

State of California  
State Water Resources Control Board  
Division of Clean Water Programs  
Underground Storage Tank Cleanup Fund Program

## **1996 LEGISLATIVE ANNUAL REPORT**

State Water Resources Control Board  
Division of Clean Water Programs  
Underground Storage Tank Cleanup Fund  
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# **Executive Summary**

Pursuant to Chapter 6.75, Article 9, Section 25299.81(d) of the Health and Safety Code (H&SC), the

State Water Resources Control Board (SWRCB) has prepared this Annual Report to the Legislature describing the status of the Underground Storage Tank Cleanup Fund Program (Fund). This Annual Report discusses recent legislative changes to the Fund for improving the efficiency of the program, with special emphasis on expediting environmental cleanup and the distribution of money from the Fund, including alternative methods for the distribution of that money.

The Underground Storage Tank Cleanup Fund (Fund) was created by California's Legislature and the Fund's program was established in February 1991, to achieve two goals. First, to provide affordable environmental impairment insurance to eligible UST owners and operators enabling them to meet federal and state financial responsibility requirements, and second, to provide financial assistance for eligible cleanup costs and damages awarded to third parties injured by petroleum releases. On June 9, 1993, the U. S. Environmental Protection Agency (EPA) approved California's Fund as a mechanism for meeting the federal financial responsibility requirements for USTs containing petroleum.

The Fund benefits a large number of small businesses and individuals by providing reimbursement for unexpected and catastrophic expenses associated with the cleanup of leaking tanks.

Many applicants have spent their working lives building a small business, only to find that when they wish to retire they are unable to sell the business and/or property because it contains old gas tanks that have leaked. To their further dismay, they must spend thousands of dollars from their life savings to clean up the now worthless piece of property. This is a common scenario facing claimants applying to the Fund. This Fund represents the only form of financial relief for people whose livelihood depends on their ability to produce an income from their business.

## **Program Effectiveness**

The best measures of effectiveness for this program are the number of claimants served and the number of claims paid. As of June 30, 1996:

- The Fund had issued 3,455 Letters of Commitment (LOCs) in the amount of \$354 million.
- \$123 million was appropriated for Fiscal Year 1995-96 for the award of new or increases to existing LOCs.
- 9,515 claims have been accepted. Based on an estimated average cost per claim of \$150,000, existing claims represent an estimated long term demand of approximately \$1.43 billion.
- 177 "A" claimants, 2,265 "B" claimants, 765 "C" claimants, and 248 "D" claimants have received LOCs.
- The Fund has paid 6,740 reimbursement requests for a total of \$271 million.
- The Fund has reviewed 541 claims where claimants received over \$52 million from other sources (insurance claims, lawsuits, settlements, discounts, etc.) related to or paid in consideration of the unauthorized release. These reviews have reduced Fund reimbursements by \$20 million.
- To date, the Fund has processed over 3,000 corrective action cost pre- approvals. In addition, the

pre-approval process has successfully reduced payment processing time by two to four weeks.

- Funds for 20 sites have been approved for direct cleanup by the regulatory agencies through the Emergency, Abandoned, Recalcitrant (EAR) Account with \$817,000 expended.
- To date, 195 claims to the Circle K Settlement Trust Fund have been processed with approximately \$1.16 million expended.
- As of June 30, 1996, 184 loans have been approved by the RUST Loan Program for an encumbered amount of \$30.8 million.
- The SWRCB is performing a statewide performance review of the petroleum UST programs at the Regional Water Quality Control Boards. The primary purpose of the review is to evaluate effectiveness of the programs and recommend improvements where appropriate. Petroleum UST case management practices and staff decisions of individual cases may affect Fund reimbursements to responsible parties.

## **Program Philosophy**

Like most government programs, there are many complex and confusing requirements which stand between those people the program is designed to assist and the actual achievement of that assistance. A detailed application form must be completed, cleanup specialists hired and supervised, and compliance with regulatory directives must be met. Furthermore, it would be easy for an individual to get "lost in the bureaucracy" as more than 10,000 applicants vie for funding.

The Fund has taken an open, personal approach to helping these individuals and businesses. Fund staff guide claimants through program requirements over the telephone, through public outreach seminars and with "plain English" guide documents. Each claimant is assigned to an individual claims reviewer and provided with their direct access telephone number. A toll-free telephone number, 1-800-813-FUND, was established for general inquiries. The program's philosophy is "How can we help?"

## **The Program**

Federal and state laws require every owner and operator of a UST to maintain financial responsibility for any damages arising from their tank operations. The Barry Keene Underground Storage Tank Cleanup Fund Act of 1989 was created by the California Legislature due to the inability of tank owners and operators to obtain insurance for their tanks and pay for cleanup when a leak was discovered. The Fund is administered by the California State Water Resources Control Board (SWRCB).

The Fund was established to administer the Act in February of 1991. Regulations for administration were approved and became effective on December 2, 1991. That same month, more than 10,000 claim applications were mailed to potential claimants and by January 17, 1992, over 6,000 claims were received. A preliminary review of these claims was completed by April 16, 1992, and claimants were notified of their standing. The first Priority List was adopted on July 16, 1992 and contained 3,583 approved claims. .

## Funding

Established by SB 299 in 1989, modified by SB 2004 in 1990, and other subsequent legislation, the Fund requires every owner of a petroleum underground storage tank which is subject to regulation under the Health and Safety Code (H&SC) to pay a per gallon storage fee to the Fund.

This fee began on January 1, 1991 at six mills (\$0.006) per gallon and, with the implementation of SB 1764 (Thompson) signed by the Governor September 1994, was increased to seven mills (\$0.007) per gallon on January 1, 1995 and to nine mills (\$0.009) on January 1, 1996. It will again increase to twelve mills (\$0.012) on January 1, 1997. The program will then begin to wind down as the funds are depleted.

## Eligibility Requirements

To be eligible to file a claim with the Fund, the claimant must be a current or past owner or operator of the UST from which an unauthorized release of petroleum has occurred, and be required to undertake corrective action by the regulatory agency. Other eligibility conditions include compliance with applicable state UST permitting requirements and regulatory agency cleanup orders. In addition to USTs subject to state regulations, owners of small home heating oil tanks which have an unauthorized release of petroleum are also eligible.

The maximum reimbursement per occurrence is \$1 million, less the deductible. The deductible varies from \$0 to \$20,000 dependent upon the claimant's priority classification and compliance with the requirement to have permitted the USTs. .

## Claim Priority System

The implementing legislation sets forth a claim priority system which is based on claimant characteristics. The highest priority, Class A, is given to residential tank owners; the second priority, Class B, is given to small California businesses, governmental agencies and nonprofit organizations with gross receipts below a specified maximum; the third priority, Class C, is given to California businesses, governmental agencies and nonprofit organizations having fewer than 500 employees; and the fourth priority, Class D, is given to all other claimants.

Under statute, the Priority List must be updated at least once a year to include new claims. Since Fall 1993, the Fund has been updating the list monthly. Claims from previous updates retain their relative ranking within their priority class with new claims ranked in their appropriate class below those carried over from the previous list. New claims in a higher priority class must be processed before older claims in a lower priority class.

There is one major exception to the priority system. Legislation (AB 1061, Chapter 432) passed in 1993 requires the Fund to award approximately 15 percent of its funds annually to any lower priority classes that would not otherwise be funded (i.e., "C" and "D" claimants each receive at least 15 percent of the

annual funding).

As of June 30, 1996, the Fund has received 304 Priority "A" applications, 3,851 Priority "B" applications, 1,884 Priority "C" applications, and 5,704 Priority "D" applications, for a total of 11,743 applications.

## Letters of Commitment

When a claim is activated from the Priority List, the eligibility requirements are verified with the appropriate regulatory agency, and a Letter of Commitment (LOC) is issued. The LOC is the mechanism the program uses to award or encumber funds for reimbursement of cleanup costs.

A claim is removed from the Priority List when the claimant is issued an LOC. Initial LOCs are issued in an amount adequate to cover the actual eligible costs incurred to date plus additional "seed" money to allow the cleanup to proceed on schedule. However, for the purposes of projecting long term obligations, the Fund uses the median claim amount of \$150,000.

As of June 30, 1996, the Fund had issued 3,455 LOCs in the amount of \$354 million.

\$132 million was appropriated for Fiscal Year 1996-97 for the award of LOCs. With the large number of active LOCs, a substantial part of the annual appropriation must be used to amend (increase) existing LOCs. The Fund estimates that as much as \$80 to \$100 million must be set aside for amendments to ensure that funding is available when needed to provide reimbursements.

As of June 30, 1996, 177 "A" claimants, 2,265 "B" claimants, 765 "C" claimants, and 248 "D" claimants had received LOCs.

## Financial Responsibility

Federal EPA regulations (40 CFR, Section 280.90, Subpart H, Financial Responsibility) published October 26, 1988, requires owners and operators of USTs to demonstrate through insurance coverage or other acceptable mechanisms that they can pay for cleanup and third party damages resulting from leaks that may occur from their petroleum USTs. The following are the approved mechanisms:

- - Financial Test of Self-Insurance
- - Guarantee
- - Insurance and Risk Retention Group
- - Surety Bond
- - Letter of Credit
- - Trust Fund
- - State UST Cleanup Fund

## Mechanisms that may be used in conjunction with the UST Cleanup Fund:

- - Letter from Chief Financial Officer
- - Certificate of Deposit

## Mechanisms that may be used by local governments:

- - Bond Rating Test
- - Financial Test
- - Guarantee
- - Government Fund

On June 9, 1993, the United States Environmental Protection Agency (EPA) approved California's Fund as a mechanism for meeting the federal financial responsibility requirements for underground storage tanks containing petroleum. The Fund covered up to a maximum of \$990,000 per occurrence and annual aggregate with the tank owner and/or operator demonstrating the remaining \$10,000 of required coverage.

SB 1764 (Chapter 1191, 1994) amended the Funds coverage limits effective July 1, 1995. The Fund may be used as an alternative to or in conjunction with the other mechanisms authorized by the Federal Act. In order to use the Fund as a basis for demonstration of financial responsibility, an owner or operator must at all times:

1. Demonstrate financial responsibility of at least the following amount per occurrence and per annual aggregate coverage exclusive of the Fund:

### PRIORITY CLASS | FINANCIAL RESPONSIBILITY AMOUNT

- Priority Class A | \$ -0-
- Priority Class B | \$ 5,000
- Priority Class C | \$ 5,000
- Priority Class D | \$10,000

If a waiver is granted pursuant to CCR Section 2811(a)(2)(B), demonstrate financial responsibility of at least twice the above amounts per occurrence and per annual aggregate coverage, exclusive of the Fund.

2. Demonstrate financial responsibility for any required amount above \$1 million exclusive of the Fund for those owners and operators required to comply with the provisions of CCR Section 2807(d); and
3. Maintain eligibility to participate in the Fund.

As an alternate to the mechanisms authorized in the Federal Act, the SWRCB approved two mechanisms that may be used in conjunction with the Fund. The "Letter from Chief Financial Officer" requires that the owner or operator demonstrate a tangible net worth of ten times the required minimum applicable annual aggregate coverage as required.

The other alternate mechanism is a Certificate of Deposit which the owner or operator secures at their banking institution. The Certificate of Deposit is made payable to the State Water Resources Control Board for the required minimum applicable annual aggregate coverage.

The Fund submitted a report to the Legislature as part of a long term study, required by Chapter 6.75, Article 8, Section 25299.80 of the H&SC, which assessed the availability of private insurance coverage for unauthorized releases from petroleum USTs. The study showed that private insurance coverage is available but not widely used by tank owners and operators. This was attributed to several factors, some of which are listed below:

1. Qualifying factors associated with insurance coverage.
  - a. Tank age.
  - b. Soil sampling required by some insurance companies prior to acceptance.
2. Premium levels remain high.
3. Not all insurance companies offer pollution liability coverage.
4. Availability of the Underground Storage Tank Cleanup Fund as a mechanism.
  - a. Mandatory storage fee already paid by UST owners.
  - b. The Fund meets the minimum financial responsibility requirements.

A recently revised edition of the Fund's Financial Responsibility Guide was distributed to UST owners, operators and local regulators informing them of the changes affecting financial responsibility.

## **Statewide Review of Petroleum UST Programs**

The SWRCB initiated a one year, statewide review of the petroleum UST programs at the Regional Water Quality Control Boards in September 1996. The primary purpose of the review is to evaluate whether technical decisions on cases are appropriate and whether staff time is being spent productively.

The scope of the review includes consideration of program management and delivery, consistency of approach, and customer service. A component of the review includes determining whether cases are being handled in accordance with the Regional Board's criteria and guidance.



The review also includes determining whether Regional Board staff are reviewing information submitted on cases, responding to responsible party requests in a timely manner and productively working on their lead cases.

The intent of the review is to objectively evaluate case management practices and recommend improvements where appropriate.

Although not specifically a review of the Fund Program, the reviews are relevant as case management practices and staff decisions on individual cases may affect reimbursements by the Fund.

## Current Fund Status

Please refer to Table 1 for a summary of the Fund's current status.

Please refer to Table 2 for a summary report of the Fund's payments as of the end of Fiscal Year 1995-1996.

Table 1  
**Underground Storage Tank Cleanup Fund**

### FISCAL STATUS REPORT

#### CASH BALANCE (June 30,1996)\*

##### **Funds Received**

Mill Storage Fee Collected	\$478,498,292
Net from Previous Fees	8,591,052
Net Interest Earned	22,358,784
<i>Total Funds Received</i>	<i>\$509,448,128</i>

##### **Funds Expended & Committed**

Program Administration	\$25,961,250
Local Oversight Program	30,522,783
Trade & Commerce Loan Program	26,500,000

Board of Equalization	4,643,000
Claims Reimbursement	345,407,977
<i>Total Funds Expended &amp; Committed</i>	<i>\$433,035,010</i>

**Available Balance** \$76,413,118

APPLICATIONS (As of June  
30,1996)

**A B C D Total**

<b>Received</b>	304	3851	1884	5704	11743
<b>Approved</b>	193	2651	2035	4636	9515
<b>Rejected</b>	54	627	244	1022	1947
<b>Pending</b>	8	127	32	114	281

LETTERS OF COMMITMENT (LOCs)

**A B C D Total**

<b>Issued</b>	177	2265	765	248	3455
<b>Amount</b>	\$6 M	\$195 M	\$107 M	\$46 M	\$354 M

PAYMENTS

**A B C D Total**

<b>Issued</b>	276	4951	1181	332	6740
<b>Amount</b>	\$5 M	\$150 M	\$84 M	\$32 M	\$271 M

*\*Does not include minor adjustments due to fines, penalties, or interest.*

**Table 2**  
**Underground Storage Tank Cleanup Fund**

**PAYMENT STATUS REPORT**

**FOR THE FISCAL YEAR 1995 - 1996**

<b>Payment Request</b>	<b>1st Qtr</b>	<b>2nd Qtr</b>	<b>3rd Qtr</b>	<b>4th Qtr</b>
<b>Activity</b>	<b>July-Sept</b>	<b>Oct-Dec</b>	<b>Jan-Mar</b>	<b>Apr-Jun</b>
Carryover	500	412	420	329
Requests Received	838	807	925	936
Requests Returned Unpaid	80	77	92	77
Payments on Hold	2	3	11	9
Payments Made	844	719	913	926
Balance Carried Forward	412	420	329	253
Total Received Year-to-Date*	838	1645	2570	3506
Total Paid Year-to-Date*	844	1563	2476	3402
<b>AVERAGE TIME INHOUSE (DAYS) FOR PAID REQUESTS</b>				
Request No. 1	59	60	50	45
Request No. 2 and Greater	51	43	34	30
<b>FUND ACTIVITY</b>				
\$ Paid This Quarter	36,564,553	34,985,832	40,020,309	36,633,723
Average Payment Per Quarter	43,322	48,659	43,833	39,561
\$ Paid Year -To-Date*	36,564,553	71,550,385	111,570,694	148,204,417
\$ Paid Cumulative	159,176,152	194,161,984	234,182,293	270,816,016
Average \$ Payment Cumulative	37,965	39,530	40,205	40,117
<b>% PAID VERSUS REQUESTED</b>				
Request No. 1	67.17%	69.67%	72.21%	65.78%

Request No. 2 and Greater	93.55%	94.15%	95.82%	91.56%
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*\*Based on Fiscal Year*

## Fund Subaccounts

Section 25299.50 of the H&SC provides the SWRCB the statutory authority to modify or create accounts in the Fund, which the SWRCB determines are appropriate or necessary for proper administration of the Fund. Two accounts have been created: (1) the Emergency, Abandoned, Recalcitrant (EAR) Account; and (2) the Circle K Settlement Trust Fund Account.

### EAR Account

Sections 25299.36 and 25299.37 (f) of the H&SC authorizes State Regional Water Quality Control Boards (RWQCB) or local agencies to undertake or contract for corrective action at petroleum UST sites. The Petroleum Underground Storage Tank Emergency, Abandoned, Recalcitrant (EAR) Account was established in 1991 to provide funding. The EAR Account may be used to take corrective action at petroleum UST sites which have had an unauthorized release and which require either: (1) immediate prompt action to protect human health, safety and the environment (emergency or prompt action sites); or (2) where a responsible party cannot be identified or located (abandoned sites); or (3) the responsible party is either unable or unwilling to take the required corrective action (recalcitrant sites). All costs incurred are subject to cost recovery from the responsible party.

The SWRCB manages the EAR Account which is funded by an annual Budget Act appropriation of \$5 million from the Petroleum UST Cleanup Fund.

As of June 30, 1996, 20 sites have been approved to receive EAR Account funding; six emergency sites, four prompt action sites, two abandoned sites, and eight recalcitrant sites.

Approximately \$289,000 was expended in FY 1995-96, including \$25,000 for emergency response work. Since the beginning of the EAR Account, \$817,000 has been expended.

Currently, eight sites are included on the FY 1996-97 EAR Account Annual Site List for a total approved funding amount of \$830,000. Site investigation or site remediation is being actively conducted at five of the listed sites. Two of the listed sites are new (approved for funding July 23, 1996) and contracts have not yet been negotiated with the county lead agency to receive the approved funding. One site is inactive due to county reluctance to perform the direct site cleanup.

### Circle K Settlement Trust Fund

Through bankruptcy proceedings, Circle K Corporation has abandoned numerous petroleum UST sites in

California. The California Circle K Settlement Trust Fund was created based on the authority granted by a July 26, 1993 court-approved settlement agreement, executed between the SWRCB and Circle K Corporation, and Section 25299.50 of Article 6, Division 20, Chapter 6.75 of the H&SC.

California was awarded approximately \$3.9 million to be provided in annual payments over a seven year period. The payments are to be used to pay for tank removal and preliminary site assessment costs, up to \$15,000, and a portion of corrective action costs (22%), up to \$200,000 per designated site. Eligible claimants can recover the remaining portion of eligible corrective action costs from the Fund.

The initial priority list, adopted by the SWRCB on May 18, 1994, contained 99 claims, all of which have been processed. Total expended on claim payments was approximately \$708,000. The first amended priority list, adopted October 26, 1995, contained 96 claims of which all have been processed. Total expended on claim payments was approximately \$447,000.

An updated priority list (Amendment No. 2), containing 57 new claims received prior to June 1, 1996, was adopted by the SWRCB on July 23, 1996 with a total claim demand of approximately \$110,000.

## **Rust Loan Program**

Chapter 8.5 (commencing with Section 15399.10) of Part 6.7, Division 3, Title 2, of the California Government Code created a loan program, to be administered by the California Trade and Commerce Agency. The loan program assists small businesses in upgrading, replacing, or removing tanks to meet applicable local, state and federal standards.

Each fiscal year, funds are appropriated from the Underground Storage Tank Cleanup Fund for this loan program, known as the Repair/Replace Underground Storage Tank (RUST) Loan Program.

RUST is designed to assist gas stations that meet the definition of small business in adhering to new tank regulations. The loan can be used to repair, remove or replace USTs to meet the regulatory requirements.

The terms are a low fixed interest rate, guided by the State Surplus Money Investment Fund (SMIF) currently at 5: percent, with a 2 percent loan fee, and a 10 to 20 year repayment term. The loans range from \$10,000 as a minimum to \$750,000 as a maximum with eligible project costs 100 percent financed. As of June 30, 1996, 184 loans have been approved accounting for an encumbered amount of \$30.8 million.

RUST loan application volume continues to increase as owners and operators of singled walled USTs are approaching the December 1998 deadline to bring their tanks into compliance with new regulations. As of June 30, 1996, 71 applications in the amount of \$14.4 million are waiting approval for funding. Monthly, the program averages 17 loan requests and 125 program information requests.

# Fund Financial Management

The Fund's financial management occurs at four levels: Level I is the storage fee; Level II is the annual appropriation; Level III is the Letters of Commitment; Level IV is the payments made to claimants.

## Level I - Storage Fee/Duration of Program

The setting of the underground storage fee by the Legislature is the first level of Fund financial management. The size of the fee ultimately dictates how quickly money is generated and claims are paid.

The original fee was 6 mills (\$0.006) per gallon stored which generated approximately \$66 million for claims payments annually. With the implementation of SB 1764 (Thompson), the fee was increased to 7 mills on January 1, 1995 and then to 9 mills (\$0.009) on January 1, 1996. The fee will again increase on January 1, 1997 to 12 mills (\$0.012).

## Level II - Annual Appropriation

The second point of the Fund's financial management is the annual appropriation of funds authorized in the Budget. The appropriation limits the amount of money that can be encumbered during a budget year and consequently regulates the number and amount of LOCs that can be issued.

In requesting each year's appropriation, it has been the goal of the SWRCB to have the appropriation set high enough to allow for paying down any large outstanding balance in the Fund as quickly as is reasonably possible, but not to request an appropriation which exceeds actual funds collected and available during the year.

When the Fund first began issuing LOCs in August of 1992, approximately \$100 million was already available for claims. Consequently, for the first full three years of activity, an appropriation of about \$115 million was requested for LOCs, even though the annual rate of collection for claims was only about \$66 million. The annual appropriation was increased to \$123 million for FY 1995-96, and to \$132 million for FY 1996-97.

## Level III - Letters of Commitment

The third level of financial control for the Fund is in the issuance of Letters of Commitment (LOCs). The SWRCB seeks to accomplish four objectives in managing LOC activity:

1. Encumber all appropriated funds each year
2. Activate as many claims as possible from the Priority List
3. Reserve sufficient funds to carry active cases through the current fiscal year
4. Comply with statutory requirements regarding priority of claims payments

The greatest management issue related to encumbrances is the difficulty in making accurate projections.

The funding appropriated for claims each year may be used for only two purposes: 1) adding funds to active LOCs so that cleanup can continue; and, 2) activating new claims from the priority list. The highest priority for funding must be for increases to active LOCs because once funding is committed to a claimant, it must continue to be available until the case is closed or the \$1 million per occurrence funding limit is reached.

For Fiscal Year 1995-96, \$50 million was set aside for amendments to active LOCs. But by January 1996, management recognized that more funds were needed for the amendments and therefore had to substantially curtail the issuance of new LOCs. Amendments to active LOCs used approximately \$82 million of the \$126 million committed to claims during fiscal year 1995-96.

Under the State accounting system, funds encumbered, but not expended at the end of three years, revert to the operating fund. Funds that revert to the operating fund are not available to activate claims except by budget act appropriation.

If full funding were to be initially committed to an LOC to see the claim through completion of the cleanup, the program would be committing funds that may not be needed thus leaving thousands of other claims on the priority list waiting for funds to become available. This also creates the situation where substantial unused funds may later revert to the operating fund.

When funds are only committed to cover the eligible work completed plus some seed money to keep the cleanup progressing, the program must set aside sufficient funding for amendments. It is impossible to accurately project how much funding will be needed for amendments.

This also makes it very difficult to make projections on when claims might receive funding. For example, funding for a priority "C" claim is affected by the following factors: 1) the ranking of the claim within the priority class; 2) the number of new claims received in higher priority classes that must be processed before proceeding with the "C" claims; 3) the amount of the annual appropriation for claims and the amount that must be set aside for amendments to existing LOCs; 4) the average cost of cleanup per claim; and 5) legislative changes.

## **Level IV - Payments**

The fourth and final point of financial management is actual reimbursement of claimants, or the liquidation of LOCs. Over the life of the program, payments are expected to consume the most staff time, but to a great degree payments require the least management from a larger financial perspective.

Simply put, if the first three levels of financial management are properly conducted, ample funds should be available for actual payments. The SWRCB's basic objectives for payments are:

1. Assist claimants with cost issues prior to the incurring of such costs
2. Process payments within 60 days of receipt
3. Pay approved costs while questionable costs are resolved
- 4.

Balance thoroughness of review against duration of review to ensure accountability and detection of fraud.

The greatest management issues related to payments include the determination of cost eligibility and assurance that no double payments occur as a result of funding received by claimants from other sources.

## Program Accomplishments

### Cost Guidelines

Pursuant to Section 25299.57(h) of the H&SC, the SWRCB was tasked to develop a summary of expected costs for common remedial actions that may be used by claimants as a guide in the selection and supervision of consultants and contractors. To meet this mandate, the SWRCB developed the UST Cleanup Fund Cost Guidelines.

These guidelines provide guidance to Fund claimants for evaluating proposed and incurred corrective action costs at sites covered by the Fund. Specifically, the guidelines will help claimants identify reimbursable goods and services, understand how the Fund evaluates activities and costs, and estimate what costs are likely to be reimbursed. Claimants will also be able to judge whether additional justification will likely be required to support a given cost, or whether a call for assistance from the Fund is in order.

The guidelines do not set prices for the listed items and activities, and are not intended to remove the element of competition or freedom of choice from the industry or replace the three bid requirement.

The Cost Guidelines consist of three sections: 1. UNIT COSTS - A unit of service, activity, or product is delivered for a set cost. Examples include an analytical test from a laboratory or an hourly rate for a consultant's staff person.

PROJECT COSTS - A project cost may be an aggregate of unit costs such as consultant billing hours, equipment rental, and subcontractors, or it may be simply consultant labor. It 2. describes a level of effort required to perform certain tasks such as preparation of a report or conducting a quarterly monitoring report. Tasks and conditions will differ between sites and the Fund will review each case individually.

3. POLICIES - A description of various Fund policies, standard practices, and statements on how the Fund addresses issues concerning reimbursement. General information intended to be helpful, but not necessarily directly tied to certain costs, is included in this section.

Copies of the Cost Guidelines were sent to consultants, contractors, and other interested parties in July of 1996. To obtain a copy of the Cost Guidelines, or any other Fund publications, call 1-(800) 813-FUND.



## **Pre-approval of Cost Estimates**

The Fund is providing increased technical assistance to claimants by helping the claimant through the process of obtaining and evaluating bids or estimates, and reviewing and approving costs prior to work being performed.

While the Fund had, for some time, been pre-reviewing costs and advising claimants as to their reasonableness, it was felt that the development of a formal pre-approval process would connote a greater commitment on the part of the Fund and the claimant.

Pre-approval requires that a set of assumptions and conditions be established which, if met, would be cause for full reimbursement.

The Fund has developed a pre-approval request form which instructs the claimant on what documentation is required to review costs. Standard documentation includes a workplan approved by the regulatory agency, copies of bids received, and a detailed project budget from the selected contractor or consultant.

To date, the Fund has processed over 3,000 pre-approvals. In addition, the pre-approval process has successfully reduced payment processing time by two to four weeks.

## **Blythe Environmental Remediation Demonstration Project**

The City of Blythe was designated as a demonstration area for a commingled plume study pursuant to SB 108. The results of this study can be found in the SWRCB's September 1995 Legislative Annual Report.

One of the results of the SB 108 required study has led to proposed legislative language which details the procedures for facilitating cleanup of commingled plumes. SB 562, which addresses the commingled plume issue, is discussed later in this report.

## **Commingled Plumes**

SB 108 (Chapter 296, 1994 Kelley) directed the SWRCB to address the issue of groundwater plumes contaminated with petroleum from several responsible parties. Commingled groundwater contamination represents a special problem to California's groundwater protection efforts because it generally represents a more serious water quality impact, involves parties that disagree as to shared liability, and includes cleanups which continue to be stalled or handled in a haphazard manner.

The Fund has developed language to be included in SB 562 to address the commingled plume issue. A detailed discussion of SB 562 is contained later in this report.

## Settlements

Many claims submitted to the Fund involve situations where the claimants have or will receive funds from other sources (insurance claims, lawsuits, settlements, discounts, etc.) in consideration of the unauthorized release. Claimants are not entitled to reimbursement from the Fund where the costs have been reimbursed or paid by others as this would constitute a double benefit to the claimant.

The Fund has reviewed 541 claims where the claimants received over \$52 million from others in consideration of the unauthorized release. These reviews resulted in reducing reimbursements from the Fund by over \$20 million.

## Claim Closures

Upon completion of the necessary corrective action at a site, the claimant receives a closure notice from the regulatory agency stating that no further action is required. The Fund then takes steps to close out the LOC and to disencumber any remaining funds in the LOC.

At the end of Fiscal Year 1995-96, the Fund had made final reimbursements on and closed out 541 LOCs. As a result, \$10,043,580 was disencumbered and made available for other claims on the Priority List.

## Legislation

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

**AB 1699 (Kelley)** - Signed by the Governor 10/14/91

Specifies the type of expenses that SWRCB can reimburse under third party claims, and redefines and clarifies the legislative intent for eligibility of residential tanks.

**SB 1356 (Greene)**- Signed by the Governor 9/12/92

Exempts the multiple bid requirement for tanks owned or operated by a public agency if the prospective costs are for private professional services within the meaning of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and those services are procured in accordance with the requirements of that chapter.

**SB 3188 (Hauser)**- Signed by the Governor 9/30/92

Creates the "Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989" and establishes the Fund in the State Treasury rather than the General Fund.

**AB 1061 (Costa)** - Signed by the Governor 9/22/93

Amends the priority ranking for the Fund to include, in the second ranking, a city, county district, or

nonprofit organization that has total annual revenues of less than \$7 million, and includes in the third ranking, a city, county, district, or nonprofit organization that employs fewer than 500 full-time and part-time employees, and requires the SWRCB to allocate approximately 15 percent of the amount appropriated to Class C and Class D claimants. Also allows for claimants who meet specific criteria to request a waiver of the permit eligibility requirements.

**AB 2303 (Richter)**- Signed by the Governor 7/11/94

Deletes the provision that tank owners or operators who had completed corrective action with regard to a release from a tank by October 2, 1989, are prohibited from filing a claim to the Fund.

**SB 108 (Kelley)** - Signed by the Governor 7/20/94

Directs the SWRCB to develop cleanup procedures and proposed regulations applicable to unauthorized releases of petroleum from multiple responsible parties which are the result of commingled contamination of groundwater plumes. The Blythe Environmental Remediation Demonstration Project will be established and the City of Blythe is to be used as the demonstration project for this purpose.

**SB 1764 (Thompson)** - Signed by the Governor 9/30/94

This bill made several changes to the Fund. Following is a highlight of the major provisions:

- The SWRCB was tasked to develop a summary of expected costs for common remedial actions that may be used by claimants as a guide in the selection and supervision of consultants and contractors. A detailed discussion of the SWRCB's action as a result of this provision is on Page 19 of this report.
- Effective July 1, 1995, the level of financial responsibility (deductible) was reduced; Class A claimants are no longer responsible for a deductible; Class B and Class C claimants have had their deductible reduced to \$5,000; Class D claimants remain the same at \$10,000.
- The Fund has been directed to provide increased technical assistance to claimants including helping the claimant through the process of obtaining and evaluating bids or estimates, and reviewing and approving costs prior to work being performed.
- On January 1, 1995, the storage fee was increased by 1 mill for a total of \$0.007; January 1, 1996, the fee was increase by 2 mill for a total of \$0.009; January 1, 1997, the fee will increase another 3 mill for a total of \$0.012.

**SB 1417 (Kelley)** - Signed by the Governor 9/19/96

This bill will allow the City of Blythe to contract for the cleanup of leaking underground storage tanks and to submit a consolidated claim to the Fund.

**SB 2965 (Firestone)** - Signed by the Governor 9/19/96

This bill would annually transfer \$8 million for the Uderground Storage Tank Cleanup Fund to the Petroleum Underground Storage Tand Financing Account for expenditure by California's Trade and Commerce Agency for the purpose of making loans to small businesses for the repair, retrofit, and

replacement of underground storage tanks. *This bill was held up in the Senate Appropriations Committee on August 21, 1996.*

**SB 562 (Thompson)** - Signed by the Governor 9/19/96

This bill places a number of requirements on the SWRCB to make changes in the way the program funds may be used and tank owners may be reimbursed for cleanup costs. These changes are effective January 1, 1997. Following is a brief description of each of the major provisions of SB 562:

1. Changes the applicability date for an exemption for motor vehicle fuel tanks for conformance to specified installation requirements from January 1, 1984 to January 1, 1997.
2. Adds the definition of “occurrence” and “site”, and states that the changes are declaratory of existing law. *This was added at the request of the SWRCB.*
3. Permits the SWRCB, under specific conditions, to suspend corrective action at sites until the Fund has provided the responsible party eligible for reimbursement with a Letter of Commitment.
4. Requires the SWRCB to implement a procedure which does not assess an owner, operator, or responsible party taking corrective action for the costs of a local oversight program and requires the SWRCB to institute an internal procedure for assessing, reviewing, and paying those costs directly between the SWRCB and the authorized local agency. *This provision discontinues the cost recovery of local oversight program costs from the responsible party after January 1, 1997.*
5. Removes the domiciliary and principal place of business requirements for Priority Class B and Priority Class C claimants.
6. Requires the SWRCB to adopt a uniform closure letter.
7. Requires the regulatory agencies to work with the responsible parties and the Fund to obtain preapproval of corrective action costs. *This provision requires a process under which regional boards would be authorized to work with site owners, operators, responsible parties, and Fund staff to seek preapproval of corrective action costs, and is designed to give claimants more assurance that their reimbursement claims will be paid from the Fund.*
8. Requires the SWRCB to make a determination of a claimant’s eligibility within 60 days of receipt of the completed claim and prohibits that determination from being revoked except under specified conditions.
9. Requires the Fund Manager to notify tank owners or operators who have an active Letter of Commitment of five years or older that a review of their case history will be performed annually until closure except under specified conditions. Authorizes the Fund Manager to move for site closure and authorizes tank owners to seek closure where closure has not been granted by the local enforcement

agency.

10. Requires that the Fund issue a notice to the claimant and the lead agency at least 15 days before the SWRCB proposes to disapprove a claim for corrective action costs which have been incurred on the grounds that the costs were unreasonable or unnecessary.

11. Requires the SWRCB to pay a claim for the costs of corrective action at a reopened site as specified and specifies that a claim at a reopened site be reimbursed before any new claims to the Fund.

12. Requires the SWRCB to develop, implement and maintain a system for storing and retrieving data from cases involving discharges of petroleum from USTs to allow regulatory agencies and the general public to use historic data in making permitting and landuse decisions relative to impacted properties. Sites for which no residual contamination remains shall be removed from the data base.

13. Declares that the cost of site cleanup, if not conducted by the owner or appropriate responsible party and performed by the SWRCB, shall be recovered by the Attorney General. *This provision was added at the request of the SWRCB.*

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

## **Recommended Legislation**

Senate Bill 562 (Thompson) was signed by the Governor on September 19, 1996 and will go into effect on January 1, 1997. The SWRCB is not recommending any new legislation at this time.