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Arnold Schwarzenegger
Governor

JUN 8 - 2010

The Honorable Ira Ruskin
California State Assembly
State Capitol, Room 3123
Sacramento, CA 95814

Dear Assembly Member Ruskin:


UNDERGROUND STORAGE TANK CLEANUP FUND (FUND)

I am pleased to provide you with a brief report on the improvements we are making to the Fund. We briefed you on some of these improvements recently at the May 5, 2010, budget subcommittee hearing, and you requested this written follow-up report.

Enclosed is the Cleanup Fund's Action Plan which provides action items and the status of actions to improve Cleanup Fund operations. Also enclosed are written answers to the questions provided in the May 5, 2010, hearing staff report.

If you or your staff would like additional information regarding this report, please contact me at (916) 341-5615, or Mr. Allan Patton, Division of Financial Assistance, at (916) 341-5131.

Sincerely,


Dorothy Rice
Executive Director

Enclosures

cc: Honorable Anna Caballero, California State Assembly
Honorable Danny Gilmore, California State Assembly
Honorable Jared Huffman, California State Assembly
Honorable Jim Silva, California State Assembly
Honorable Bob Blumenfield, California State Assembly
Honorable Jim Nielsen, California State Assembly
Mr. Jay McKeeman, CIOMA

California Environmental Protection Agency

**State Water Resources Control Board
Underground Storage Tank Cleanup Fund**

ACTION PLAN

Background

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

Since the Cleanup Fund program began operations in 1991, the State Water Resources Control Board (State Water Board) has paid over \$2.2 billion to thousands of individuals and small businesses to help them cover the cost of cleaning up their gas stations and other leaking tank sites. Another \$500 million has been paid to local governments and large businesses. This financial assistance program is supported by fees paid by tank owners to the Board of Equalization.

During the course of the program, over 19,000 claims have been filed. Some 11,000 claims have been paid in part or in full, of which about 7,000 have been closed and about 4,000 remain active. Another 4,600 claims filed by major corporations and government agencies are on our priority list, awaiting activation. Individual payment transactions have numbered more than 66,000, for a long-term average payment of about \$40,000/claim/year.

During the late 1990s and most of the 2000s, the program was able to accommodate all eligible claims filed by small businesses and individuals. The cost of cleanups, however, has increased over the last few years as the annual cost per claim rose to \$50,000.

In 2008, the cash reserve built up in the early years of the program fell below prudent reserves, and the program experienced a cash shortage. This shortage was made worse because of a concurrent dip in revenues due to the slow-down in the economy. Insufficient cash was available to service all of the active claims, and payments were and remain delayed by many months. This created a sudden and severe hardship for our small business claimants and their consultants, who are also small businesses.

In response, the State Water Board held a public hearing on March 9, 2009, to receive testimony from stakeholders, and directed staff to develop and implement actions to remedy the problems. Through this stakeholder input and self-examination, Board staff confirmed that the problem was two pronged: 1) There was a need to improve the business model and processes at the Cleanup Fund to better manage the cashflow; and 2) there was the lack of incentive to get cases cleaned up quickly and efficiently. The lack of closure incentive applied to all three major parties: 1) the responsible party or claimant, whose site cleanup bills are paid by the Cleanup Fund; 2) the consultant, who can continue to bill hours as long as the case is active; and 3) the regulator, who generally prefers to close only cases that have minimal or no risk associated with the site closure. As a result of these disincentives, over 43 percent of the active claims have been open for ten years or more.

The State Water Board has taken numerous actions in response to the cash shortage situation. The State Water Board members directed staff to undertake specific steps to attack both parts of the problem – making the Cleanup Fund work better and getting cases to closure more quickly and efficiently. As part of the solution, the Board established two stakeholder task forces to review both the regulatory side and the payment side of the UST Program, and make suggestions for improvements or changes. The Board also directed staff to commission an independent audit of the program.

The work of the audit and task forces began in July 2009 and wrapped up in early 2010. The findings and recommendations of these efforts were consistent and can be organized around four topics: financial management, cost containment, processing efficiency and internal controls.

The audit found that the Cleanup Fund program has been, and remains, too reactive to reimbursements for UST cleanup work. The program couldn't adequately plan expenditures, contain costs or work efficiently because it could not forecast how many payment requests would be received in a given time period, when these requests would be received, or for how many dollars the requests would be for. The auditors recommended that the program convert to a more traditional grant-like program, by putting our small business claimants on a fixed budget and establishing standard invoicing formats and regular invoicing periods. The audit also recommended that the program become more active in determining what activities are to be undertaken at funded sites. The ongoing and proposed actions by the program will be organized with the goal of implementing this core set of recommendations.

The following summarizes actions implemented and to be implemented to address these findings and recommendations.

Financial Management and Cost Containment

To bring long term demand into balance with revenue, the Cleanup Fund needs to reduce the number of active claims and/or reduce the average cost per claim. The reduction in active claims will be accomplished by a continuous review of older cases with the aim of quickly moving them to closure when site conditions warrant. Cost savings for active sites will be achieved by having the Cleanup Fund participate in the development of budgets for our small business claims.

1. **Completed:** To immediately save an estimated \$30 million annually, the State Water Board directed that groundwater monitoring at sites be reduced to twice yearly instead of four times yearly, unless site conditions warrant otherwise.
2. **Underway:** The State Water Board directed all Regional Board and Local Oversight Program agencies to complete reviews of all their cases by June 2010 and either close the case if warranted by site conditions, or determine what needs to be done to obtain case closure.
3. **Underway:** State Water Board staff accelerated the review of older cleanup fund cases under existing Health and Safety Code authority. Staff will bring cases before the Board for consideration of closure where appropriate. The first sets of cases were heard by the Board in January and April 2010 and additional cases will be heard by the State Board every few months. The intent is to use this process to encourage regulators to close cases by demonstrating consistent application of State Water Board cleanup policy to underground storage tank cleanups. All of this work is done with full consideration of the protection of water quality and the environment, and human health and safety.
4. **Underway:** The Fund is implementing a systematic and rigorous cash flow projection/reporting process. A Cleanup Fund Financial Manager position was created and filled. This person has the responsibility of conducting regular cash flow projections for the Cleanup Fund and will provide reports to the State Water Board, program staff, stakeholders and our claimants on these projections. This person is also responsible for determining the number of active claims the program can support.
5. **Underway:** The Cleanup Fund will require budgets be developed for all small business claims. This will enable development of program cash flow demand projections and establish cost limits for individual claims. Setting budgets for each of our claimants will also lead to faster and more efficient cleanups by focusing all work to be evaluated against the ultimate goal of case closure. We are implementing a pilot project now to develop and test this claim budget process.

6. **Planned:** The Cleanup Fund will analyze expenditures by types of costs and project phases to help develop better long-term cash-flow planning. Budgeted claims will request payments organized around budget categories.
7. **Planned:** The Cleanup Fund will begin imposing a stay on any additional payments for claims determined ready for closure under the Five Year Review process, while the case is elevated to the State Water Board for formal consideration of closure.

Processing Efficiency

The Cleanup Fund needs to process our payments more quickly through use of standardized invoices and simpler procedures. Cleanup Fund staff have already implemented numerous changes in this area, but will continue to transition to a more effective budgeted-claim approach.

1. **Completed:** The Cleanup Fund has formed a stakeholder advisory group to provide feedback and suggestions for changes in the program business model.
2. **Completed:** The Cleanup Fund changed from an overall two step process to encumber and pay funds to a single step process. This has saved staff time, paper and reduced processing time by one week.
3. **Completed:** Cleanup Fund staff reduced the number of steps and people involved in review of a given payment to reduce wait time.
4. **Completed:** Cleanup Fund staff eliminated the requirement for submittal of hard-copy reports when these reports are entered into the State Water Board's online cleanup programs database – Geotracker – via the online Geotracker tools.
5. **Completed:** Cleanup Fund staff developed a vendor affidavit to provide proof of payment vs. requiring submittal of cancelled checks.
6. **Completed:** Cleanup Fund staff eliminated the need for original wet signatures on some forms where legally defensible to facilitate submittal by email and FAX.
7. **Underway:** Cleanup Fund management staff are reviewing individual staff workloads and improving productivity tracking. Telework was canceled for all Fund staff, while we develop our new business model.
8. **Underway:** Cleanup Fund staff are creating more user-friendly forms for claimants.

9. **Underway:** Cleanup Fund staff will continue to enhance the program web site so that claimants can more easily determine the status of their payments and otherwise be better informed, thereby improving service and reducing telephone call and email response demands.
10. **Planned:** Cleanup Fund staff will standardize invoice formats and establish regular reimbursement schedules for budgeted small business claims. This will further improve processing speed and allow us to better manage cash flows and overall workloads.
11. **Underway:** Cleanup Fund management staff will temporarily redirect approximately ten staff from our claims processing unit to our payments processing workload to reduce the backlog of payment requests awaiting review.

Improve Internal Controls

We plan to implement all of the audit recommendations regarding internal control improvements, including:

1. **Completed:** Cleanup Fund management staff established an independent Cleanup Fund Fraud Team in the State Water Board's Enforcement Office to pursue allegations of fraud, waste and abuse. We will evaluate the results of this effort as it proceeds and consider making this a permanent unit in the Enforcement Office. While, the audit did not make any specific findings regarding fraud, it did identify weaknesses in the program that could result in waste and abuse. If nothing else, this effort will provide feedback to the program as it develops its new business model on how to better contain costs and reduce the risk of fraud, waste and abuse.
2. **Planned:** Cleanup Fund staff will establish a real-time payment audit and review processes to ensure payment reviews are accurate.
3. **Planned:** Cleanup Fund management staff will also establish management-level quality control processes to evaluate overall payment procedures.

Next Steps

The cash infusion to the Cleanup Fund from AB1188 will allow the program to make payments on the more than \$100 million outstanding payment requests now in-house. It also provides the Cleanup Fund with a window of opportunity to implement changes necessary to prevent the cash shortages from being repeated. The Cleanup Fund must develop and implement the changes discussed today in relatively short order. Cleanup Fund staff will continue to aggressively develop, implement, and monitor these changes. Cleanup Fund

staff will continue to report progress back to the State Board at regular intervals during and after this implementation phase.

Challenges

With more than \$100 million in payment requests in-house and work of some type ongoing at most of the 4,000 active sites, the challenge will be to accomplish the transition in business model to a budgeted-claim approach while continuing to process payments submitted under the old model. Also, instilling change in a highly decentralized regulatory program that has been in existence for more than two decades remains a challenge.

Although these challenges will be significant and will require a major change in program and stakeholder/claimant operational procedures, the State Water Board is committed to streamlining our operations and bringing this program into a sustainable balance.

Responses to Questions, Assembly Budget Subcommittee No. 3, Hearing on Underground Storage Tank Cleanup Fund, May 5, 2010

1. What course of action is the State Water Board taking to lead Regional Water Boards and Local Oversight Agencies to close cases when the threat to human health and the environment have been reasonably abated?

The State Water Board directed Regional Water Boards and Local Oversight Program agencies to review all of their cases and either: 1) close the site following the decisional framework established in prior Board decisions or 2) identify reasons the case can't be closed, and to post that information on online database, Geotracker. The State Water Board directed Cleanup Fund staff to accelerate the Five Year review process and to elevate cases to regulatory agency management when there is a disagreement at the staff level on whether the case can be closed. If there continues to be disagreement, staff will bring the case to the State Water Board for hearing. The State Water Board heard two sets of cases so far and closed ten cases. State Water Board management will be issuing memos to Regional Water Boards and Local Oversight agency management summarizing the key issues addressed by the State Water Board in its closure decisions. This effort is intended to provide guidance to the regulatory agencies on how cases can be considered for closure under differing fact patterns.

2. What steps are the SWRCB taking to ensure that Regional Water Boards and Local Oversight Programs embrace the new cleanup paradigms (risk based closures) in SWRCB Resolution 2009-042 (May 2009) and Resolution 2009-081 (November 2009).

The Five Year review process will apply the Resolutions' framework to Regional Water Boards and Local Oversight Program agency cases. State and Regional Water Boards staff meet frequently and will be discussing the implementation of these Resolutions at each agency. State Water Board management will continue to brief Regional Water Boards Executive Officers on the importance of this effort. Staff will regularly report to the State Water Board on the consistency of implementation.

3. Can the existing 5-year claims review process be expedited? What is the plan (i.e. number) of claims to be reviewed in the next 18 months?

Yes, the State Water Board believes the process can be expedited and is refining the Five Year review process steps- initial consultation with regulatory staff, elevation of cases to organizational management, and elevation to the State Water Board. As a more streamlined process is implemented, the number of cases being considered at the management and State Water Board levels will increase. Closures appear to be increasing. Cleanup Fund staff expect to conduct 1,500 reviews in the next 18 months.

4. Does final closure authority need to be centralized or augmented? If so, how would that be accomplished?

The State Water Board believes the current arrangement where cases are managed at regional and local agencies is the best overall approach, as long as an appeal process and the Five Year review process are available to provide relief to responsible parties.

5. What steps are being taken by the UST Cleanup Fund to enhance accountability of consultants and ensure that only qualified consultants are allowed to perform work?

The State Water Board requires that firms be properly licensed by the appropriate licensing agency.

6. What course of action is the Water Board taking to assure a predictable set of closure standards is being applied to allow site consistent closure?

The State Water Board's decisional framework for case closure relies on analysis of all case specific factors such as age of the release, history of cleanup work completed at the site, the nature and extent of any remaining contaminants, expected impact on beneficial uses, local groundwater hydrogeology, feasibility and value of any additional work, etc. The term "standard" implies a numeric goal, which by definition will be ultra conservative and not lead to predictable closures.

7. Are there statutory impediments to gaining consistent and protective site closure standards?

See discussion under No. 6 above.

8. Are there improvements that can be made to the site closure appeals process?

The State Water Board used an improved, and quicker, site closure notice and documentation process for site closure appeals heard on April 20, 2010. Staff will continue to improve this process.

Claims Administration

The UST Cleanup Fund Task Force and the Audit both identify an array of shortcomings and ways to make the claims process more efficient. However a number of the recommendations appear to require a significant amount of time to develop and implement. Given that AB1188 expires in less than two years, time is of the essence in developing and implementing programs that restore financial viability to the USTCF.

9. What rapidly deployable program recommendations are likely to have a substantial impact to the cash flow of the UST Cleanup Fund? How has the Fund placed a priority on developing these rapidly deployable programs?

To improve cash-flow, the State Water Board has and will continue to implement actions in the following areas: 1) reducing costs at individual sites covered by active claims; 2) reducing the number of active Cleanup Fund sites by closing low-risk sites and delaying activation of new claims until sufficient cash will be available; 3) processing payments more quickly; and 4) improving cash projection practices.

Some of the "rapidly deployable" actions already completed or underway include: 1) reduction in groundwater monitoring frequency, 2) review and closure of claims where appropriate, 3) improvements in payments processing and paperwork, and 4) establishment of a Fund Financial Manager. The Cleanup Fund will also stop paying on claims determined ready for closure through the Five Year Review process, until heard by the State Water Board. This will stop ongoing payment for unnecessary work and save funds for cases where work is needed. Additional staff have been redirected to review payment requests to reduce the backlog.

Rapidly deployable recommendations will be implemented as identified and vetted. The intent is to focus on actions that are easily implemented and that have significant impact.

10. Has the USTCF developed a tiered implementation plan for the recommendations made by the various commentaries on Fund problems and needs?

Yes, and the Cleanup Fund staff established the following priorities: 1) monitor cash flow closely; 2) make payments quickly when funds become available; 3) continue to reduce the payment processing time for payment requests; 4) close cases more quickly; and 5) implement a budget process for small business claimants.

11. Has the Board considered outsourcing of claims processing to deal with work shortages?

Not recently. Past analyses identified problems in doing this because of civil service issues. In addition, it would be difficult to direct a contractor during this period of quickly shifting processes and priorities.

12. Has the Board set up a triage method for determining that appropriate technologies are being planned or employed?

Yes, this will be done through the claim budget process. The process will involve a three-way negotiation between the regulator, claimant/consultant and Cleanup Fund as to what work should be completed at the site. This will include consideration of what technology is appropriate.

13. Has the Board established a quick method for appealing claims issues and differences of opinions?

The appeal process has been revised and streamlined, but the State Water Board continues to have a significant number of appeals pending.

The State Water Board implemented some steps to streamline the "easy" cases by using standard appeal request forms, standard format decision letters and a triage system. Cleanup Fund staff now require that appeals be submitted with a Reimbursement Request in order to process those costs found eligible in a shorter time-frame.

Many remaining appeals are complex and involve issues such as dividing costs between eligible and ineligible sources, or winding through complicated property ownership transactions to establish eligibility. These appeals require significant staff time and can not be resolved quickly.

Ultimately, the best way for the State Water Board to deal with appeals involving cost issues, is to reduce the number of appeals by putting the small business claims on a budget. If everyone knows what the costs and work are going to be before incurred, there is much less likelihood that an appeal will ensue.

14. What steps have been taken to ensure that claims are processed and paid (if funding is available) within 60 days, as required by statute¹?

Cleanup Fund staff streamlined procedures and paperwork. Most significantly, the Cleanup Fund temporarily reassigned claims staff to work on payments and initiated a focused effort to make payment reviews current by the end of the fiscal year.

Some of the new processes and changes include:

New Reimbursement Request (RR) Form Released – Allows claimants to designate an RR contact person.

Letter of Commitment (LOC) Change – Cleanup Fund staff are no longer encumbering money against each claim. Cleanup Fund staff reduced the number of LOCs being created and the workload that goes along with processing them.

Proof of Payment (POP) Affidavit – Cleanup Fund staff prepared a form for claimants to use when submitting POP documentation. This will reduce the amount of paper coming into the program. This is the preferred method of the Cleanup Fund, but staff can still request additional information if needed.

Pay Out – When funds are received, the Cleanup Fund Payout Group releases the payments. To speed up the process, staff eliminated the need to print out Payment Letters and the other additional documentation. The documentation that was usually sent out with the Payment Letters is being sent with the Revenue Hold Letters.

Wet Signature – To speed up certain processes, staff are now accepting photocopy signatures for the Address Change Form, Std. 204, and Proof of Payment Affidavit.

Modified RR Review Process – To speed up reviews, staff have been directed to review sub-invoices only if needed to clarify information on the primary invoice.

¹ H&SC 25299.57(i)(1)