



STATE WATER RESOURCES CONTROL BOARD

UNDERGROUND STORAGE TANK CLEANUP FUND

FISCAL YEAR 2012/2013

ANNUAL REPORT



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Executive Summary

This annual report was prepared pursuant to Chapter 6.75, Article 9, Section 25299.81(d) of the Health and Safety Code (H&SC), which requires the State Water Resources Control Board (State Water Board) to continuously or annually post and update on the State Water Board web site, information that describes the status of the Underground Storage Tank (UST) Cleanup Fund (Cleanup Fund), and make recommendations to improve the efficiency of the program. This report also provides information on environmental cleanup of petroleum USTs and the distribution of monies from the Cleanup Fund as of June 30, 2013.

Unauthorized releases from many petroleum USTs allowed hazardous substances to seep into the soil and contaminate groundwater, a source of drinking water for many Californians. Other potential health and environmental risks from some USTs included surface water pollution, indoor vapor intrusion, and exposure from direct contact such as ingestion and dermal contact. The Cleanup Fund was established to provide financial assistance to petroleum UST owners and operators for the cleanup of these contaminated sites. The Cleanup Fund has been critical both for cleaning up immediate impacts of UST releases and for preventing significant migration of petroleum product in groundwater and soil. Most UST cleanup cases are from legacy releases; California's requirements over the past 20 years to update UST systems have resulted in fewer new releases.

The Cleanup Fund is supported by fees paid by owners of operating USTs. For every gallon of fuel that is placed into an underground storage tank, owners and operators pay a storage fee. During fiscal year 2012/2013, (FY 2012/2013) the Cleanup Fund was supported by a 2.0-cents-per-gallon fee. On January 1, 2014, a temporary fee increase of 0.006 cents expired, lowering the fee from 2.0 cents per gallon to 1.4 cents per gallon¹.

During FY 2012/13, the Cleanup Fund received approximately \$315 million in revenues and paid or committed to pay roughly \$193 million for corrective action costs. Typically, about three-quarters of the Cleanup Fund money pays for direct expenditures for cleaning up contaminated sites. The remaining one-quarter of the Cleanup Fund pays for associated state costs. Of this amount for state costs, approximately one-half pays for regulatory oversight at the State Water Board, its nine Regional Water Quality Control Boards (Regional Water Boards), and 21 Local Oversight Program agencies (LOPs) and the remaining one-half pays for the administration of the Cleanup Fund, including claims processing and fraud prevention and prosecution. A portion of the revenues also pays the Board of Equalization's costs of collecting the fee revenue from the UST owners.

Between 1991, when the Cleanup Fund program began operations, and June 30, 2013, the State Water Board has reimbursed more than \$3.3 billion to over 11,300 eligible claimants. Of the 11,300 claims that received reimbursement to date, over 8,600 cases have been remediated and both their regulatory cases and Cleanup Fund claims closed. About 2700 claims are currently active and being reimbursed. Of these 2700, about 1600 claims have cases that had not yet met case closure criteria, and about 1100 claims had cases that are either closed or eligible for closure. Another 4,799 claims are on the Priority List waiting to begin reimbursement when funds are available. Of these, over 3,500 claims have been remediated and the case is either closed or eligible for closure, leaving over 1,200 claims that do not yet meet case closure criteria. The breakdown of the Priority List at the end of FY 2012/13 was:

¹ Note: On September 25, 2014, the Governor signed SB 445 (Chapter 547, Statutes of 2014, which increased the fee back to 2.0 cents per gallon and extended the sunset date of the Fund to January 1, 2026.

- ¹Priority A – 8 claims
- Priority B – 42 claims
- Priority C – 94 claims
- Priority D – 4,655 claims

Approximately 3,700 additional claim applications have been denied because they did not meet eligibility requirements, and about 200 applications are under review.

The Cleanup Fund and the UST Program as a whole face significant challenges within the next few years. The more significant challenges include:

- Reduced Cleanup Fund revenues due to the end of the temporary fee increase on January 1, 2014, from 2.0 to 1.4 cents per gallon.
- Escalation of cleanup costs over time. Today's open cases are projected to cost an average of \$850,000 per claim. Historically, since the beginning of the program, the average has been \$630,000 per claim.
- The Cleanup Fund is scheduled to sunset on January 1, 2016. As much as perhaps \$3 billion in claims will not have been paid if the Cleanup Fund sunsets as scheduled, affecting up to 2700 active claims receiving reimbursements and 4,700 unreimbursed claims on the Fund's Priority List.

Program Description

The Barry Keene Underground Storage Tank Cleanup Fund Act of 1989 created the Cleanup Fund to help owners and operators of petroleum USTs satisfy federal and state financial responsibility requirements. To fulfill the federal financial responsibility requirements, the Cleanup Fund is available to assist petroleum UST owners and operators with the costs of cleaning up contaminated soil and groundwater caused by leakage from petroleum USTs. The federal financial responsibility requirements also require coverage for third-party liability due to unauthorized releases of petroleum from USTs.

The Cleanup Fund's mission is to contribute to the protection of California's water quality, public health, and safety, through:

- Establishing an alternative mechanism to meet federal financial responsibility requirements for owners and operators of USTs,
- Reimbursing eligible corrective action costs incurred for the cleanup of pollution resulting from the unauthorized release of petroleum from USTs.

¹ Class A: These claims are the highest priority claimants owning residential tanks.

Class B: These claims are reserved for small California businesses, governmental agencies, and nonprofit organizations with 100 employees or less and gross receipts below a specified amount.

Class C: These claims are for certain California businesses, governmental agencies, and nonprofit organizations not meeting the criteria for Class B, but who have less than 500 employees. Fund statutes mandate that a minimum of 14 to 16 percent of the funds committed are awarded to Priority Class C claimants.

Class D: These are all other eligible claimants and are the lowest priority. Fund statutes mandate that a minimum of 14 to 16 percent of the funds committed are awarded to Priority Class D claimants.

The Cleanup Fund's revenues are generated by a storage fee for every gallon of petroleum product placed into a UST. The State Board of Equalization (BOE) collects the fee quarterly from owners of active USTs. The fee dropped from 2 cents to 1.4 cents per gallon on January 1, 2014.

The Cleanup Fund benefits a large number of small, medium and large businesses and individuals by providing reimbursement for expenses associated with the cleanup of leakage from petroleum USTs. The Cleanup Fund also provides money to the nine Regional Water Quality Control Boards and local regulatory agencies for oversight of the cleanup of leaking USTs, to abate emergency situations and to undertake corrective action at abandoned sites that pose a threat to human health, safety, and the environment, as a result of a UST petroleum release. The law establishing the Cleanup Fund is scheduled to sunset on January 1, 2016.

There are a total of 41,000 leaking UST cases in California, of which 16,000 claims have been determined eligible for reimbursement of cleanup costs from the Cleanup Fund. The remaining 25,000 have never been Fund-eligible – either because they have not applied to the Cleanup Fund, or they did not meet the eligibility requirements. Of the 41,000 total UST cases, over 35,000 cases are closed and over 6,000 cases remain open. It should be noted that the Cleanup Fund provides most of the funding for regulatory oversight of UST cases regardless of the cases themselves being eligible for reimbursement from the Cleanup Fund.

Of about 16,000 cases that are Fund-eligible, approximately 8,600 claims have been closed, and about 2,700 remain active and are being paid. Another 4,700 claims, mostly filed by major corporations and government agencies, are on the Priority List awaiting activation for payment. Claimants may be reimbursed costs up to \$1.5M per occurrence, less the deductible and less any funds received from other sources. Only costs determined to be eligible are reimbursed to the claimant, upon availability of funds.

The revenues collected from the UST storage fees are expended for the following purposes:

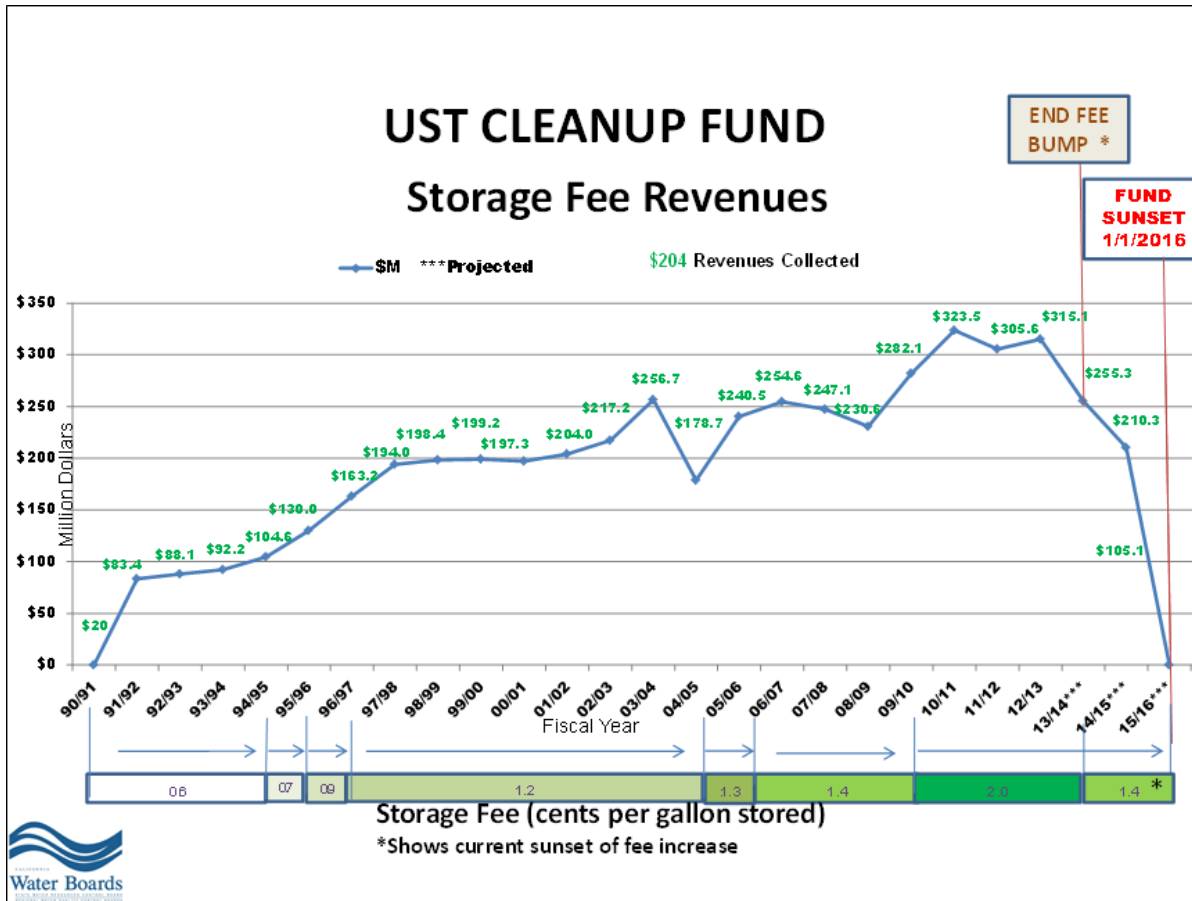
- Claims Reimbursement which includes:
 - Cleanup Fund Claims
 - Orphan Site Cleanup Fund Grants (OSCF)
 - Emergency, Abandonment Contracts (EAR)
 - Remove, Repair, Replace Loans and Grants (RUST)
- Regulatory Agency Oversight
- Cleanup Fund Staff Administration
- Board of Equalization for collection of the UST storage fee
- State Controller's Office for the issuance of reimbursement payments
- State Administration Overhead

Case vs. Claim

The terms case and claim can be a source of confusion. A case is a UST release site and cleanup project. A claim is an application for eligibility to the Cleanup Fund for reimbursement of costs for a release – somewhat like an insurance claim. Sometimes there are multiple claims for one regulatory case, and sometimes there are multiple cases under one claim. However, usually there is one claim per regulatory case.

Fiscal Management

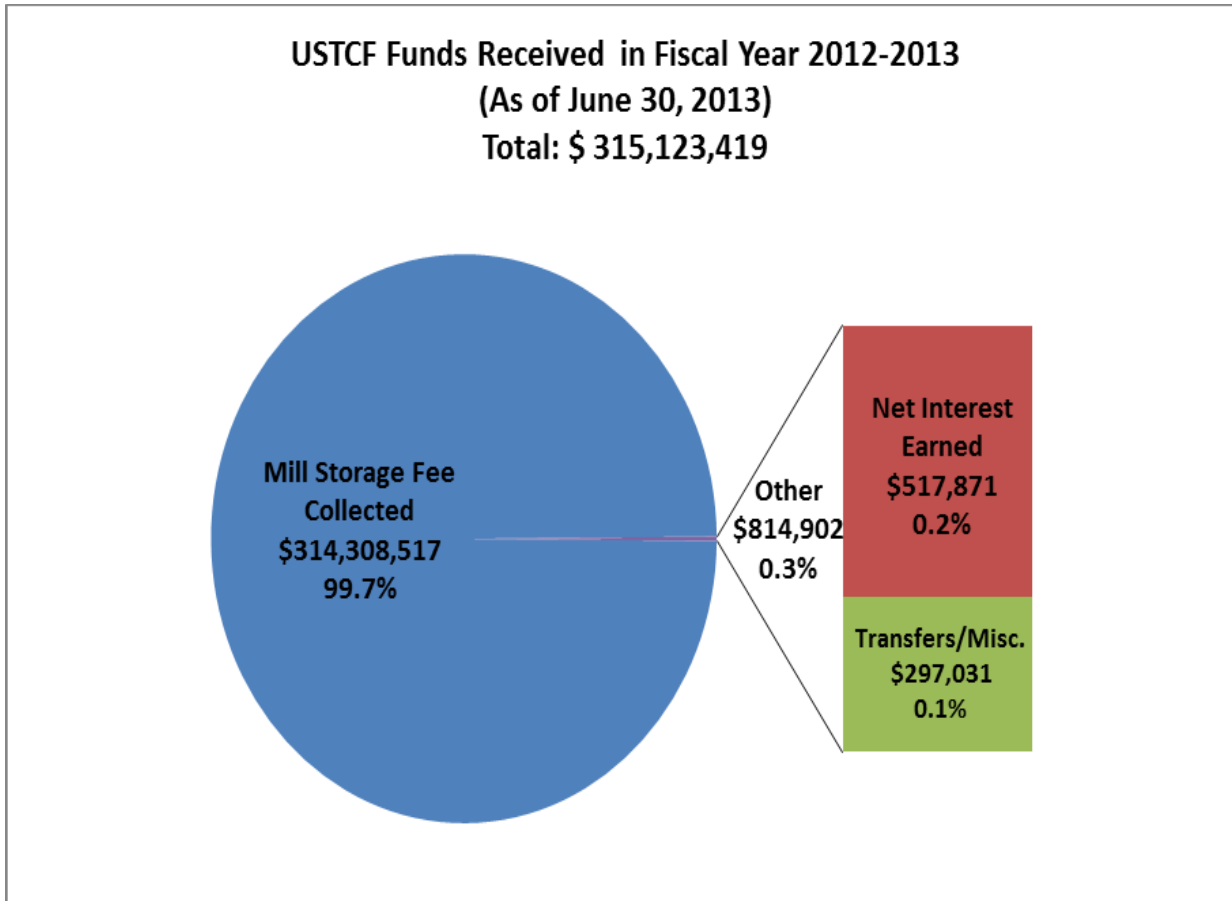
Established in 1991, the underground storage tank maintenance fee provides revenues for programs designed to expedite the cleanup of leaking underground petroleum storage tanks in California. The fee applies to certain petroleum products placed into underground storage tanks. Since the inception of the Fund, the fee rates per gallon have increased incrementally throughout the years. The gradual rise in fees has allowed the Fund to maintain a consistent increase in claims reimbursements while meeting rising expenditure demand.



The fee rates per gallon for the following periods have been:

- \$.006 January 1, 1991 – December 31, 1999
- \$.007 January 1, 1995 – December 31, 1995
- \$.009 January 1, 1996 – December 31, 1996
- \$.012 January 1, 1997 – December 31, 2004
- \$.013 January 1, 2005 – December 31, 2005
- \$.014 January 1, 2006 – December 31, 2009
- \$.020 January 1, 2010 – December 31, 2013
- \$.014 January 1, 2014 – the program’s sunset, January 1, 2016.

In FY 2012/13, the Cleanup Fund saw an increase in revenue of about 3.12 percent compared to FY 2011/12. Factors contributing to the increase in revenue included the plateauing of gas prices and possible increase in gas consumption, and minimal unexpected issues with refineries such as fires that could cause gas prices to increase and reduce gas consumption.



The following table provides a summary of major revenues and expenditures from the Cleanup Fund in Fiscal Year 2012/13 and since its inception.

REVENUE / EXPENDITURES SUMMARY AS OF JUNE 30, 2013*

	<u>12/13 Fiscal Year</u>	<u>Since Inception</u>
FUNDS RECEIVED:		
Mill Storage Fee Collected	\$314,308,517	\$4,384,817,829
Net from Previous Fees		\$8,591,052
Net Interest Earned	\$517,871	\$107,523,553
Transfers/Misc.	\$297,031	\$8,562,858
Total Funds Received:	\$315,123,419	\$4,509,495,292
FUNDS EXPENDED & COMMITTED:		
Fund Administration [1]	\$21,504,052	\$258,932,568
Cleanup Oversight [2]	\$ 23,439,001	\$ 339,602,532
Department of Trade & Commerce [3]		\$75,500,000
Replace, Remove or Upgrade UST (RUST) [4]		\$15,104,012
School District Account [5]		\$30,000,000
Orphan Site Cleanup Fund (OSCF) [6]		\$30,000,000
Board of Equalization (BOE) [7]	\$3,009,393	\$42,064,502
Claims Reimbursement [8]	\$193,671,738	\$3,592,763,819
Department of Health Services [9]		\$20,000,000
CalEPA	\$884,190	\$6,577,594
State Controllers Office (SCO) [10]	\$84,751	\$690,457
Fi\$Cal [11]	\$962,431	\$962,431
Misc [12]	\$1,632	\$6,075,969
Total Funds Expended & Committed:	\$243,557,188	\$4,418,273,884
NET FUNDS AVAILABLE:	\$71,566,231	\$91,221,408

*Amounts from previous reports were adjusted to reflect actuals.

[1] Fund Administration includes ProRata (State Overhead).

[2] This includes local oversight program costs, funding to the Regional Boards, Office of Enforcement administration, and Office of Enforcement contracts. Under authority in H&SC Section 25299.51, the State Water Board receives an annual appropriation to fund (hire or contract) local agency staff to oversee UST cleanups.

[3] 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 USTs. The Fund was transferred to the State Water Board in 2004.

[4] The RUST Program assists small gas station owners and operators with UST compliance by providing grants and loans for replacing, removing, or upgrading their USTs.

[5] The School District Account was established under H&SC Section 25299.50.3; \$10 million was transferred in FYs 2009/10, 10/11, and 11/12.

[6] The OSCF was established under H&SC 25299.50.2.

[7] The BOE receives an annual appropriation to cover the costs of collecting the UST fee.

[8] Claims Reimbursement includes Committed Budgeted Claims Reimbursement and Special Programs: OSCF past commitments, the Emergency, Abandonment, Recalcitrant Account and Commingled Plume Account.

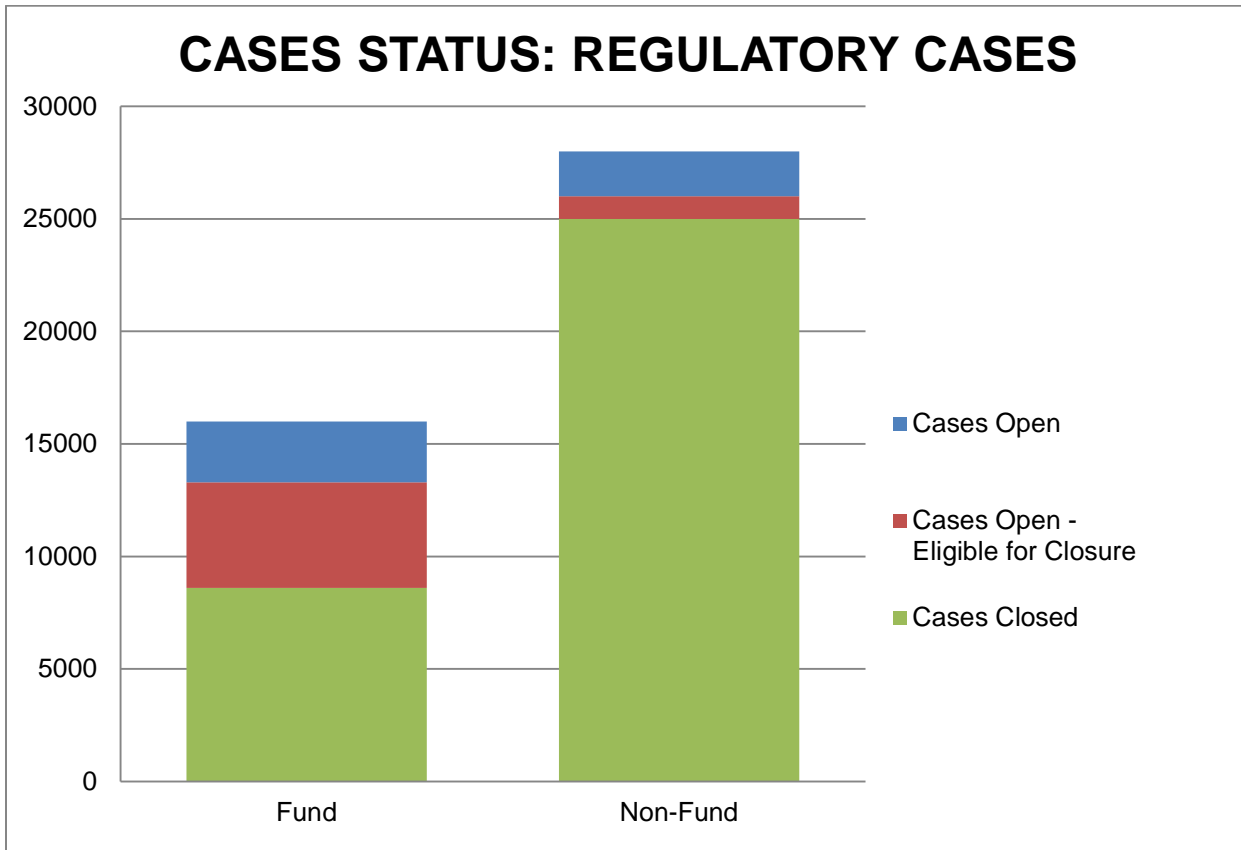
[9] Under authority provided in H&SC Section 25299.99.1, the State Water Board may annually transfer \$5 million to the Department of Public Health for the Drinking Water Treatment and Research Fund. This transfer expired on December 31, 2009.

[10] SCO receives an annual appropriation for the Human Resources Management System Assessments per Section 25.25.

[11] Fi\$Cal receives an annual appropriation for the Financial Information System for California Assessments per Section 8.88.

[12] Misc includes accounts receivables, abatements, and various contracts and loans.

HISTORY



During the late 1990's and most of the 2000's, the Cleanup Fund was able to accommodate all eligible claims filed by small businesses and individuals. In 2008, the cash reserve built up in the early years of the Cleanup Fund declined precipitously, which resulted in a cash shortage. This shortage was made worse because of a concurrent dip in revenues due to the general slow-down in the nationwide economy. As a result, there was insufficient cash available to service all of the active claims, and payments were delayed by many months. This created a sudden and severe hardship for the small business claimants and their consultants.

During fiscal years FY 2008/09 and 2009/10, the State Water Board took numerous actions in response to the Cleanup Fund's cash shortage. At the direction of the State Water Board, staff took specific steps to improve the efficiency and effectiveness of the Cleanup Fund. The State Water Board also commissioned an independent audit of the program. In addition, the State Water Board established two stakeholder task forces: one to review the UST regulatory program, and one to review the Cleanup Fund and to make suggestions for improvements and changes. The audit and task forces began work in July 2009 and completed their reviews in early 2010.

Through the audit and the task force groups' input and self-examination, State Water Board staff determined that: (1) There was a need to improve the business model and processes at the State Water Board to better manage the cash flow; and (2) there was a need for an incentive to ensure

that cases were cleaned up quickly and efficiently. In response to the audit and task force findings, the State Water Board began developing a new business model to better manage cash flow and ensure cases were cleaned up and closed quickly and efficiently. The organization of the Cleanup Fund staff was restructured to clearly delineate responsibilities for the financial management of the Cleanup Fund's revenues and expenditures. Monitoring and reporting mechanisms were developed to more accurately project revenues and expenditures.

The State Water Board continually implements changes to strengthen internal controls and continues to establish management-level quality control processes to effectively and efficiently manage the Cleanup Fund. The State Water Board continues to focus on bringing the Cleanup Fund's long-term demand into balance with revenue. It should be noted, however, that revenues vary from year-to-year based on the amount of fuels stored in the tanks, which is dependent on various factors including fuel prices and the economy.

Actions:

- A Fiscal Unit monitors and tracks revenues and expenditures. Weekly reporting keeps Cleanup Fund management informed of revenues spent and remaining balances.
- Fee revenues are projected monthly to ensure expenditures do not exceed revenues.
- Project revenues available for claim reimbursement to establish initial annual site budgets as well as approvals of budget change requests throughout the fiscal year.
- Establish cost limits for individual claims to enable development of program cash flow demand projections.
- Increased revenue in FY 2012/13 as compared to 2011/12 allowed the State Water Board to activate additional claimants from the priority list and increase the FY 2013/14 site budgets.

Claims

Fund statutes set forth a claim priority system for payment based on specified claimant characteristics relating to the claimant's ability to pay. There are four priorities:

Class A: These claims are the highest priority claimants owning residential tanks.

Class B: These claims are reserved for small California businesses, governmental agencies, and nonprofit organizations with 100 employees or less and gross receipts below a specified amount.

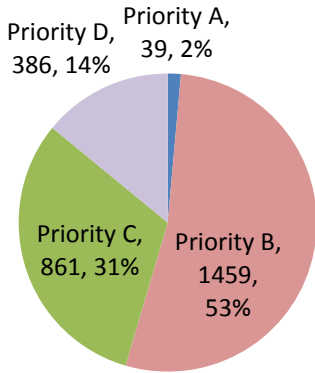
Class C: These claims are for certain California businesses, governmental agencies, and nonprofit organizations not meeting the criteria for Class B, but who have less than 500 employees. Fund statutes mandate that a minimum of 14 to 16 percent of the funds committed are awarded to Priority Class C claimants.

Class D: These are all other eligible claimants and are the lowest priority. Fund statutes mandate that a minimum of 14 to 16 percent of the funds committed are awarded to Priority Class D claimants.

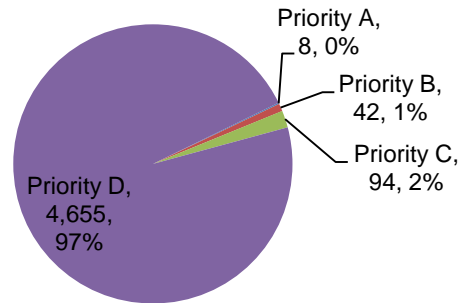
Over 19,900 claims have been filed during the course of the program. About 11,300 claims have been issued a Letter of Commitment (LOC) and paid in part or in full. Of those claims, approximately 8,600 were closed and about 2,700 remain active. Another 4,700 claims filed by major corporations and government agencies are on the Priority List awaiting activation. Approximately 3,700 were denied and about 200 are under review. The State Water Board processed approximately 83,000 individual payment transactions, which, over the long term, average about \$40,000/claim/year paid annually. The three charts below show active claims which

are open claims being funded, claims on the Priority List waiting for activation and funding, and the number of years claims are open as of June 30, 2013.

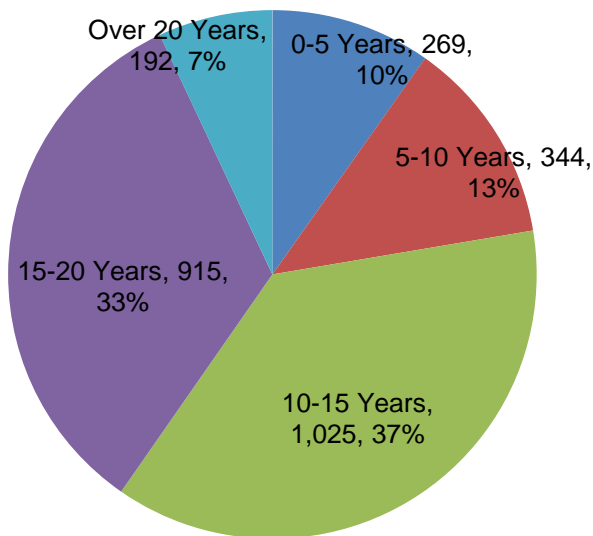
**Active Claims by Priority Class
(as of June 30, 2013)**



**Claims Waiting for Funding
by Priority Class
Fiscal Year 2012/2013
(as of June 30, 2013)**



**Age of Claims
(Years Claim Open as of June 30, 2013)**



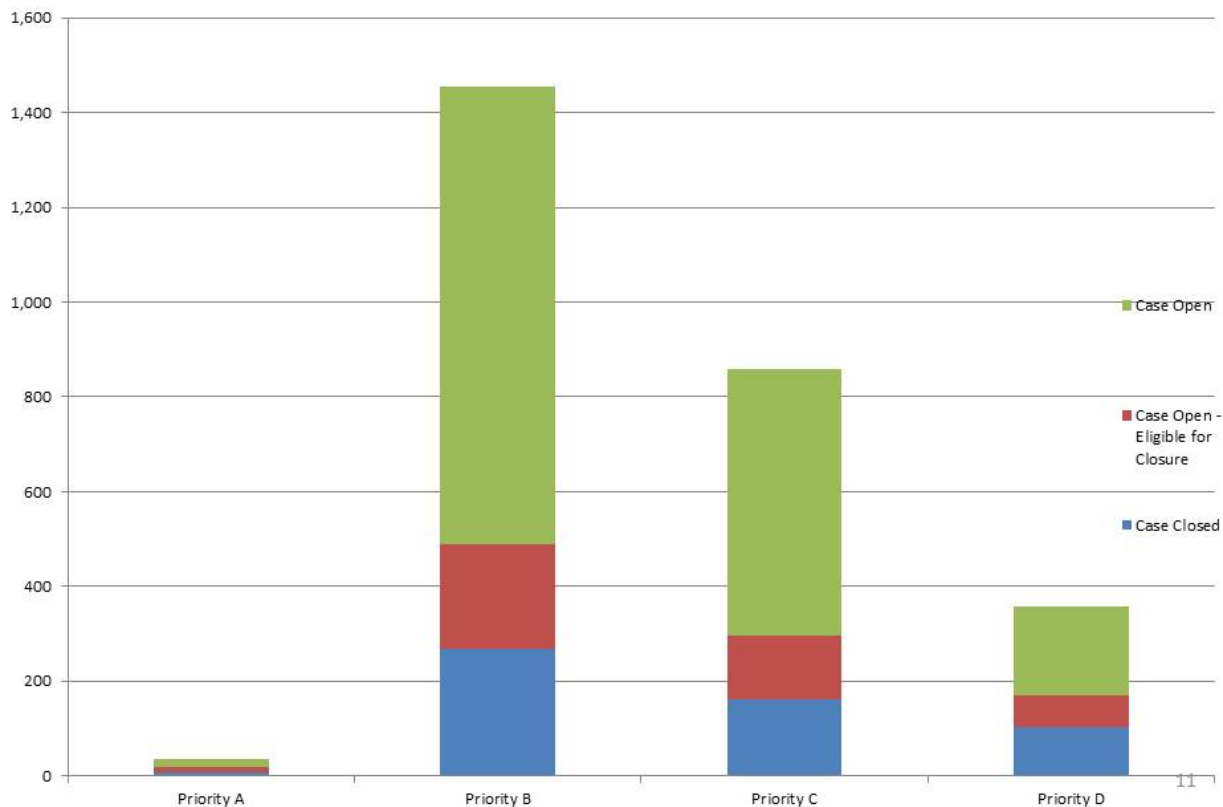
State Water Board staff continues to manage the number of newly active claims to ensure demand is in balance with revenues. New Letters of Commitment are issued based on projected funding available, for claims with regulatory cases that are not closed, and Cleanup Fund approval of an annual site budget.

- During FY 2012/13, the State Water Board Cleanup Fund activated (i.e. began paying on claims that had not previously received funding) the following claim types:
 - School District Claims – There was sufficient funding to activate school district claims as a result of the law that established the separate “School District Account” specifically to pay school district claims regardless of Priority Class.
 - Priority Class A claims – There was sufficient funding to activate these claims, which are the highest priority claimants.
 - Priority Class B claims – There was sufficient funding to activate these claims, which are the second highest priority claimants.
 - Priority Class D claims – Although these are the lowest priority claimants, the laws mandate that at least 14 percent of the Fund’s committed be awarded to Priority Class D claimants. As these claims are paid, new claimants must be added to meet the mandate. Most of the regulatory cases for these claims have been closed, so claimants most likely will only request one reimbursement request. During FY 2012/13, the Cleanup Fund did not activate Priority Class C claims. Current law also mandates that at least 14 percent of the funding for cleanup be used for Priority C claims. The mandated 14 percent was used to pay existing claims, so no new claims were activated in 2012/13.
- State Water Board staff continues to make eligibility determinations and issue Staff Decisions within 60 days of receipt of a new application as required by statute.
- State Water Board staff continues to implement a risk-based approach for conducting regulatory agency compliance reviews to verify that a claimant is permitted and meets regulatory agency requirements for cleanup.

Case Status of Claims

As shown in the graph below, there are approximately 2700 Active Claims for reimbursement from the Cleanup Fund. About 1100 or 40 percent of the sites were cleaned up and closed by the regulatory agency or are on their way to closure over the next several months. Once the regulatory agency closes a case and the claim is closed, new Priority A and Priority B claims are activated and funded as quickly as possible.

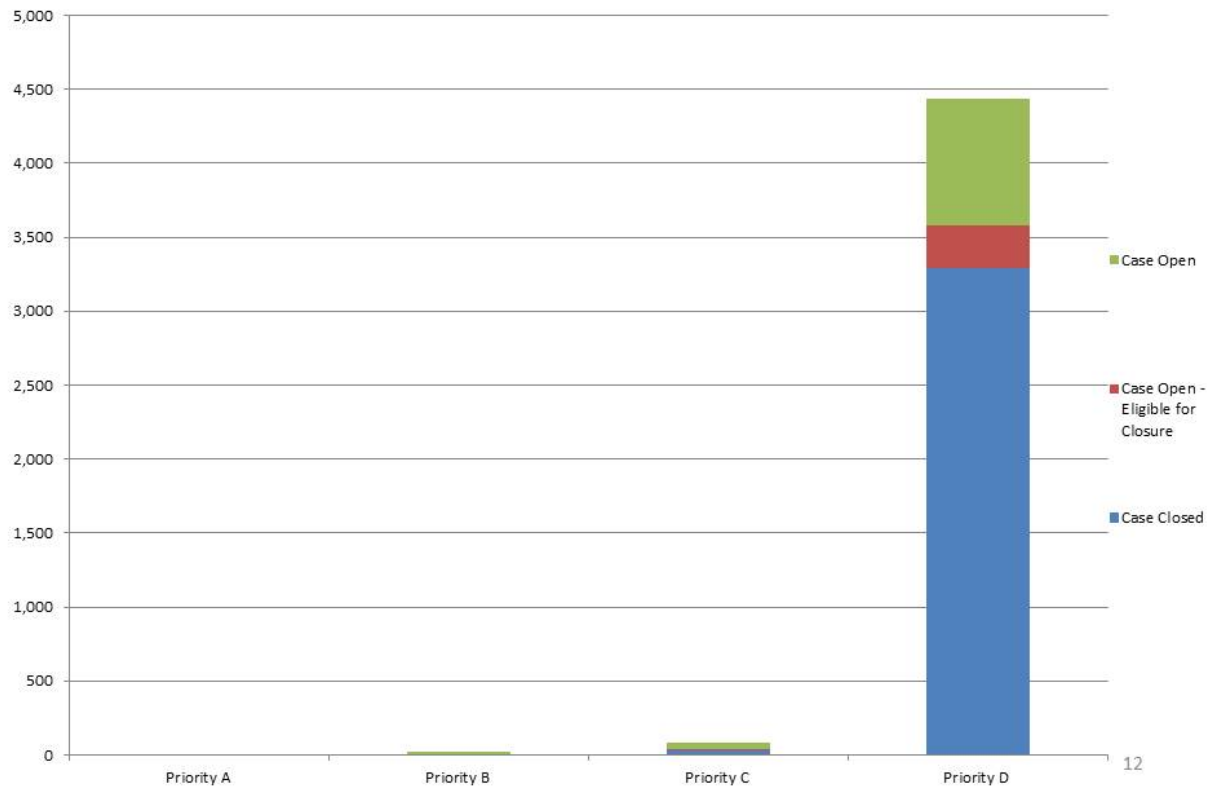
CASE STATUS: ACTIVE CLAIMS



Claims on the Priority List are awaiting funding, since not enough fees have been collected to reimburse all claims and fund additional resources for payment. The graph below titled Case Status: Priority List Claims shows of the approximate amount of 4799 claims on the Priority List:

- There were 8 Priority A's, 42 Priority B's and 94 Priority C's still to be activated. Nearly all the claims on the Priority List are Priority D claims -- 4655.
- Most of the Priority List claims are closed cases. Specifically, in total:
 - 3328 had closed regulatory cases.
 - 298 were eligible for closure.
 - 1211 had open cases.

CASE STATUS: PRIORITY LIST CLAIMS



Cost Controls

The State Water Board continues to focus on moving cases that meet closure criteria to closure, and closing out those claims in the Cleanup Fund.

UST Low-Threat Case Closure Policy

The State Water Board's Underground Storage Tank Low Threat Case Closure Policy (Closure Policy), which provides specific case closure criteria, went into effect on August 17, 2012.

Actions:

- The State Water Board adopted Resolution 2012-62 which requires a number of actions to ensure implementation of the Closure Policy, including:
 - Annual review of all UST cases against the Closure Policy;
 - Preparation of Path to Closure Plans by December 31, 2013;
 - Focus on priority cases, defined as those that are affecting water supply wells, are affecting human health, or that have in soil or groundwater free product (significant amounts of pure petroleum fuel);
 - State Water Board review of cases denied case closure by regulatory agencies;
 - Cleanup Fund Manager reviewed, using the Closure Policy, the 541 UST cases that the Cleanup Fund had previously recommended be considered for closure under the Five-Year Review Process.

Implementation of the policy has provided the following benefits:

- The Policy has led to increased process efficiency of case closure for low-threat petroleum-impacted UST sites that no longer pose a threat to human and environmental health.
- All funding decisions associated with Annual Site Budgets and Budget Change Requests are based on review of cases with respect to the Closure Policy. This has led to more appropriate budgets for sites that no longer pose a threat to human and environmental health, as well as for sites that need further cleanup in order to meet case closure criteria.
- The Closure Policy has provided clarity in determining reasonable and appropriate costs necessary to move cases to closure, and has thereby helped the State Water Board avoid paying claims for actions that do not move a case to closure. Costs incurred that do not move a case to meet closure criteria are generally unreasonable and unnecessary costs, which makes them ineligible for reimbursement from the Cleanup Fund.

Projecting funds necessary to reimburse claims with closed regulatory cases is more certain than those with ongoing cleanup. Cases that are open and eligible for closure incur lower costs, primarily for destruction of monitoring wells and disposal of any waste. Open cases, especially those in active remediation incur corrective action costs at the highest rate, both for treatment system purchase and high monthly utility costs or for excavation.

- Closing cases as soon as they meet all the closure criteria is the primary action the State can do to contain costs. With the Closure Policy, those criteria are much more clear.

Five-Year Review Process

Statute requires the Cleanup Fund Manager to annually review the case history to determine appropriateness of UST regulatory case closure for all Cleanup Fund claims where funding has occurred for five or more years, unless the owner or operator objects. Changes in statute became effective January 1, 2012 and 2013, which made procedural and substantive changes. In cases where the Cleanup Fund Manager finds that closure is appropriate, a review summary report (RSR) is provided to the regulatory oversight agency for review. This finding freezes the regulatory agency from enforcing existing or new directives. With approval of the tank owner or operator, the Cleanup Fund Manager may make a recommendation to the State Water Board for closure. This recommendation freezes the amount that can be reimbursed annually for corrective action to \$10,000. Both freezes can be avoided under certain conditions.

Proactively assessing cases for closure was anticipated to ultimately reduce demand on the Fund as cases were closed. Five-year reviews also reduce the chance that the responsible party will fully expend the maximum \$1.5 million allowed from the Cleanup Fund before the site is cleaned up and the case closed. Furthermore, the reviews provide an opportunity to detect waste and abuse if funds are being spent at sites that warrant closure. The Cleanup Fund Manager also reviews case histories and recommends cases for closure for claims outside the mandated criteria in order to achieve these goals for other claims in the Cleanup Fund.

Actions:

- Cleanup Fund staff identified 541 active cases over 5 years old and evaluated them to determine if they are appropriate for closure. As required by State Water Board Resolution 2012-62, Cleanup Fund staff evaluated most of the 541 cases against the Policy.
- Approximately 90 percent of the 541 UST cases met the closure criteria. By the end of 2013, 238 cases were closed and the remaining cases that met the Closure Policy are in the closure process.
- Most of these closures are expected to be completed by July 1, 2014.
- Current and future Five-Year Reviews will focus on preparation of Review Summary Reports for cases that have been denied closure by the Regulator, cases where a Budget Change has been requested and additional cases as directed by the Cleanup Fund Manager.

Annual Site Budgets

In order to better manage cash flow, during the year prior to any fiscal year, the Cleanup Fund budgets a dollar amount for each claim that it expects to reimburse for corrective action costs incurred during that fiscal year. These are annual site budgets.

Claimants may request changes to the annual site budget in a Budget Change Request. These requests are processed throughout the fiscal year. Claimants submit reimbursement requests against their budget during the fiscal year for reimbursement by the Fund. Only costs incurred within the budgeted amount were reimbursed at that time to ensure the Fund did not over-expend the overall Cleanup Fund budget. Over-budget costs are reimbursed only after timely budgeted costs have been reimbursed and if there is unexpended money from that fiscal year's Cleanup Fund budget.

Benefits of Annual Site Budgets:

- With annual site budgets, revenues are set aside for ongoing corrective action, enabling more effective management of the Cleanup Fund
- Claimants know ahead of time what costs are likely to be reimbursed during the upcoming fiscal year.
- Where revenues are greater than projected, claimants may submit Budget Change Requests to add to the Annual Site Budgets. Priority is given to A and B claims and any claim doing closure activities such as abandoning wells and disposing of any remaining waste onsite.
- In addition to yearly budgets, the Cleanup Fund uses additional controls to continually monitor revenue and expenditures to ensure that the funds are maximized for the intended purposes.
- Fiscal controls such as annual site budgets for claimants have aided in better managing the expenditures of the program. Subsequently, the Cleanup Fund was able to reimburse over-budget costs incurred in FY 2011/12.

Reimbursement of “Old Costs” – Costs Incurred Before FY 2011/12

The State Water Board needed to determine the amount of eligible costs that had not been submitted for active claims. There had never been a deadline for submitting reimbursement requests. In FY 2011/12, most of the budget was set aside and a deadline was given for submitting reimbursement requests for eligible costs incurred prior to FY 2011/12. Reimbursement requests had been submitted and were still being submitted during FY 2012/13.

Reimbursement of FY 2011/12 Late Reimbursement Requests

Reimbursement requests for costs incurred under active claims prior to July 1, 2011, were due no later than September 30, 2012. Approximately 1,400 reimbursement requests were submitted between July 1 and September 30, and about 300 after the September due date. There were over 1,700 reimbursement requests submitted after July 1. The influx resulted in a backlog. Late submittals were processed before timely FY 2012/13 reimbursement requests. The last FY 2011/12 claims within budget were paid in April 2012, and timely FY 2012/13 reimbursement requests were significantly delayed.

Reimbursement of FY 2011/12 Over-Budget Costs

Only 31 percent of reimbursement requests against site budgets were in-house or paid by the September 30, 2012, deadline for claimants to submit FY 2011/12 costs. This left approximately 69 percent of the FY 2011/12 costs either not incurred or not submitted. Approximately \$30 million of FY 2011/12 budgeted costs were not submitted for reimbursement by the September 30 deadline. Claimants did not inform the Cleanup Fund that they were not going to use their FY 2011/12 budget allotments. This resulted in the Cleanup Fund not being able to determine until late FY 2012/13 that there was sufficient cash to reimburse for FY 2011/12 over-budget costs for Priority C claims. Priority C claims' FY 2011/12 over-budget costs were not paid until August 2013.

In FY 2012/13, the Cleanup Fund was able to pay FY 2011/12 over-budget costs for Priority A and B claims.

Reimbursement of FY 2012/13 Budgeted Costs

The Cleanup Fund allocated \$193 million of the FY 2012/13 Cleanup Fund budget for all corrective action for claims as well as sites in the Special Programs. The amount for all claims was \$180 million. Of this amount, \$133.5 million was allocated for annual site budgets (initial site budgets and budget change requests).

Only 27 percent in reimbursement requests against site budgets were received or paid by the September 30, 2013, deadline for claimants to submit FY 2012/13 costs. This left approximately 73 percent of the FY 2012/13 budgeted costs either not incurred or not submitted.

Payments

Payment Processing During FY 2012/13

The reimbursement requests received included those submitted for prior year costs as well as costs incurred during FY 2012/13. They included "Old Costs" incurred prior to June 30, 2011, costs incurred during FY 2011/12, and costs incurred during FY 2012/13. Reimbursement requests were processed in the order of date received, which resulted in processing in the following order: "Old Costs", FY 2011/12 costs, FY 2012/13 costs.

The following table shows, by Priority Class, the number of reimbursement requests received, processed, and paid during FY 2012/13. Over 5,000 reimbursement requests were received. This is a typical annual total number of reimbursement requests that are received and paid during a fiscal year. However, most of the reimbursement requests were received at the beginning of the fiscal year in response to administrative deadlines to submit reimbursement requests from earlier fiscal years -- processed in order to minimize the unknown outstanding demand on the Cleanup Fund.

FY 2012/2013 Reimbursement Requests					
	Priority A	Priority B	Priority C	Priority D	Total
RRs Received	77	3,114	1,636	400	5,227
RRs Processed	85	3,338	1,730	476	5,629
RRs Paid	\$1.2M	\$68.6M	\$38M	\$30.9M	\$138.7M
RRs on Hold for Payment	0	27	521	0	548
RR \$ on Hold for Payment	\$0	\$400,000	\$11.2M	\$0	\$11.6M

Actions:

- The State Water Board continued to implement changes to strengthen internal controls and management-level quality control processes to evaluate overall claim processing procedures.

- State Water Board staff continued to transition to the more effective budgeted-claim approach, including creating and modifying forms and documents to streamline the collection of information required to process requests.

Payments Processing Times During FY 2012/13

The statutory requirement for payment processing is 60 days, which the Cleanup Fund had never met and continued not to meet during FY 2012/13. The payments processing improvements that had been made in response to the 2009 Fund Audit added steps for checks and balances within the process, but only minor streamlining actions.

As discussed above, over 1,700 of the reimbursement requests for costs incurred during FY 2011/12 were submitted after July 1. At the beginning of FY 2012/13, the influx immediately created a backlog. Late 2011/12 submittals were processed before timely FY 2012/13 reimbursement requests. The last FY 2011/12 claims within budget were paid in April 2012, and as a result, timely FY 2012/13 reimbursement requests were significantly delayed.

Although actual processing time is relatively short, the amount of time the reimbursement requests waited prior to processing was significant. The processing time for FY 2012/13 Budgeted Cost Reimbursement Request packages submitted prior to September 30, 2013, averaged 129 days from the Date Received to the Paid Date. These times are included in the averages listed in the table.

FY 2012/2013 Reimbursement Request (RR) Processing Time					
Total RRs In-house* During FY 12/13 and Paid by June 30, 2013					
	Priority A	Priority B	Priority C	Priority D	Average
Average Processing Time (Date Rec'd to Date Sent to Accounting)	68 days	155 days	183 days	110 days	159 days
Average Processing Time (Date Rec'd to Paid Date)	88 days	175 days	201 days	132 days	178 days
RRs for FY 2012/2013 Budgeted Costs Submitted Prior to September 30, 2013 Deadline					
Average Processing Time (Date Rec'd to Date Sent to Accounting)	44 days	111 days	113 days	58 days	111 days
Average Processing Time (Date Rec'd to Paid Date)	64 days	130 days	132 days	85 days	129 days

*In-house RRs include those submitted for prior year costs as well as FY 2012/13.

Actions:

- The State Water Board is continually improving reimbursement requests processing time with the use of standardized invoices and simplified procedures.
- The State Water Board developed a Payment Improvement Processing Plan and began its implementation.
- Guidance documents are posted on the Cleanup Fund's web page to assist claimants in submitting complete reimbursement requests.
- Rather than delay processing timely submittals of reimbursement requests, the Cleanup Fund committed to process payments for timely submittals before submittals received after published administrative deadlines. Timely submittals are paid sooner.
- The Cleanup Fund committed to implement electronic invoicing for more timely and error-free payment processing.

Claim Closure Management

The Cleanup Fund's administrative closure function ensures public funds are used appropriately. The Administrative Closure Unit performs a detailed administrative claim audit randomly throughout the life of the claim and on each claim prior to releasing a final payment.

The Administrative Closure Unit audits claims:

- Analyzes payment requests to ensure expenditures were not paid for costs incurred before January 1, 1988, or after the site received regulatory closure;
- Verifies calculated amounts are accurate and double payments have not occurred; and
- Verifies only eligible, necessary, and reasonable costs were paid.

The Administrative Closure Unit closes claims:

- After the regulatory agency has issued a site closure letter;
- When the statutory maximum payment of \$1.5 million has been paid; When a claim has been dormant over one year; or
- After a claim has reached the statutory deadline of 365 days to submit all costs to the Fund.

Actions:

The Administrative Closure Unit closed 520 claims in FY 2012/13.

Status of Cleanup Fund Sub Accounts

There are four active sub accounts that were established through legislation.

Emergency Abandoned and Recalcitrant Account

The Emergency Abandoned and Recalcitrant (EAR) Account was established in 1991. The EAR Account provides funding to Regional Water Boards and Local Agencies to initiate corrective action at petroleum UST sites which have had an unauthorized release and which require either:

- An immediate or prompt action response at a site to protect human health, safety, or the environment; or
- Action at a site where a responsible party (RP) cannot be identified or located (abandoned site); or
- The identified RP is either unable or unwilling to take the required corrective action (recalcitrant site).

The emergency funds are a critical resource and are 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 wellhead treatment on impacted domestic wells. All EAR Account costs are subject to cost recovery from the responsible parties. Since establishment of the EAR Account, 68 sites have received \$16.4 million in reimbursements and 12 sites have been closed. The EAR Account receives an annual appropriation of \$5,000,000.

FY 2012/2013 EAR Account		
Sites	Payments Processed	Total Payment
30	142	\$1,810,068

Commingled Plume Account

The Commingled Plume Account (CPA) was created in 1997 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.

The CPA provides multi-site funding where a commingled plume has been confirmed by the regulatory agency. A commingled plume is defined as the condition that exists when groundwater polluted 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. The CPA receives an annual appropriation of \$10,000,000.

In FY 2012/13, a new annual budget process was implemented for all active CPA claims.

Since establishment of the CPA Account, Cleanup Fund staff has:

- Reviewed 72 CPA applications;
- Determined 57 CPA applications eligible;
- Reimbursed 50 CPA claims for a total of \$68.9 million
- Closed 16 CPA claims totaling 40 sites.

FY 2012/2013 CPA Account		
Claims Requesting Funds	Reimbursements Processed	Total Reimbursement
33	49	\$6,240,749

School District Account

School District claims are in Priority Classes B, C and D. Historically, limited funding has been available to Priority Class D claims for school districts due to the number of active claims in the higher priority classes. However, Chapter 644 Statutes of 2008, (AB 2729, Ruskin), established the School District Account (SDA) within the Cleanup Fund. Specifically, the SDA assists Priority Class D school districts with reimbursement of corrective action costs. This legislation transferred \$10 million per year from the Cleanup Fund into the SDA for the three-year period of FY 2009/10, FY 2010/11, and FY 2011/12 totaling \$30 million. Funds from the SDA must be obligated or liquidated on or before January 1, 2016.

In November 2009, legislation allowed Priority Class B and C School District claims to be included in the SDA. The change was effective January 1, 2010. Currently, all School District Claims are reimbursed through the SDA. The State Water Board received a total of 268 school district claims statewide. Some of these claims were previously funded through the Cleanup Fund. All active claims are currently being funded through the School District Account. The chart below describes the claims funded and paid for School District sites.

FY 2012/2013 School District Account				
Funded School District Claims	Priority Class B	Priority Class C	Priority Class D	Total
School District Applications	60	58	80	198
School District Payments	\$8,056,707	\$8,068,870	\$14,819,940	\$30,945,517

Orphan Site Cleanup Fund

Chapter 616, Statutes of 2008, (SB 1161, Lowenthal), established the Orphan Site Cleanup Fund (OSCF). OSCF is a reauthorized program of the Orphan Site Cleanup Account (OSCA) to continue

and pay for the cleanup of brownfield petroleum UST contaminated sites where there is no financially responsible party (orphan sites). OSCF defines brownfield as a site located in an urban area (50,000 or more population) where there was previous economic site activity and where the site is currently vacant. The OSCF received a \$10 million transfer of funds from the Cleanup Fund for FY 2008/09, FY 2009/10 and FY 2010/11. The OSCF is scheduled to sunset on January 1, 2016.

FY 2012/2013 OSCF Account			
Funding Source	Sites Requesting Funds	Payments Processed	Total Payment
State	27	66	\$3,431,517

Since the OSCF was established in 2009, the State Water Board:

- Received 92 project applications;
- Determined 73 project applications eligible;
- Provided 65 projects State and federal stimulus grant funding totaling \$24 million; and
- Provided 22 projects formerly funded under the OSCA, OSCF funds to continue corrective action to complete site cleanup.

Communication

The State Water Board strives for transparency regarding Cleanup Fund activities and for excellent customer service.

Actions:

- Staff prepared and posted a Communications Plan after a period of public review.
- Staff improved the Cleanup Fund web site with structural changes so that claimants can more easily determine the status of their payments, budget change requests, and have up-to-date information.
- More reliable web service improves overall customer service by maximizing staff time to process payments, review claims for eligibility, and review cases to determine appropriateness of case closure, and minimizing requests for information via telephone calls and email.
- Notices and Fund Updates are communicated via the Cleanup Fund's electronic webserver list and continuously posted to the web site.
- Frequently asked questions (FAQs) are posted on the Cleanup Fund's web site.
- Preparations began for developing online acceptance of reimbursement requests and invoices, and associated efficiencies in payment processing and real-time reporting of payment status.

- Cleanup Fund management meets with the Fund Interest Group and other interested parties as requested.

Fraud Prevention, Detection, and Prosecution

The State Water Board's Office of Enforcement Fraud, Waste and Abuse (FWA) Prevention Unit investigates and prosecutes cases of fraud and misuse of Cleanup Fund monies.

Actions:

- On April 1, 2013, the FWA Prevention Pilot Program became a permanent unit.
- During FY 2012/13, the FWA Prevention Unit reviewed allegations and actively investigated cases of potential fraud against the Cleanup Fund.
- The FWA Unit investigated cases, one of which resulted in an owner of an environmental consulting firm pleading guilty to a criminal felony count of filing false claims with the State Water Board. As part of the plea agreement, the consultant will repay the Cleanup Fund \$1.6 million.
- The FWA Unit investigations provide information to the Cleanup Fund allowing changes in procedures with the intent to prevent FWA, which help inform improved policies and procedures for preventing fraud.

Environmental Benefits

Leakage from petroleum USTs allow hazardous substances to seep into the soil and contaminate groundwater, a source of drinking water for many Californians. Other potential health and environmental risks may include surface water pollution, indoor vapor intrusion, and exposure from direct contact such as ingestion and dermal contact.

The Cleanup Fund was established to provide financial assistance to petroleum UST owners and operators for cleanup of these contaminated sites. The Cleanup Fund has reimbursed corrective action costs of over 11,300 UST cases to date, of which, over 8600 cases have been remediated and closed. The Cleanup Fund has been critical to both cleanup immediate impacts and to prevent significant migration of petroleum product in groundwater and soil.

Implementing corrective action at UST sites so that they meet closure criteria is a State Water Board priority. Sites that meet closure criteria do not pose a significant risk to human health or the environment. Cleanup allows full use of property, benefiting the community economically as well. In addition, the completion of a cleanup allows both the regulatory case and the Cleanup Fund claim to be closed. Closing claims allows for funding cleanup of sites, which do not yet meet cleanup criteria.

Annually, State Water Board staff reviews the site and claim history of Cleanup Fund claims where funding has occurred for five or more years to determine whether a recommendation for site closure is in order. This review is required by statute but is also beneficial to small businesses and

individuals, because it provides for a third party check on the progress of the site relative to the expenditure of funds and reduces the chance that the responsible party will run out of funds before the site is cleaned up and closed. Furthermore, this review provides an opportunity to detect waste and abuse if funds are being spent at sites that warrant closure. During FY 2012/13 State Water Board staff completed 1326 five-year reviews. Regulatory agencies closed 223 cases after the five-year reviews were completed.

Legislation

Three bills affected the Cleanup Fund and its accounts during FY 2012/2013:

Chapter 237, Statutes of 2012 (AB1715, Smyth) effective January 1, 2013, requires local regulatory agencies and Regional Water Boards to cease issuing directives or enforcing existing directives once the Fund Manager determines that the site is appropriate for closure and provides a review summary report to those agencies.

Chapter 39, Statutes of 2012 (SB1018, Committee on Budget and Fiscal Review), effective January 1, 2013, allows School District Account funds not expended in a fiscal year to remain in the School District Account . Funds remaining in the School District Account on January 1, 2016 shall be transferred to the Cleanup Fund

Chapter 536, Statutes of 2012 (AB1701, Wieckowski) effective January 1, 2013, (1) requires the State Water Board to establish a program for certifying cities and counties to oversee the cleanup of leaking underground storage tanks and (2) prohibits cities and counties, beginning July 1, 2013, from overseeing the cleanup of leaking underground storage tanks, unless they have been certified by the State Water Board.

Conclusion

Federal and state laws require every owner and operator of a petroleum UST to maintain financial responsibility to pay for damages arising from their UST operations. The Cleanup Fund provides financial assistance to eligible owners and operators for costs associated with the cleanup of leakage from petroleum USTs.

The Cleanup Fund has assisted in the cleanup of petroleum-related impacts to groundwater and soil, while also preventing further impacts in the form of significant petroleum migration in groundwater. While the Cleanup Fund did experience a cash shortage in late 2008, the State Water Board continues to make significant progress in improving the Cleanup Fund through: (a) financial management; (b) cost containment; (b) processing efficiency; and (c) other internal controls.

As of June 30, 2013, the State Water Board has paid over \$3.3 billion to individuals and small businesses to help them cover the costs of cleanup of leakage from petroleum USTs. Over 11,300 claims have received some form of reimbursement. Of those claims, 8,600 have been closed, and approximately 4,700 claims are on the waiting list to begin receiving reimbursements depending on availability of funds.

Without the Cleanup Fund's assistance, leakage from petroleum USTs would not have been cleaned up to the extent that it has been. In addition, many UST owners are individuals and small businesses and, without reimbursement from the Cleanup Fund for the cost of cleanup, would experience as a group more bankruptcies and business closures. In this manner, the Cleanup Fund has both preserved and created jobs. The financial assistance provided by the Cleanup Fund and its sub accounts supports continued economic activity at sites with historic leakage from petroleum USTs.

The State Water Board continues to take the following actions concerning the Cleanup Fund:

- Reduce risk to human health and the environment;
- Cost-effective corrective action at UST sites;
- Direction of limited public funds to UST sites that do not meet closure criteria;
- Prudent use of public funds;
- Prevention, detection, and prosecution of fraud, waste, and abuse of public funds;
- Return property to beneficial use and increase economic activity.

The Cleanup Fund and the UST Program as a whole face significant challenges. The more significant challenges include:

- The Cleanup Fund is scheduled to sunset January 1, 2016. As much as about \$3 billion in claims will not be paid if the Cleanup Fund sunsets as scheduled, affecting up to 2,700 active claims currently receiving reimbursements and over 4,700 unreimbursed claims on the Fund's Priority List
- A temporary petroleum storage fee increase sunset on January 1, 2014, decreasing the fee from 2.0 to 1.4 cents per gallon, reduces the amount that can be reimbursed to claimants
- UST owners must transition to alternatives to the Cleanup Fund prior to its 2016 sunset in order to meet federal financial responsibility requirements.