



UST CLEANUP FUND

FALL/WINTER 1999

UPDATE

UST CLEANUP FUND ISSUE No. 12

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The UST Cleanup Fund UPDATE is provided only as a general information guide and is intended to respond to many of the questions being asked about the status of the Fund.

The information provided in this publication is not intended as legal advice.

We invite your comments and encourage written suggestions on how and what you would like to see in future issues of the UPDATE. Suggestions and comments can be mailed to:

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF CLEAN WATER PROGRAMS
UST CLEANUP FUND
P. O. BOX 944212
SACRAMENTO, CA 94244-2120

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California and The SWRCB Recover \$1.2 Million From UST Fund Claimant

BY: DANA DIFFERDING, STAFF ATTORNEY

The State of California and the State Water Resources Control Board (SWRCB) will recover \$1.2 million from Mr. Bruce DeMenno, a former claimant to the UST Cleanup Fund, pursuant to a stipulated court judgment.

Mr. DeMenno received \$464,109 from the Fund that he was not entitled to receive by failing to timely disclose to the Fund his receipt of \$800,000 from two insurance companies. The insurance money was paid in connection with a petroleum underground storage tank leak at Mr. DeMenno's gas station in Lucerne Valley, California.

In order to prevent double recovery, the Fund requires claimants to disclose whether they have received funds from any other source that were related to the petroleum release that is the subject of their claim, and to notify the Fund promptly if they do receive such funds.

In connection with his application to the Fund, Mr. DeMenno signed a form certifying that he had not received funds from other sources, and that he would notify the Fund promptly if he did.

At the time of his certification, however, Mr. DeMenno had settled with his insurance companies for \$800,000, and \$271,810 of that money had already been expended remediating his site. In addition, Mr. DeMenno did not disclose his receipt of the \$800,000 until well over a year had elapsed, by which time he had been reimbursed \$464,109 from the Fund.

The facts underlying the lawsuit were the subject of an earlier administrative proceeding before the SWRCB that culminated in SWRCB Order WQ 98-06-UST.

In the order, the SWRCB disqualified Mr. DeMenno from further participation in the Fund on the grounds that documents he

(See Recovery - page 3)



GOVERNOR DAVIS ANNOUNCES MTBE DECISION *RISKS OUTWEIGH BENEFITS OF FUEL ADDITIVE*

In a move to protect the people of California from possible health risks, Governor Gray Davis announced on March 25, 1999, that he will direct a three-year, eight-month phase out of the fuel additive Methyl Tertiary Butyl Ether (MTBE).

Through his executive order, Governor Davis began the statewide process, across an array of agencies, to remove MTBE from California's gasoline supply. Additionally, the Governor has called upon California's federal delegation to establish a forum for the removal of MTBE without violating the Federal Clean Air Act.

"I hereby certify that there is, on balance, a significant risk to California's environment associated with the continued use of MTBE in gasoline. I am directing the appropriate state regulatory agencies to devise and carry out a plan to begin immediate phase out of MTBE from California gasoline, with 100% removal achieved no later than December 21, 2002" Governor Davis stated at a recent press conference.

"I will be asking the U. S. Environmental Protection Agency for an immediate waiver from the oxygen mandate in the Clean Air Act, with the understanding that California will still fully meet the air quality emission standards of the Act.

"California will not backslide on air quality. Nor will we sacrifice clean air for clean water. We can and we will have both clean air and clean water.

"I believe that an aggressive but responsible phase out period is the most prudent course of action for California."

EXECUTIVE ORDER ON MTBE

The following items, extracted from Governor Davis' Executive Order D-5-99, have an impact on the State Water Resources Control Board:

Item 8: The State Water Resources Control Board (SWRCB), in consultation with the Department of Water Resources and the Department of Health Services (DHS), shall expeditiously prioritize groundwater recharge areas and aquifers that are most vulnerable to contamination by MTBE and prioritize resources towards protection and cleanup. The SWRCB, in consultation with DHS, shall develop a clear set of guidelines for the investigation and cleanup of MTBE in groundwater at these sites.

Item 9: The State Water Resources Control Board shall seek legislation to extend the sunset date of the Underground Storage Tank Cleanup Fund to December 31, 2010. The proposed legislation would increase the reimbursable limits for MTBE groundwater cleanups from \$1 million to \$1.5 million.

Item 10: The California Air Resources Board and the State Water Resources Control Board shall conduct an environmental fate and transport analysis of ethanol in air, surface water and groundwater. The Office of Environmental Health Hazard Assessment shall prepare an analysis of the health risks of ethanol in gasoline, the products of incomplete combustion of ethanol in gasoline, and any resulting secondary transformation products. These reports are to be peer reviewed and presented to the Environmental Policy Council by December 31, 1999, for its consideration.



NEW LEGISLATION PASSES

Senate Bill 665 (Statutes 1999, Chapter 328), authored by Senator Byron Sher, was approved by Governor Davis on September 3, 1999. SB 665 makes numerous technical and clarifying corrections to UST laws. The provisions of this bill that impact the Fund include: a limit of \$3,000 per occurrence on regulatory technical assistance costs, an ability to seek review of pre-approval requests, a 30-day time period for the Fund to respond to pre-approval requests, and the removal of a provision that allowed for the Fund to sue and be sued in its own name.

Senate Bill 989 (Statutes 1999, Chapter 812), also authored by Senator Sher, was approved by Governor Davis on October 8, 1999. SB 989 increases the amount of reimbursement available from the Fund for corrective action to \$1.5 million per occurrence. The bill also extends the Fund program until January 1, 2011.

The Fund is in the process of preparing regulations to implement these provisions. Before January 1, 2000, the Fund will provide claimants, local agencies, regional boards, and other interested parties a more detailed summary of the changes resulting from the new legislation.

For a complete text of these two bills, visit the legislative counsel's website at www.leginfo.ca.gov.

Y2K – IS THE FUND READY?

BY: KATHY ADCOCK
ASSOC. INFO SYSTEMS ANALYST

Where does the UST Cleanup Fund stand? We are currently using FoxPro, a database software that uses, recognizes and calculates on four-digit-year dates. All we had to do was include the command "Set Century On" in our applications. All dates that were entered as "98" or "99" immediately became "1998" and "1999".

Minor modifications to data entry screens have been made to allow for four-digit-years instead of two. When the Year 2000 roles in, our key data entry staff will be required to enter four digits instead of two. I consider this a small price to pay and an easy solution to a problem that has turned the world upside down.

Staff personal computers (workstations) have all been tested and meet Year 2000 requirements. Those that didn't have been replaced.

So in answer to the question
"Yes, the UST Cleanup Fund is Y2K Ready."

Recovery (Continued from page 1)

submitted in connection with his claim to the Fund (including the certification form) contained material misrepresentations. The order required Mr. DeMenno to repay the \$464,109 expended from the Fund plus interest, and referred the case to the Attorney General's Office for prosecution.

The subsequent complaint filed by the Attorney General's office against Mr. DeMenno alleged a cause of action for breach of contract on

cause of action for violation of the False Claims Act on behalf of the State.

Under the False Claims Act, a person who knowingly makes a false claim to the State is liable for treble damages, and may be liable for civil penalties of up to \$10,000 per false claim.

The court judgment allows for full reimbursement to the Fund, plus additional payments. The overall judgment should serve to deter fraud against the Fund.

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FUND MANAGER TO RETIRE

Dave Deaner, Manager of the UST Cleanup Fund since its inception in 1991, announced his intention to retire from state service. He will be leaving the Fund on February 29, 2000. Under Dave's leadership, the Fund has become the largest in the nation in terms of claim activity and amount of annual revenues received and expended. The following is Dave's farewell letter.



Winston H. Hickox
*Secretary for
Environmental
Protection*

State Water Resources Control Board

Division of Clean Water Programs

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Gray Davis
Governor

LETTER OF FAREWELL

I'd like to take this opportunity to say goodbye to all of you with whom I have associated with over the past eight and one-half years. When I took on this assignment, I could never have anticipated the number of challenges and frustrations that would come with the job.

So much has happened to the Fund during this relatively short amount of time. When initially assigned the task of Fund startup in February 1991, all I had to work with was a recently passed piece of legislation (SB 2004). As in any new program, there were a number of things that had to be done to get the program started and running as soon as possible. In addition to personnel and budgets, there was the daunting task of developing regulations, policies, and disseminating information about the program to a large number of potential claimants. All of this was accomplished in a record amount of time thanks to the dedication and support of a number of individuals, many who are still with the Fund today.

Since the start of this program, there have been a number of changes to include 12 new laws and a number of policy reforms that have affected the way we administer the program. Some have improved the program while others have not. In reflecting back over these eight and one-half years, I have come to realize that the many satisfactions have outweighed the frustrations. Perhaps the best measure of satisfaction comes from the hundreds of letters we continually receive from claimants thanking us for the way they were treated in this program.

So as I prepare to leave the Fund for retirement, I'm both happy and proud with the way the program has evolved over these years. The Fund as it stands today is the largest in the country, is solvent, and continues to pay claims in a timely manner. I'm confident that the successes we have enjoyed in this program to date will continue into the future.

Sincerely,

Dave Deaner, Manager
UST Cleanup Fund

APPLICABILITY OF STATE PREVAILING WAGE TO UST CLEANUP SITES

Are corrective action projects that are implemented by UST owners or operators, and who are reimbursed from the state's UST Cleanup Fund, considered public works that would trigger California's prevailing wage obligation?

The Department of Industrial Relations (DIR) has determined that projects conducted by private UST owners or operators who enter site remediation agreements with private contractors are not "public works" as defined by section 1720 of the Labor Code. This is because the private owners or operators directly contract and pay for the corrective action and no public agency is a party to the construction contract. (DIR Determination 91-042, p.2.) DIR concluded that since private tank owners' or operators' projects are not public works, those projects are not subject to the prevailing wage constraints delineated in the Labor Code.

Secondly, DIR considered a previous determination which established that grant funds given to and spent directly by a private party are not public funds that trigger prevailing wage obligations. DIR determined that the reimbursements given to Cleanup Fund claimants are in the nature of a grant and, therefore, are not public funds subject to prevailing wage requirements.

UST CLEANUP FUND REGULATIONS

Title 23, Division 3, Chapter 18 of the California Code of Regulations, which govern the Fund program, is currently undergoing a review and revision process. The proposed amendments are being made to update the regulations in light of legislative changes made pursuant to SB 562 (Thompson), SB 665 (Sher), and SB 989 (Sher).

Once the draft of the changes is ready for public review, a Notice of Proposed Rulemaking will be sent out to those names on the Fund's Interested Party Mailing List.

To be placed on this mailing list, call (800) 813- FUND, leave your name, address, and telephone number. If you have received this newsletter in the mail, then you are already on the mailing list.



**Briefly
Speaking**

WHAT'S ON THE FUND'S WEBPAGE

BY: KATHY ADCOCK
ASSOC. INFO SYSTEMS ANALYST

[WWW.SWRCB.CA.GOV/
~CWPHOME/FUNDHOME.HTM](http://WWW.SWRCB.CA.GOV/~CWPHOME/FUNDHOME.HTM)

What do you need to know? Do you even know what you need? Visit our web site and you may find what you need and learn a whole lot more.

Begin with [General Information](#). You will find a short history/overview of the UST Cleanup Fund; information on who to contact at your county or region; and the May 1999 Priority List.

Continue to [Bulletins and Updates](#). You will find bulletins regarding regulatory technical assistance, expediting closure review, and Senate Bill 562. You will also find past issues of this newsletter.

Do you need [Technical Information](#)? This link will give you access to the Fund's cost guidelines and technical documents regarding the 3-bid requirements, California's Contractors' State Licensing law, assistance with hiring consultants and contractors, and information regarding the pre-approval process for corrective action costs.

Do you want to know more about regulations, financial responsibility, or view legislative reports? Check out the link to [Regulations, Responsibility and Reports](#).

Guide your mouse to [Documents Download](#) and you will find the Fund's claim application form with instructions, and numerous other documents required when submitting an application. You will find reimbursement instructions and a sundry of additional forms, guidelines, informational reports, regulations and program statistics far too numerous to mention individually.

Are you lost? Click on [Site Map](#) and you will find a list of links to all pages in our web site.

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UST CLEANUP FUND
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Fund Manager To Retire

See Page 4 for Details

FUND EFFECTIVENESS

As of November 30, 1999:

- The Fund has issued 7,435 Letters of Commitment (LOCs) in the amount of \$890 million.
 - The Fund has accepted 11,898 claims.
 - 276 "A" claimants, 3,394 "B" claimants, 2,811 "C" claimants, and 954 "D" claimants have received LOCs.
 - The Fund has paid 19,662 reimbursement requests for a total of \$792 million.
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