt of the request. Cost pre-approval is a method by which a claimant and Fund staff can reach an understanding with regard to eligible reimbursable costs, prior to starting the cleanup. If the proposed project activities are completed for the approved amount, full reimbursement is virtually assured. This activity was greatly reduced in 2003 due to lack of staff and the need to divert staff to reimbursement payments. The Fund plans to reinstate an improved pre-approval process during FY 2008-09.

Five Year Review

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

There are currently over 3,200 claims in the Fund with a LOC for five years or more. Since re-implementing the five-year review process in the beginning of 2007, the Fund has completed 1,283 five-year reviews as of June 30, 2008. Approximately 25 percent of the completed five-year reviews resulted with the Fund recommending that the case be closed. For 50 percent of the cases reviewed, the Fund recommended that additional cleanup be performed or that a change in the current course of action be considered to accelerate the progress of the case. The Fund is currently working with the Regional Board staff on those cases where the five-year review recommended additional work or case closure. This effort has been successful in moving many of the cases ahead in the corrective action process.

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 6,655 claims have been closed as of June 30, 2008.

Fund Subaccounts

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

EAR Account

The State Water Board, under authority provided by H&SC Sections 25299.36 and 25299.50, established the EAR Account in 1991. This account provides Regional Water Board and local agency funding to undertake or contract for corrective action at UST sites that have had an unauthorized release if (1) the site requires immediate action to protect human health, safety and the environment, (2) a responsible party cannot be identified or located, or (3) responsible parties are either unable or unwilling to take the required corrective action. Since 1991, the State Water Board has spent \$8.9 million from the EAR Account to fund cleanups at 114 sites. The EAR Account has led to the closure of 8 sites, and the State Water Board has awarded \$1.1 million in emergency funds to abate serious threats at 14 sites caused by leaking petroleum USTs. The emergency funds are a critical resource and were used to abate explosive gasoline vapors, abate the migration of highly contaminated groundwater to residential areas and nearby creeks, deliver potable water to residents whose private wells were contaminated with petroleum, and install well head treatment on impacted domestic wells. All EAR Account costs are subject to cost recovery from the responsible parties.

During 2007-08, the State Water Board provided \$1.3 million in funding from the EAR Account for cleanups at 16 sites. Several of these sites are close to being closed with no further action required.

Commingled Plume Account

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

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

Since its inception, the Commingled Plume Account has received 48 claim applications, and there is growing interest in this Program. Of these claims, the State Water Board has issued \$61 million in LOCs for 37 claims, and has paid out \$44 million in reimbursement requests. Several funded sites are moving quickly toward site closure. A total of four sites have been closed under the Commingled Plume Account and another four expect to receive site closure letters in the next year.

Fire Safety Agency Subaccount

AB 2872 (Shelley), Chapter 144, Statutes of 2000 created the Fire Safety Agency Subaccount (Subaccount). The bill transferred \$5 million from the Fund to the Subaccount and authorized the State Water Board to expend the money to pay claims that were filed by Fire Safety Agencies before January 1, 2000. The Fund 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 to the Fund by AB 1906 (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 sunset on January 1, 2008.

The OSCA Program received 70 project applications. Fifty-two (52) projects were determined eligible. The State Water Board has issued OSCA assessment and cleanup grants for 41 of these sites amounting to \$30 million. An encouraging benefit is the reuse or planned reuse of many of these sites for affordable housing. More than 70 percent of eligible applications qualified for environmental justice priority points ensuring a large portion of OSCA funds will be committed to lower income areas and provide opportunities for community improvements. Currently, eight sites have been cleaned up and 33 additional sites are actively being cleaned up under the OSCA Program. Of those sites, five of the closed sites have been redeveloped into productive uses and 23 of the sites currently being cleaned up are planned for redevelopment.

One example of the accomplishments of the OSCA program is the Gish Apartments in San Jose (see before and after pictures). In this case, the discharger had cleaned up the site (a former gas station), and received regulatory site closure in 2000, based on the land use designation for the property at that time. The property sat idle for years until First Community Housing had a vision for an infill affordable housing project. Due to the land use change to residential site development, First Community Housing incurred unforeseen environmental costs that jeopardized the feasibility of the project.

The State Water Board assisted First Community Housing and provided funding of \$561,000 during project development for further environmental cleanup of petroleum contaminated soils. In June 2007, the project was completed, with the debut of the Gish Apartments, a transit oriented, affordable and unique 35-unit energy efficient apartment complex with ground floor retail. The project received Leadership in Energy and Environmental Design (LEED) for Homes and New Construction Gold certifications. LEED is a Green Building Rating System™ that encourages and accelerates global adoption of sustainable green building and development practices through the creation and implementation of universally understood and accepted tools and performance criteria. The Gish Apartments have provided desperately needed housing for low income

families and the developmentally disabled and contributed to smart growth for the City of San Jose.

Gish Apartments, San Jose, CA

Before



Gish Apartments, San Jose, CA

After



After

Bernard Andre' Photography

Drinking Water Treatment and Research Fund (Research Fund)

The Fund, upon request, annually transfers up to \$5 million to the California Department of Public Health (CDPH) Research Fund. CDPH was created effective July 1, 2007, as part of the reorganization of the Department of Health Services (DHS). CDPH used the Research Fund for public drinking water wells contaminated by a motor fuel oxygenate (usually methyl tertiary butyl ether (MTBE)), where there is substantial evidence that the contamination was caused by a release from an UST.

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

This Account is scheduled to end on January 1, 2010, a year before the Fund's current sunset date of January 1, 2011. 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 petroleum USTs.

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

Fund Commitments

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

Claims Review

The Claims Review Unit is 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 2007-08, 174 claims were added to the priority list. In addition, the Fund issued 153 new LOCs. Regulations require that claim applications be given an initial review and decision of eligibility within 60 days of receipt. During FY 2007-08, the average time for initial review was 49 days.

It is not possible to predict accurately the number of new claims that the Fund will receive in the future. However, based on past history, Fund staff expects to issue 150 new LOCs in FY 2008-09, and to perform initial reviews within the 60-day timeframe successfully.

Payments Review

Subsequent to receipt of the LOC, the claimant may submit reimbursement requests for the costs of their corrective action. During FY 2007-08, the Fund received 5,207 reimbursement requests and processed 4,926 payments for a total of \$234,370,372. Regulations require that a reimbursement request be processed for payment within 60 days of receipt. The average time for processing payments was 78 days.

During FY 2008-09 the Fund expects to receive and process approximately 4,600 reimbursement requests.

Cost Pre-Approval Review

Pursuant to H&SC section 25299.38, the Fund can pre-approve estimated corrective action costs to ensure that the proposed costs are eligible, reasonable, and necessary. Pre-approval is optional for claimants, however, pre-approval can reduce

reimbursement request processing time if the corrective action is completed consistent with the pre-approval. In addition, the pre-approval process identifies ineligible costs and can reduce the number of appeals after the fact. Those appeals occur when Fund technical reviewers deem costs associated with corrective actions to be unreasonable and unnecessary after the projects are completed.

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

The Fund completed 243 high cost corrective action pre-approvals during FY 2007-08, for a total value of over \$20 million. The Fund projects approximately 750 pre-approvals will be processed in FY 2008-09.

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 2007-08, Fund staff reviewed 46 claims involving settlement issues. Since the beginning of the Fund, 2,222 settlement claims have been reviewed, for a total savings to the Fund of \$37 million.

It is not possible to project accurately 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 2008-09.

Assignment Review

In April 2000, the State Water Board heard a request to allow assignment of a Fund claim to an otherwise ineligible party. As a result, the State Water Board adopted *In the Matter of the Petition of Lake Publishing Company*, Order: WQ 2000-06-UST (*Lake*). The *Lake* order allows the Fund to honor, under certain circumstances, a claimant's

assignment of its rights to reimbursement from the Fund. Claimants are now able to assign their Fund claim or Fund eligibility in cases where they may have sold their property or are no longer able to continue with their Fund claim.

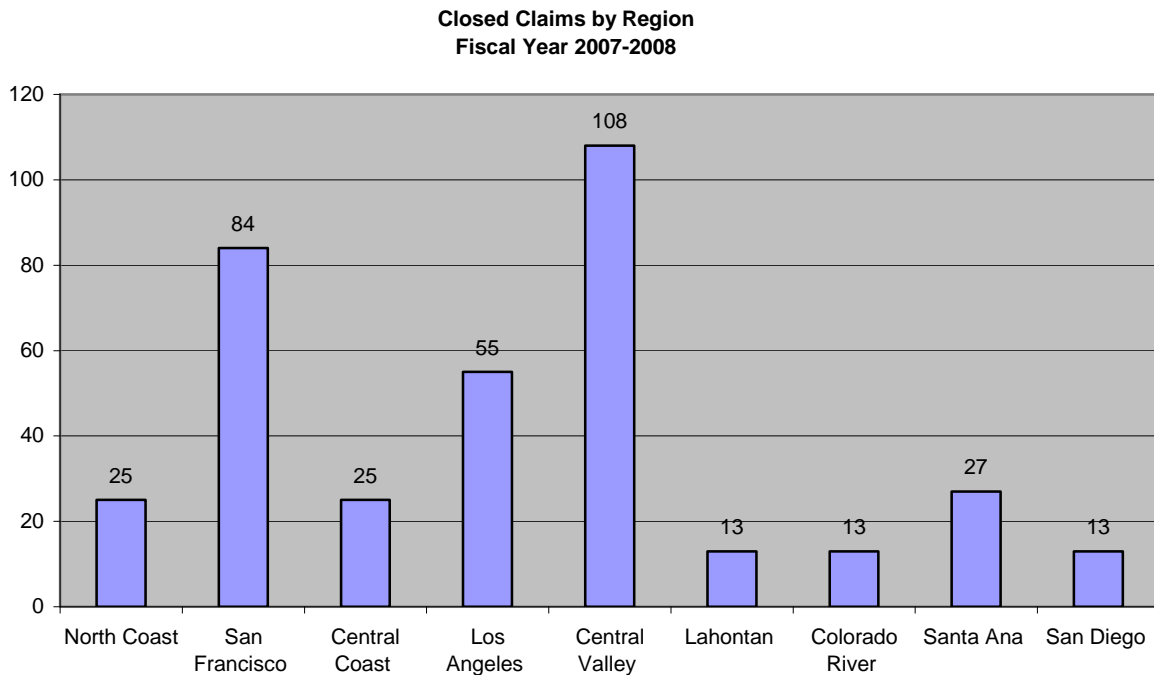
During FY 2007-08, Fund staff reviewed 106 assignment agreements. Since 2000, 552 assignment agreements have been reviewed.

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.

Fund staff closed 363 claims during FY 2007-08. The following chart shows by region the number of claims closed.

The Fund projects that 370 claims will be closed during FY 2008-09,



Five-Year Review

The Fund reviews the case history of all claims having an active LOC 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. During FY 2007-08, Fund staff reviewed 1,074 claims for possible closure. During or following review by the Fund, the Regional Boards closed 65 UST cases. The Fund projects that it will complete approximately 1,000 five-year reviews in FY 2008-09.

Fiscal Status Report

CASH BALANCE Fiscal Year End 2007-2008

	<u>07/08 Fiscal Year</u>	<u>Since Inception *</u>
FUNDS RECEIVED:		
- Mill Storage Fee Collected	\$245,382,975	\$2,938,067,960
- Net From Previous Fees		\$8,591,052
- Net Interest Earned	\$1,712,346	\$105,823,123
Total Funds Received:	\$247,095,321	\$3,052,482,135
FUNDS EXPENDED & COMMITTED:		
- Fund Administration	\$19,159,530	\$174,236,872
- Cleanup Oversight ¹	\$23,380,965	\$225,489,432
- Department of Trade & Commerce ²		\$75,500,000
- Rust Program		\$15,104,012
- Board of Equalization ³	\$2,741,068	\$27,074,921
- Claims Reimbursement	\$250,728,743	\$2,540,648,966
- Department of Health Services ⁴		\$20,000,000
- CalEPA	\$882,982	\$2,608,428
- Misc ⁵	\$867,416	\$5,816,596
Total Funds Expended & Committed:	\$297,760,704	\$3,086,479,227
NET FUNDS AVAILABLE:⁶		(\$33,997,092)

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

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 may annually transfer \$5,000,000 to the Department of Public Health (Department of Health Services prior to July 1, 2008) for the Drinking Water Treatment and Research Fund.

⁵ Misc. includes accounts receivable abatements, various contracts and loans.

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

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.

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. The Act 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 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 Act establishes the Blythe Environmental Remediation Demonstration Project and the City of Blythe 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. Requires the State Water Board to develop a summary of expected costs for common remedial actions that may be used by claimants as a guide in the selection and supervision of consultants and contractors.
2. 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 was directed to provide increased technical assistance to claimants including helping the claimant through the process of obtaining and evaluating bids or estimates, and reviewing and approving costs prior to work being performed.
4. On January 1, 1995, the storage fee was increased by one mill for a total of \$0.007; January 1, 1996, the fee increased by two mill for a total of \$0.009; January 1, 1997, the fee increased another three mill for a total of \$0.012.

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 provides to the responsible party eligible for reimbursement a LOC.
4. Requires the State Water Board to implement a procedure that does not assess an owner, operator, or responsible party taking corrective action for the costs of a local oversight program. Also 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 regulatory agencies to work with 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.
8. Requires the State Water Board make a determination of a claimant's eligibility within 60 days of receipt of the completed claim and prohibits that determination from being revoked except under specified conditions.
9. Requires the Fund Manager to notify tank owners or operators who have an active LOC of five years or more that a review of their case history will be performed annually until closure, except under specified conditions. 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 were 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 directs 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 petroleum UST cases to allow regulatory agencies and the general public to use historic data in making permitting and land use decisions relative to impacted properties. Sites for which no residual contamination remains shall be removed from the database.
13. The Attorney General, upon request from the State Water Board, shall recover costs of cleanup from responsible parties, UST owners and UST operators for

corrective action undertaken or contracted by the Regional Water Boards or local agencies.

14. Establishes the Commingled Plume Account and authorizes a joint claim for corrective action and cost recovery under the program as specified.

SB 2198 (Sher), Chapter 997, Statutes of 1998, created the Drinking Water Treatment and Research Fund (Research Fund) and directed the State Water Board to transfer \$5,000,000 annually from the Fund to the Research Fund maintained by the CDPH. The purpose of the Research Fund is to address the contamination of public water supplies caused by oxygenates. The Research Fund is used for investigation, cleanup, or treatment of groundwater or surface water, as well as replacement or alternative water supplies and research into treatment technologies.

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 extends 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 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).

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

AB 1068 (Liu), Chapter 624, Statutes of 2004, extends the sunset date for the Replacement of Underground Storage Tanks 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 (TTCA) 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.

AB 1437 (Aghazarian), Chapter 282 Statutes of 2007, modified the permit waiver criteria. Under AB 1437, there is no cutoff date for UST permit waivers. Permit waivers may be granted for permit noncompliance that occurred both before and after January 1, 1990, if specific permit waiver criterion is met. Claimants who qualify for the permit waiver under AB 1437 must pay a higher deductible on their claim, depending upon the date that the claimant complied with UST permitting or closure requirements. Claimants who comply on or before December 22, 1998, must pay twice the amount of deductible that would otherwise apply to the claim, and claimants who comply after December 22, 1998, must pay a deductible that is four times the amount that would otherwise apply to the claim.