

UNDERGROUND STORAGE TANK

*Cleanup Fund*

PROGRAM SUMMARY

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF FINANCIAL ASSISTANCE

REVISED JANUARY 2008

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## **About the Program**

The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 (commencing with section 25299.10 of the California Health and Safety Code (H&SC)) created the Underground Storage Tank (UST) Cleanup Fund (Fund) to help eligible owners and operators of petroleum USTs:

1. Meet federal and state requirements to demonstrate financial responsibility by providing coverage to pay for the costs of cleanup and third party liability caused by an unauthorized release of petroleum from a UST;
2. Provide financial assistance by reimbursing costs of cleanup for unauthorized releases from petroleum USTs; and
3. Provide reimbursement for damages awarded to third parties who are injured by unauthorized releases of petroleum from USTs.

Federal and state governmental entities are not eligible for reimbursement from the Fund. Federal and state entities that own or operate petroleum USTs are not subject to federal financial responsibility requirements, nor are they required to pay the storage fee imposed by the state.

Funds for the program are generated by a storage fee paid by UST owners who are required to have a permit to own or operate a UST. The fee is based on the number of gallons of petroleum placed in the UST and is collected by the Board of Equalization.

The Fund reimburses eligible claimants for eligible, incurred corrective action costs. Corrective action costs include preliminary site assessment, soil and water investigation, corrective action plan implementation, and verification monitoring after the cleanup is completed. Corrective action costs for work performed before January 1, 1988, are not eligible for reimbursement by the Fund. The Fund does not reimburse claimants for corrective action costs until after the work is performed. The Fund also covers third party claims for amounts awarded to a third party for bodily injury or property damage, if the third party award is a court-approved settlement, final judgment, or an arbitration award by a court-appointed arbitrator. The Fund will not reimburse amounts awarded to a third party pursuant to a default judgment.

The maximum amount of reimbursement from the Fund per occurrence is \$1.5 million less the eligible claimant's applicable level of financial responsibility, otherwise known as the claimant's deductible.

The claimant's deductible varies depending upon the claimant's priority classification and compliance with the UST permit requirements.

The Fund does not provide reimbursement for removal, repair, retrofit, or installation of USTs. However, financing is available to eligible participants via two other programs:

1. Replacing, Removal, and Upgrading Underground Storage Tanks Program (RUST), which provides loans and grants to eligible applicants.
2. The Installing Underground Storage Tanks Program (IUST), which provides grants to eligible applicants.

Additional information on these two programs is available at [www.waterboards.ca.gov/cwphome/ustcf/rust.html](http://www.waterboards.ca.gov/cwphome/ustcf/rust.html) or by calling (916) 327-6976.

### **Financial Responsibility**

The United States Environmental Protection Agency (EPA) regulations (Title 40, Code of Federal Regulations (CFR) Subpart (H), Part 280, section 280.90) published October 26, 1988, require owners and operators of USTs to demonstrate through insurance coverage or other acceptable mechanisms that they can pay for cleanup and third party damages resulting from leaks that may occur from their USTs.

On June 9, 1993, the EPA approved California's Fund as a mechanism for meeting the federal financial responsibility requirements for petroleum USTs. UST owners and operators must demonstrate financial responsibility in the amounts required by the federal regulations cited above. Currently, the federally required minimum amounts are:

1. \$1 million per occurrence - Owners and operators of petroleum USTs that are located at petroleum marketing facilities (e.g., service stations and truck stops), or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; or
2. \$500,000 per occurrence - Owners and operators not included in the preceding paragraph.

In addition, UST owners and operators must be covered for an annual aggregate amount. The annual aggregate amount is based on the number of USTs owned or operated and is the total amount of financial

responsibility that an owner or operator must demonstrate to cover all leaks from their USTs that might occur in one year.

The federal required minimum amounts are:

1. 1 to 100 USTs - \$1 million annual aggregate; or
2. 101 or more USTs - \$2 million annual aggregate.

As an alternative to, or in conjunction with, mechanisms authorized by the federal regulations, an owner or operator may demonstrate financial responsibility of up to \$1 million through use of the Fund. To use the Fund as a financial responsibility mechanism, an owner or operator must at all times:

1. Meet Fund eligibility requirements;
2. Demonstrate financial responsibility of at least the following amount per occurrence and per annual aggregate coverage, exclusive of the Fund: \$0 for Priority Class A, \$5,000 for Priority Class B and C, and \$10,000 for Priority Class D; and (See page 10 for more information on priority class requirements.)
3. Demonstrate financial responsibility for any required amount above \$1 million, exclusive of the Fund, for those owners and operators required to comply with the provisions of section 2807(a)(4) of the California Code of Regulations (CCR), Title 23, Division 3, Chapter 18 (Fund regulations).

To obtain more information regarding financial responsibility, refer to the Financial Responsibility Guide (FR Guide) available at [www.waterboards.ca.gov/cwphome/ustcf](http://www.waterboards.ca.gov/cwphome/ustcf).

### **Eligibility Requirements**

In order to submit a claim to the Fund, the claimant must meet all of the eligibility requirements listed below.

The eligibility requirements outlined below include applicable sections cited from the Fund regulations and H&SC, Division 20, Chapter 6.75.

The Fund's statutes and regulations can be viewed online at [www.waterboards.ca.gov/cwphome/ustcf](http://www.waterboards.ca.gov/cwphome/ustcf).

## **Eligibility Requirements (Continued)**

### **Eligible Owner/Operator of the UST Requirement**

**The claimant must be, or have been, the owner or operator of the UST that is the subject of the claim. Federal and state governmental entities are not eligible for reimbursement from the Fund.**

#### **Discussion:**

In order to submit a claim to the Fund, the claimant must: 1) be a current or past owner or operator, or a de facto owner, of the UST from which an unauthorized release has occurred; 2) be required by the regulatory agency to undertake corrective action; and 3) be the individual or entity that has paid or will pay for the costs of cleanup. Owners of real property who are not owners or operators of the UST(s) that is the subject of the claim are not eligible for reimbursement from the Fund.

Purchasers of real property or persons who otherwise acquire real property on which a UST or residential tank is situated may not receive reimbursement from the Fund for a cost attributable to an occurrence that commenced prior to acquisition of the real property if:

1. The purchaser or acquirer knew, or in the exercise of reasonable diligence, would have discovered that a UST or residential tank was located on the real property being acquired; and
2. Any person who owned the site or owned or operated a UST or residential tank at the site prior to acquisition by the purchaser or acquirer would not have been eligible for reimbursement from the Fund.

If an owner of a UST or residential tank is ineligible to file a claim against the Fund, the operator at the time of the act or omission causing the owner's ineligibility is also ineligible to file a claim for the site.

If an operator of a UST or residential tank is ineligible to file a claim against the Fund, the owner at the time of the act or omission causing the operator's ineligibility is also ineligible to file a claim for the site.

If a previous owner or operator of a UST or residential tank is ineligible to file a claim against the Fund, the current owner and the current operator may not receive reimbursement from the Fund for a cost attributable to an occurrence that commenced when a previous owner or operator had ownership or control over the UST or residential tank.

**Fund regulations, § 2810.1  
H&SC § 25299.57**

#### **Exceptions to the Above:**

1. Property owners who are not eligible UST owners or operators may file a claim to the Fund if: 1) they acquired property that has been the subject of completed corrective action and a closure letter has been issued by the regulatory agency; 2) the person who carried out the earlier corrective action filed a claim with the Fund and was eligible for reimbursement; and 3) further corrective action is required by the regulatory agency because of additionally discovered contamination from the same release.

2. A claimant who acquired property on which a UST or residential tank is located may be eligible for reimbursement from the Fund for costs associated with an occurrence that commenced before the claimant acquired the property, despite the ineligibility of the previous owner or operator, if the claimant is not affiliated with the ineligible person and if the claimant otherwise satisfies Fund eligibility requirements.

**Fund regulations, § 2810.1(b)  
H&SC §§ 25299.57(k)(1) and 25299.54(h)(2)**

## **Eligibility Requirements (Continued)**

### **Eligible UST Requirement**

**The tank must be a petroleum UST as defined in section 25281(y) of the H&SC and must be subject to the permit requirements in Chapter 6.7 of Division 20 of the H&SC.**

#### **Discussion:**

The only exception is certain small home heating oil tanks that are covered by the Fund even though they are not USTs and are not subject to the permit requirements. Farm tanks, hydraulic lift tanks, and above ground tanks are examples of tanks that do not fit within the definition of a UST, are not subject to Chapter 6.7 of the H&SC permit requirements or storage fees, and are not eligible for reimbursement from the Fund.

**Fund regulations, § 2804  
H&SC § 25299.24**

### **Permit Requirement**

**The claimant must be, and have been, in compliance with the UST permit requirements in Chapter 6.7 of Division 20 of the H&SC.**

#### **Discussion:**

The Fund claimant must have obtained any UST permit required under Chapter 6.7 of Division 20 of the H&SC when the claimant first became subject to UST permitting requirements or when the applicable local agency began issuing UST permits, whichever is later.

There are two instances where a permit is not required:

1. All USTs were decommissioned under the direction of the regulatory agency prior to January 1, 1984. A decommissioned UST is one that: (1) cannot have inputs or withdrawals because it has been filled with an inert solid; (2) its fill pipes have been sealed; and/or (3) its piping has been removed. If this is the case, the claimant must include a copy of the regulatory agency's decommissioning documentation with the application.
2. The tank is a residential home heating oil tank with a capacity of 1,100 gallons or less.

#### **Exceptions to the Above:**

If a Fund claimant acquires real property where a UST is situated, and despite reasonable diligence, the claimant was unaware of the UST at the time the real property was acquired, the claimant can demonstrate permit compliance if the claimant obtains a UST permit within a reasonable period of time, not to exceed one year, from when the claimant should have become aware of the UST or when the local agency began issuing permits, whichever occurs later.

**H&SC § 25299.57(d)(4)(A) and 25299.57(d)(4)(B)**

**(Continues next page)**

## **Eligibility Requirements (Continued)**

### **Permit Requirement (Continued)**

#### **Permit Waiver**

If the claimant cannot provide evidence of having obtained a permit to own or operate the UST(s), the claimant can request the State Water Resources Control Board (State Water Board) waive the requirement as a condition for eligibility.

#### Waiver Requirement No. 1

The claimant was unaware of the permit requirement, and upon becoming aware of the permit requirement, the claimant complies with H&SC section 25284 (UST permitting requirements) or H&SC 25298 (UST closure requirements) within a reasonable period, not to exceed one year, from when the claimant became aware of the permit requirement.

#### Waiver Requirement No. 2

Before submitting the application to the Fund, the claimant has complied with H&SC section 25299.31 (financial responsibility requirements) and has obtained and paid for all permits currently required.

#### Waiver Requirement No. 3

Before submitting the application to the Fund, the claimant has paid all UST storage fees, interest, and penalties imposed pursuant to Article 5 (commencing with section 25299.40) and Part 26 (commencing with section 50101) of Division 2 of the Revenue and Taxation Code for the UST that is the subject of the claim.

**Claimants who qualify for the permit waiver must pay a higher deductible on their claim, depending upon the date that claimant complies with UST permitting or closure requirements.**

Claimants who comply on or before December 22, 1998, must pay twice the amount of deductible that would otherwise apply to the claim. Claimants who comply after December 22, 1998, must pay a deductible that is four times the amount that would otherwise apply to the claim.

**H&SC § 25299.57(d)(4)(C) and 25299.57(d)(4)(D)**

### **Eligible Unauthorized Release Requirement**

**There must have been an unauthorized release of petroleum discovered, reported to, and confirmed by, the responsible regulatory agency.**

#### **Discussion:**

The claimant must submit documentation of the discovery of the unauthorized release from the UST and reporting of the unauthorized release to the regulatory agency. Documentation should include a copy of the UST Unauthorized Release (Leak/Contamination) Report filed with or by the regulatory agency, correspondence with the regulatory agency verifying the date of discovery and reporting of the release, and correspondence from the local agency to the claimant confirming that an unauthorized release has occurred at the site and that corrective action is required.

**Fund regulations, § 2811(a)(1)  
H&SC § 25299.57(d)(1)**

## **Eligibility Requirements (Continued)**

### **UST Storage Fee Requirement**

**The claimant has paid all currently due fees, interest, and penalties imposed pursuant to Health and Safety Code, Division 20, Chapter 6.75, Article 5 (commencing with section 25299.40) and Revenue and Taxation Code, Division 2, Part 26 (commencing with section 50101).**

**Discussion:**

Every owner of a UST for which a permit is required must pay a storage fee for each gallon of petroleum placed in the UST. Claimants will be required to submit documentation from the Board of Equalization verifying that fees for the UST that is the subject of the claim have been paid. Additional information is available at [www.boe.ca.gov](http://www.boe.ca.gov) or by calling 1-800-400-7115.

**Fund regulations, § 2811(a)(6)  
H&SC § 25299.57(d)(5)**

### **Regulatory Directive Requirement**

**The claimant must have undertaken necessary cleanup actions in accordance with applicable federal and state requirements.**

**Discussion:**

The claimant must have been in contact with the regulatory agency with jurisdiction over the subject site and must have been ordered or directed by the regulatory agency to clean up the site. In addition, the claimant must have been in compliance with orders or directives issued by the regulatory agency.

If the claimant knew of the unauthorized release before January 1, 1988, the claimant must have initiated the corrective action on or before June 30, 1988. If the claimant failed to initiate corrective action on or before June 30, 1988, the claimant is not eligible for reimbursement from the Fund.

**Fund regulations, §§ 2811(a)(4) & 2811(a)(5)  
H&SC § 25299.54(c)**

## **Eligibility Requirements (Continued)**

### **Financial Responsibility Compliance Requirement**

**The claimant must be in compliance with the applicable financial responsibility requirements imposed by federal and state law.**

**Discussion:**

If a UST leaks, the owner and operator may be faced with high cleanup costs or with lawsuits brought by third parties. Financial responsibility requirements ensure that money will be available to meet these costs.

Because of the threat to both human health and the environment caused by leaking USTs, the federal government requires owners and operators to demonstrate financial responsibility for their USTs.

Title 40, CFR, Part 280, Subpart H, requires owners and operators to show through an approved method that they can pay for cleanup and third party damages resulting from accidental releases from their USTs.

All owners or operators of petroleum USTs must demonstrate financial responsibility, unless exempted by the federal regulations. If the owners and operators are separate parties, only one is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.

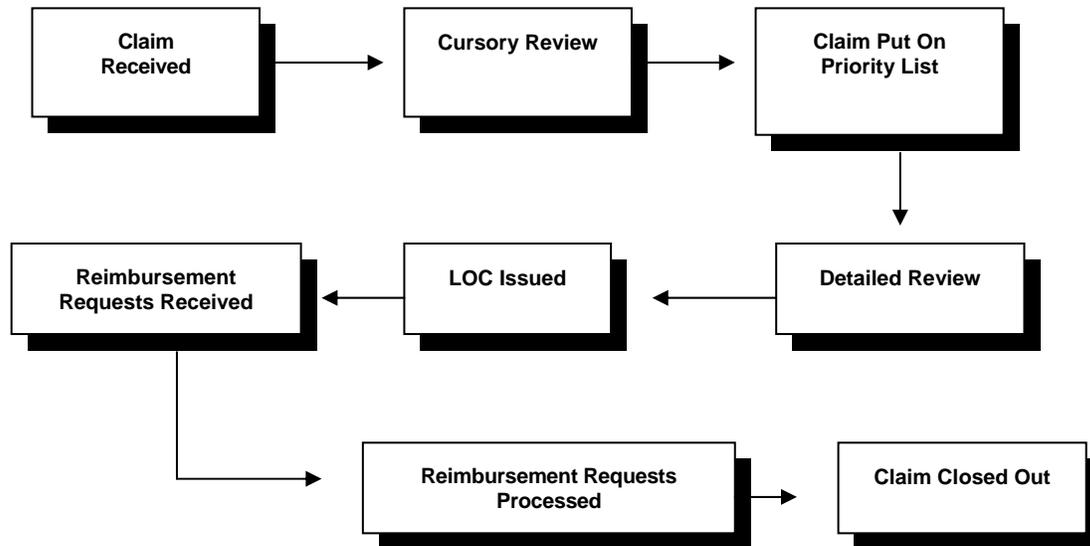
Financial responsibility requirements are contained in the Fund's FR Guide, Article 3 of the Fund's regulations, and in Title 40, CFR, Part 280, Subpart H.

A claimant may use the Fund to meet financial responsibility requirements of up to \$1 million, less the deductible amount, if the claimant complies with all Fund eligibility requirements.

**Fund regulations, §§ 2805-2809.2  
H&SC §§ 25299.31 & 25299.57(d)(3)(A)**

## Claims Processing

### UST CLEANUP FUND GENERALIZED CLAIM PROCESS



Upon receipt of an application, the Fund assigns a claim number to the application. This number is used throughout the processing of your claim. Refer to this number whenever inquiring about the status of your claim. This number is used for administrative purposes only and does not indicate a claim's status or eligibility.

The application requests information that is necessary for the Fund to make an eligibility determination for participation in the Fund and reimbursement of eligible costs. Your application is reviewed for completeness and eligibility. In conjunction with the regulatory agency, the Fund ensures that your cleanup efforts are in compliance with Chapter 6.7 of Division 20 of the H&SC, applicable federal regulations, and any orders and directives issued by the State Water Board, the appropriate Regional Water Quality Control Board (Regional Water Board), and your local regulatory agency. This consists of a review of your site file maintained by the regulatory agency and discussions with agency staff assigned to oversee your site cleanup activities.

The Fund may need to contact you for more information in order to determine your eligibility or appropriate priority class. You must notify the Fund if you move or change your telephone number.

If the Fund determines that your claim is eligible for funding, it will be placed on the priority list in the appropriate priority class according to the date the Fund received your completed claim application. If the

Fund determines your claim is not eligible, you will be notified and given the reasons for this determination. You will also be advised of your appeal rights.

Timing of the review and approval process is dependent on the submittal of a completed application including all required documents. Refer to the Claim Application Checklists for all of the documents that are required to be submitted with the application.

### **Priority Class**

The Fund's legislation provides a priority system to first reimburse those claimants who are least able to pay the costs of cleanup. The four classifications are:

1. Class A (highest priority): owners of residential tanks as defined in Article 2 of the Fund regulations;
2. Class B (second priority): small businesses with 100 or fewer full and part-time employees and average annual gross receipts of twelve million dollars (\$12,000,000) or less over a period of three years;
3. Class C (the third priority): owners or operators of USTs who own and operate a business that employs fewer than 500 full and part-time employees; and
4. Class D (the fourth priority): all other claimants.

### **Priority List**

A claim will be placed on the priority list once a completed and approved claim is accepted by the Fund. The claim's priority ranking will be based on its priority class and the date the Fund received the application. The Fund randomly ranks all claims received on the same date. The Fund generally processes claims on the priority list according to priority class and the claim's rank on the list.

The Fund updates the priority list once a month and adds newly approved claims. Existing claims on the priority list retain their relative ranking within their priority class and new claims are ranked in their appropriate priority class below those claims carried over from the previous list. New claims in a higher priority class are processed before older claims in a lower priority class.

The updated priority list is available at [www.waterboards.ca.gov/cwphome/ustcf](http://www.waterboards.ca.gov/cwphome/ustcf).

## **Letter of Commitment**

The Letter of Commitment (LOC) is the legal document used to encumber funds for cleaning up a contaminated site. The Fund issues an LOC when: 1) all eligibility requirements are met; 2) the regulatory oversight agency concurs that the site is in compliance; 3) the claim is reachable on the priority list; 4) funding is available; and 5) eligible corrective action and third party costs incurred have exceeded the deductible.

The initial amount of the LOC will be based on potentially eligible costs incurred to date, and an estimated amount to cover the costs of completing any work in progress. You will be contacted by the Fund to complete documents that are necessary for the preparation of your LOC. Once your LOC is approved, your claim will be removed from the Priority List. The Fund may amend the LOC at a later date if you incur additional eligible costs.

Along with the LOC, you will receive Reimbursement Request instructions that contain details on how to submit a reimbursement request for eligible costs incurred.

## **Pre-Approval**

Pre-approval is a method by which the claimant can come to an understanding with the Fund with regards to eligible reimbursable costs prior to starting all or part of the cleanup. Pre-approval is not prepayment nor is it an exemption from any required documentation or bid requirement.

After a claimant receives directives to begin corrective action from the appropriate regulatory agency, the claimant should choose a consultant to prepare a workplan. The workplan is then submitted to the regulatory agency for approval. Upon approval, the claimant should obtain three bids or proposals based upon the workplan. The claimant may then contact the Fund Technical Unit for its site and to obtain a pre-approval form that includes a list of documents to be submitted with the pre-approval request. A complete listing of Technical Unit Fund staff and phone numbers is available at [www.waterboards.ca.gov/cwphome/ustcf](http://www.waterboards.ca.gov/cwphome/ustcf).

## **Reimbursable Costs**

Eligible UST owners and operators who have been issued an LOC may submit claims for:

1. Reimbursement of corrective action costs incurred for work performed on or after January 1, 1988;
2. A claim for reimbursement of amounts awarded in third party compensation; and
3. Regulatory Technical Assistance Costs (RTAC), to a maximum of \$3,000 per occurrence, incurred for work performed on or after January 1, 1997.

The Fund may only reimburse reasonable and necessary corrective action, regulatory technical assistance, and third party compensation costs that are incurred by or on behalf of a claimant. The Fund may only reimburse claimants for corrective action work that has been approved by and is acceptable to the appropriate regulatory agency. If a claimant has been reimbursed for a cost, the Fund may not reimburse any other claim for the same cost. Refer to the Fund's cost guidelines and regulations for a detailed list of non-reimbursable costs (available at [www.waterboards.ca.gov/cwphome/ustcf](http://www.waterboards.ca.gov/cwphome/ustcf)).

## **Third Party Costs**

Third party costs are costs awarded to a third party by a judgment or court-approved settlement or arbitration award. Costs incurred as a result of a default judgment are not eligible for reimbursement. Third parties do not include owners of the real property from which the release occurred, owners or operators of the USTs that are the subject of the claim, or tenants or landlords of the sites.

Third party costs are only eligible for reimbursement if the claimant has not yet been reimbursed in excess of \$1 million (less the deductible). Once a claimant has been reimbursed for \$1 million in eligible costs, an additional \$500,000 per occurrence is only available for reasonable and necessary corrective action and regulatory technical assistance costs. The additional \$500,000 may NOT be used to reimburse the claimant for any third party costs.

Eligible third party costs are:

1. Medical expenses occasioned by an unauthorized release;

2. Actual loss of wages or business income caused by an unauthorized release;
3. Actual expenses for remedial action necessary to remedy the effects of property damage caused by an unauthorized release; and
4. Damages equal to the fair market value of the property rendered permanently unsuitable for beneficial use by an unauthorized release.

### **Three Bid Requirements**

Fund regulations require claimants to obtain at least three bids or proposals prior to contracting for corrective action work. Any work conducted after December 2, 1991, must be supported by at least three bids or proposals, except for:

- Work already under written contract as of December 2, 1991, including continuation of work underway if covered by such a contract;
- The first \$10,000 of eligible corrective action costs (costs for tank removal, upgrade or replacements are not eligible corrective action costs); and
- Corrective action work conducted by a local agency force account on their own site(s).

Effective July 1, 1995, the three bids or proposals requirement was modified to include claims for professional and geologic work and claims for remediation construction contracting work.

Although corrective action is defined in four phases (see Title 23, Chapter 16, Article 11 of the CCR), the Fund recognizes that for practical purposes there are two distinct efforts: contamination investigation and contamination cleanup. At a minimum, the claimant must receive three bids or proposals for the investigation effort (Phases I and II) and three bids or proposals for the contamination cleanup (Phases III and IV).

Claimants must follow applicable state laws and regulations in procuring qualified consultant and contractor services, and must ensure that such services are obtained from qualified firms at a reasonable price. Claimants have the ultimate responsibility for selecting whom they wish to hire.

When three bids or proposals have been obtained, the Fund will generally limit reimbursement to the lowest bid or proposal. The Fund may waive the three bids or proposals requirement if Fund staff find that based on

the information submitted, the three bids or proposals requirement is unnecessary, unreasonable, or impossible to comply with under the circumstances pertaining to a particular claim.

### **Double Payment**

Claimants are not entitled to reimbursement of costs that have been or will be reimbursed from another source. Claimants are required to identify under penalty of perjury all funds received from any source, including, but not limited to, insurance claims, legal judgments, contributions from other potentially responsible parties, or any other source regardless of how the funds were characterized, which were related to or paid in consideration of the UST release that is the subject of the claim. A claimant may not be reimbursed by both the Fund and another party for the same cost. If a claimant is reimbursed by another party for costs that were previously reimbursed by the Fund, the claimant must return those funds to the Fund.

### **Appeals Process**

There are several reasons why a claimant may wish to appeal a decision by the Fund, the Regional Water Board, or the local regulatory agency. Therefore, it is important for claimants to understand the roles and responsibilities of each of these agencies and their different appeal processes if claimants are not satisfied with the actions or inactions of any of these agencies' staff.

The Fund strongly encourages responsible parties to resolve any issues and problems by working with the appropriate regulatory agency contact. Regulatory agencies may also have an informal appeal process that can be used to resolve disputes. Certain actions of regulatory agencies may be appealed to the State Water Board. This review is separate and independent from the Fund's appeal process.

The Fund's appeal process can be summarized as follows: (Refer to Article 5 of the Fund regulations for complete information on the Fund's appeal process.)

**Staff Decision:** Fund staff review applications and reimbursement requests in order to determine whether claims and costs are eligible.

**Fund Manager Decision:** Any claimant who disagrees with a Fund staff decision may request review of the staff decision by the Fund Manager, who will then issue a Fund Manager Decision.

**Final Division Decision:** Any claimant who disagrees with the Fund Manager Decision may request review of the Fund Manager Decision by the Deputy Director of the Division of Financial Assistance, who will then

issue a Final Division Decision. Additionally, claimants may request that the Deputy Director of the Division of the Financial Assistance review a staff decision directly, instead of requesting the Fund Manager review the staff decision.

**Petition to the State Water Board:** If the claimant disagrees with the Final Division Decision, the claimant may file a petition with the State Water Board asking the State Water Board to review the Final Division Decision.

### **“On Behalf Of” Agreements**

The Fund may only reimburse a claimant for costs incurred by the claimant, or by another person on behalf of the claimant pursuant to an express agreement. Such agreements are called “on behalf of” agreements. To be a valid “on behalf of” agreement, the agreement must expressly create both an obligation by one entity to incur the costs on behalf of the claimant and an obligation by the claimant to repay those costs if the claimant is reimbursed by the Fund. An “on behalf of” agreement cannot be used to circumvent priority.

More information regarding “on behalf of” agreements can be found in the following State Water Board orders: *In the Matter of the Petition of Quaker State Corporation*, Order WQ 97-06-UST (*Quaker State*) and *In the Matter of the Petition of Hollis Rodgers, et al.*, Order WQ 99-02-UST (*Hollis Rodgers*). The *Quaker State* and *Hollis Rodgers Orders* are available at [www.waterboards.ca.gov](http://www.waterboards.ca.gov) (see Board Business, Resolutions/Orders/Decisions, Water Quality Orders, 1997 and 1999 respectively).

### **Assignments**

In April 2000, the State Water Board considered a petition requesting the State Water Board to allow a Fund claim, or eligibility to file a Fund claim, to be assigned to an otherwise ineligible party. (See *In the Matter of the Petition of the Lake Publishing Company*, Order: WQ 2000-06-UST (*Lake*).) The *Lake Order* is available at [www.waterboards.ca.gov](http://www.waterboards.ca.gov) (see Board Business, Resolutions/Orders/Decisions, Water Quality Orders, 2000, sixth item).

Pursuant to the *Lake Order*, the Fund will honor a claimant’s assignment of its rights to reimbursement from the Fund, under certain circumstances. In many respects, an assignment is very similar to the Fund’s long-established practice of permitting “on behalf of” agreements.

**Terms:**

“Assignor” -- a party who is eligible to apply to the Fund, or who is already a claimant to the Fund.

“Assignee” -- usually a party who is not eligible to file its own claim to the Fund, but is not ineligible because of its own conduct/misconduct at the site.

**Reimbursement Restrictions and Procedures under Assignments**

- An Assignee essentially steps into the shoes of the Assignor.
- Only costs incurred and/or paid by the Assignee after the effective date of the assignment agreement are eligible for reimbursement to the Assignee.
- Assignments cannot be used to circumvent priority.
- The Assignor must demonstrate financial responsibility under federal law.
- Assignor may not use an assignment to unravel the provisions of a previous release or indemnification agreement.

After an assignment agreement is accepted, the Assignee may be reimbursed for costs associated with cleanup of the contaminated site. An assignment agreement cannot be backdated and becomes effective upon execution by the parties to the agreement. Therefore, only costs incurred and paid by the Assignee after the effective date of the assignment agreement are eligible, consistent with the requirements in *Quaker State* and *Hollis Rodgers*. Once the assignment is in place, the Fund may only reimburse the Assignor for costs incurred by the Assignor before the effective date of the assignment.

Additional information regarding assignments and “Sample Provisions for Assignments” is available at [www.waterboards.ca.gov/cwphome/ustcf](http://www.waterboards.ca.gov/cwphome/ustcf) (see Assignment of Claim). This guidance document can be used by parties to enter into their assignment agreement.

Information regarding assignments or copies of the above information can be obtained from the Fund by calling 1-800-813-FUND.

## **Commingled Plume Account**

A commingled plume occurs when groundwater is contaminated by petroleum from two or more discrete unauthorized releases originating from separate sites and plumes from the releases have mixed or encroached upon one another to the extent that the corrective action performed on one plume will necessarily affect the other.

Unauthorized releases from USTs are a major source of petroleum-contaminated commingled plumes. Commingled plume sites represent a special problem to California's groundwater protection efforts because they often have serious water quality impacts, involve parties that disagree as to liability, and include cleanups that continue to be stalled or handled in a piecemeal, haphazard, expensive manner. Unless corrective action is performed in a coordinated manner, corrective action of commingled plumes can be ineffective.

The Commingled Plume Account was created to encourage responsible parties with commingled plumes to coordinate their cleanup efforts, avoid litigation, more rapidly address required cleanup, and significantly reduce the costs of cleanup. Ten million dollars (\$10,000,000) is appropriated each fiscal year for the Commingled Plume Account.

Some of the benefits of the Commingled Plume Account are:

1. Identified responsible parties that contributed to the plume may file one joint claim;
2. Responsible parties that are eligible for reimbursement from the Fund and responsible parties that are not eligible for reimbursement from the Fund can be joint claimants on a commingled plume claim if specified requirements are met. (Reimbursement of eligible costs will not be impacted because of the inclusion of ineligible parties or ineligible releases, so long as at least 85 percent of the plume is composed of petroleum contamination from an unauthorized release(s) from a UST(s) whose owner(s) or operator(s) is (are) eligible for payment of a claim pursuant to section 25299.54 of the H&SC.);
3. The maximum funding per commingled plume claim is up to \$1.5 million per occurrence for which a UST owner or operator named in the joint claim is eligible for reimbursement pursuant to section 25299.54 of the H&SC; and

4. Commingled Plume Account claims have their own priority list, separate from the priority list of individual claims to the Fund.

A commingled plume does not include either of the following:

1. Contaminated groundwater plumes resulting from unauthorized releases or discharges from a single site; or
2. Soil contamination, unless it can be demonstrated that the contaminated soil is an immediate threat to groundwater.

Eligibility information about the Commingled Plume Account and application procedures are contained in the Commingled Plume Account Program Guide available at [www.waterboards.ca.gov/cwphome/ustcf](http://www.waterboards.ca.gov/cwphome/ustcf) or by calling 1-800-813-FUND.

### **Power of Attorney**

The Fund encourages claimants to sign all Fund documents personally. Claimants may, however, want a designated representative to sign Fund documents on the claimant's behalf. The Fund will only accept documents signed by the claimant's representative if the claimant has submitted a Power of Attorney (POA), designating a specific representative to sign and submit documents to the Fund on the claimant's behalf.

A Fund-specific POA form is available at [www.waterboards.ca.gov/cwphome/ustcf](http://www.waterboards.ca.gov/cwphome/ustcf) or by request. Claimants may also choose to use a commercially available POA form or have their own legal counsel prepare a POA for them.

The Fund advises claimants to not designate a consultant or contractor performing work on a project site as the claimant's representative due to the potential for a conflict of interest between the claimant and the consultant or contractor.

**Claimants are personally responsible for and will be bound by any assertions made to the Fund by the claimant's designated representative pursuant to a POA. If the claimant's designated representative makes a false statement or misrepresentation to the Fund, the claim may be disqualified from the Fund.**

## **Change of Address**

In the event a claimant/joint claimant's address changes, the claimant must complete and submit an Address Change form to the Fund. This form is for a change of address only. Claimants/joint claimants should enter their new address exactly as they would like it to appear on their LOC, reimbursements and all other information that will be mailed. If a claimant has multiple claims with the Fund, only one form will be needed in order to change the address on all of the claimant's claims. Claimants may obtain the Address Change form at [www.waterboards.ca.gov/cwphome/ustcf](http://www.waterboards.ca.gov/cwphome/ustcf) or by calling 1-800-813-FUND.

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## NOTES

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