



## **STATE WATER RESOURCES CONTROL BOARD**

### **UNDERGROUND STORAGE TANK CLEANUP FUND**

**FISCAL YEAR 2011/2012**

### **ANNUAL REPORT**

(Posted August 2013)



STATE WATER RESOURCES CONTROL BOARD  
REGIONAL WATER QUALITY CONTROL BOARDS

# Table of Contents

---

<b>Executive Summary .....</b>	<b>3</b>
<b>Background .....</b>	<b>5</b>
<b>Financial Management.....</b>	<b>6</b>
<b>Claims Management .....</b>	<b>9</b>
<b>Cost Controls and Management .....</b>	<b>12</b>
UST Low-Threat Case Closure Policy .....	12
Five-Year Review Process.....	12
Reimbursement of “Old Costs” .....	13
Annual Site Budgets .....	13
<b>Payments Management .....</b>	<b>14</b>
<b>Claim Closure Management .....</b>	<b>16</b>
<b>Special Programs (Cleanup Fund Sub Accounts) .....</b>	<b>16</b>
Emergency Abandoned and Recalcitrant Account.....	16
Commingled Plume Account .....	17
School District Account.....	18
Orphan Site Cleanup Fund .....	19
<b>Communication .....</b>	<b>19</b>
<b>Fraud Prevention, Detection, and Prosecution .....</b>	<b>19</b>
<b>Environmental Benefits .....</b>	<b>20</b>
<b>Legislation .....</b>	<b>21</b>
<b>Conclusion.....</b>	<b>21</b>

## Executive Summary

---

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 continuously or annually post and update on the State Water Board web site, information that describes the status of the Underground Storage Tank (UST) Cleanup Fund (Cleanup Fund), and make recommendations to improve the efficiency of the program. This report also provides information on environmental cleanup of petroleum USTs and the distribution of monies from the Cleanup Fund as of June 30, 2012.

Unauthorized releases from petroleum USTs allowed hazardous substances to seep into the soil and contaminate groundwater, a source of drinking water for many Californians. Other potential health and environmental risks may include surface water pollution, indoor vapor intrusion, and exposure from direct contact such as ingestion and dermal contact. The Cleanup Fund was established to provide financial assistance to petroleum UST owners and operators for cleanup of these contaminated sites. The Cleanup Fund also supports regulatory staff at State Water Boards, its nine Regional Water Quality Control Boards (Regional Water Boards), and 20 Local Oversight Program agencies (LOPs).

The Cleanup Fund is supported by fees paid by UST owners for every gallon of fuel that is placed into an underground storage tank. During, fiscal year 2011/2012 (FY 2011/12), the Cleanup Fund received approximately \$303 million in revenues and paid out to claims roughly \$252 million.

The Cleanup Fund has been critical to both cleanup immediate impacts and to prevent significant migration of petroleum product in groundwater and soil. The Cleanup Fund assists claimants in covering cost associated with the cleanup of leakage from petroleum USTs. There is a mandated \$1.5 million maximum reimbursement per claim. Between 1991, when the Cleanup Fund program began operations, and June 30, 2012, the State Water Board paid over \$3.3 billion to over 11,300 eligible claimants such as individuals and small and large businesses and local government agencies, to help cover the cost of cleaning up leakage from petroleum USTs at gas stations and other sites. Of the 11,300 claims that received reimbursement to date, over 8,400 cases have been remediated and their claims closed. About 2,900 claims are currently active and being reimbursed. Another 4,700 claims are on the Priority List waiting to begin reimbursement when funds are available. An additional 3,900 claims were received by the Cleanup Fund; 3,700 claims were determined ineligible, and 200 are under review.

The Cleanup Fund has mandated sub accounts for three special programs. Since its inception in 1991, the State Water Board's Cleanup Fund Special Programs sites have received over \$199 million in reimbursements. The special programs are:

- Commingled Plume Account (CP) – allows claimants to better coordinate work on commingled plumes;
- Orphan Site Cleanup Fund (OSCF) – provides redevelopment entities funds to investigate, remediate, and redevelop properties; and
- Emergency, Abandoned, Recalcitrant Account (EAR) – provide regulatory agency directed work for emergency work, for corrective action at abandoned sites without viable responsible parties or with recalcitrant responsible parties, some of which have exceeded the \$1.5 million cap per claim.

The State Water Board is diligently taking action with the following intended results:

- Reduced risk to human health and the environment;
- Cost-effective corrective action at UST sites;
- Direction of limited public funds to UST sites that do not meet closure criteria;
- Prudent use of the public funds;
- Prevention, detection, and prosecution of fraud, waste, and abuse of public funds;
- Returning property to beneficial use and increased economic activity.

These actions also implement recommendations of a 2009 external audit related to financial management and cost containment, process efficiency, and internal controls.

The Cleanup Fund and the UST Program as a whole face significant challenges within the next few years. The more significant challenges include:

- Despite a temporary UST storage maintenance fee increase, the fee revenues collected in FY 2011/12 were lower than the revenues of the previous year. Reasons for this revenue decline are thought to be lower gas consumption due to increased fuel prices and the increase in alternative fuel or more fuel-efficient vehicles.
- In addition, the temporary fee increase sunsets on January 1, 2014, reducing the fee from 2.0 to 1.4 cents per gallon. The projection is that fee revenues will be even lower.
- The Cleanup Fund is scheduled to sunset January 1, 2016. As much as perhaps \$3 billion in claims will not be paid if the Cleanup Fund sunsets as scheduled, affecting up to 3,000 active claims currently receiving reimbursements and 4,700 unreimbursed claims on the Fund's Priority List.
- Operating UST owners must meet federal financial responsibility requirements, and transition to alternatives to the Cleanup Fund needs exploration.

## 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 leakage from petroleum USTs. The federal financial responsibility requirements also require coverage for third-party liability due to unauthorized releases of petroleum from USTs.

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 leakage from petroleum USTs. The Cleanup Fund also provides money to the nine Regional Water Quality Control 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, 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 law establishing the Cleanup Fund is scheduled to sunset on January 1, 2016.

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.

Between 1991 when the Cleanup Fund program began operations and June 30, 2012, the State Water Board paid over \$2.7 billion to roughly 11,300 eligible claimants such as individuals and small businesses to help cover the cost of cleaning up leakage from petroleum USTs at gas stations and other sites. Furthermore, \$630 million was paid to local governments and large businesses. An additional \$199 million has been paid to special programs such as the Commingled Plume Account, Orphan Site Cleanup Fund and the Emergency, Abandoned, Recalcitrant Account.

Fund statutes set forth a claim priority system for reimbursement of eligible corrective action costs based on specified claimant characteristics relating to the claimant's ability to pay.

As of June 30, 2012, over 19,900 claims have been filed since 1991. About 11,300 claims have been paid in part or in full. Of those claims, approximately 8,400 were closed and about 2,900 remain active. Another 4,700 claims filed by major corporations and government agencies were on the priority list awaiting activation. Approximately 3,700 claims have been denied and about

200 are under review. The State Water Board processed 76,000 individual payment transactions, which, over the long-term, average about \$41,000/claim/year paid annually.

During the late 1990's and most of the 2000's, 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. As a result, 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.

During fiscal years FY 2008/09 and 2009/10, 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.

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 was a need for an incentive to ensure that cases were cleaned up quickly and efficiently. In response to the audit and task force findings, the State Water Board began developing a new business model to better manage cash flow and ensure cases were cleaned up and closed quickly and efficiently. The organization of the Cleanup Fund staff was restructured to clearly delineate responsibilities for the financial management of the Cleanup Fund's revenues and expenditures. Monitoring and reporting mechanisms were developed to more accurately project revenues and expenditures.

The following information summarizes the Cleanup Fund's continued development and actions in FY 2011/12.

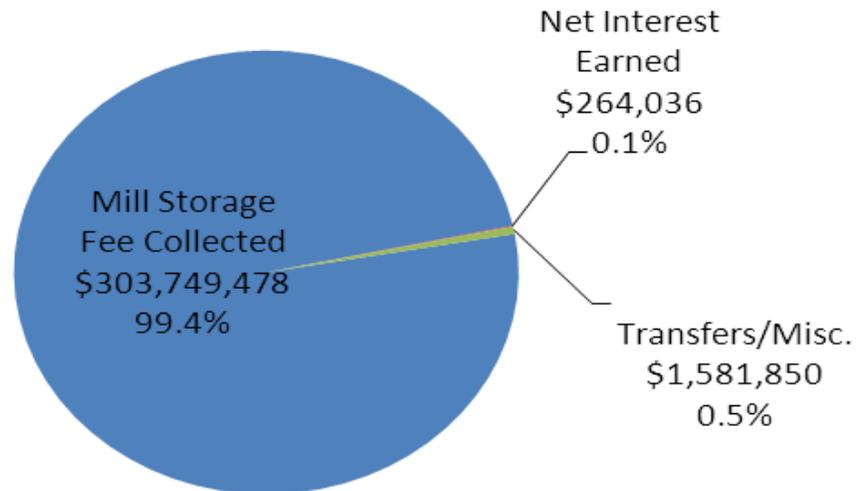
## Financial Management

---

In FY 2011/12, the Cleanup Fund saw a decrease in revenue of about 5.43 percent compared to FY 2010/11. A number of contributing factors such as the rise of gas prices, lower gas consumption, unexpected issues with refineries such as fires, corn yield production decline, and the continual emergence of Alternative Fuel Vehicles contributed to the decline. Also, in FY 2011/12, American Recovery and Reinvestment Act (ARRA) funds expired, causing an increase in the Fund expenses.

Despite lower revenues and higher expenses, the Fund was able to maintain a level of claim reimbursements comparable to the prior year. Fiscal controls such as annual site budgets for claimants have aided in better managing the expenditures of the program. In addition to yearly budgets, the Fund uses additional fiscal controls to continually monitor revenue and expenditures to ensure that the funds are maximized for the intended purposes.

## Funds Received 11/12 Fiscal Year



## Funds Expended 11/12 Fiscal Year

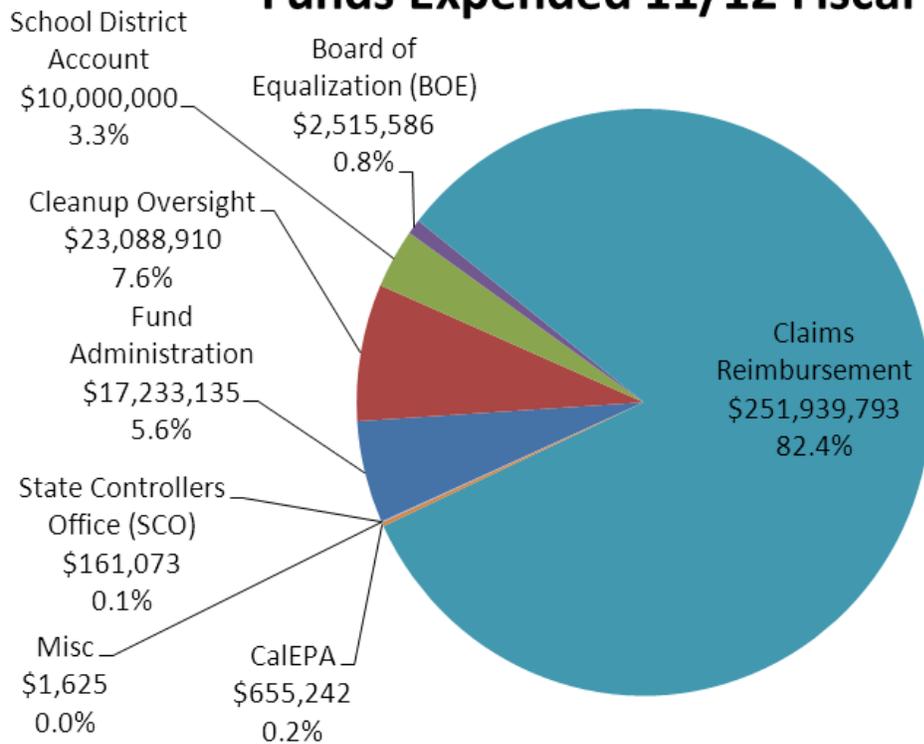


Table 1 provides a summary of major revenues and expenditures from the Cleanup Fund in Fiscal Year 2011/12 and since its inception.

**Table 1  
REVENUE/EXPENDITURES SUMMARY AS OF JUNE 30, 2012**

<b>FUNDS RECEIVED:</b>	<u>11/12 Fiscal Year</u>	<u>Since Inception</u> *
Mill Storage Fee Collected	\$303,749,478	\$4,070,509,312
Net from Previous Fees		\$8,591,052
Net Interest Earned	\$264,036	\$107,005,682
Transfers/Misc.	\$1,581,849	\$8,265,827
<b>Total Funds Received:</b>	<b>\$305,595,364</b>	<b>\$4,194,371,873</b>
 <b>FUNDS EXPENDED &amp; COMMITTED:</b>		
Fund Administration <sup>1</sup>	\$17,233,135	\$237,428,516
Cleanup Oversight <sup>2</sup>	\$23,088,910	\$316,163,531
Department of Trade & Commerce <sup>3</sup>		\$75,500,000
Replace, Remove or Upgrade UST (RUST) <sup>4</sup>		\$15,104,012
School District Account <sup>5</sup>	\$10,000,000	\$30,000,000
Orphan Site Cleanup Fund <sup>6</sup> (OSCF)		\$30,000,000
Board of Equalization <sup>7</sup> (BOE)	\$2,515,586	\$39,055,109
Claims Reimbursement <sup>8</sup>	\$251,939,793	\$3,410,811,009
Department of Health Services <sup>9</sup>		\$20,000,000
Cal/EPA	\$655,242	\$5,693,404
State Controller's Office (SCO) <sup>10</sup>	\$161,073	\$605,706
Misc <sup>11</sup>	\$1,625	\$6,074,337
<b>Total Funds Expended &amp; Committed:</b>	<b>\$305,595,364</b>	<b>\$4,186,435,624</b>
 <b>NET FUNDS AVAILABLE:</b>		 <b>\$7,936,249</b>

\*Amounts from previous report were adjusted to reflect actuals

<sup>1</sup> Fund Administration includes prorata.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> The OSCF was established under H&SC Section 25299.50.2.

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

<sup>8</sup> Claims Reimbursement includes Committed Budgeted Claims Reimbursements and Special Programs: OSCF past commitments, the Emergency, Abandonment, Recalcitrant Account and Commingled Plume Account

<sup>9</sup> 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.

<sup>10</sup> SCO receives an annual appropriation for the Human Resources Management System Assessments per Section 25.25

<sup>11</sup> Misc includes accounts receivables, abatements, various contracts and loans.

The State Water Board continues to focus on bringing the Cleanup Fund's long-term demand into balance with revenue. The Cleanup Fund implemented changes to strengthen internal controls and continues to establish management-level quality control processes.

### **Actions:**

- A Fiscal Unit monitors and tracks revenues and expenditures. Weekly reporting keeps Cleanup Fund management informed of revenues spent and remaining balances.
- Fee revenues are projected monthly to ensure expenditures do not exceed revenues.
- The projection of revenues available for claim reimbursement is the basis for establishing initial annual site budgets as well as approvals of budget change requests through out the fiscal year.
- Cost limits were established for individual claims and enabled development of program cash flow demand projections.

## **Claims Management**

---

Fund statutes set forth a claim priority system for payment 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.

Over 19,900 claims have been filed during the course of the program. About 11,300 claims have been paid in part or in full. Of those claims, approximately 8,400 were closed and about 2,900 remain active. Another 4,700 claims filed by major corporations and government agencies are on the priority list awaiting activation. Approximately 3,700 were denied and about 200 are under review. The State Water Board processed 76,000 individual payment transactions, which, over the long-term, average about \$41,000/claim/year paid annually. The charts below show the claim status of the Cleanup Fund as of June 30, 2012<sup>1</sup>.

---

<sup>1</sup>

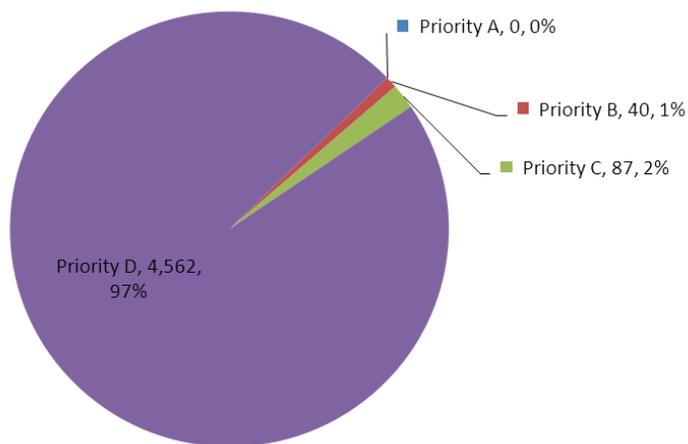
Class A: residential tank owners.

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

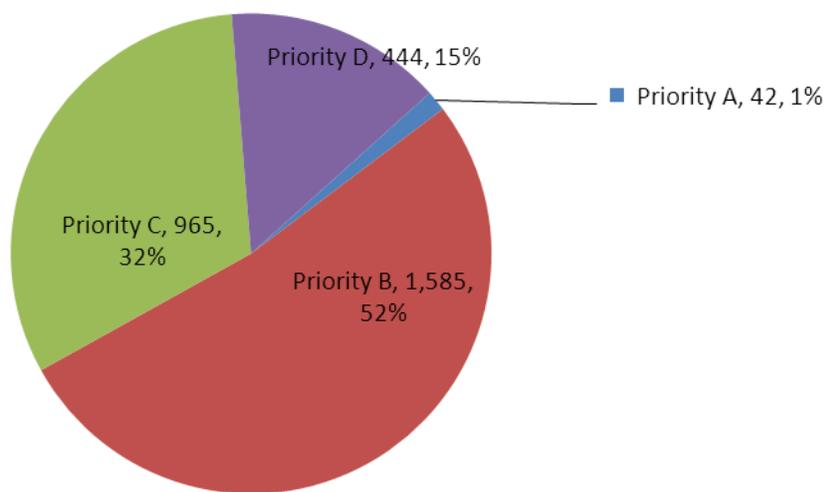
Class C: certain California businesses, governmental agencies, and nonprofit organizations not meeting the criteria for Class B, but who have less than 500 employees.

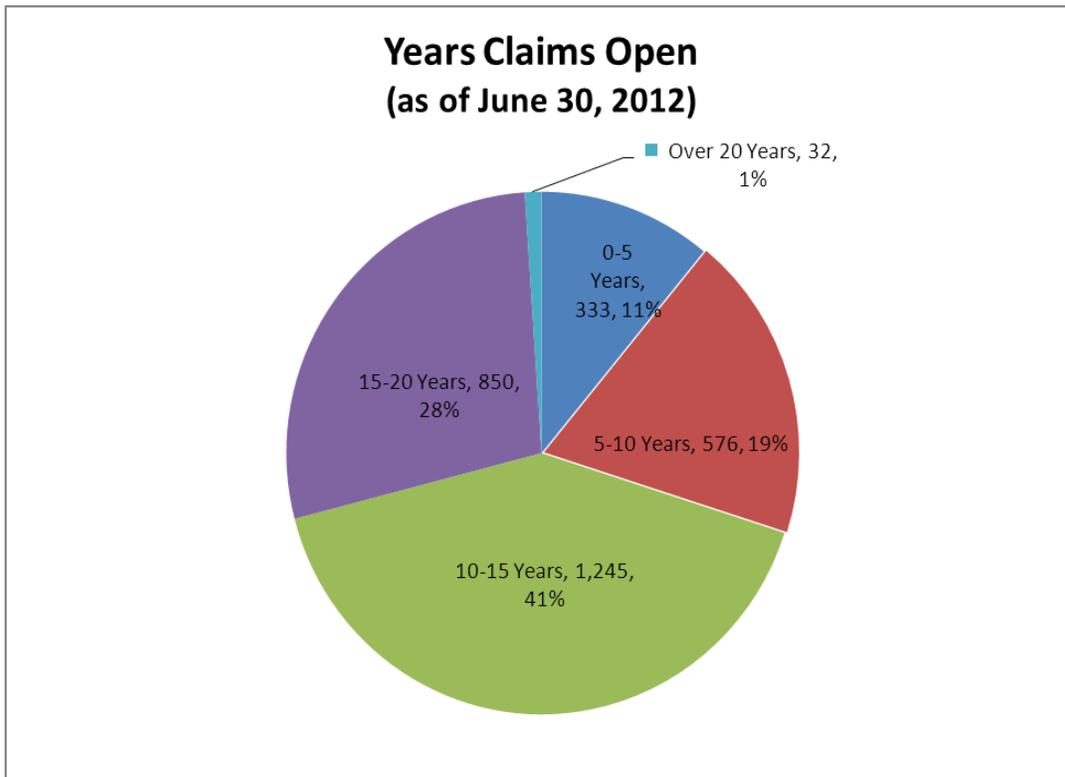
Class D: all other eligible claimants.

### Claims Waiting for Funding by Priority Fiscal Year 2011/2012



### Active Claims by Priority Class (as of June 30, 2012)





#### **Actions:**

- State Water Board staff is managing the number of newly active claims to ensure demand is in balance with revenues. Letters of Commitment (LOCs) that fund new claims are reviewed semi-annually and funded dependent on available funding and approval of a project budget.
- During FY 2011/12, the Cleanup Fund did not activate new claims except for the following exceptions:
  - School District Claims – Legislation established a separate “School District Account” specifically to pay school district claims.
  - Priority Class A claims – These claims are the highest priority claimants owning residential tanks.
  - Priority Class D claims – These are the lowest priority claimants. Fund Statutes mandate that 14 percent of the Fund’s committed are awarded to Priority Class D claimants.
- 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 implemented a risk-based approach for conducting regulatory agency compliance reviews as part of the new business model. Previously, staff traveled to regulatory agency offices to verify that a claimant is in permit and corrective action compliance. Staff has identified alternate means to verify compliance, other than travel, such as reviewing GeoTracker and corresponding through email.

# Cost Controls and Management

---

The Cleanup Fund continues to focus on reducing active claims by moving claims that meet closure criteria to closure.

## UST Low-Threat Case Closure Policy

### Actions:

- On May 1, 2012, the State Water Board adopted the Underground Storage Tank Low-Threat Case Closure Review Policy (Policy). The Policy, which has regulatory effect as of August 17, 2013, provides specific case closure criteria.
- State Water Board Resolution 2012-0016 adopted the Policy and requires a number of actions, including review of all cases against the Policy within one year and annually thereafter. Proactively assessing cases against the Policy criteria was anticipated to ultimately reduce demand on the Fund as cases were closed.
- State Water Board staff began evaluating certain cases against the Policy. The cases are those reviewed pursuant to the mandated review of claims that have been funded for 5 years or more and subsequently previously recommended to pursue closure.

## Five-Year Review Process

Statute requires the Cleanup Fund Manager to annually review the case history of all Cleanup Fund claims where funding has occurred for five or more years, unless the owner or operator objects. State Water Board staff reviews the site and claim history to determine whether a recommendation for site closure is in order. This review provides a third-party review of progress of the case 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 the case closed. Furthermore, this review provides an opportunity to detect waste and abuse if funds are being spent at sites that warrant closure. In cases where the Five-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 recommends the case to the State Water Board for closure consideration.

### Actions:

- The following table represents the status of Five-Year Reviews for FY 2011/12:

FY 2011/2012 Closures			
5 Year Reviews	Recommendations for Closure to Be Pursued	Recommendations for Additional Corrective Action	Concurrence with Current Corrective Action
1326	586	399	404

- 223 cases were closed by regulatory agencies after a Five-Year Review was completed for the case.

## Reimbursement of “Old Costs”

Outstanding reimbursable costs were unknown because there is no statutory deadline for submitting reimbursement requests (RRs). In order to reimburse costs incurred prior to FY 2011/12:

- The Cleanup Fund set aside most of the anticipated revenues for reimbursement of old costs. About two-thirds of the FY 2011/12 revenues, \$130 million, were set aside for claim reimbursement of costs incurred prior to July 1, 2011.
- During the year, the set-aside was increased as RRs were submitted.
- Claimants were notified to submit requests for payment of these costs by December 1, 2012, to take advantage of this set aside.

## Annual Site Budgets

The Cleanup Fund does not have sufficient revenues to allocate budgets sufficient to reimburse all reasonable and necessary costs for all active claims during the fiscal year.

### Actions:

- As a result, FY 2011/12 was the first year that each claim was provided an annual site budget. An annual site budget is a set-aside of anticipated revenues for each active claim to reimburse corrective action costs during the fiscal year. Setting budgets for claimant's leads to faster and more efficient cleanups by focusing all cleanup work toward the ultimate goal of case closure.
- In order to prevent the Fund from running short of money, as happened in the past, some individual site budgets are necessarily insufficient, based largely on the legislatively mandated priority system. Claimants were informed costs incurred more than the annual site budget would not be reimbursed until funds are available. With low revenues and annual site budgets focused on ongoing corrective action, over-budget costs were not anticipated to be reimbursed in the near future.
- Based on communication with the regulatory staff, claimants, and consultants, as well as data review in GeoTracker, the State Water Board understands that these are cases that need additional work. However, the funds were not sufficient to cover the costs of that work.
- Annual site budgets were identified for all active claims in Priority classes A, B, and C. The claim Priority class system requires that Priority A claims be paid prior to Priority B claims; Priority B claims prior to Priority C claims, etc.
- Therefore, as long as there are Priority A and Priority B claims that have not been reimbursed, reimbursement of reasonable and necessary costs to Priority C and D claims in excess of the 14 percent minimum payout will be delayed.

- Claims were placed into “Budget Categories” based on the current phase of corrective action at the individual sites using feedback from claimants and consultants and using current information on GeoTracker. Active claims given annual budgets included a total of 3,425 individual claims. Staff revised budget category assignments as they received updated information from claimants, consultants, and regulators.
- 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.
- During FY 2011/12, State Water Board staff approved \$107 million for active claim annual budgets in Priority Classes A, B, and C. This amount included the initial claim budget allocation of \$89 million and \$16 million in budget augmentations.
- Sites identified as ready for closure and sites where the Regional Water Boards or the local regulatory agency has granted closure were provided minimal site budgets of \$10,000. Claimants are given an opportunity to negotiate increases in their budget for costs directly related to site closure such as monitoring well abandonment and waste disposal, provided that additional funding is available for the budget increase.

## Payments Management

---

State Water Board staff review RRs<sup>1</sup> submitted by claimants seeking reimbursement against the claim’s annual budget and for:

- Reasonable and necessary corrective action costs incurred for cleanup of contamination caused by unauthorized releases from 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. The following tables show:

---

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

FY 2011/2012 Reimbursement Requests					
	<sup>1</sup> Priority A	Priority B	Priority C	Priority D	Total
RRs Received	52	1,650	1,046	566	3,314
RRs Processed	99	3,194	2,035	670	5,998
RRs Paid	\$1.7M	\$88.6M	\$66M	\$35.5M	\$191.8M
RRs on Hold for Payment	9	183	177	0	369
RR \$ on Hold for Payment	\$114,000	\$3.2M	\$4.1M	\$0	\$7.4M

FY 2011/2012 Reimbursement Request Processing Time					
	Priority A	Priority B	Priority C	Priority D	Average
Average Processing Time (Date Rec'd to Date Sent to Accounting)	39 days	122 days	136 days	150 days	129 days
Average Processing Time (Date Rec'd to Paid Date)	53 days	134 days	149 days	163 days	141 days

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

**Actions:**

- The State Water Board is continually improving RR 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.

<sup>1</sup> 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).

- 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 submitting complete RRs.

## **Claim Closure Management**

---

The administrative closure function ensures public funds are used appropriately. The Administrative Closure Unit performs a detailed administrative claim audit on each Cleanup Fund claim prior to releasing a final payment.

### **Actions:**

- The Administrative Closure Unit administrative claim audit:
  - Analyzes payment requests to ensure expenditures were not paid for costs incurred before January 1, 1988, or after the site received regulatory closure;
  - Verifies calculated amounts are accurate and double payments have not occurred; and
  - Verifies only eligible, necessary, and reasonable costs were paid.
- The Administrative Closure Unit closes claims:
  - 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.
  - After a claim has reached the statutory deadline of 365 days to submit all costs to the Fund.
- The Administrative Closure Unit closed 741 claims in FY 2011/12.

## **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, 59 sites have received \$14.1 million in reimbursements and 8 sites have been closed. The EAR Account receives an annual appropriation of \$5,000,000.

<b>FY 2011/2012 EAR Account</b>		
<b>Sites</b>	<b>Payments Processed</b>	<b>Total Payment</b>
<b>25</b>	<b>66</b>	<b>\$1,329,519</b>

### **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.

In FY 2011/12, a new annual budget process was implemented for all active CPA claims.

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

- Reviewed 70 CPA applications;
- Determined 56 CPA applications eligible;
- Reimbursed 47 CPA claims for a total of \$68.9 million
- Closed 12 CPA claims totaling 33 sites.

<b>FY 2011/2012 CPA Account</b>		
<b>Claims Requesting Funds</b>	<b>Reimbursements Processed</b>	<b>Total Reimbursement</b>
<b>23</b>	<b>37</b>	<b>\$3,570,561</b>

### 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 or liquidated on or before January 1, 2016.

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 268 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

<b>FY 2011/2012 School District Account</b>				
<b>Funded School District Claims</b>	<b>Priority Class B</b>	<b>Priority Class C</b>	<b>Priority Class D</b>	<b>Total</b>
<b>School District Applications</b>	<b>59</b>	<b>55</b>	<b>76</b>	<b>190</b>
<b>School District Payments</b>	<b>\$7,420,010</b>	<b>\$7,549,262</b>	<b>\$12,045,277</b>	<b>\$27,014,549</b>

## 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 2008/09, FY 2009/10 and FY 2010/11. The OSCF is scheduled to sunset on January 1, 2016.

<b>FY 2011/2012 OSCF Account</b>			
<b>Funding Source</b>	<b>Sites Requesting Funds</b>	<b>Payments Processed</b>	<b>Total Payment</b>
<b>State</b>	<b>28</b>	<b>94</b>	<b>\$2,659,545</b>

Since the OSCF was established in 2009, the State Water Board:

- Received 83 project applications;
- Determined 64 project applications eligible;
- Provided 57 projects State and ARRA grant funding totaling \$23 million; and
- Provided 22 projects formerly funded under the OSCA, OSCF funds to continue corrective action to complete site cleanup.

## **Communication**

---

State Water Board staff continues to enhance the Cleanup Fund web site so claimants can more easily determine the status of their payments, budget change requests, and have up-to-date information, thereby improving service and reducing telephone calls and email response demands.

- Notices and Fund Updates are communicated via the Cleanup Fund's electronic webserver list and continuously posted to the web site.
- Frequently asked questions (FAQs) are posted on the Cleanup Fund's web site.
- Cleanup Fund management meets with the Fund Interest Group and other interested parties as requested.

## **Fraud Prevention, Detection, and Prosecution**

---

The State Water Board's Office of Enforcement Fraud, Waste and Abuse (FWA) Pilot Program Unit investigates and prosecutes cases of fraud and misuse of Cleanup Fund monies.

### **Actions:**

- During FY 2011/12 FWA Pilot Program Unit reviewed allegations and actively investigated cases of potential fraud against the Cleanup Fund.
- The FWA Unit investigated cases, one of which resulted in the State Water Board filing a criminal complaint against the owners of an environmental consulting firm for defrauding the Cleanup Fund. The criminal complaint was followed by a civil complaint.
- The FWA Unit investigations provide information to the Cleanup Fund which allows changes in procedures with the intent to prevent FWA.

## **Environmental Benefits**

---

Leakage from petroleum USTs allowed hazardous substances to seep into the soil and contaminate groundwater, a source of drinking water for many Californians. Other potential health and environmental risks may include surface water pollution, indoor vapor intrusion, and exposure from direct contact such as ingestion and dermal contact.

The Cleanup Fund was established to provide financial assistance to petroleum UST owners and operators for cleanup of these contaminated sites. The Cleanup Fund has reimbursed corrective action costs of over 11,300 UST cases to date, of which, over 8,400 cases have been remediated and closed. The Cleanup Fund has been critical to both cleanup immediate impacts and to prevent significant migration of petroleum product in groundwater and soil.

Implementing corrective action at UST sites so that they meet closure criteria so that cases and claims can be closed is a State Water Board priority. Closing not only the UST case 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 use of property, 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.

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 2011/12 State Water Board staff completed 1326 five-year reviews. Regulatory agencies closed 223 cases after the five-year reviews were completed.

## Legislation

---

Chapter Statutes of 2011 (AB 291, Wieckowski), effective January 1, 2011, a measure that extends a pre-existing increase in the fee at a rate of \$0.006 per gallon of petroleum from December 31, 2011, until January 1, 2014.

Chapter Statutes of 2011 (AB 358, Smyth), effective January 1, 2011, an emergency measure that, among other things: (1) after Fund Manager recommendation of case closure to the State Water Board, limits reimbursement of subsequently incurred corrective action costs to \$10,000 per year, except as specified; and (2) requires that claims for reimbursement of corrective action costs that are received more than 365 days after the date of issuance of a closure letter or after the issuance or activation of a letter of commitment, whichever occurs later, not be reimbursed, with limited exceptions.

## Conclusion

---

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 leakage from petroleum USTs.

The Cleanup Fund has been critical to not only the cleanup of impacts to, but also the prevention of significant migration of petroleum in, groundwater and soil. While the Cleanup Fund did experience a cash shortage in late 2008, the State Water Board continues to make significant progress in improving Cleanup Fund: (a) financial management; (b) cost containment; (b) processing efficiency; and (c) other internal controls.

As of June 30, 2012, the State Water Board has paid since 1991 over 2.7 billion to individuals and small businesses to help them cover the costs of cleanup of leakage from petroleum USTs. Over 11,300 claims have received some reimbursement; 8,400 of those claims have been closed; and approximately 4,700 claims are on the waiting list to begin receiving reimbursements depending on availability of funds.

Without the Cleanup Fund's assistance, leakage from petroleum USTs would not have been cleaned up to the extent that it has been. In addition, many UST owners were individuals and small businesses and, without reimbursement from the Cleanup Fund for the cost of cleanup, they would have experienced more bankruptcies and business closures. Instead the Cleanup Fund has both preserved and helped to create jobs. The financial assistance provided by the Cleanup Fund and its sub accounts supports continued economic activity at sites where there was historic leakage from petroleum USTs.

The State Water Board is diligently taking the actions with the following intended results:

- Reduced risk to human health and the environment;
- Cost-effective corrective action at UST sites;
- Direction of limited public funds to UST sites that do not meet closure criteria;
- Prudent use of the public funds;

- Prevention, detection, and prosecution of fraud, waste, and abuse of public funds;
- Returning property to beneficial use and increased economic activity.

The Cleanup Fund and the UST Program as a whole face significant challenges. The more significant challenges include:

- Despite a temporary UST storage maintenance fee increase, the fee revenues collected in FY 2011/12 were lower than the revenues of the previous year. Reasons have been purported to be lower gas consumption due to increased fuel prices and the increase in alternative fuel or more fuel-efficient vehicles;
- In addition, the temporary fee increase sunsets on January 1, 2014, reducing the fee from 2.0 to 1.4 cents per gallon. The projection is that fee revenues will be even lower;
- The Cleanup Fund is scheduled to sunset January 1, 2016. As much as perhaps \$3 billion in claims will not be paid if the Cleanup Fund sunsets as scheduled, affecting up to 2,900 active claims currently receiving reimbursements and 4,700 unreimbursed claims on the Fund's Priority List; and
- Operating UST owners must meet federal financial responsibility requirements, and transition to alternatives to the Cleanup Fund needs exploration.