



## **STATE WATER RESOURCES CONTROL BOARD**

### **UNDERGROUND STORAGE TANK CLEANUP FUND**

**FISCAL YEAR 2014/2015**

**ANNUAL REPORT**



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# Executive Summary

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This annual report was prepared pursuant to 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 from July 1, 2014 to June 30, 2015.

The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 created the Cleanup Fund to help owners and operators of petroleum USTs cleanup unauthorized releases and to 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 is supported by fees paid by UST owners for every gallon of fuel that is placed into an underground storage tank. The Cleanup Fund has been critical both in cleaning up immediate impacts of UST releases and in preventing significant migration of petroleum products in groundwater and soil. California's requirements over the past 20 years to update UST systems have resulted in fewer new releases. Currently, most UST cleanup cases are from legacy releases.

Since the beginning of the Cleanup Fund program operations in 1991 through June 30, 2015, the State Water Board has reimbursed more than \$3.8 billion to 11,428 eligible claimants. Of the 11,428 claims that received reimbursement, over 8,510 cases have been remediated and both their regulatory cases and Cleanup Fund claims closed. At the end of FY 2014/15 there were 2,383 active claims being reimbursed. Of these 2,383, about 1,296 claims are open cases (where the cleanup of the site has not yet been completed), and about 1,077 claims are for closed cases (i.e., where the cleanup of the site has been completed) or cases that are eligible for closure.

During FY 2014/15, the Cleanup Fund received approximately \$299.66 million (M) in revenues and committed to pay roughly \$211.5 M for corrective action costs. Typically, about three-quarters of the Cleanup Fund money pays for direct expenditures for cleaning up contaminated sites. The remaining amount 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 18 Local Oversight Program agencies (LOPs). 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.

In addition, the Cleanup Fund has 4,688 pending claims that are awaiting sufficient funds to become available in the Cleanup Fund in order to begin the reimbursement process.

## 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.

The Cleanup Fund and the UST Program face significant challenges within the next few years. The most significant challenges include:

- Escalation of cleanup costs over time. Today's open cases are projected to cost an average of \$850,000 per claim where historically the average was \$630,000 per claim.
- As many as 2,383 active claims and 4,688 claims on the Fund's Priority List are waiting for reimbursement of cleanup costs that totals an estimated \$3.5 billion. The passage of Senate Bill 445 (Hill, Chapter 547, Statutes of 2014) requires the removal and closure of all single-walled USTs, which is expected to add approximately 1,200 additional claims to the 4,688 Fund's Priority List.
- The challenge to pay all eligible costs and claims on the Cleanup Fund's Priority List before the Cleanup Fund's sunset date of January 1, 2026.

## Legislation

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On September 25, 2014, the Governor signed SB 445 (Hill, Chapter 547, Statutes of 2014). SB 445 was an urgency measure that immediately affected the Cleanup Fund during FY 2014/2015. SB 445 required key changes to the UST Cleanup Fund program, including:

- Extending the program's sunset date by 10 years to January 1, 2026;
- Increasing the fee assessed on petroleum stored in underground storage tanks from \$0.014 per gallon to \$0.02 per gallon;
- Prior to September 25, 2014, claimants could be reimbursed for costs up to \$1.5M per occurrence, less the deductible and less any funds received from other sources. After September 25, 2014, new claims have a maximum reimbursement of \$1M.
- [Requiring all single-walled USTs to be permanently closed by December 31, 2025;](#)
- Dedicating 3 mils (\$0.003) of the assessed fee for: (1) helping small businesses comply with underground storage tank regulatory requirements (Replacing, Removing, or Upgrading USTs RUST loans and grants); (2) providing funding through the new [Site Cleanup Subaccount](#) for investigating and cleaning up contaminated sites without regard to the source of the contamination, particularly where there are no viable responsible parties; and (3) reimbursing school districts for UST cleanups;
- Increasing the maximum [RUST](#) grant amount to \$70,000 and providing for removal-only RUST grants (RUST grant moneys above the \$70,000 maximum are available in limited circumstances);
- Transfers \$100M from the Cleanup Fund to the Expedited Claim Account for an [Expedited Cleanup Pilot Project](#)
- Providing the State Water Board with necessary authority to address fraud in the Cleanup Fund;
- Emergency, Abandoned, and Recalcitrant Account Program (EAR) Account sites, Orphan Site Cleanup Fund (OSCF) sites, Commingled Plume Account sites that are submitted to the Board after December 31, 2014;
- Expanding eligibility for [Orphan Site Cleanup Fund](#) sites;
- Increasing the Regulatory Technical Assistance Cap (RTAC) to \$5,000 for those defined costs;
- Specifying that costs incurred after September 25, 2014, for electronic uploads of Cleanup Fund related documents are not subject to the RTAC;
- Requiring an audit of the Cleanup Fund every five years;
- Requiring a study of the existing statute defining small business for the purpose of Cleanup Fund eligibility and a bond study.

## Program Description

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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; and
- Reimbursing eligible corrective action costs incurred for the cleanup of pollution resulting from the unauthorized release of petroleum from USTs.

The Cleanup Fund benefits numerous small, medium, and large businesses and individuals by providing reimbursement for expenses associated with the cleanup of leaks from petroleum USTs. The Cleanup Fund also provides money to the nine Regional Water 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 resulting from a UST petroleum release.

Petroleum storage fees not only provide funding for claims, but they also provide funding for specialized cleanup programs through the State Water Board's Division of Financial Assistance such as, the Emergency Abandoned and Recalcitrant (EAR) Account, the Orphan Site Cleanup Fund (OSCF), The Commingled Plume Account (CPA), the School District Account (SDA), the Site Cleanup Subaccount Program (SCAP), and the Expedited Claim Account Program (ECAP).

The 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 require either:

- An immediate or prompt action response at a site to protect human health, safety, or the environment;
- 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).

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. EAR Account costs are subject to cost recovery from the responsible parties.

SB 1161 (Lowenthal, Chapter 616, Statutes of 2008), established the 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 defined brownfield as a site located in an urban area (with a population of 50,000 or more) where there was previous economic site activity and where the site is currently vacant. This brownfields provision was eliminated by SB 445 (Hill, Chapter 547, Statutes of 2014), which also extended the sunset date to January 1, 2026. The OSCF received a \$10 million transfer of funds from the Cleanup Fund for FY 2008/09, FY 2009/10, and FY 2010/11 for a total of \$30 million. OSCF will not receive additional transfers of funds from the Cleanup Fund.

The 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. 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 \$10M.

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 in 2008, AB 2729 (Ruskin, Chapter 644, Statutes of 2008), established the SDA within the Cleanup Fund. The SDA assists Priority Class D school districts with reimbursement of corrective action costs. This legislation transferred \$10 M 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.

AB 1188 (Ruskin, Chapter 649, Statutes of 2009), allowed Priority Class B and C School District claims to be included in the SDA effective January 1, 2010. In 2013, AB 120 (Committee on Environmental Safety and Toxic Materials, Chapter 632, Statutes of 2013), changed the eligibility requirements for School District claims allowing for permit waivers. The Cleanup Fund conducted additional reviews of claims previously determined ineligible to see if these claims met the new eligibility requirements.

Additionally, SB 445 provides an unspecified portion of 3 mils of the petroleum storage fee to fund the SDA. This bill would extend the operation of those portions of the act and the School District Account until January 1, 2026. Funds in the SDA that are not expended in a fiscal year shall remain in the SDA. Funds remaining in the SDA on January 1, 2026, shall be transferred to the Underground Storage Tank Cleanup Fund.

The SCAP is a new funding program established by SB 445 (Hill, Chapter 547, Statutes of 2014) allowing the State Water Board to issue grants for projects that remediate the harm or threat of harm to human health, safety, or the environment caused by existing or threatened surface or groundwater contamination. This funding program is available to address only man-made contaminants. Documentation is also required to show the responsible party lacks resources to implement the project. In fiscal year 2014/2015 SCAP received an annual appropriation of \$19.5M.

The ECAP is a new program established by SB 445 (Hill, Chapter 547, Statutes of 2014) intended to reduce the overall cost for site cleanup and the time to reach closure by increasing coordination with the regulators, claimants and their consultants, and the Cleanup Fund. ECAP will implement a Pilot Project that requires establishment of project milestones, cost estimates for multi-year funding plans, and reimbursement submission schedules. SB 445 (Hill, Chapter 547, Statutes of 2014) transferred \$100M from the Cleanup Fund to the new Expedited Claim Account (ECA) to reimburse eligible corrective action costs of claims selected to be part of the Pilot Project. The existing laws for eligibility and reimbursement cap for claims are unchanged. The ECAP will implement the Pilot Project and the Pilot Project Report is due January 1, 2018. ECAP will continue until the \$100M in the ECA is committed.

## Environmental Benefits

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Leakage from petroleum USTs allows 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 has been critical to the cleanup of immediate impacts and preventing 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 to shift to cleanup sites that do not yet meet the closure criteria.

Annually, the 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, and the review benefits small businesses and individuals. The review 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 fraud, waste, and abuse. During FY 2014/2015, State Water Board staff completed approximately 1,000 review summary reports, and subsequently 373 cases were closed after the review.

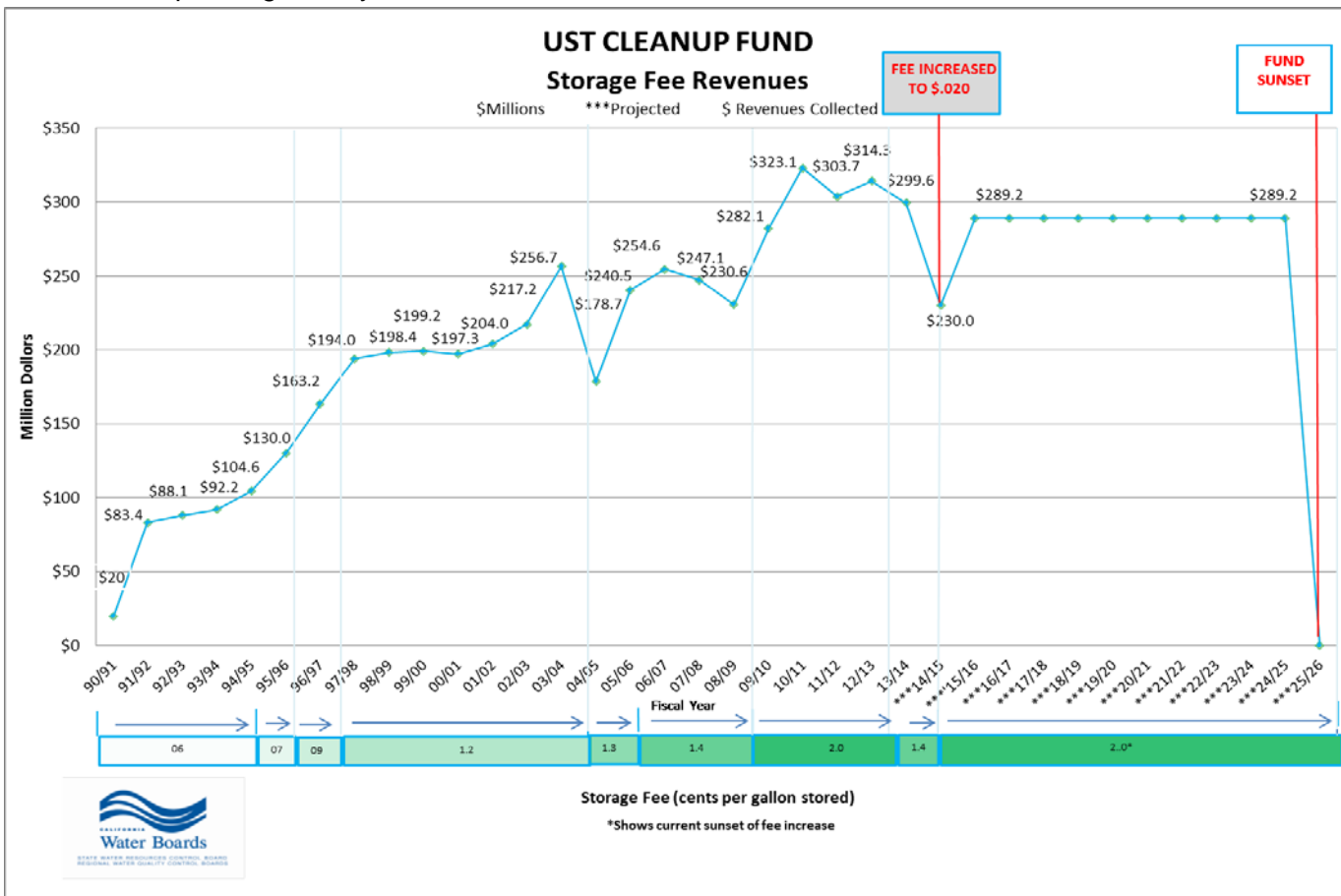
Since 1989, there have been a total of 41,483 leaking UST cases in California, of which 15,779 claims were determined eligible for reimbursement of cleanup costs from the Cleanup Fund. The remaining 25,704 cases have not applied to the Cleanup Fund or they did not meet the eligibility requirements. Of the 41,483 total UST cases, 36,455 cases have been closed and 5,028 cases remain open. It should be noted that the Cleanup Fund provides most of the funding for regulatory oversight of UST cases regardless of whether there is a Cleanup Fund claim for the case.

SB 445 (Hill, Chapter 547, Statutes of 2014) has provided the Cleanup Fund with an alternative funding program through the Site Cleanup Subaccount Program. The SCAP is able to address investigation and remediation of contaminated sites caused by man-made contaminants. In previous years, a lack of available funding and ineligibility for Cleanup Fund programs created an assortment of sites that posed a significant threat to human health, safety and the environment. SCAP will offer the opportunity for these sites to be investigated, remediated and closed.

# Revenues

The petroleum storage fee provides revenues for programs designed to assist with the cleanup of leaking petroleum USTs and other contaminants eligible through SCAP. The fee applies to each gallon of petroleum placed into underground storage tanks. Since the inception of the Fund, the fee rates per gallon have increased incrementally throughout the years. For the most part, the gradual rise in fees has allowed the Fund to maintain a consistent increase in claims reimbursements while meeting rising expenditure demand.

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. Revenues available for claim reimbursement are predicted to establish initial annual site budgets and approvals of budget change requests throughout the fiscal year. Annual site budgets are established as set asides for claim reimbursement planning. The Storage Fee Revenues graph below shows the fee rates per gallon over time. Changes in revenues are marked by the green sectioned bar below the corresponding fiscal year.

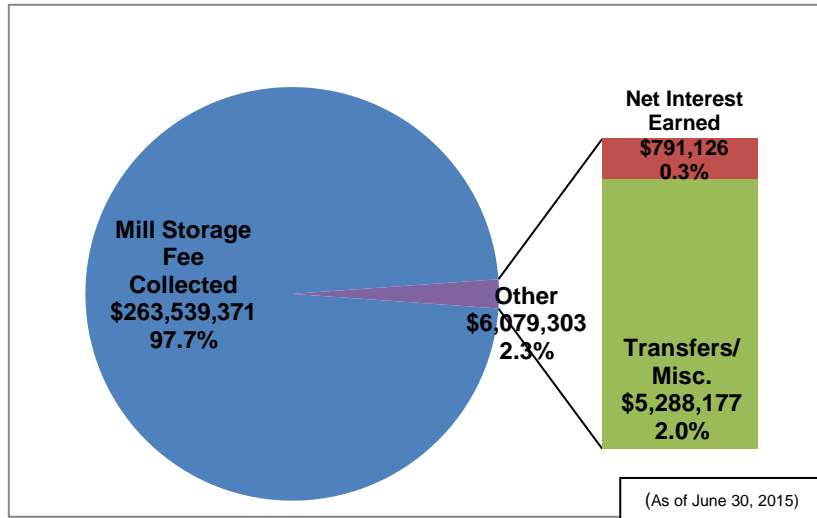


The fee rates per gallon for the following periods have been:

- \$.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 – December 31, 2014
- \$.020 January 1, 2015 – the program’s sunset, January 1, 2026.



In FY 2014/2015, the Cleanup Fund saw an increase in revenue of about 4.6 percent compared to FY 2013/2014. The passage of SB 445 (Hill, Chapter 547, Statutes of 2014) contributed to an increase in revenues available for Cleanup Fund programs. An additional \$0.006 mills per fiscal year is projected to be available until the program sunsets in 2026. The figure to the right illustrates the impact the Mills Storage fee has on revenues collected.



The following Revenue/Expenditures Summary report provides an outline of major revenues and expenditures from the Cleanup Fund in Fiscal Year 2014/2015 and since its inception.

<b>REVENUE / EXPENDITURES SUMMARY AS OF JUNE 30, 2015*</b>		
	<b><u>14/15 Fiscal Year</u></b>	<b><u>Since Inception</u></b>
<b>FUNDS RECEIVED:</b>		
Mill Storage Fee Collected	\$263,539,371	\$4,945,879,310
Net from Previous Fees		\$8,591,052
Net Interest Earned	\$791,126	\$108,614,338
Transfers/Misc.	\$5,288,177	\$15,689,311
<b>Total Funds Received:</b>	<b>\$269,618,674</b>	<b>\$5,078,774,011</b>
<b>FUNDS EXPENDED &amp; COMMITTED:</b>		
Fund Administration [1]	\$21,156,885	\$300,933,433
Cleanup Oversight [2]	\$32,222,170	\$398,391,537
Department of Trade & Commerce [3]		\$75,500,000
Replace, Remove or Upgrade UST (RUST) [4]		\$23,104,012
School District Account [5]		\$30,000,000
Orphan Site Cleanup Fund (OSCF) [6]		\$30,000,000
Board of Equalization (BOE) [7]	\$3,157,696	\$48,134,154
Claims Reimbursement [8]	\$148,027,306	\$3,952,291,164
Department of Health Services [9]		\$20,000,000
CalEPA	\$810,816	\$8,206,030
State Controllers Office (SCO) [10]		\$690,457
Fi\$Cal [11]	\$235,000	\$3,411,040
Misc [12]	\$12,266	\$6,098,596
<b>Total Funds Expended &amp; Committed:</b>	<b>\$205,622,139</b>	<b>\$4,896,760,423</b>
<b>NET FUNDS AVAILABLE:</b>	<b>\$63,996,535</b>	<b>\$182,013,588</b>

\*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 Cleanup Fund, through FY 1998/99, the Department of Trade and Commerce received an annual appropriation to provide loans to small businesses for the RUST grant and loan program, which 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. In FY 2013/14, a one-time cash transfer was made from the USTCF to the Petroleum Underground Storage Tank Financing (PUSTFA).

[5] The School District Account was established under H&SC 25299.50.3; \$10M was transferred in FYs 2009/10, 10/11, 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 storage 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 annually transferred \$5M to the Department of Public Health for the Drinking Water Treatment and Research Fund. The transfer expired on December 31, 2009.

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

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

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

## Status of Fund Claims

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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:

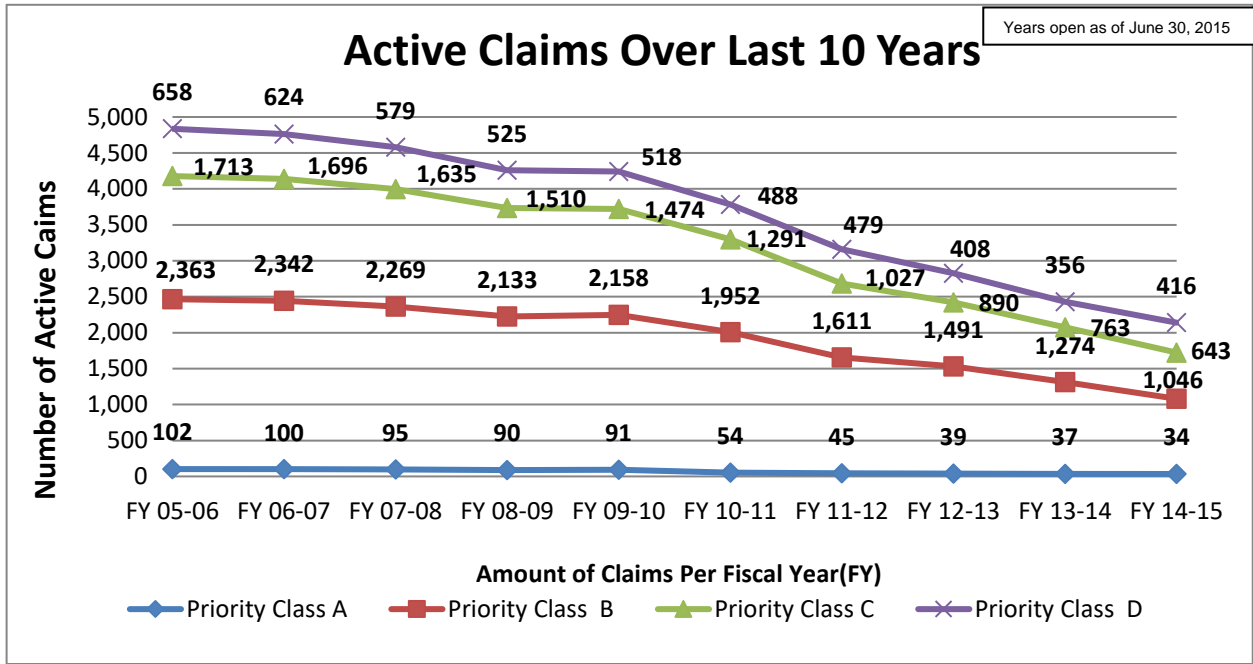
- Class A: Highest priority claimants owning residential tanks.
- Class B: Reserved for small California businesses, governmental agencies, and nonprofit organizations with 100 employees or less and gross receipts below a specified amount.
- Class C: Certain California businesses, governmental agencies, and nonprofit organizations not meeting the criteria for Class B, but who have less than 500 employees. Cleanup Fund statutes mandate that a minimum of 14 to 16 percent of the funds committed are awarded to Priority Class C claimants.
- Class D: All other eligible claimants and are the lowest priority. Cleanup Fund statutes mandate that a minimum of 14 to 16 percent of the funds committed are awarded to Priority Class D claimants.

Since the inception of the Cleanup Fund over 19,900 claims were filed through the end of FY 2014/2015. About 11,727 claims were issued a Letter of Commitment (LOC) and paid in part or in full. Of those claims, approximately 9,559 were closed and about 2,139 remain active. Another 4,688 claims filed by major corporations and government agencies are on the Priority List awaiting activation. Approximately 3,740 additional claim applications were denied because they did not meet eligibility requirements, and about 125 applications are under review.

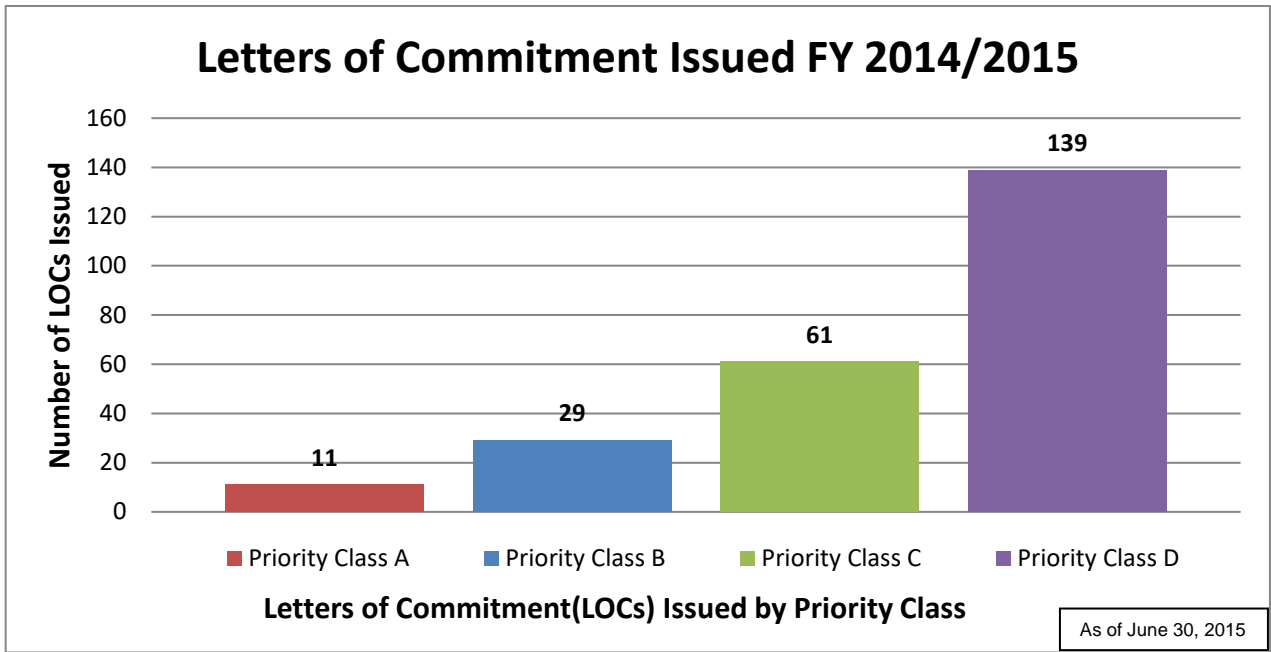
The State Water Board processed approximately 93,000 individual payment transactions, which, over the long term, average about \$40,000/claim/year paid annually.

Of the 4,688 claims filed through fiscal year 2014/2015, 714 claims are open cases and 3,974 claims are for closed cases or cases that are eligible for closure. The breakdown of types of claims on the Priority List waiting for funding at the end of FY 2014/15 was:

- Priority A – 4 claims
- Priority B – 30 claims
- Priority C – 31 claims
- Priority D – 3,995 claims

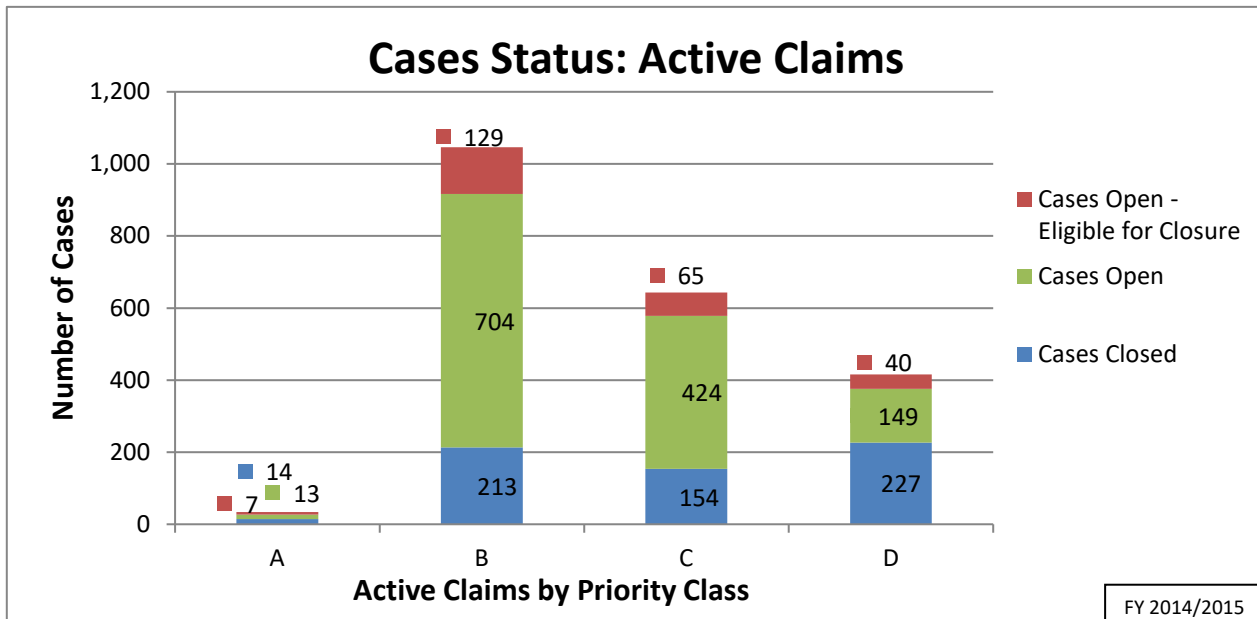


- Cleanup Fund staff continues to manage the number of newly active claims to ensure demand is in balance with revenues. New Letters of Commitment are issued based on projected funding available.
- State Water Board staff continues to make eligibility determinations and issue Staff Decisions within 60 days of receipt of a new application as required by statute.
- State Water Board staff continued 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.
- State Water Board staff continues the electronic claim application submittal process implemented in January 2014.

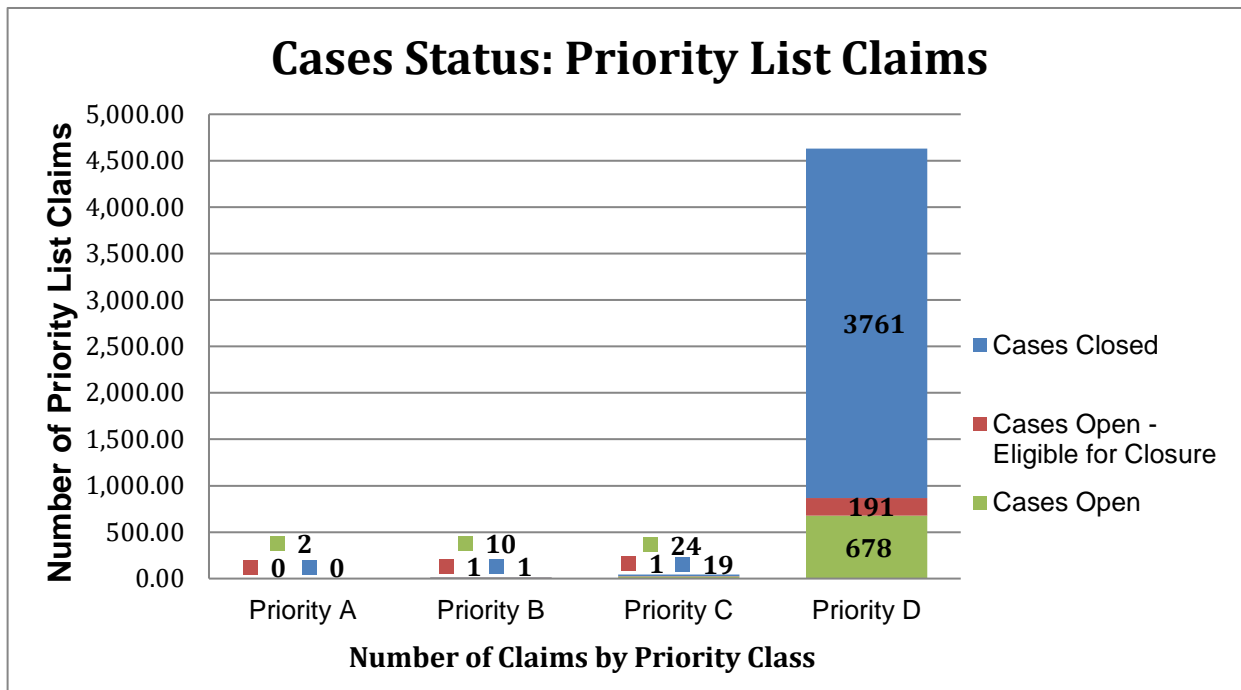


## Case Status of Claims

As shown in the graph below, there are 2,139 Active Claims for reimbursement from the Cleanup Fund. Once a regulatory agency closes a case and the claim is closed, new Priority A, B and C claims are activated and funded as quickly as possible. In FY 14/15, 55 percent of active sites were cleaned up and closed by the regulatory agency or were on their way to closure.



The graph below, Case Status: Priority List Claims, shows that the majority of the Priority D Claims waiting for funding have closed cases. As with the active claims, the majority of the claims on the Priority List in FY 14/15 have cases that are closed or were on their way to closure.



## Status of Payments

### Payment Processing

Over 4000 reimbursement requests were received and processed during FY 2014/2015, which included costs incurred during FY 2013/14 and prior fiscal years. The following table shows, by Priority Class, the number of reimbursement requests received, processed, and paid during FY 2014/2015. However, most reimbursement requests are received at the beginning of the fiscal year in response to the September 30<sup>th</sup> administrative deadline to submit reimbursement requests from the previous fiscal years. Reimbursement requests are processed in the order of date received.

FY 2014/2015 Reimbursement Requests					
	Priority A	Priority B	Priority C	Priority D	Total
	40	1996	1282	209	3527
RRs Processed	51	2382	1532	244	4209
RRs Paid	\$642,629	\$48M	\$37M	\$10M	\$95M
RRs on Hold for Payment*	0	46	38	0	84
RR \$ on Hold for Payment*	\$0	\$752K	\$839K	\$0	\$1.6M

\*RRs on hold represent over budget costs not yet paid at the end of FY 2013/14.

### Payments Processing Times During FY 2014/2015

The statutory requirement for payment processing is 60 days, which the Cleanup Fund historically has had difficulty meeting, including during FY 2013/14. However, the average payment processing time for FY 2013/14 was reduced by 33 days from the FY 2012/13 payment processing time of 178 days. Approximately 1,200 reimbursement requests for costs incurred during FY 2012/13 were submitted in FY 2013/14 between July 1, 2013, and September 30, 2013, and the influx immediately created a backlog. On time FY 2012/13 costs were paid through April 2014. FY 2013/14 costs were processed beginning in October 2013. Late FY 2012/13 costs were paid October 2014. The last FY 2013/14 claims within budget were paid in February 2015, resulting in delayed payments of on time FY 2014/15 reimbursement requests

Although actual processing time is relatively short, the amount of time the reimbursement requests were backlogged prior to processing was significant due to the continuous influx of reimbursement requests submitted at deadline. The processing time for FY 2013/14 Budgeted Cost Reimbursement Request packages submitted prior to September 30, 2014, averaged 96 days from the Date Received to the Paid Date. These times are included in the averages listed in the table.

FY 2014/2015 Reimbursement Request (RR) Processing Time					
Average Processing Time	Total RRs In-house* During FY 14/15 and Paid by June 30, 2015				
	Priority A	Priority B	Priority C	Priority D	Average
Date Rec'd to Date Sent to Accounting	48 days	126 days	135 days	75 days	126 days
Date Rec'd to Paid Date	66 days	145 days	153 days	94 days	145 days
Average Processing Time	RRs for FY 2014/2015 Budgeted Costs Submitted Prior to September 30, 2015 Deadline.				
Date Rec'd to Date Sent to Accounting	42 days	81 days	74 days	77 days	78 days
Date Rec'd to Paid Date	58 days	100 days	91 days	98 days	96 days

\*In-house RRs include those submitted for prior year costs as well as FY 2014/2015.

### **Actions:**

- The State Water Board is continually improving reimbursement requests processing time with the use of standardized invoices and simplified procedures.
- State Water Board staff made available an electronic Cleanup Fund document submission system to make the reimbursement process more efficient and effective. Submitting needed documents through GeoTracker has allowed for better tracking, processing, and accountability.
- Electronic submission process available electronically through GeoTracker is reducing the processing time of reimbursement requests while maintaining a high level of quality reviews.

## **Cost Controls**

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The proactive assessment for closure and early closure of cases has resulted in not expending the full \$1.5M per case and funds are reallocated to new cases accepted into the Cleanup Fund. The reviews also provide a continuing opportunity to deter waste and abuse by closing cases that warrant closure. The Cleanup Fund Manager continues to review case histories and recommends cases for closure for claims outside the mandated criteria in order to achieve the goals for other claims in the Cleanup Fund (see Case Closure Reviews section).

### **Annual Site Budgets**

To improve cash flow management, the Cleanup Fund budgets a dollar amount for each claim that it expects to reimburse for corrective action costs incurred during that fiscal year. Preliminary Annual Site Budgets are released during the FY prior to the fiscal year in which the annual site budget applies. Preliminary annual site budgets for FY 2014/15 were released in October 2013, by posting the list to the website and sending an announcement through the Cleanup Fund's electronic mailing list.

Budget Change Requests were submitted for budget dollar increases, budget dollar decreases, and budget category changes. Budget Change Requests affecting the FY 2014/2015 annual site budgets were submitted beginning July 1, 2014, and processed throughout the fiscal year. Claimants submit reimbursement requests against their budget during the corresponding FY. Only costs incurred within the budgeted amount are reimbursed to ensure the Cleanup Fund does not over-expend the overall Cleanup Fund budget. Over-budget costs that are determined to be reasonable and necessary are reimbursed after timely budgeted costs have been reimbursed and if there are available funds to make payment.

### **Benefits of Annual Site Budgets:**

- Revenues are set aside for ongoing corrective action and closure activities enabling more effective management of the Cleanup Fund.
- By releasing preliminary annual site budgets, claimants can begin planning their corrective action work in the upcoming year and negotiate with their regulatory agency and consultants to ensure they are doing work within budget.
- Claimants may submit Budget Change Requests to modify their annual site budget. Priority is given to A and B claims and any claim doing closure activities, such as abandoning wells and disposing of remaining waste.
- Annual site budgets have aided in better management of expenditures, and the Cleanup Fund was able to reimburse submitted over-budget costs incurred in FY 2013/14.

## **Submittal of Budget Change Requests via GeoTracker**

Claimants are able to submit Budget Change Requests to the Cleanup Fund via GeoTracker. This is the State Water Board's accessible database system used by the State Water Board, the Regional Water Board's, and local agencies to track and archive compliance data and other information from unauthorized releases from USTs. By submitting Budget Change Requests via GeoTracker, the Cleanup Fund was able to review and process requests in a timelier manner. In addition, claimants were able to know with certainty that their requests were received or rejected by the Cleanup Fund faster, which increased transparency and communication for both parties.

## **Claim Closure**

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The Cleanup Fund's 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 claim audit is performed in order to ensure there were no overpayments, duplicate payments, under payments and only reasonable and necessary costs were paid. In the case of an overpayment or a duplicate payment, the monies are requested through the accounts receivable process. For under payments, a check is issued to the claimant for the corrected amount.

During FY 2014/2015, the Administrative Closure Unit closed 173 claims, which included:

- Sites receiving a site closure letter from their regulatory agency;
- Claims reimbursed the statutory maximum payment of \$1.5M, less the deductible;
- Claims with no activity for over one year; and
- Claims reaching the statutory deadline of 365-days to submit all final costs to the Cleanup Fund for reimbursement.

Claim audits generally consist of, but are not limited to:

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

## **UST Low-Threat Closure Policy**

The State Water Board continues to focus on moving cases to closure using the UST Low-Threat Case Closure Policy that went into effect on August 17, 2012. In addition, the State Water Board required the following:

- Annual review of UST cases against the Closure Policy;
- Preparation of Path to Closure Plans by December 31, 2013, with yearly updates;
- 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 separate phase petroleum fuel);
- State Water Board review of cases denied case closure by regulatory agencies;
- Cleanup Fund Manager review, using the Closure Policy, of the 541 UST cases that were previously recommended be considered for closure under the Five-Year Review Process.

## **Five-Year Review Process**

Health and Safety Code Section 25299.39.2 requires the Cleanup Fund Manager to annually review the case history of a claim to determine appropriateness of UST 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 effective January 1, 2012 and 2013, 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 UST 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. Health and Safety Code Section 25296.10 gives authority to the State Water Board to review the case history to determine appropriateness of UST regulatory case closure for all Cleanup Fund claims. If the State Water Board determines that closure is appropriate, the State Water Board can close the case.

**Actions:**

- During FY 14/15, 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 FY 2013/14, 238 cases were closed and the remaining cases that met the Closure Policy are in the closure process.
- Five Year Review staff completed 531 RSRs resulting in 173 cases being closed either during or subsequent to the 5-Year Review and an additional 42 cases recommended for closure and in the process of being closed (38%). The remainder of the cases needed additional corrective action.
- In accordance with the Low Threat Policy Implementation Plan, Fund staff is required to review cases where the regulatory agency either denied closure or provided no response within 60 days of the request for closure by the responsible party. Of the 531 cases listed above, 134 cases were of this type. Cleanup Fund staff has reviewed or are reviewing these cases. Currently, 44 (33%) are being recommended for closure or the agency has agreed to close. Responsible parties for 42 cases were issued Final Orders to abandon wells and remove any waste generated during corrective action. Upon completing these actions, the responsible party will be issued the Uniform Closure Letter.

## **Status of Cleanup Fund Sub Accounts**

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### **Emergency Abandoned and Recalcitrant Account**

Since establishment of the EAR Account:

- 72 sites have received \$17.6 million in reimbursements and 16 sites have been closed.
- The EAR Account receives an annual appropriation of \$5,000,000.

<b>FY 2014/2015 EAR Account</b>		
<b>Sites</b>	<b>Payments Processed</b>	<b>Total Payment</b>
<b>33</b>	<b>16</b>	<b>\$663,909</b>

### **Orphan Site Cleanup Fund**

Between 2009 when OSCF was established and June 30, 2014, the State Water Board:

- Received 101 project applications;
- Determined 80 project applications eligible;
- Provided 74 projects State and federal stimulus grant funding totaling \$25 million; and
- Provided funding for 22 projects formerly funded under the OSCA, OSCF funds to continue corrective action to complete site cleanup



<b>FY 2014/2015 OSCF Account</b>			
<b>Funding Source</b>	<b>Sites Requesting Funds</b>	<b>Payments Processed</b>	<b>Total Payment</b>
<b>State of CA</b>	<b>34</b>	<b>68</b>	<b>\$4,611,319</b>

### **Commingled Plume Account**

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

- Reviewed 72 CPA applications;
- Determined 59 CPA applications eligible;
- Reimbursed 49 CPA claims for a total of \$84.4M
- Closed 18 CPA claims

<b>FY 2014/2015 CPA Account</b>		
<b>Claims Requesting Funds</b>	<b>Reimbursements Processed</b>	<b>Total Reimbursement</b>
<b>27</b>	<b>85</b>	<b>\$9,333,849</b>

### **School District Account**

Currently, all School District Claims are reimbursed through the School District Account (SDA). Since 2009, the State Water Board has received a total of 276 school district claims statewide. The chart below describes the claims funded and paid for School District sites.

<b>FY 2014/2015 School District Account</b>				
<b>Funded School District Claims</b>	<b>Priority Class B</b>	<b>Priority Class C</b>	<b>Priority Class D</b>	<b>Total</b>
<b>School District Applications</b>	<b>60</b>	<b>60</b>	<b>87</b>	<b>207</b>
<b>School District Payments</b>	<b>\$9,3701,773</b>	<b>\$9,901,585</b>	<b>\$16,622,199</b>	<b>\$35,894,557</b>

### **Site Cleanup Subaccount Program**

Implementation of the Site Cleanup Subaccount Program (SCAP) began in fiscal year 2014/2015. SCAP was paired with Proposition 1, Groundwater Sustainability to form the Groundwater Quality Funding Program. As with other funding programs within the State Water Board, the application process was facilitated via Financial Assistance Application Submittal Tool (FAAST). Groundwater Quality Funding staff began development of a pre-application in FY 14/15. SCAP Scoping Questions were also developed in FY 14/15 and were posted to the Cleanup Fund Website to provide valuable information to potential SCAP grantees, as well as Regional Water Boards. The SCAP Scoping Questions also were sent to stakeholders via the Lyris list.

From April 2015 through June 2015, the Cleanup Fund held stakeholder workshops to attain feedback on how best to distribute the revenue of the 3 mils between SCAP, RUST, and SDA. The stakeholders included representatives from the schools, environmental justice organizations, petroleum industry representatives, and consultants. As a result of the information provided from the workshops held at the State Water Board and via WebEx, it was determined that the 3 mils would be distributed evenly between SCAP and RUST. The 3 mils revenue was effective in January of 2015, and by April of 2015 a total of \$4.2M was collected.

In June 2015, State Water Board staff from SCAP and Prop 1 Groundwater Sustainability began public scoping meetings throughout the state. Meetings were used to inform the public about requirements, considerations, and expectations of the programs while also soliciting public input. This outreach was held in Fresno, Sacramento, Los Angeles, and Orange County.

## **Expedited Claim Account Program**

The State Water Board is required to develop and implement the Pilot Project and post findings in a Pilot Project Report. Criteria for selecting Pilot Project claims as well as metrics for measuring project performance must be developed with stakeholder input. Pilot Project claims will be selected based on the selection criteria and interest by claimants. The Pilot Project is anticipated to begin sometime after July 1, 2015 and continue until ECA funds are exhausted. The results from the Pilot Project will be presented in a report that is required to be released by January 1, 2018.

## **Communication**

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The State Water Board strives for transparency regarding Cleanup Fund activities and for excellent customer service. Staff continues to improve the Cleanup Fund Web Site so claimants can more easily determine the status of their payments, budget change requests, and to access up-to-date information.

### **Actions:**

- More reliable web service improves overall customer service by maximizing staff time to process payments, review claims for eligibility, review cases to determine appropriateness of case closure, and minimizes requests for information via telephone calls and email.
- Notices and Fund Updates are sent out routinely to communicate changes, reminders, or information via the Cleanup Fund's electronic webserver list and continuously posted to the web site.
- Online acceptance of reimbursement requests and invoices, and associated efficiencies in payment processing and real-time reporting of payment status.
- Cleanup Fund management continues to meet with the Fund Interest Group that are made up of industry representatives, claimants, consultants, and other interested parties, as requested.

## **Fraud Prevention, Detection, and Prosecution**

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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 2013/14, the FWA Prevention Unit reviewed allegations and actively investigated cases of potential fraud against the Cleanup Fund, which resulted in two complaints being filed in superior court against environmental consultants.
- 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, serve 180 days in the county jail, serve 3 years of probation, and surrender his professional licenses, including his Professional Geologist license.
- The FWA Unit investigations provide information to the Cleanup Fund, which results in procedural and policy changes to help prevent further fraud, waste, and abuse.

## Conclusion

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Federal and state laws require every owner and operator of a petroleum UST to maintain financial responsibility to pay for damages arising from 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; (c) processing efficiency; and (d) other internal controls.

As of June 30, 2014, the State Water Board has paid over \$3.8 billion to individuals and small businesses to help them with cleanup costs from leaking petroleum USTs. Over 11,428 claims have received some form of reimbursement. Of those claims, 8,510 have been closed, and approximately 4,688 claims are on the Priority List waiting to begin receiving reimbursements pending the 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; and
- Return properties 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:

- There are approximately \$3 billion in claims that have not been paid affecting up to 2,400 active claims currently receiving reimbursements and 4,688 unreimbursed claims on the Cleanup Fund's Priority List. A shortage of staff and resources has directly affected the rate of claims being paid and processed.
- 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 passage of Senate Bill 445 requires the removal and closure of all single-walled USTs, which will add additional claims to the 4,688 unreimbursed claims.