



STATE WATER RESOURCES CONTROL BOARD

UNDERGROUND STORAGE TANK CLEANUP FUND

FISCAL YEAR 2010/2011

ANNUAL REPORT



STATE WATER RESOURCES CONTROL BOARD
REGIONAL WATER QUALITY CONTROL BOARDS

Table of Contents

Executive Summary	3
Underground Storage Tank (UST) Cleanup Fund.....	3
Background	4
Fiscal Status Report	6
Activities.....	7
Financial Management and Cost Containment.....	7
Processing Efficiency.....	8
Improve Internal Controls.....	10
Status of the Cleanup Fund.....	11
Payments	13
Closures	14
5 Year Review Unit.....	14
Administrative Closure Unit.....	14
Status of Cleanup Fund Sub Accounts.....	16
Emergency Abandoned and Recalcitrant Account	16
Commingled Plume Account	17
School District Account	17
Orphan Site Cleanup Fund.....	19
American Recovery and Reinvestment Act.....	19
Environmental Benefits.....	20
Legislation	20
Conclusion.....	22

Executive Summary

Underground Storage Tank (UST) Cleanup Fund

This annual report was prepared pursuant to Chapter 6.75, Article 9, Section 25299.81(d) of the Health and Safety Code (H&SC) which requires the State Water Resources Control Board (State Water Board) to prepare an annual report for posting to the State Water Board website that provides the status of the Underground Storage Tank (UST) Cleanup Fund (Cleanup Fund) and discusses recent legislative changes to the Cleanup Fund for improving the efficiency of the program. The report also provides information on expanding environmental cleanup and the distribution of monies from the Cleanup Fund.

The Barry Keene Underground Storage Tank Cleanup Fund Act of 1989 established the Cleanup Fund. The Cleanup Fund's mission is to contribute to the protection of California's water quality, public health, and safety, through:

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

The Cleanup Fund benefits a large number of small businesses and individuals by providing reimbursement for expenses associated with the cleanup of leaking petroleum USTs. The Cleanup Fund also provides money to the nine Regional Water Quality Control Boards (Regional Water Boards) and local regulatory agencies to abate emergency situations or to undertake corrective action at abandoned sites that pose a threat to human health, safety, and the environment, as a result of a UST petroleum release.

The Regional Water Boards, County Local Oversight Program agencies (LOP Agencies), and other local agencies direct corrective action to clean up soil and groundwater contamination at petroleum UST sites that have had unauthorized releases. The Cleanup Fund also supports other special accounts authorized by the Legislature.

The Cleanup Fund's revenues are generated by a storage fee for every gallon of petroleum product placed into a UST. The current fee is 2.0 cents per gallon. The State Board of Equalization (BOE) collects the fee quarterly from owners of active USTs. The fee is scheduled to drop to 1.4 cents per gallon on January 1, 2014. Fund statutes set forth a claim priority system based on specified claimant characteristics relating to the claimant's ability to pay. There are four priorities:

- Class A: is reserved for residential tank owners.
- Class B: is reserved for small California businesses, governmental agencies, and nonprofit organizations with gross receipts and employees below a specified maximum.
- Class C: is for certain California businesses, governmental agencies, and nonprofit organizations not meeting the criteria for Class B, but who have less than 500 employees.
- Class D: is given to all other eligible claimants.

The law establishing the Cleanup Fund is scheduled to sunset on January 1, 2016.

Background

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

Since the Cleanup Fund program began operations in 1991, the State Water Board has paid over \$2.4 billion to thousands of individuals and small businesses to help cover the cost of cleaning up their leaking USTs at gas stations and other sites. An additional \$199 million (M) have been paid to special programs such as the Commingled Plume Account, Orphan Site Cleanup Fund and the Emergency, Abandoned, Recalcitrant Account. Furthermore, \$559 million was paid to local governments and large businesses. This financial assistance program is supported by fees paid by owners of USTs to the BOE.

Over 19,700 claims were filed during the course of the program. About 11,100 claims have been paid in part or in full. Of those claims, approximately 7,400 were closed and about 3,700 remain active. Another 4,500 claims filed by major corporations and government agencies are on the priority list awaiting activation. Approximately 3,705 were denied and about 395 are under review. The State Water Board processed 73,700 individual payment transactions, which, over the long-term, average about \$40,000/claim/year paid annually. The cost of cleanups had increased over the last few years to an average annual cost of roughly \$50,000/claim/year, but it decreased to an average annual cost of \$46,000 over the last year.

During the late 1990s and most of the 2000s, the Cleanup Fund was able to accommodate all eligible claims filed by small businesses and individuals. In 2008, the cash reserve built up in the early years of the Cleanup Fund fell below prudent reserves which resulted in a cash shortage. This shortage was made worse because of a concurrent dip in revenues due to the slow-down in the economy. There was insufficient cash available to service all of the active claims, and payments were

delayed by many months. This created a sudden and severe hardship for the small business claimants and their consultants, many of whom are also small businesses.

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

Fiscal Status Report

Table 1 provides a summary of major revenues and expenditures from the Cleanup Fund in Fiscal Year 2010/11 and since its inception.

**Table 1
REVENUE/EXPENDITURES SUMMARY**

FUNDS RECEIVED:	<u>10/11 Fiscal Year</u>	<u>Since Inception</u> *
Mill Storage Fee Collected	\$323,142,416	\$3,766,759,834
Net from Previous Fees		\$8,591,052
Net Interest Earned	\$379,535	\$106,741,646
Transfers/Misc.	(\$6,648)	\$6,683,977
Total Funds Received:	\$323,515,303	\$3,888,776,509
FUNDS EXPENDED & COMMITTED:		
Fund Administration ¹	\$12,332,206	\$220,195,381
Cleanup Oversight ²	\$22,287,837	\$293,074,621
Department of Trade & Commerce ³		\$75,500,000
Replace, Remove or Upgrade UST (RUST) ⁴		\$15,104,012
School District Account ⁵	\$10,000,000	\$20,000,000
Orphan Site Cleanup Fund ⁶ (OSCF)	\$10,000,000	\$30,000,000
Board of Equalization ⁷ (BOE)	\$3,171,095	\$36,539,523
Claims Reimbursement ⁸	\$263,951,666	\$3,158,871,216
Department of Health Services ⁹		\$20,000,000
Cal/EPA	\$867,804	\$5,038,162
Misc ¹⁰	\$143,767	\$6,072,712
Total Funds Expended & Committed:	\$322,754,375	\$3,880,395,627
NET FUNDS AVAILABLE:		\$8,380,882

*Amounts from previous report were adjusted to reflect actuals

¹ Fund Administration includes prorata.

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

³ From the inception of the Fund, through FY 1998/99, the Department of Trade and Commerce received an annual appropriation to provide loans to small businesses for the upgrade and replacement of USTs. The Fund was transferred to the State Water Board in 2004.

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

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

⁶ The OSCF was established under H&SC Section 25299.50.2.

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

⁸ Claims Reimbursement includes Special Programs: OSCF past commitments, the Emergency, Abandonment, Recalcitrant Account and Commingled Plume Account

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

¹⁰ Misc includes accounts receivables, abatements, various contracts and loans.

Activities

Through the audit and the task force groups' input and self-examination, State Water Board staff determined that: (1) There was a need to improve the business model and processes at the State Water Board to better manage the cash flow; and (2) there needed to be an incentive to ensure that cases were cleaned up quickly and efficiently. The lack of closure incentive applied to all three major parties: A) the responsible party or claimant, whose site cleanup bills are paid by the Cleanup Fund; B) the consultant, who can continue to bill time and materials as long as the case is active; and C) the regulator, who generally prefers to close only cases that have minimal or no risk associated with the site closure. As a result, over 43 percent of the active claims have been open for ten years or more while continuing to receive reimbursement from the Cleanup Fund. Some claims have been reimbursed the maximum statutory limitation of \$1.5 million per occurrence. In response to the findings of the task forces and audit review, the State Water Board began developing a new business model in FY 2009/2010. The following information summarizes the Cleanup Fund's continued development and actions in FY 2010/2011 to implement the new business model.

Financial Management and Cost Containment

The State Water Board is working towards bringing the Cleanup Fund's long term demand into balance with revenue. The State Water Board is actively working to reduce active claims through an ongoing review of older claims and quickly moving claims to closure when site conditions warrant. Cost savings for active sites will be achieved with the individual site budgets for Priority Class A, B and C claims.

Actions:

- The State Water Board directed that groundwater monitoring be reduced to twice annually instead of four times a year. The continued reduction in monitoring saves an estimated \$30 million annually.
- The State Water Board directed that all Regional Water Board and LOP Agencies complete reviews on all cases by June 2010 for closure or movement to closure. As a result of this caseload review, approximately 1300 UST sites were closed by the various Regional Water Boards and LOP Agencies.
- State Water Board staff accelerated the review of older Cleanup Fund cases to determine closure under existing Health and Safety Code authority (5 Year Reviews). This is an ongoing process, and State Water Board staff continue to bring cases before the State Water Board for closure consideration.

The State Water Board restructured the organization of the Cleanup Fund staff to clearly delineate responsibilities for the financial management of the Cleanup Fund's revenues and expenditures. Monitoring and reporting mechanisms have been

established to more accurately project and track revenues, as well as expenditures for the Cleanup Fund.

- State Water Board staff continue to manage the number of active claims to ensure demand is in balance with revenues. Letters of Commitment (LOC) that fund new claims will be issued once a year dependent on available funding and approval of a project budget.
- State Water Board staff compared the phase of cleanup with the last several years of expenditures for each claim. This information provides staff with a better understanding of the average costs for each phase of cleanup. This information gathered on an ongoing basis will be used to better project the needs for each forthcoming fiscal year and help develop long term cash flow planning for placement in budget categories.
- State Water Board staff completed project budget development for all Priority Class A, B and C claims. Cost limits were established for individual claims and enabled development of program cash flow demand projections. An expedited appeal process was implemented to provide claimants an opportunity to ensure that their site was placed in the proper category. This initial step was completed in November 2010. On June 30, 2011, final budgets for Priority Class A, B and C claims were posted to the Fund's web page. Setting project budgets for claimants leads to faster and more efficient cleanups by focusing all cleanup work toward the ultimate goal of case closure.
- State Water Board staff is providing minimal budgets of \$10,000 for site work to those sites identified as ready for closure and sites where the Regional Water Boards or the local regulatory agency staff has already granted closure. Claimants are given an opportunity to negotiate increases in the budget for costs directly related to site closure such as monitoring well abandonment and waste disposal, provided that additional funding is available.

Processing Efficiency

The State Water Board is continually improving claim processing time through the use of standardized invoices and simplified procedures. State Water Board staff implemented numerous changes in this area and continue to transition to a more effective budgeted-claim approach. Forms and documents have been created and modified to streamline the collection of information required to process requests. Guidance documents are posted on the Cleanup Fund's web page to assist claimants. In-house review time of new reimbursement requests early in the fiscal year averaged roughly 85 days. In-house review time was reduced to approximately 60 days (as required by Cleanup Fund Regulations) by the end of the fiscal year. Furthermore,

revenue from the fee increase significantly reduced the backlog of requests (Chapter 649, Statutes of 2009).

Actions:

- The State Water Board formed a stakeholder advisory group to provide feedback and suggestions for changes in the Cleanup Fund's program business model. Members of the group included claimants, consultants, and regulatory agency staff. Cleanup Fund staff worked closely with the group to obtain input on the various options presented for improving Cleanup Fund processes. The group began meeting May 2010 and met monthly through January 2011.
- State Water Board staff improved the payment process by streamlining the steps involved in reviewing a payment, including eliminating the submittal of hard copy reports when the reports became available on the State Water Boards' online cleanup program database, GeoTracker and eliminating the requirement for original wet signatures on some documents. State Water Board staff developed user-friendly forms for claimants and continue to look for ways to further improve those forms.
- State Water Board staff continues to enhance the Cleanup Fund web site so claimants can more easily determine the status of their payments and have up-to-date information, thereby improving service and reducing telephone calls and email response demands.
- State Water Board staff has been developing and implementing standardized forms as part of the new business model. These forms were implemented beginning July 2011. This will improve processing speed and allow the State Water Board to better manage cash flow and workloads.
- State Water Board staff is making eligibility determinations and issuing Staff Decisions within 60 days of receipt of a new application as required by statute.
- State Water Board staff plans to implement a risk-based approach for conducting regulatory agency compliance reviews as part of the new business model. Previously, staff traveled to regulatory agency offices for every claim on the priority list. Staff has identified alternate means, other than travel, to verify with the regulatory agency that a claimant is in permit and corrective action compliance.
- Letters of Commitment (LOC) will be issued once a year depending on available funding for that year to manage the number of active claims and ensure that day-to-day demand is in balance with revenues.
- Claimants will be required to have an approved project budget before a new LOC is issued.

Improve Internal Controls

State Water Board staff implemented changes to strengthen internal controls and continues to establish management-level quality control processes to evaluate overall claim processing procedures.

Actions:

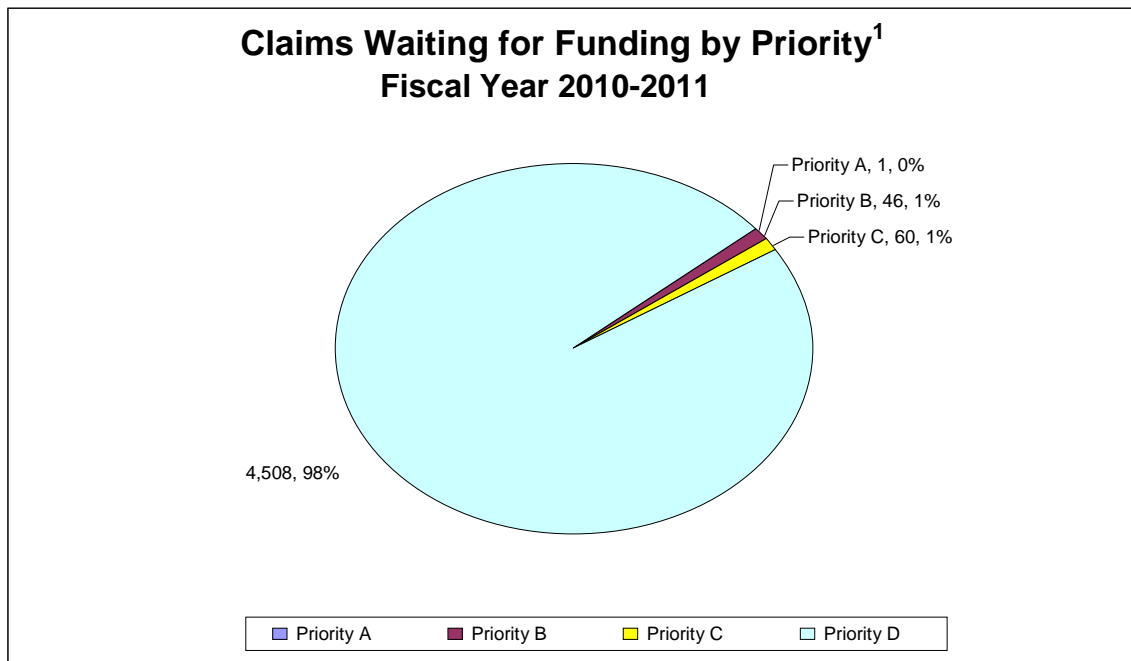
- State Water Board staff established an independent Fraud, Waste, and Abuse Unit in the State Water Board's Enforcement Office to pursue allegations of fraud, waste, and abuse. This effort will provide feedback to the Cleanup Fund as it develops its new business model on how to better contain costs and reduce the risk of fraud, waste and abuse.
- State Water Board redirected staff and created a "Closure Unit" to conduct a real-time payment audit and review process to ensure payment reviews are accurate. This process will be implemented concurrently with the individual claim budgets as part of the new business model.

A complete copy of the Task Force report is posted on the Cleanup Fund's web site:
http://www.waterboards.ca.gov/water_issues/programs/ustcf/docs/taskforce/tf_final_rpt.pdf

A complete copy of the Audit Report is posted on the Cleanup Fund's web site:
http://www.waterboards.ca.gov/water_issues/programs/ustcf/docs/audit_rpt022210.pdf

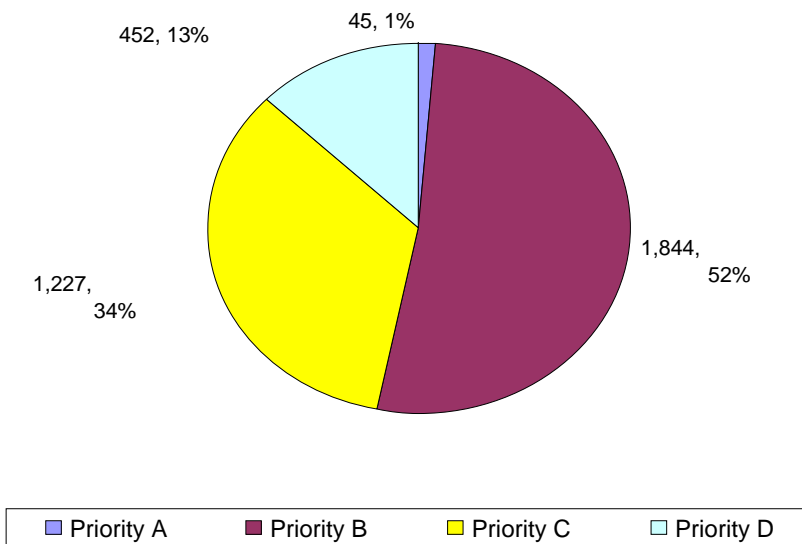
Status of the Cleanup Fund

The charts below reflect the current status of the Fund.

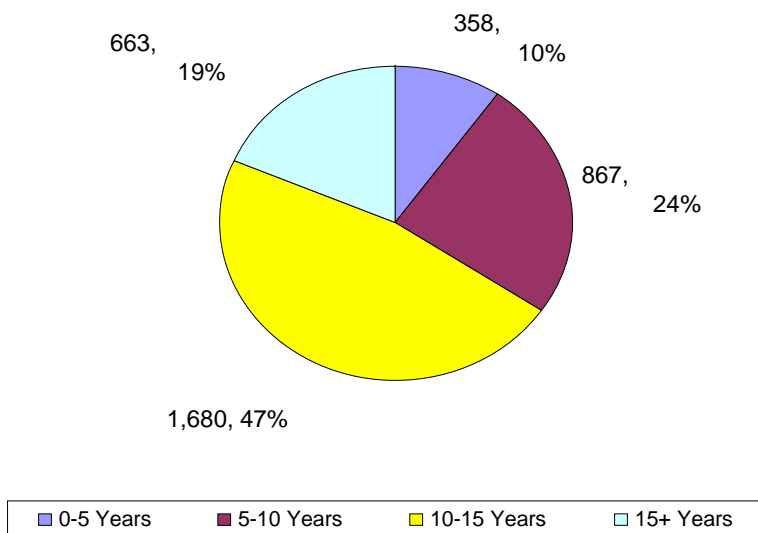


¹ Class A: residential tank owners.
Class B: small California businesses, governmental agencies, and nonprofit organizations with gross receipts and employees below a specified maximum.
Class C: certain California businesses, governmental agencies, and nonprofit organizations not meeting the criteria for Class B, but who have less than 500 employees.
Class D: all other eligible claimants.

List of Active Claims by Priority Fiscal Year 2010-2011



Length of Time of Active Claims Fiscal Year 2010-2011



Payments

State Water Board staff review reimbursement requests (RRs¹) submitted by claimants seeking reimbursement for:

- Reasonable and necessary corrective action costs incurred for cleanup of contamination caused by leaking USTs; and
- Court-approved amounts awarded to third parties against the claimant.

Claimants may be reimbursed costs up to \$1.5M per occurrence, less the deductible and less any funds received from other sources. Only costs determined to be eligible are reimbursed to the claimant, upon availability of funds.

FY 2010/2011					
	² Priority A	Priority B	Priority C	Priority D	Total
RRs Received	65	2,002	989	283	3,339
RRs Processed	82	2,841	2,161	626	5,710
RRs Paid	\$2M	\$110M	\$106M	\$36M	\$254M
RRs on Hold for Payment	0	4	58	3	65
RR \$ on Hold for Payment	0	\$119,000	\$1.5M	\$237,000	\$1.9M

FY 2010/2011					
	Priority A	Priority B	Priority C	Priority D	Average
Average Processing Time (Date Rec'd to Hold Date)	25 days	73 days	89 days	124 days	85 days
Average Processing Time (Date Rec'd to Paid Date)	57 days	141 days	291 days	220 days	190 days

¹ Reimbursement requests (RR) are submitted by claimants requesting reimbursement of eligible corrective action costs.

² Fund statutes set forth a claim priority system based on specified claimant characteristics relating to the claimant's ability to pay.

There are four priorities:

Class A: is reserved for residential tank owners.

Class B: is reserved for small California businesses, governmental agencies, and nonprofit organizations with gross receipts and employees below a specified maximum.

Class C: is for certain California businesses, governmental agencies, and nonprofit organizations not meeting the criteria for Class B, but who have less than 500 employees.

Class D: is given to all other eligible claimants.

Exceptions in statute require the Fund to award approximately 14 to 16 percent of the annual appropriation to any lower priority classes that would not otherwise be funded (i.e., Class C and D claimants each receive at least 14 to 16 percent of the annual funding).

Closures

5 Year Review Unit

Current law requires the Cleanup Fund Manager to annually review the case history of all claims having an LOC active for more than five years, unless the owner or operator objects. The State Water Board has established a special unit to conduct these “5 Year Reviews.”

In cases where the 5 Year Review staff finds that the case should be considered for closure and the regulatory staff has not provided a reasonable basis for keeping the case open, the Cleanup Fund Manager will:

- Within one month, elevate the case to the Regulatory Agencies’ Executive Officer (EO) or Director for a thirty day review.
- If the Regulatory Agencies’ EO or Director agrees to case closure, they will send a No Further Action letter within 90 days.
- When there is continued disagreement between the 5 Year Review staff, and the Regulatory Agencies regarding case closure, the Cleanup Fund Manager will recommend the case to the State Water Board for closure consideration.

The following table represents the status of 5 Year Reviews for FY 2010/2011:

FY 2010/2011 Closures			
5 Year Review Unit Case Reviews	5 Year Review Unit Recommendations for closure	Recommended Additional Corrective Action	Concurred with Current Corrective Action
1,334	558	434	342

- 209 Cases were closed after 5 Year Review

Administrative Closure Unit

The Closure Unit ensures public funds are used appropriately and performs a detailed administrative claim audit on each Cleanup Fund claim prior to releasing a final payment. Claims are closed:

- After the regulatory agency has issued a site closure letter;
- When the statutory maximum payment of \$1.5 million has been paid; or
- When a claim has been dormant over one year.

The administrative claim audit includes:

- 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.

The Administrative Closure Unit closed 490 claims in the FY 2010-11.

Budget Allocation

During FY 2010/11, the technical units completed the initial budget allocation for the Fund's new business model. State Water Board staff presented a series of webinars to reach out to regulators and claimant representatives. Beginning in early 2010, staff began reviewing available technical data for all active claims in Priority Classes A, B, and C. They developed a new database that integrated data from the Fund's Payments database, the regulatory database (GeoTracker) and technical reviews performed by staff.

Cleanup Fund Staff posted in October 2010, a listing of all active Priority Class A, B, and C claims to the Fund's web site for comments by stakeholders. They placed all claims into "Budget Categories" based on the current phase of corrective action at the individual sites. The list included a total of 3,425 individual claims and was broken down into five categories and two work phases. Staff revised budget category assignments as they received updated information from claimants, consultants, and regulators.

Next, staff requested budgets from claim representatives. Staff sent out additional budget requests each month until all active claims had been included. Because of the size and scope of this effort, staff transmitted nearly all category and budget information via the Fund's web site and through an e-mail list server. They also handled responses from stakeholders electronically.

On June 30, 2011, the State Water Board posted the final budgets for all active claims (excluding Priority D claims and school districts). Staff approved a total of 3,240 budgets, allocating up to \$100,000 for certain individual claims for a total of \$107 million. This is in addition to approximately \$70 million which was allocated for costs incurred prior to July 1, 2011.

Status of Cleanup Fund Sub Accounts

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

Emergency Abandoned and Recalcitrant Account

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

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

The emergency funds are a critical resource and are used to abate explosive gasoline vapors, abate the migration of highly contaminated groundwater to residential areas and nearby creeks, deliver potable water to residents whose private wells were contaminated with petroleum, and install well head treatment on impacted domestic wells. All EAR Account costs are subject to cost recovery from the responsible parties. Since establishment of the EAR Account, 45 sites have received \$11.7 million in reimbursements and 8 sites have been closed. The EAR Account receives an annual appropriation of \$5,000,000.

FY 2010/2011 EAR Account		
Sites	Payments Processed	Total Payment
21	68	\$1,209,354

Commingled Plume Account

The Commingled Plume Account (CPA) was created to encourage responsible parties with commingled plumes to coordinate their cleanup efforts, avoid litigation, more rapidly address required cleanups, and significantly reduce the costs of cleanup.

The CPA provides multi-site funding where a commingled plume has been confirmed by the regulatory agency. A commingled plume is defined as the condition that exists when groundwater polluted with petroleum from two or more discrete unauthorized release sites have mixed or encroached upon one another to the extent that the corrective action performed on one plume will necessarily affect the other. Commingled plume sites represent a special groundwater protection problem because they often represent more serious water quality impacts, involve parties that disagree as to liability, and include cleanups that are stalled or handled in a piecemeal, haphazard, or expensive manner. Unless coordinated, commingled plume site corrective action is often ineffective. The CPA receives an annual appropriation of \$10,000,000.

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

- reviewed 66 CPA applications;
- determined 53 CPA applications eligible;
- reimbursed 43 CPA claims for a total of \$65 million
- closed 9 CPA claims totaling 24 sites.

FY 2010/2011 CPA Account		
Claims Requesting Funds	Reimbursements Processed	Total Reimbursement
27	37	\$9,685,272

School District Account

School District claims are in Priority Classes B, C and D. Historically, limited funding has been available to Priority Class D claims for school districts due to the number of active claims in the higher priority classes. However, Chapter 644 Statutes of 2008, (AB 2729, Ruskin), established the School District Account (SDA) within the Cleanup Fund. Specifically, the SDA assists Priority Class D school districts with reimbursement of corrective action costs. Chapter 644/2008 transfers \$10 million per year from the Cleanup Fund into the SDA for the three year period of FY 2009/10, FY 2010/11 and FY 2011/12 totaling \$30 million. Funds from the SDA must be obligated by July 1, 2012, and liquidated on or before June 30, 2014.

In November 2009, Chapter 649/2009 amended AB 2729 allowing Priority Class B and C School District claims to be included in the SDA. The change was effective January 1, 2010. Currently, all School District Claims are reimbursed through the SDA. The State Water Board received a total of 246 school district claims statewide. Some of these claims were previously funded through the Cleanup Fund. All active claims are currently being funded through the School District Account. The chart below describes the claims funded and paid for School District sites

FY 2010/2011 School District Account				
Funded School District Claims	Priority Class B	Priority Class C	Priority Class D	Total
School District Applications	58	51	62	171
School District Payments	\$8,169,069	\$7,814,305	\$9,842,781	\$25,826,155

Orphan Site Cleanup Fund

Chapter 616, Statutes of 2008, (SB 1161, Lowenthal), established the Orphan Site Cleanup Fund (OSCF). OSCF is a reauthorized program of the Orphan Site Cleanup Account (OSCA) to continue and pay for the cleanup of brownfield petroleum UST contaminated sites where there is no financially responsible party (orphan sites). OSCF defines brownfield as a site located in an urban area (50,000 or more population) where there was previous economic site activity and where the site is currently vacant. The OSCF received a \$10 million transfer of funds from the Cleanup Fund for FY 2008/2009, FY 2009/2010 and FY 2010/2011. The OSCF is scheduled to sunset on January 1, 2016.

American Recovery and Reinvestment Act

The State Water Board received \$15.6 million in federal stimulus funds through the American Recovery and Reinvestment Act (ARRA) from the federal Leaking UST (LUST) Trust Fund. The funds are being disbursed through the OSCF to fund projects and UST Cleanup personnel efforts toward closing sites. The State Water Board used existing regulations and procedures that are consistent with federal requirements to award and disburse ARRA funds for eligible OSCF projects. The federal funding continues into FY 11/12 and ends September 30, 2012.

FY 2010/2011 OSCF Account			
Funding Source	Sites Requesting Funds	Payments Processed	Total Payment
ARRA Federal	22	111	\$4,524,748
State	19	28	\$4,023,706

Since the OSCF was established in 2009, Cleanup Fund Staff:

- received 54 project applications;
- determined 45 project applications eligible ;
- 41 projects received State and/or ARRA grant funding totaling \$7.5 million
- 22 projects formerly funded under the OSCA, received OSCF funds to continue corrective action to complete site cleanup
- closed 250 cases, where State Water Board staff had recommended closure.

Environmental Benefits

Leaking USTs allow petroleum, cleaning solvents, and other hazardous substances to seep into the soil and contaminate the groundwater, a source of drinking water for many Californians. A leaking UST can present other health and environmental risks, including potential for fire, explosion, surface water pollution and indoor vapor intrusion. The Cleanup Fund was established to provide financial assistance to UST owners and operators for cleanup of these contaminated sites.

Annually, State Water Board staff reviews the site and claim history of Cleanup Fund claims where funding has occurred for five or more years to determine whether a recommendation for site closure is in order. This review is required by statute but is also beneficial to small businesses and individuals, because it provides for a third party check on the progress of the site relative to the expenditure of funds and reduces the chance that the responsible party will run out of funds before the site is cleaned up and closed. Furthermore, this review provides an opportunity to detect waste and abuse if funds are being spent at sites that warrant closure.

During FY 2010/11 State Water Board staff completed 1334 five year reviews and closed 490 sites as well as closing the Cleanup Fund claims for those sites.

Closing not only the site but also the Cleanup Fund claim provides not only an environmental benefit, but also an economic benefit. The completion of a cleanup is often needed to allow full utilization of land to occur, benefiting the community as well as environmental resources through the development of the site providing job opportunities where previously the site was contaminated and vacant. Closing Fund claims allows the program to provide funds to newly contaminated sites and continue to cleanup sites where continued cleanup is warranted.

Legislation

[Chapter 649 Statutes of 2009, \(AB 1188, Ruskin\)](#), effective January 1, 2010, an urgency measure that: (1) provides a \$0.006 increase to the UST storage maintenance fee from January 1, 2010, until January 1, 2012; (2) requires the State Water Board to post on its web site within 90 days of completion the result of a program or fiscal audit of the Cleanup Fund; (3) expands reimbursement from the School District Account to Priority Class B and C school district claims; (4) allows some claimants who have approved but unpaid claims to be reimbursed for carrying costs related to obtaining other financing; (5) makes a clarifying change to the grant awards process for the Replacing, Removing, or Upgrading Underground Storage Tanks (RUST) grants allowed pursuant to Chapter 69, Statutes of 2009, (AB 96, Ruskin).

[Chapter 569, Statutes of 2011 \(AB 291, Wieckowski\)](#) an urgency measure, extends, from January 1, 2012 until January 1, 2014, the sunset date of the \$0.006 per gallon increased fee that is deposited into the Cleanup Fund.

[Chapter 571, Statutes of 2011 \(AB 358, Smyth\)](#) an urgency measure, makes various changes to existing law pertaining to the cleanup of leaking USTs. Among its provisions, the bill: (1) requires Regional Water Quality Control Boards (Regional Water Boards) and local agencies with responsibility for overseeing the cleanup of leaking USTs to electronically submit specified information on each UST site to the State Water Board; (2) requires UST owners and operators to submit information of the unauthorized release to local agencies in a format specified by the State Water Board; and (3) authorizes the State Water Board to close UST sites (and thereby discontinue requirements for further cleanup) that are under the jurisdiction of a local implementing agency (LIA), upon petition by a UST owner/operator or as part of its regular review of UST sites that have been open for more than five years. LIAs are local agencies who oversee the cleanup of leaking USTs without contract or oversight by the State Water Board. The bill also modifies eligibility requirements for the Cleanup Fund to allow UST owners who are directed by a federal agency to clean up leaking USTs to be eligible for reimbursement from the Cleanup Fund. Under current law, UST owners are only eligible to be reimbursed from the Cleanup Fund if they are directed by a Regional Water Board or local agency to clean up a site.

Conclusion

Leaking underground storage tanks continue to be a significant source of local shallow groundwater pollution and some pose potential threats to health and safety. Federal and state laws require every owner and operator of a petroleum UST to maintain financial responsibility to pay for damages arising from their UST operations. The Cleanup Fund provides financial assistance to eligible owners and operators for costs associated with the cleanup of contamination caused by leaking petroleum USTs.

Since the Cleanup Fund program began in 1991, the State Water Board paid over \$2.4 billion to individuals and small businesses to help them cover the costs of cleanup resulting from their leaking USTs. Over 11,100 sites received funding, 7400 of those were closed and approximately 4500 are waiting funding. Without the Cleanup Fund's assistance, the cost of cleanup of their leaking USTs may have resulted in bankrupting or putting many of these individuals out of business. The Cleanup Fund's financial assistance allows for continued economic activity at these sites, thus both preserving and potentially creating jobs.

While the Cleanup Fund did experience a cash shortage in late 2008, the State Water Board continues to make significant progress in improving: (a) financial management and cost containment; (b) processing efficiency; and (c) internal controls for the Cleanup Fund.

FY 2011/12 will be a test year for these significant changes to the State Water Board. Any necessary further changes and improvements will be implemented as they are identified through continued ongoing process improvement reviews. It is anticipated that the State Water Board will be operating on a “business as normal” basis incorporating all the planned changes by July 2012.