

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

TO: INTERESTED PARTIES

DATE: December 5, 1996

**SUBJECT: UNDERGROUND STORAGE TANK CLEANUP FUND PROGRAM (FUND),
SENATE BILL 562 (THOMPSON)**

Senate Bill 562 was signed by the Governor on September 18, 1996 and filed with the Secretary of State on September 19, 1996. Authored by Senator Mike Thompson and sponsored by the Environmental Resource Council, this bill makes changes in the way program funds may be used and how tank owners and operators are reimbursed for cleanup costs.

The new provisions will become effective January 1, 1997. The Fund is developing procedures for implementing the changes. Major provisions of SB 562 include:

Eligible Claimants Can Request SWRCB Suspend Corrective Action Work. (Section 25299.39, California Health & Safety Code (H&SC))

A responsible party eligible for reimbursement from the Fund can request that the SWRCB suspend additional corrective action or investigation work beyond: (a) removal or modification of existing tanks; (b) excavation of petroleum saturated soil or removal of excess petroleum from saturated soil within the tank pit; (c) removal of free product; and (d) preliminary site assessment. The suspension, if allowed, would be until a Letter of Commitment is issued, or the Fund no longer exists.

Procedures and forms for requesting the SWRCB to "suspend corrective action work" will be available in early January 1997. You can request that a copy be mailed to you as soon as they are available by sending a fax to (916) 227-4349 or by mailing a request to: Division of Clean Water Programs, Underground Storage Tank Section, 2014 T Street, Suite 130, P.O. Box 944212, Sacramento, CA 94244-2120.

Responsible Parties Will No Longer Have To Pay Oversight Costs For Oversight After December 31, 1996. (Section 25299.37(d), H&SC)

The SWRCB is required to implement a procedure which does not assess the responsible party taking corrective action for the costs of the Local Oversight Program, and requires the SWRCB to institute an internal procedure for assessing, reviewing, and paying these costs. This change is only applicable to

oversight performed by the Local Oversight Program after December 31, 1996.

The SWRCB will cease billing responsible parties for Local Oversight Program cost performed on or after January 1, 1997, but will continue to bill the responsible party for oversight costs performed through December 31, 1996.

Requires Fund Staff And Regulatory Agency Staff To Coordinate Efforts To Provide Eligible Responsible Parties With Pre-Approval Of Their Costs. (Section 25299.37(c)(6), H&SC)

This new provision requires Fund staff, local agency staff, and Regional Board staff to coordinate and work together to provide the eligible responsible party with pre-approval of their corrective action costs. Pre-approval provides greater assurance that the work required is the most cost-effective corrective action alternative and that the costs incurred can be reimbursed by the Fund.

The regulatory agencies with responsibility for overseeing cleanup of unauthorized releases from Underground Storage Tanks are responsible for the review and approval of the most cost-effective corrective action alternative. The Fund is responsible for pre-approval of costs and for the reimbursement of necessary and reasonable corrective action costs of work required by the regulatory agency. There are times when a responsible party will respond to direction from the regulatory agency to remediate a site and then find the Fund questioning the necessity of that work or the reasonableness of the costs. Responsible parties must obtain pre-approval of costs to ensure the costs can be reimbursed.

Change In Priority Class Requirements. (Section 25299.52(b)(2)(A&B), H&SC)

The bill eliminates the requirements that all owners or officers of the business must be domiciled in California and the principal office must be located in California to qualify for either Priority Class "B" or "C". As a result, a small number of claimants who were not accepted into Priority Class "B" or "C" may qualify after January 1, 1997, if they otherwise meet all requirements. The claim application will be revised to reflect this change.

If you currently have a claim on the Priority List and this change may qualify your claim for either Priority Class "B" or "C" after January 1, 1997, you should contact the Fund. If your original application requested Priority Class "B" or "C" and included all the necessary documentation for the requested priority, you can simply send a letter to your assigned Claims Analyst and request review. If your original application did not include the necessary documentation, you will need to complete the appropriate sections of the application and provide the necessary documentation. If you have questions, call 1-800-813-FUND or your assigned Claims Analyst.

Fund Program Manager Required To Review Claims With An Active Letter Of Commitment Over Five Years For Possible Closure. (Section 25299.39.2(a), H&SC)

The bill mandates that the Fund Manager review all case histories of claims (with an active letter of commitment for more than five years) and make recommendations to the SWRCB for closure. The Fund Manager will notify claimants with an active Letter of Commitment over five years, that a case history review will be conducted on their site. The review will be conducted annually, unless the claimant notifies the Fund Manager not to move forward with the review. If warranted, the Fund Manager can recommend to the SWRCB that no further corrective action be required and that the site be closed.

The SWRCB may require closure of a case at a site under the jurisdiction of the Regional Boards or local oversight program agencies. Where the case is under the jurisdiction of a local implementing agency other than a local oversight program agency, further reimbursements from the Fund can be denied.

Eligible Responsible Parties May Petition The Fund Manager Or The SWRCB For Review Of Their Tank Case. (Section 25299.39.2(b), H&SC)

Any owner or operator **that is eligible for reimbursement from the Fund**, and who believes their corrective action plan for the site has been satisfactorily implemented, but has not been granted closure, may petition the Fund Manager for review of their case. Petitions should not be submitted until after January 1, 1997, and then only after (1) the claimant has completed their approved corrective action plan; (2) has requested that no further action be required from the regulatory agency; and (3) the regulatory agency has denied closure.

Any responsible party that is **not** eligible for reimbursement from the Fund, and who meets the above criteria, may directly petition the SWRCB to review the case.

Procedures and forms for submitting petitions requesting the Fund Manager or SWRCB review the case will be available in early January 1997. You can request a copy be mailed to you as soon as they are available by sending a fax to (916) 227-4530 or by mailing a request to: Division of Clean Water Programs, UST Cleanup Fund, 2014 T Street, Suite 130, P.O. Box 944212, Sacramento, CA 94244-2120.

Buyers Of Property Where The Site Was The Subject Of Completed Corrective Action, A Closure Letter Was Issued By The Regulatory Agency, And Where The Previous Person Filed A Claim And Was Eligible For Reimbursement, May Be Eligible To File A Claim. (Section 25299.57(k), H&SC)

Property owners who acquire property where the site has been the subject of completed corrective action, where a closure letter has been issued by the regulatory agency, and where the person who carried out the earlier corrective action filed a claim and was eligible for reimbursement, may submit a claim to the Fund if additional corrective action is required because of additionally discovered contamination from the same release. The Fund may reimburse the additional corrective action costs to the extent that earlier reimbursements under the previous claim did not exceed the maximum coverage (\$1 million less the applicable deductible).

Property owners who are not owners or operators of the leaking underground storage tanks that contaminated the site are still not eligible to file a claim except under the limited circumstances described

above .

Establishes The Commingled Plume Account. (Section 25299.90, H&SC)

The bill authorizes a joint claim to be submitted for reimbursement of corrective action costs for a commingled plume, establishes the Commingled Plume Account, and makes available up to \$10 million for the 1996-97 fiscal year for the program.

"Commingled plume" means the condition that exists when groundwater contamination with petroleum from two or more discrete unauthorized releases have mixed or encroached upon one another to the extent that the corrective action performed on one plume will necessarily affect the other. A commingled plume does not include either of the following: (1) Contaminated groundwater plumes resulting from unauthorized releases or discharges from a single site; or (2) Soil contamination, unless it can be demonstrated that the contaminated soil is an immediate threat to groundwater.

Commingled plume sites represent a special problem to California's groundwater protection efforts because they often represent more serious water quality impacts, involve parties that disagree as to liability, and include cleanups which continue to be stalled or handled in a piecemeal, haphazard, expensive manner. The Commingled Plume Account is designed to address these complex sites where multiple responsible parties may be involved.

The Commingled Plume Account is intended to encourage coordinated cleanup efforts between responsible parties identified as having contributed substantially to the commingled plume, to avoid continuing litigation between responsible parties, to more rapidly address the required cleanup, and to significantly reduce the costs of cleanup. It is estimated that approximately 5 percent of the claims involve to some degree a commingled plume.

Cleaning up commingled plume sites cooperatively can reduce the cleanup costs in the range of 30 to 50 percent over that if each party cleaned up independently.

Some of the benefits of the Commingled Plume Account claims include: (1) the filing of one joint claim by all identified responsible parties that contributed to the plume; (2) if at least 85% of the plume is comprised of petroleum contamination from an unauthorized release from a tank whose owner or operator is eligible for payment of a claim pursuant to Section 25299.54, reimbursements may not be impacted because of the ineligible parties or substances; (3) the maximum funding per commingled plume claims is \$1 million per occurrence for each tank owner or operator eligible for reimbursement; and (4) Commingled Plume Account claims have their own priority that is separate from the priority of individual claims to the Fund.

The Fund is currently developing procedures for the new program. A Commingled Plume Claim Application will be available by mid December. Claim applications will be accepted after January 1, 1997 and will be prioritized based on the date of receipt of the completed application. Claims submitted by the City of Blythe will be paid before all other claims (Senate Bill 1417). It is anticipated that up to \$10

million will be appropriated each year for the Commingled Plume Account.

There are a number of criteria that must be met before an application can be submitted:

1. The soil and water investigations must have been completed in accordance with Article 11 of Division 3 of Title 23 of the California Code of Regulations.
2. Each person named in the joint claim must be an owner, operator or other responsible party ordered to perform corrective action or remedial action.
3. The joint claimants must have demonstrated to the satisfaction of the local regulatory agency or regional board that a commingled plume exists and that every identified unauthorized release or discharge contributed substantially to the commingled plume. Documentation of the commingled plume including a written statement from the regulatory agency must be a part of the claim application. The SWRCB will review the submitted documentation and must be satisfied that a commingled plume exists that meets all statutory requirements.
4. The joint claimants must have entered into a written agreement that provides for a coordinated corrective action plan. The written agreement shall require the joint claimants to do the following: (a) appoint one of the joint claimants to represent the joint claimants; (b) permit reasonable access to contributing sites as necessary to perform corrective action; (c) identify any corrective action costs incurred at contributing sites and assess if any of those costs may be eligible for reimbursement; (d) estimate responsibility among the joint claimants and provide a formula or method for apportioning costs that are not eligible for reimbursement or which might exceed funding reimbursement limits; (e) identify all money or other compensation received by any joint claimant which is related to contamination at any contributing site or the commingled groundwater plume.

Claim applications will not be accepted as complete for the purpose of prioritizing the claims without the above requirements having been met and documented with the application. Questions on the Commingled Plume Account claims can be addressed to Diana Romero at (916) 227-4419.

Adds The Definitions Of "Site" And "Occurrence". (Sections 25299.19 & 25299.23.1, H&SC)

The bill adds definitions for "site and "occurrence" to the statutes. The definitions are declaratory of existing law and are intended to clarify the Legislature's original intent. The new statutory definition of "occurrence" is slightly different than the definition currently in program regulations and may impact a small number of claims.

The statutory definition provides that an unauthorized release subsequent to a previous unauthorized release at the same site shall be considered a separate occurrence if an initial site investigation has been completed for the prior unauthorized release. A separate claim must be filed for each occurrence with the maximum reimbursement being \$1 million per occurrence less the applicable deductible.

Makes Claimant's Administrative Costs For "Regulatory Technical Assistance" Eligible For

Reimbursement Up To A Limit Of \$3,000 [see [Dave Deaner's 3/17/98 letter](#) advising that there is no \$3,000 limit for reimbursement of Regulatory Technical Assistance claims]. (Section 25299.57(j))

After January 1, 1997, claimants can be reimbursed for their administrative costs for "regulatory technical assistance" up to a maximum of \$3,000 [see [Dave Deaner's 3/17/98 letter](#) advising that there is no \$3,000 limit for reimbursement of Regulatory Technical Assistance claims]. This provision is intended to reimburse claimants who need assistance from their attorneys, accountants, etc. with the claim application, with documents required in order to access the fund, with reimbursement requests, and with the procurement of consultant/contractor services.

Section 25299.57(j) states "The board shall pay a claim for regulatory technical assistance to the owner or operator of a property on which is located a release from a petroleum underground storage tank which is the subject of a site investigation or corrective action and is otherwise eligible for reimbursement under this chapter".

The Assembly Toxics Committee report on their June 18, 1996 hearing indicates that the author (Thompson) agreed, with the Chairman's (Richter) request, to an authorization of a refundable cost component not to exceed \$3,000 for technical regulatory assistance for any eligible tank owner. The Fund has confirmed the intent of this provision with Senator Mike Thompson's office.

Since Cleanup Fund regulations specifically makes attorney fees, other legal costs, as well the costs of completing and filing of claims and appeals ineligible for reimbursement, this provision is not retroactive and will not cover such costs for work performed prior to January 1, 1997. Program regulations will be revised.

Administrative "regulatory technical assistance" should be obtained from parties where there is no appearance for a conflict of interest. For example, consultants or contractors should not assist claimants with the procurement process because it would appear to be a conflict if they also submit bids for the work.

Other Changes

Requires the SWRCB to determine an applicant's eligibility for a claim for corrective action costs and notify the claimant of this determination within 60 days of receipt of the claim application.

Requires the SWRCB to notify a claimant and the lead regulatory agency of the proposed disallowance of costs on the grounds that the costs were unreasonable or unnecessary, at least 15 days before proposing to disapprove the claim cost.

Requires the SWRCB to forward all payments to the Controller for payment within 10 days of approval of the payment.

Requires the SWRCB to adopt a uniform closure letter by March 1, 1997.

Requires the SWRCB to develop, implement and maintain a system for storing and retrieving data from cases involving discharges of petroleum to allow regulatory agencies and the general public access to historic data in making decisions regarding permitting, land use, and other matters. Sites for which no residual contamination remains will be removed from the database.

Provides that a responsible party may petition the SWRCB or the Regional Board for review of actions or decisions of the local agency in implementing the cleanup, abatement, or other action. SB 562 added the option of submitting a petition to the Regional Board.

Copies Of Senate Bill 562

Copies of SB 562 can be obtained from the Senate Bill Room at the State Capitol and can also be accessed on the World Wide Web using the Legislative Counsel's address of <http://www.leginfo.ca.gov>.

Questions

If you have questions, please call 1-800-813-FUND. Please be as specific as possible when leaving a message so that the proper staff can return the call.

Dave Deaner, Manager

UST Cleanup Fund Program

Underground Storage Tank Cleanup Fund Program

Last Modified: 11/18/99

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

March 17, 1998

TO: Interested Parties

REGULATORY TECHNICAL ASSISTANCE

This memorandum further clarifies and supersedes my memorandums to interested parties dated December 5, 1996, and June 21, 1997.

Senate Bill 562 took effect on January 1, 1997, and added section 25299.57(j) to the Health & Safety Code which stated that: "The board shall pay a claim for regulatory technical assistance to the owner or operator of a property on which is located a release from a petroleum underground storage tank which is the subject of a site investigation or a corrective action and is otherwise eligible for reimbursement under this chapter."

The bill did not define "regulatory technical assistance" or provide an explanation of the intent of this provision. We had understood from materials provided by legislative staff that the bill's author had intended to request reimbursement of regulatory technical assistance costs up to a maximum of \$3,000. However, this figure was not included in the bill as eventually passed. The memorandum to interested parties dated July 21, 1997 was intended to clarify the matter. The memorandum quoted section 25299.57(j) as enacted, that is, without reference to the \$3,000 figure. However, it also referred to a legislative committee report and used the figure of \$3,000 as illustrative of the range of costs that were intended to be reimbursed. Apparently, this conveyed the erroneous impression that there was a \$3,000 limit. Please be advised that there is no \$3,000 limit for reimbursement of regulatory technical assistance claims.

However, only reasonable and necessary costs for regulatory technical assistance incurred on and after January 1, 1997, and which are clearly documented as to task activity, time, and cost can be reimbursed. Regulatory technical assistance should be obtained from parties where there is no appearance of a conflict of interest. For example, there would be an appearance of a conflict of interest for a consultant or contractor affiliated with a firm doing work on a project to also be the claimant's representative

authorized to approve the work or to review and approve the bids.

The following material from my July 21, 1997, memorandum provides additional guidance on the subject of regulatory technical assistance and remains applicable. It is included for further clarification:

"Regulatory technical assistance means assistance from a person other than the claimant in the preparation and submission of a claim to the Fund, and includes assistance with completing and submitting the claim application and reimbursement requests, and assistance in complying with procurement requirements. Assistance with completing and submitting a claim application includes filling out the Cleanup Fund Application and obtaining supporting documentation. Assistance with submitting reimbursement requests includes filling out the Reimbursement Request Form, filling out the necessary spreadsheets, and providing copies of invoices, proof of payment, technical documents, etc. required by the program. Assistance in complying with procurement requirements include the request for proposals, the evaluation of bids, and the request for pre-approvals from the Fund. These are activities that many qualified professionals can perform at a reasonable cost.

Most claimants are quite capable of handling these activities themselves and are encouraged to do so. Fund staff will advise and assist claimants with these activities. If assistance is necessary, claimants are encouraged to use professionals that are experienced with program requirements.

Invoices for "regulatory technical assistance" must clearly document the task activity, the time and the cost. Fund staff will carefully review all costs claimed to ensure the costs are both reasonable and necessary. We contacted a number of individuals and firms that currently assist claimants with submitting claim applications and reimbursement requests. One firm routinely performs complete claim applications at a costs of less than \$40 per hour. Costs for regulatory technical assistance generally range from approximately \$50 per hour to \$85 per hour. A cost of approximately \$65 per hour including overhead is fairly typical. In most cases, a simple claim application should cost less than \$500 to prepare accurately and completely. A complete reimbursement request may take 1-4 hours to prepare."

Sincerely,

Original signed by

Dave Deaner, Manager

UST Cleanup Fund

Underground Storage Tank Cleanup Fund Program

Last Modified: 11/18/99