



Alan C. Lloyd, Ph.D.
Agency Secretary

State Water Resources Control Board



Division of Financial Assistance

1001 J Street • Sacramento, California 95814

P.O. Box 944212 • Sacramento, California • 94244-2120

1-800-813-3863 (FUND) • FAX (916) 341-5806 • www.waterboards.ca.gov/cwphome/ustcf

Arnold Schwarzenegger
Governor

April 3, 2006

To: Underground Storage Tank Cleanup Fund (Fund) Claimants and Interested Parties

IMPORTANT

YOUR REIMBURSEMENT FROM THE FUND MAY BE IN JEOPARDY

Reimbursable Costs

Pursuant to Fund regulations,¹ section 2812.2, subdivision (a): “The Board may only reimburse from the Fund reasonable and necessary corrective action, regulatory technical assistance, and third party compensation costs that are incurred by or on behalf of a claimant.” The term “incurred by” means that a claimant is required to pay and the claimant must actually pay the contractor(s) for corrective action costs.

The Fund cannot reimburse a claimant for corrective action costs incurred by anyone other than the claimant, unless the Fund receives and verifies a valid “on behalf of” agreement or assignment between the claimant and the other party. Therefore, unless there is a valid “on behalf of” agreement or assignment in the claim file, all invoices submitted to the Fund must be addressed to the claimant and the checks paying the contractor(s) must be paid by the claimant.

For example, an individual named Jim Smith is the claimant. Jim Smith is 100% owner of Jim’s Trucking, Inc. Jim’s Trucking, Inc. hired a contractor to conduct the cleanup and the contractor sends Jim’s Trucking, Inc. an invoice billing Jim’s Trucking, Inc. for corrective action costs. Jim Smith then submits the invoice addressed to Jim’s Trucking, Inc. to the Fund in a reimbursement request. In this case, the corporation, not the claimant, has incurred the costs. The Fund cannot reimburse Jim Smith for these costs unless the Fund has received a valid “on behalf of” agreement or assignment between Jim Smith and Jim’s Trucking, Inc. that was executed before Jim’s Trucking, Inc. incurred the costs. Unless Jim Smith and Jim’s Trucking, Inc. have executed a valid “on behalf of” agreement or assignment, all invoices for corrective action costs must be addressed to Jim Smith and all checks paying the contractor(s) must be drawn on Jim Smith’s personal account.

¹ California Code of Regulations, title 23, division 3, chapter 18, section 2803, et seq.

"On Behalf Of" Agreements

An "on behalf of" agreement stipulates that the other party is paying corrective action costs on behalf of the claimant and the claimant will repay the other party after receiving reimbursement from the Fund. A claimant's alleged responsibility for site cleanup or a claimant's subsequent ratification of a cleanup conducted and paid for by another party does not establish that the other party incurred the costs of that cleanup on behalf of the claimant. To be a valid "on behalf of" agreement, the agreement must expressly create both an obligation by one entity to incur the costs and an obligation by another entity to reimburse the entity incurring the costs. Additionally, the agreement must be executed prior to the date the other party begins to incur costs.

For more information regarding "on behalf of" agreements see State Water Resources Control Board (State Water Board) Order WQ 97-06-UST, *In the Matter of the Petition of Quaker State Corporation*.²

Assignments

A valid assignment is an agreement between the claimant and another party (assignee) transferring all of the claimant's rights to reimbursement from the claimant's Fund claim to the assignee. This agreement allows the assignee to "step into the shoes" of the former claimant. Like an "on behalf of" agreement, an assignment must be executed prior to the date the assignee begins to incur costs. An assignment may not be used to circumvent priority or certain eligibility provisions.

For more information on assignments see the UST Assignment of a Claim and Information guide located at <http://www.waterboards.ca.gov/cwphome/ustcf/assignclaim.html> and State Water Board Order WQ 2000-06-UST, *In the Matter of the Petition of the Lake Publishing Company*.

Please contact the Fund at 1-800-813-3863 (FUND) if you have any questions regarding this guidance letter.

Sincerely,



Ron Duff, Manager
Underground Storage Tank Cleanup Fund

² State Water Board Orders may be accessed on the Internet at <http://www.waterboards.ca.gov/resdec>.