



## **UNDERGROUND STORAGE TANK CLEANUP FUND**

# **ASSIGNMENT OF CLAIM INFORMATIONAL GUIDE**

**State Water Resources Control Board  
Division of Financial Assistance  
Revised October 2018**

## Disclaimer

The Underground Storage Tank (UST) Cleanup Fund has revised the Assignment of Claim Informational Guide. The UST Cleanup Fund developed the Assignment of Claim Informational Guide to help answer general questions regarding assignment of a UST Cleanup Fund claim or the right to file a new claim (where an assignor has not filed a UST Cleanup Fund claim). The Assignment of Claim Informational Guide is for informational purposes only; it does not establish any rules or requirements for assignments.

In addition to this revised Assignment of Claim Informational Guide, the UST Cleanup Fund has revised its Sample Assignment Provisions. Parties are not required to use the Sample Assignment Provisions, but parties are encouraged to review them to better understand the restrictions on claim assignments and to aid in the development of an assignment that will be acceptable to the UST Cleanup Fund.

## Submission and Questions

Please submit the executed assignment agreement along with all required supporting documentation to:

State Water Resources Control Board  
Division of Financial Assistance  
Attn: Settlement Unit  
P.O. Box 944212  
Sacramento, CA 94244-2120

If you have any questions regarding the assignment of claims, please contact the UST Cleanup Fund by calling 1-800-813-FUND, sending an email to [ustcleanupfund@waterboards.ca.gov](mailto:ustcleanupfund@waterboards.ca.gov), or by writing to the address listed above. Please include "Settlements Unit: Assignment Question" in the subject line for faster response. Please also provide your UST Cleanup Fund Claim Number or the site address, if a claim has not yet been filed.

## General Assignment Information

An assignment is an express written agreement between a party who has a UST Cleanup Fund claim or is eligible to file a UST Cleanup Fund claim (assignor) and a party who will be acquiring the UST Cleanup Fund claim or rights to file a UST Cleanup Fund claim from the assignor (assignee). The assignee may be a party who is not eligible to apply for the UST Cleanup Fund, but cannot be ineligible because of the party's own conduct/misconduct at the site that is the subject of the claim. Typically, the assignee has an ownership interest in the site or otherwise is responsible for site cleanup. Oftentimes, assignments occur as part of a sale of the property from the assignor to the assignee.

The assignor can assign to the assignee only those UST Cleanup Fund reimbursement rights that the assignor possesses. Offsets that would otherwise diminish the assignor's reimbursement (e.g., insurance and settlement proceeds) will similarly reduce the amount reimbursed to the assignee. Additionally, in the event of any fraud or misrepresentation on the part of either the assignor or the assignee, the UST Cleanup Fund may disqualify the UST Cleanup Fund claim and pursue legal action against the assignor or assignee or both.

The UST Cleanup Fund reviews all assignments prior to acceptance to ensure that they comply with the State Water Resources Control Board Order WQ 2000-06-UST, *In the Matter of the Petition of Lake Publishing Company (Lake)*. Assignments also must be consistent with State Water Board Order WQ 97-06-UST, *In the Matter of the Petition of Quaker State Corporation (Quaker State)* and State Water Board Order WQ 99-02-UST, *In the Matter of the Petition of Hollis Rodger et al. (Hollis Rodgers)*.

The UST Cleanup Fund cannot advise you on the best way to draft your assignment or how to structure other related transactions. Nor can the UST Cleanup Fund make a determination or preapprove any assignment prior to reviewing the executed Assignment Agreement and all supporting documentation. The UST Cleanup Fund recommends you read the information below and refer to the Sample Provisions for Assignments in this Guide to ensure that your assignment meets the criteria in *Lake*. For more information please refer to *Lake*, *Quaker State*, and *Hollis Rodgers*. You also may want to consult other guidance and information made available by the UST Cleanup Fund as appropriate for your circumstances.

### Approval Process and Timeframes

Upon submittal of an assignment, your UST Cleanup Fund claim will be suspended temporarily pending review and processing of the assignment. If the UST Cleanup Fund approves your assignment, the UST Cleanup Fund will request certain administrative forms before processing the assignment. The amount of time this process takes varies depending on many different factors (i.e., incomplete requests, number of Settlement Unit work items already in queue, etc.), so the UST Cleanup Fund cannot provide a time estimate.

It is the assignor's and assignee's responsibility to immediately take steps to effectuate all assignments, including, but not limited to, timely submittal of assignments to the UST Cleanup Fund for review. Assignors are not permitted to continue to submit reimbursement requests after the effective date of the assignment. The UST Cleanup Fund will not reimburse an assignor for costs that it did not submit to the UST Cleanup Fund before the effective date of the assignment.

## Assignment Restrictions

Please note that UST Cleanup Fund claims are property rights that are separate and legally distinct from a right to the real property associated with the claim. Pursuant to *Lake*, an eligible claimant may assign its rights to reimbursement from the UST Cleanup Fund to another person, subject to specified restrictions and the State Water Board's consent. UST Cleanup Fund claims, or rights to file UST Cleanup Fund claims, may be assigned to persons or entities that have an ownership interest in the real property or are otherwise responsible for cleanup at the site.

Restrictions set forth in *Lake*:

- *Lake* provides that the State Water Board will not honor an assignment if the assignment is used to circumvent priority, meaning that a lower-priority claimant may not receive an assignment from a higher priority claimant, except to the limited extent permitted for "on behalf of" agreements in *Hollis Rodgers*. (*Lake*, p. 21.)
- *Lake* also provides that the State Water Board will not honor an assignment if the assignment would unravel the provisions of a previous release or indemnity agreement. (*Ibid.*) This prohibition means that if the buyer indemnified the claimant/seller for future corrective action costs and took over all responsibility for cleanup at the time of purchase, the claimant/seller cannot assign the UST Cleanup Fund claim to the buyer at a later point in time.
- *Lake* further provides that the State Water Board may invoke its authority to further restrict assignability of claims where circumstances warrant. (*Lake*, pp.17-18.)

## Assignor's Financial Responsibility Obligation

All UST owners and operators must demonstrate financial responsibility, unless they are exempt from the federal financial responsibility requirements. Assignment of a UST Cleanup Fund claim or the right to file a claim does not change the UST owner or operator's obligations under federal law to demonstrate financial responsibility for taking corrective action and for compensating third parties. Except where the assignee becomes the owner or operator of the UST that had the unauthorized release, the assignor continues to be responsible to maintain financial assurances until the corrective action for that release has been completed. (See 40 CFR 280.113.) The assignee is not permitted to demonstrate financial responsibility on behalf of the assignor.

Notwithstanding the assignment of the UST Cleanup Fund claim, the assignor may continue to use the UST Cleanup Fund as a mechanism to satisfy federal financial responsibility requirements. If the assignor uses the UST Cleanup Fund to satisfy financial responsibility requirements, the assignor would continue to be responsible to demonstrate financial responsibility for the amount of the deductible as a condition of eligibility to the UST Cleanup Fund.

If the assignor already has an eligible claim filed with the UST Cleanup Fund and the assignor has demonstrated that it has met financial responsibility requirements, no additional documentation regarding financial responsibility will be necessary to facilitate an assignment. If the assignor does not have an existing eligible claim filed with the UST Cleanup Fund at the time of the assignment, the assignor must demonstrate financial responsibility for the amount of the UST Cleanup Fund deductible in order for the assigned claim to be eligible for reimbursement.

## *Effective Date of Assignment*

The assignor and assignee must decide on the effective date of the assignment. In accordance with *Lake*, the effective date of the assignment cannot predate the date the parties execute the written agreement. (See *Lake*, pp. 19-21.) The effective date can be the same date as the parties execute the agreement, a date associated with the sale of the site from the assignor to the assignee, or another readily ascertainable date in the near future. Assignments involving multiple claims, also referred to as global assignments, should have a single, readily ascertainable effective date.

Please note that the UST Cleanup Fund only may reimburse costs incurred by the assignor before the effective date of the assignment. The UST Cleanup Fund only may reimburse costs incurred by the assignee on or after the effective date of the assignment.

## **Specific Scenarios**

### *If the Assignor Has Not Filed a UST Cleanup Fund Claim*

The UST Cleanup Fund does not allow an assignor to file a UST Cleanup Fund claim after the effective date of an assignment agreement. In cases where the assignor does not have an existing UST Cleanup Fund claim, the assignee must file the UST Cleanup Fund claim and demonstrate the priority and eligibility of the assignor. If the UST Cleanup Fund determines that the assignor is eligible, then the UST Cleanup Fund will place the assignee on the priority list and the initial LOC will be issued to the assignee. Instead of the UST Cleanup Fund directly reimbursing the assignor for corrective action costs incurred by the assignor, the assignor and assignee may reach an agreement whereby the assignee pursues these costs and ultimately pays them over to the assignor. Be advised that the assignee still must comply with the UST Cleanup Fund's requirements for proof of payment.

*Please see Sample 1 of the Sample Assignment Provisions for provisions that the parties may include for assignments where the Assignor has not filed a UST Cleanup Fund claim.*

### *If the Assignor Has an Eligible UST Cleanup Fund Claim and Has Not Been Issued a Letter of Commitment (LOC)*

If the UST Cleanup Fund approves the assignment of a claim before an LOC has been issued to the assignor, the UST Cleanup Fund will issue the initial LOC to the assignee. The UST Cleanup Fund will not reimburse an assignor for costs that the assignor incurred before the effective date of the assignment, but did not submit to the UST Cleanup Fund before the effective date of the assignment. Instead of the UST Cleanup Fund directly reimbursing the assignor for these costs, the assignor and assignee may reach an agreement whereby the assignee pursues reimbursement of these costs and ultimately pays them over to the assignor. Be advised that the assignee still must comply with the UST Cleanup Fund's requirements for proof of payment.

*Please see Sample 2 of the Sample Assignment Provisions for provisions that the parties may include for assignments of UST Cleanup Fund claims where the UST Cleanup Fund has not issued an LOC.*

## *If the UST Cleanup Fund Has Issued an LOC for the Assignor's Claim*

The UST Cleanup Fund will reimburse an assignor for costs that the assignor both incurred and submitted to the UST Cleanup Fund before the effective date of the assignment if the assignor and the assignee agree that the assignor will pursue reimbursement of this category of costs. In these cases, the UST Cleanup Fund will not amend the LOC in favor of the assignee until: 1) the UST Cleanup Fund has reimbursed the assignor for these costs; 2) the assignor waives the right to the costs; or 3) the assignee and assignor come to an alternate agreement regarding recovery of the costs. In one alternative scenario, the assignor and assignee may agree that the assignee will pursue this category of costs. The assignment must expressly state whether this category of costs will be pursued by the assignor or assignee and must clearly identify all the costs in this category by providing all of the following: 1) reimbursement request number; 2) date of reimbursement request; 3) amount requested; and 4) date(s) of incurred costs. The UST Cleanup Fund cannot reimburse the assignee for any costs that the assignee incurs after the effective date until the LOC is amended to be in the assignee's name. Please note that the UST Cleanup Fund will not amend the LOC back to the assignor's name after the LOC is amended to be in the assignee's name.

The UST Cleanup Fund will not reimburse an assignor for costs that the assignor incurred before the effective date of the assignment, but did not submit to the UST Cleanup Fund until after the effective date of the assignment. Except where the parties have agreed that the assignor will pursue reimbursement of costs that the assignor incurred and submitted to the UST Cleanup Fund before the effective date of the assignment, the UST Cleanup Fund will amend the LOC to reflect the assignee's name upon approval of an assignment. Be advised that the assignee still must comply with the UST Cleanup Fund's requirements for proof of payment.

*Except in those circumstances where there is an overpayment owed by the assignor to the UST Cleanup Fund, please see Sample 3 of the Sample Assignment Provisions for provisions that the parties may include for assignments of UST Cleanup Fund claims where the UST Cleanup Fund has issued an LOC.*

## *Assignor's and Assignee's Overpayment Obligations*

Once the UST Cleanup Fund approves an assignment, the assignee becomes jointly and severally liable for the amount of any overpayment owed by the assignor to the UST Cleanup Fund for the UST Cleanup Fund claim being assigned (also referred to as an accounts receivable). For this reason, the UST Cleanup Fund encourages the assignor to resolve any overpayments owed to the UST Cleanup Fund before completing the assignment. The UST Cleanup Fund will not approve an assignment of a UST Cleanup Fund claim with an overpayment unless both the assignor and assignee affirmatively acknowledge and accept that they are joint and severally liable for the overpayment and that the UST Cleanup Fund will not reimburse any additional costs under the claim unless the overpayment is cleared.

*Please see Sample 4 of the Sample Assignment Provisions for provisions that the parties may include for assignment of a UST Cleanup Fund claim with an overpayment amount outstanding.*

## *If the Individual Claimant is Deceased*

Only the named claimant(s) can assign the UST Cleanup Fund claim. If an individually named claimant is deceased, the UST Cleanup Fund must determine the identity of the successor claimant before the successor claimant can assign the UST Cleanup Fund claim to the

assignee. If an UST Cleanup Fund claim has not yet been filed and the individual who previously owned and/or operated the subject UST(s) is deceased, the UST Cleanup Fund will first need to determine if that individual was eligible for reimbursement from the UST Cleanup Fund. If the UST Cleanup Fund determines that the deceased individual would have been an eligible claimant, the identity of the successor claimant must be determined, before the successor claimant can assign the claim to the assignee.

### *If the Claimant Entity No Longer Exists*

The UST Cleanup Fund also must identify the appropriate successor claimant when the UST Cleanup Fund claim, or the right to file a UST Cleanup Fund claim, was held by an entity, such as a corporation, limited liability company (LLC), partnership, trust, or estate, that has been dissolved or otherwise no longer exists. Please note that in some instances a claimant entity that has been dissolved may assign the claim as part of its ability to “wind up” its affairs. Also, where an entity still exists, but has changed its name or has changed its name and entity status, such as when a corporation is converted to an LLC, the UST Cleanup Fund will need documentation of that change.

### *Eligibility for Reopened UST Cleanup Cases*

In certain limited circumstances, landowners who own land on which there was a previous release from a UST(s) that previously was removed may be eligible for reimbursement from the UST Cleanup Fund even though the landowner never owned or operated the UST(s). These landowners may be eligible for reimbursement from the UST Cleanup Fund without having to first obtain an assignment from the former UST owner and/or operator if: 1) the site was the subject of a completed corrective action for the previous release; and 2) additional corrective action is required because of additionally discovered contamination from the previous release. Please note that additional requirements apply. For more information about the requirements, please refer to Health and Safety Code section 25299.57, subdivision (k).

## **Documents Needed to Support Assignment Requests**

The parties must submit a fully executed assignment agreement. Assignors and assignees must provide evidence of signatory authority. Please see the section below on Signatory Authority for more information.

If the claim is being assigned in conjunction with the sale of the property subject to cleanup, or if the property has been previously sold and the buyer or current property owner request assignment of the UST Cleanup Fund claim, please provide the following:

- Signed and Dated Assignment Agreement
- Sales Agreement
- Amendments or Addendums to the Sales Agreement
- Copy of Recorded Deed of Trust or Final Escrow Closing Statement

Additional documentation will be required if the UST Cleanup Fund needs to identify a successor claimant, the UST Cleanup Fund claim being assigned is being reopened, or any other issue arises that affects the assignment.

Upon approval of the assignment agreement, UST Cleanup Fund will direct you to submit required administrative forms. Do not submit these administrative forms until directed to do so by UST Cleanup Fund staff.

## *Signatory Authority*

It is essential that the UST Cleanup Fund ensure that persons signing on behalf of an individual assignor or assignee and persons signing on behalf of a corporation, partnership, LLC, trust, estate, or municipality or other governmental agency have authority to sign. Confirmation of an authorized signature protects the UST Cleanup Fund, the assignor, and the assignee from actions that might lead to scenarios where an individual who does not have the authority to act on behalf of the claimant fraudulently assigns a UST Cleanup Fund claim to another party.

Please see the Authorized Signatory Table below for more information on authorized signatories for different entity types and the types of documentation that may be needed in order for the UST Cleanup Fund to process the assignment. In addition to the authorized signatories listed below, corporations, partnerships, and LLCs may designate another officer or employee of the business to sign on its behalf through a corporate resolution, partnership agreement, authorized signatory letter signed by one of the authorized signatories listed below, or other similar document. Please note that employees of subsidiaries or affiliates may not sign on behalf of the assignor or assignee unless the individual has been designated as an attorney-in-fact.

The UST Cleanup Fund encourages assignors and assignees to sign all documents personally. The UST Cleanup Fund only will accept documents signed by the assignor's or assignee's attorney-in-fact if the assignor or assignee has submitted a Power of Attorney (POA), designating a specific attorney-in-fact to sign and submit documents to the Fund on the claimant's behalf. Please see the UST Cleanup Fund's website for more information on POAs.

## Authorized Signatory Table

ENTITY TYPE	AUTHORIZED SIGNATORIES	TYPES OF DOCUMENTATION REQUIRED
Individual	Claimants filing as individuals need not identify a title.	None
Corporation	President, Chief Executive Officer (CEO), Chair of the Board, or Chief Operating Officer (COO).	Statement of Information or other document listing current officers
General Partnership, Limited Partnership, or Limited Liability Partnership	General Partner  (Note: If the Assignor is a General Partnership, all General Partners must sign the assignment agreement or provide additional documentation disclaiming an interest in the UST Cleanup Fund claim.)	Partnership Agreement or other document listing the General Partners
Limited Liability Company	Manager managed LLCs: A manager of the limited liability company.  Member managed LLCs: A member of the limited liability company.  (Note: Some LLCs use other titles, such as corporate officer titles, instead of member or manager.)	Statement of Information or other document listing current managers, members, officers, or other individuals with signatory authority
Trust	Trustee or Co-Trustees of the trust as stated in the Declaration of Trust or Trust Agreement.	Declaration of Trust or Trust Agreement, including all Amendments  Successor Trustee Designation, if applicable  Grantor's Death Certificate, Wills, and/or other estate documentation, if applicable
Estate	Executor or Administrator of the Estate	Letters Testamentary or Letters of Administration  Grantor's Death Certificate, Will, and/or other estate documentation
Municipality or Other Government Entity	Delegated Official	Ordinance, Resolution, or other delegation giving the official signature authority