

# **USTCF TASK FORCE FINAL REPORT**

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*January 25, 2010*

## **BACKGROUND**

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### **TASK FORCE CREATION AND PURPOSE**

By way of Resolution 2009-0042 (adopted May 2009), the State Water Resources Control Board (SWRCB) created this Task Force to review the Underground Storage Tank Cleanup Fund (USTCF) and the circumstances associated with its 2008/2009 cash-flow crisis and to make recommendations for process improvement. Task Force members represent the diversity of stakeholders affected by the USTCF. These include owners and operators of UST systems, environmental consultants, regulatory agency staff and representatives from the Western States Petroleum Association, the California Independent Oil Marketers Association and the Sierra Club. The Task Force met approximately twice a month from June through December 2009. At the earliest meeting, members agreed that the purpose of the Task Force was to return the USTCF to its intended function – a stable and reliable program for the reimbursement of costs associated with releases of hydrocarbons from underground storage tanks (USTs).

### **BACKGROUND**

The USTCF was created by the Barry Keene Underground Storage Tank Trust Fund Act of 1989 (Health and Safety Code, division 20, chapter 6.75, section 25299.10 et seq.). In its opening section, the Act described the public health and water quality benefits associated with a “comprehensive, uniform, and efficient corrective action program.” The mission of the USTCF was primarily financial. Although its existence facilitated the protection of human health and the environment, its stated purpose was the reimbursement of costs associated with corrective action taken at eligible petroleum UST sites.

Periodically, the USTCF has experienced cash availability difficulties. Manifested most commonly as funding shortages, the difficulties have sometimes been remedied by (among other measures) increasing the fee flowing to USTCF reimbursement accounts. In 2008, however, the USTCF experienced a sudden and severe cash shortage – some existing claims were suspended, the funds required to reimburse eligible costs already incurred by tank owners and operators (and contractors on their behalf) were not expected for years. The consequences were abrupt and severe. While a fee adjustment was seen as a possible component of a durable solution, due to the nature and magnitude of the collapse, it was clear that the program required immediate and comprehensive attention. As noted above, the SWRCB created this Task Force to recommend immediate and longer term changes.

### **CONTENTS OF TASK FORCE REPORT**

This report includes a Summary of Recommendations followed by a detailed description of the Task Force work and its findings and recommendations. Following this description is a discussion of external factors that hinder the efficient operation of the reimbursement program – aspects that are largely outside the control of the Division of Financial Assistance (DFA) and this

Task Force. While the DFA cannot provide an immediate fix to these issues, we discuss how they affect the USTCF and could be productively addressed by others.

This report concludes with a presentation of specific performance-related issues and recommendations for change. The Task Force believes that attention to these areas will create a reliable and responsive reimbursement program; an equitably funded resource that owners and operators can turn to for assistance – one that will provide resources necessary for the protection of human health, the environment, and California’s increasingly precious supply of clean drinking water.

## **SUMMARY OF TASK FORCE RECOMMENDATIONS**

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### **Recommendation 1: Ensure Adequate Staffing Resources and Expertise For Claim Processing and Program Improvement**

- Action Requested:
1. The SWRCB should ensure the USTCF has adequate staff to put the increased revenue stream resulting from AB 1188 to its intended purpose.
  2. The USTCF should endeavor to immediately fill the seven open management and staff level positions resulting from retirements and attrition.
  3. The USTCF should add accounting and financial expertise to the list of screening criteria for eligible candidates for management and staff positions at the USTCF.

### **Recommendation 2: Efficiency and Management of Reimbursement Request Handling**

- Action Requested:
1. The USTCF should re-emphasize the importance of utilizing standardized invoices and forms. Where the format of invoices submitted with Reimbursement Requests (RRs) does not conform to submittal requirements, the use of the existing invoice summary form should be required. Other RR documents should be reviewed for standardization, such as the narrative history.
  2. The USTCF must take appropriate steps to improve efficiencies and internal processes to reduce the payment processing time for approved RRs.
  3. The USTCF should evaluate transitioning to a less paper intensive processing system.

**Recommendation 3: Establish Budgeting and Reserve Policy**

- Action Requested:
1. The USTCF should release funds as early as possible to reimburse Claimants, many of which are now in debt or facing potential bankruptcy due to payment delays.
  2. The USTCF should regularly review its budget projections for revenues, claims payments and manage its cash flow to accelerate payments to Claimants and provide this information to stakeholders on the USTCF's webpage.
  3. On at least a semi-annual basis, the Division of Administrative Services (DAS) and the USTCF should evaluate the adequacy of the reserve and, if possible, reduce the amount thus freeing up funds to provide additional financial relief for Claimants.

**Recommendation 4: Leverage the Pre-Approval Process**

- Action Requested: No later than June 2010, the USTCF should introduce an improved pre-approval process. The USTCF should consider including in this new process assigning staff to claims on a "Total Project" basis, developing a Conceptual Project Description checklist, requiring the pre-approved scope of work to match the associated request for cost reimbursement, and creating an efficient process for the USTCF to resolve any disputes with the implementing agency.

**Recommendation 5: Use of Existing SWRCB Authority to Close Cases**

- Action Requested: Each quarter, the USTCF should present cases to the SWRCB for closure under the 5-Year Review process.

**Recommendation 6: Monitor Progress on Un-suspended Priority C Claims**

- Action Requested: The USTCF's management and the SWRCB should closely monitor the financial demand on the USTCF and continually post progress reports to the USTCF web site for public review. Potential funding shortfalls should be identified before they materialize and necessary changes evaluated and implemented in a timely manner.

**Recommendation 7: Improve Communication, Outreach, and Training**

- Action Requested: The USTCF should increase its public outreach efforts. This should include a combination of the following suggestions: continuing to post information to its website, providing e-mail updates through the ListServ Management System, and hosting webinars, seminars or conferences.

### **Recommendation 8: Increase Functionality of Cost Guidelines**

Action Requested: The USTCF should create a small working group to evaluate and update the cost guidelines including, but not limited to, equipment expenses, labor rates and project tasks.

### **Recommendation 9: Creation of USTCF Advisory Group**

Action requested: The USTCF should form an Advisory Group to serve as a “sounding board” for USTCF staff, to facilitate the exchange of information with the regulated community, to encourage a transparent process for the program and provide regular input regarding opportunities to improve processes.

## **ISSUES, EVALUATION, AND RECOMMENDATIONS FOR ACTION**

### **PREVIOUS RECOMMENDATIONS AND ONGOING ACTION**

#### **Auditor Recommendations – September 2, 2009**

Resolution 2009-0042 stipulated that an outside auditor be retained and that the Task Force make recommendations by early September 2009 for auditor consideration. While the Task Force was necessarily separated from and could not receive feedback from the selected auditor during the audit, the Task Force was able to meet with contracting staff from the SWRCB to discuss the focus and constraints of the audit. A representative from the outside auditing firm attended several Task Force meetings as an observer.

As directed by the Resolution, the Task Force delivered its recommendations for the auditor in a letter dated September 2, 2009 (Attachment 1).

#### **Immediate-Term Recommendations – October 1, 2009**

At its earliest meeting, the Task Force agreed that the severity of the crisis required action before the January 2010 date for final program-improvement recommendations. Accordingly, the Task Force devoted its earliest meetings to the examination of what actions could be taken to free cash for the payment of claims, expedite the filling of program coffers with Board of Equalization-collected fee revenue, and collateralize existing obligations for the purposes of claim-financing.

The immediate-term action items were presented to the SWRCB in an October 1, 2009 letter and presented at the October 6, 2009 SWRCB meeting (Attachment 2).

#### **Interim Task Force and USTCF Actions**

During the six-month term of the Task Force, USTCF Staff and Task Force members have worked together to recommend and implement changes in USTCF processes, procedures and

documentation. These changes have improved communication with claimants regarding reimbursement timeframes and program requirements. Most importantly, these changes have expedited the processing of existing claims. For example, the USTCF has implemented a triage process which standardizes deficiencies which result in the return of an RR. This triage process results in more timely communication with a Claimant for less significant RR issues and results in faster resolution and RR processing.

Concurrently with the Task Force's work, the BOE has adjusted the remittance schedule for the largest owners/operators to leverage the increase in fees brought by the passage of AB 1188, resulting in an increase of approximately \$8MM - \$10MM in funds available for reimbursement in early 2010.

Task Force members and the USTCF staff have worked tirelessly to allow claimants to use USTCF claims and approved reimbursements as collateral to obtain loans for UST clean up related expenses (i.e. bridge-financing).

The Task Force believes that its discussions with USTCF staff, and the cooperation facilitated by Task Force meetings, have helped streamline procedures and prompt other immediate improvements that may not have otherwise occurred.

## **USTCF PROGRAM CONSTRAINTS**

While the USTCF can make changes to increase its efficiency and improve its budgeting and management of cash flow, its ultimate viability cannot be safeguarded by the USTCF alone, as the USTCF reimburses expenses flowing from a process over which it has only limited control. In an effort to treat the issue comprehensively, the Task Force has identified a number of external factors that affect the USTCF program. The Task Force believes that while changes in these areas are beyond the USTCF's immediate control, their description is beneficial for the sake of context and understanding.

### **Limitations by Statute and Other Factors**

At the time the USTCF was created, a claim ceiling of \$1MM (with a very small initial claimant deductible) was established. The claim ceiling was raised to \$1.5MM in the mid-1990s to accommodate a perceived financial burden associated with the mitigation of the gasoline additive MtBE. Other than the small deductible, the claim ceiling and a requirement that costs be reasonable and necessary, no financial restriction is put on the Claimant by the USTCF other than the stipulation that only costs associated with activities "directed and approved" by overseeing agencies are eligible for reimbursement. Frequently, there are not sufficient incentives to complete response actions quickly and cost-effectively; only the claim cap functioned as a meaningful mechanism for cost control in meeting project objectives.

The Task Force studied program modifications that would create incentives to increase the pace

at which cleanups proceed and, as a consequence, lower their overall corrective action costs. Options included:

1. Changing the deductible from a fixed up-front fee to a fixed percentage – Arizona and Nevada, for example, apply a 10% deductible to every cost claimed for reimbursement. This out-of-pocket expense allows a different manner of claimant oversight and process participation.
2. Introducing a hold-back or retainer, such as Florida uses, where a percentage of eligible costs are held until the completion of a response action or a milestone. The hold back percentage would be selected such that it did not cause financial duress, but it would be sufficiently large to motivate more expedient completion of project tasks.
3. Paying only upon the completion of key substantial project activities (the completion of the site assessment or an initial remedial action, for example). This approach is used in Texas and Tennessee.
4. In recognition of the phasing out of MtBE, rolling the claim ceiling back to \$1MM.
5. Establishing a claim expiration date (reasonably firm, but open for appeal under certain circumstances).

The Task Force examined each option, particularly with regard to the resistance that would be encountered from various stakeholders. The Task Force concluded that legislative action would be required to implement any of these actions and it would be difficult to garner support for such changes from various stakeholders making the prospects for success extremely unlikely.

### **External Pressures Affecting the USTCF**

The Task Force reviewed non-USTCF factors and influences that work against expediency and cost-effectiveness at UST clean ups to identify opportunities to protect the USTCF financial resources. With the exception of the influence the USTCF brings through the pre-approval process and its review of what is “reasonable and necessary” for cost determinations, the Task Force believes that the USTCF is too far removed from the process of site mitigation to exert any meaningful control. The Task Force did, however, identify those process attributes most in need of attention by others. These attributes included (with suggestions for further examination where appropriate):

1. Case Closure. This Task Force supports and encourages the work of others aimed at clarifying and applying a more rational and consistent approach to determining when response actions at a site are completed. Presently, no clearly articulated criteria exist to identify when all technically practicable and appropriate response actions have been implemented. Consequently, it is not uncommon for remedial systems to operate inefficiently or for post-remedial monitoring to continue for many years following the conclusion of the last reasonable mitigating action. Improvements in this area are badly needed.

2. Pre-Closure Processes. Time required for site investigation would be substantially reduced if project activities were planned and implemented in a more comprehensive manner. It is not uncommon for service providers and overseeing agencies to proceed in exceedingly small steps (particularly during the investigation phase of work) i.e. three monitoring wells, then an additional well, then a soil vapor survey, then an additional well ... and on and on – with each micro-component documented in a report and each subsequent component proposed in a stand-alone work plan. As a consequence, site investigations can take five years or more. While the USTCF may be able to affect an aspect of this piecemeal approach through the pre-approval process (see the Recommendations section of this report), meaningful changes are only likely to occur if they are implemented by the overseeing agencies, the consultants and the responsible parties.

3. Agency Coordination and Oversight. UST cleanups in California are overseen by over 100 separate agencies. Consequences flowing from the disconnected system include:

- Inconsistent interpretation of water quality policies across the state.
- An inadequate system for assessing needs and delivering technical resources and training to implementing agencies.

This organizational structure increases project lifespan and expense, consequently creating a greater burden on the USTCF's financial and staffing resources than would otherwise be necessary.

While it is outside the scope of this Task Force to make substantive recommendations regarding agency structure, we urge the SWRCB take decisive action to address these issues. The first steps should include an evaluation of the regulatory landscape, the identification of possible courses of action, and impediments to progress. The range of outcomes could include:

- No sweeping change with respect to constituent agency structure or accountability, but functional improvement facilitated by the creation of a framework within which these agencies would operate.
- Modest change. Regional reporting structures, where local programs report to and are meaningfully coordinated and supervised by Regional Boards, with the Regional Boards in turn more meaningfully overseen by the SWRCB.
- Sweeping change. A plan for substantial agency restructuring – the possible unification of all toxics cases (UST, Site Clean Up Program (SCP)– all substances, all media) under the aegis of a single (existing or new) California agency. Most other states utilize a single-agency approach.

4. Lack of Competitive Incentive. The quality and consistency of technical approaches to underground tank cleanup in California suffers due to a lack of competitive incentive.

Since the USTCF reimburses up to \$1.5MM per occurrence (largely regardless of technical approach), those involved with UST site clean ups have little incentive to implement innovative, streamlined and cost effective approaches. Often, from the claimant perspective, the most appealing attribute of a consultant (particularly for smaller claimants) is their willingness to conduct work and wait for reimbursement from the USTCF.

Division of Water Quality (DWQ) staff recently undertook a sweeping and substantial rewrite of the Leaking Underground Fuel Tank (LUFT) Manual. The revised LUFT Manual is the product of accumulated knowledge and experience from UST stakeholders, takes advantage of web-based communication technology, and has been supported by contractors funded by EPA. This Task Force applauds this important undertaking and wholeheartedly supports the DWQ in this process. The Task Force hopes that all implementing agencies will come to rely on the practices and advancement recorded in the new LUFT Manual.

## **RECOMMENDATIONS**

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The sudden 2008 upset in the USTCF ability to pay claims in a timely manner owed primarily to inadequate cost controls and budgeting process. Most simply described, for some years the USTCF operated at a surplus – it received more in fee revenue than it disbursed to pay claims. In more recent years this trend reversed, though the sum built up over the years of surplus filled the growing gap between revenue and expenses and the USTCF remained able to pay claims year after year. The revenue/expense gap and the value of the dwindling surplus, however, were not effectively monitored, and when the surplus was exhausted, the system was left operating at a substantial and sudden deficit. While the current backlog in unpaid claims is a consequence of an unmonitored budget process that requires attention, the Task Force identified a number of other areas that warranted illumination and improvement.

Task Force recommendations address USTCF budgeting and cash management, performance and process issues, staffing levels, case closure, and communication and outreach improvements.

### **Recommendation 1: Ensure Adequate Staffing Resources and Expertise For Claim Processing and Program Improvement**

- Outcome: Expedite claims processing and implementation of other Task Force process-improvement recommendations.
- Issues: Severe staff shortages due to furloughs, retirements and elimination of overtime. Demand for claim processing outpaces current staffing. Lack of formally trained accounting experts in the USTCF's management and staff positions hinders development of revenue/expense management processes, projection models and protocols.

- Action Requested:
1. The SWRCB should ensure the USTCF has adequate staff to put the increased revenue stream resulting from AB 1188 to its intended purpose.
  2. The USTCF should endeavor to immediately fill the seven open management and staff level positions resulting from retirements and attrition.
  3. The USTCF should add accounting and financial expertise to the list of screening criteria for eligible candidates for management and staff positions at the USTCF.

AB 1188 increased the amount of the per-gallon fee by 0.6 cents from 1.4 cents to 2 cents a gallon. The increase was aimed at facilitating the payment of the substantial claim backlog and future claims. Due to State-mandated employee furloughs, elimination of overtime, and staff vacancies, however, staff time available for claim processing has been reduced. The SWRCB should ensure the USTCF has adequate staff to increase the number of RRs paid each quarter as intended by AB 1188.

The Task Force asks the SWRCB to direct the USTCF to add accounting and financial expertise to the list of screening criteria for eligible candidates. It is essential for efficient administration that the USTCF's staff possess this important skill set. Lastly, the Task Force strongly recommends the SWRCB work with CalEPA to fully staff the USTCF.

### **Recommendation 2: Efficiency and Management of Reimbursement Request Handling and Payments Processing**

Outcome: Reduce time spent on non-priority and/or inefficient tasks to reduce processing time for each RR. Eventually, increase output of claim payments to reach statutory timeframe of 60 days or other reasonably determined timeframe. Given the USTCF's condition, some Priority B and C class stakeholders are forced to obtain financing to continue assessment and cleanup activities. The financing options available to stakeholders are dependent upon the USTCF issuing approval letters. While timely payment of RRs is certainly preferred over financing, approval of RRs within 60 days would make financing a more viable option for claimants and consultants.

Issues: As of January 7, 2010, approximately 3,000 RRs are in house in various stages of being reviewed or processed for payment for all priority classes. Of this number 760 are already approved, but on hold for revenue, leaving 2,240 "awaiting review or in process". USTCF staff is processing approximately 200 – 300 RRs per month resulting in a backlog of RRs of seven – ten months without adding any new RRs.

- Action Requested:
1. The USTCF should re-emphasize the importance of utilizing standardized invoices and forms. Where the format of invoices submitted with RRs does not conform to submittal requirements, the use of the existing invoice summary form should be required. Other RR documents should be reviewed for standardization, such as the narrative history.
  2. The USTCF must take appropriate steps to improve efficiencies and internal processes to reduce the payment processing time for approved RRs.
  3. The USTCF should evaluate transitioning to a less paper intensive processing system.

Health and Safety Code section 25299.57, subdivision (i) requires the State Water Board to pay for corrective action invoices within 60 days of receipt. Without additional staff resources and possibly a permanent revenue increase, it is highly unlikely that the USTCF will ever be able to return to this mandate. However, it is the goal of the Task Force to enable the USTCF to at least process RRs, if not issue payments, within this timeframe. In order to review RRs within 60 days, efficiencies must be gained by all sections within the USTCF.

Concerns of this Task Force are:

- Lack of direct communication with Claimants, or designated contacts, if a RR is insufficient. This results in costs being pended or deemed ineligible, and could result in a future appeal. In response to concerns raised by the Task Force, the USTCF has modified the existing RR form to include language directing the USTCF staff to contact the claimant or their designee for missing information. It is anticipated that the new form and additional communication will eliminate or significantly reduce pended costs and the amount of costly supplemental determinations. The Task Force fully supports the new form and this process of communication.
- The USTCF staff has indicated to the Task Force that RRs are frequently submitted incomplete, not properly filled out or submitted with inadequate documentation. Inconsistent and incomplete RR submittals cause additional and often unnecessary time to be spent by the USTCF staff. The USTCF has implemented some changes to address this issue, such as a triage process for RRs received. The Task Force supports the changes already made and encourages the USTCF staff to continue to identify opportunities to standardize the process and reduce time spent on insufficient RRs.
- Once revenue is deposited by the BOE into the DFA's account, it is still taking too long to disburse the funds to those claimants that have an approved RR. Currently, it can take over 120 days to disburse all of the received revenue. By statute, the claimant is not obligated to make payment to its vendors for these costs for another 30 days after receiving reimbursement. The current system can potentially cause a payment to be delayed to the vendors or subcontractors for five months or more after the revenue has been received from the BOE. Efforts must be made to reduce the payment processing

time for these approved RRs from over 120 days to no more than 21 days after receiving revenue deposits from the BOE.

- The USTCF has seven open positions at the management and staff levels. It is imperative that all of the positions are filled in an expeditious manner to reduce RR processing and payment delays. The Task Force encourages the immediate filling of all positions.
- The current RR review and payment process is time and paper intensive. Files are voluminous and require offsite storage, even for some RRs which have been reviewed but not yet paid. An evaluation of electronic and/or automated systems options and cost effectiveness has not been conducted recently.

### **Recommendation 3: Establish Budgeting and Reserve Policy**

**Outcome:** Provide stability and predictability to Claimants and Service Providers regarding the payment of future RRs. Adjust reserve amount to release cash to pay existing backlogged RRs.

**Issues:** Stakeholders were caught off guard in November 2008 as the USTCF issued notices that active C Claimant LOCs would be suspended and, depending on priority class, existing pending RRs would be delayed for payment by 9 – 30 months. This work was already performed and was either already paid or otherwise incurred by Claimants. Stakeholders on all levels, including subcontractors, waiting to be paid were put in serious financial strain, if not bankruptcy, due to this mismanagement of financial forecasting by the USTCF.

**Action Requested:**

1. The USTCF should release funds as early as possible to reimburse Claimants, many of which are now in debt or facing potential bankruptcy due to payment delays.
2. The USTCF should regularly review its budget projections for revenues and claims payments, and manage its cash flow to accelerate payments to Claimants. This information should be posted on the USTCF's webpage.
3. On at least a semi-annual basis, the DAS and the USTCF should evaluate the adequacy of the reserve and, if possible, reduce the amount thus freeing up funds to provide additional financial relief for claimants.

### **Fiduciary Responsibility to Stakeholders**

The USTCF has a fiduciary responsibility to provide information regarding its financial health. By doing so, business decisions can be made by individual stakeholders in advance of incurring costs for cleanups.

In an effort to assure such a crisis does not happen in the future, the Task Force agrees that it is critical that USTCF management change past budgetary practices and embrace an open/transparent communication policy. In this regard, the Task Force recommends:

- Creating a Financial/Budgetary Section to the USTCF's webpage where historical and current data, reports and charts, such as FY 2009-2010 Revenue/Expenditures Plan can be posted for public viewing. These reports would allow stakeholders to make business decisions based on their own analysis of the USTCF's financial data.
- Providing complete and continual transparency by posting data monthly on BOE revenue deposits to the USTCF webpage and comparing the BOE revenue deposits to the monthly demand of incoming RRs by priority class.
- Continuing to improve timely posting of the status of all RRs received by the USTCF. To ensure that this information is useful, the data should be updated for all priority classes on a weekly basis.

#### Reserve Account

Staff from the DAS presented information regarding the program's reserves to the Task Force on August 17, 2009. The Task Force learned:

- Approximately 10% of the USTCF's annual encumbrance is kept in reserve (currently at \$23.5 MM).
- This reserve account acts as the SWRCB's "clearing account" to pay ongoing expenses for 34 different Programs (including the USTCF). Each Program is responsible for reimbursing the USTCF to pay its ongoing bills.
- The use of the USTCF as the SWRCB's clearing account was established by statute.
- Due to quarterly revenue collections, the reserve account "approaches its balance" approximately four times per year.
- The lowest balance recorded was at \$13 MM in the fall of 2008, when the budget crisis occurred.

BOE staff presented to the Task Force on November 3, 2009. During the presentation, the Task Force learned:

- Fee payers that market an average of one million gallons per month are required to pay quarterly revenues electronically.
- Beginning in January 2010 approximately 1/3 of all fee payers will be required to pay the fee electronically on a monthly basis, but will continue to file quarterly tax returns.

- It is estimated that this monthly payment will generate approximately \$10M per month to be deposited in the first two months of each quarter and subsequently reduce the deposit in the third quarter by the same amount (or \$20MM aggregate). This is a timing issue and results in no change in the total deposit for a quarter.

Since the specific amount held in reserve is not mandated by statute, the Task Force believes that the USTCF's management has the ability to modify the reserve amount. Coupled with the fact that the BOE is now collecting a portion of the quarterly fees on a monthly basis, the Task Force recommends the USTCF evaluate the adequacy of the reserve amount on at least a semi-annual basis, and, if possible, reduce the amount thus providing additional funds to reimburse Claimants.

While it is recognized by the Task Force that the amount of the released reserve is not truly "additional revenue", it is believed that by releasing the funds earlier it will provide some relief to stakeholders now in debt due to the USTCF's payment delays.

The Task Force fully supports the BOE's migration towards monthly revenue payments for high volume fee payers. This will help reduce the effects, if not eliminate entirely, the sudden start/stop method of RR payments being made based on waiting for an entire quarter's revenue deposits.

#### **Recommendation 4: Leverage the Pre-Approval Process**

Outcome:	Cost control, technical process improvement.
Issues:	No existing automatic mechanism for technical process quality control; disagreements with the USTCF's evaluation of efficacy and appropriateness after the work has been completed; valuable staff time and administrative expense invested in avoidable disputes.
Action Requested:	No later than June 2010, the USTCF should introduce an improved pre-approval process. The USTCF should consider including in this new process assigning staff to claims on a "Total Project" basis, developing a Conceptual Project Description checklist, requiring the pre-approved scope of work to match the associated request for cost reimbursement, and creating an efficient process for the USTCF to resolve any disputes with the implementing agency.

The USTCF reimburses costs that are reasonable and necessary for actions that have been directed and approved by the overseeing agency. There are two options with respect to cost evaluation – (1) to review proposed costs prior to the commencement of the activity (pre-approval) or (2) scrutinize the undertaking and its cost after the activity is complete (claim review). Pre-approval was used regularly in the 1990s, however, in 2003 it was deemphasized by the USTCF's management in an attempt to direct staff resources to claim review and processing.

Post-activity review of expenses associated with project tasks that did not receive cost pre-approval generally use the USTCF's Cost Guidelines and the reviewer's judgment to determine if the work and expense meet the generally accepted criteria for "reasonable and necessary." While the move away from the pre-approval process freed resources for claim review, it eliminated a valuable opportunity for the USTCF's staff to participate in the evaluation of the efficacy of a project activity prior to its execution.

The Task Force evaluated a return to an optional pre-approval oriented system of claim cost control. The USTCF's staff advised that the prior system was largely abandoned because:

1. The level of effort invested in post-claim review was not significantly reduced by the pre-approval process; and,
2. RRs were frequently not prepared in a manner reflective of the pre-approved scope of work, resulting in a greater degree of processing labor than originally anticipated.

The Task Force believes that an effective pre-approval process is a critically important feature for Priority A, B and C class claimants. Managed properly, pre-approval:

3. Influences the scope of work proposed, cleanup objectives, and proposed-scope relevance with respect to the most expedient and cost-effective path to file closure; and,
4. Reduces staff review time, as post-activity "reasonableness" conflicts can be avoided and costs submitted for reimbursement can be more efficiently reviewed and approved.

The Task Force notes that a pilot program was initiated by the USTCF and the regulatory agencies that incorporates an improved pre-approval process (Pilot Program). The Pilot Program currently has 39 sites divided between the following regulatory agencies:

1. Regional Boards: Regions 3, 5, 6, and 9.
2. Local Oversight Programs: Merced, Sacramento, Solano.

The Pilot Program establishes 12-18 month planning horizons for consultants, responsible parties, regulators, and the USTCF's staff. Pre-approvals for activities will be given by the USTCF for the full planning period and the progress of reimbursements tracked.

The Pilot Program intends to evaluate a means to improve coordination and cooperation between the USTCF and the regulatory agencies. Pre-approvals for this process are anticipated from the USTCF staff in February 2010. A presentation of the Pilot Program will be made at the CUPA Conference on February 2, 2010. The initial effectiveness of the program will be assessed in approximately May 2010.

The Task Force recommends the USTCF introduce an improved pre-approval process in June 2010. The improved pre-approval process should be based on Task Force discussions and the results of the Pilot Program. The June date will enable the USTCF's staff to focus their valuable resources on backlogged claim processing in the near term, and to develop processes that will

ensure a measure of success not experienced with the previous pre-approval process. Specific attributes to be considered for incorporation into the new pre-approval requirement could include, but not be limited to:

1. A “Total Project” assignment of the USTCF’s personnel, whereby staff become case managers, responsible for all aspects of the claim process from pre-approval through technical review.
2. A Conceptual Project Description checklist (a required submittal with a request for cost pre-approval). This checklist would force the demonstration of comprehensive project strategy, and could require descriptions of:
  - Sensitive receptors and perceived human health/non-human ecologic benefit to be gained through the response action;
  - The Project’s site conceptual model;
  - Data needs, including a description of anticipated regularly occurring project events (such as groundwater monitoring) and justification for their frequency of occurrence;
  - The strategy for the expedient completion of the current phase of activity (facilitating the preparation of more comprehensive project workplans and limiting the number of task iterations required to complete a phase of the response action): and,
  - A general plan to achieve closure.
3. A matching requirement between the pre-approved scope of work and the associated request for cost reimbursement (a reimbursement submittal must correspond to the form of the pre-approval in whole or in part).
4. A mechanism to resolve disagreements between the implementing agency and the USTCF with respect to a proposed technical action. The two agencies must reach agreement. Under no circumstances should the responsible party or their consultant be trapped in the middle of the dispute between government oversight agencies - with one agency directing an activity that the other agency refuses to reimburse.

**Recommendation 5: Use of Existing SWRCB Authority to Close Cases**

Outcome: Reduce case lifespan, reduce expenses and allow additional sites access to USTCF before it sunsets in 2016.

Issues: Of over 11,000 active UST cleanup cases, 7,000 have been open for over ten years. Lack of consistent administration of cleanup and closure criteria across the State among diffuse oversight agencies, and stakeholders

without incentive to quickly obtain closure are among many reasons for these statistics.

Action Requested: Each quarter, the USTCF should present cases to the SWRCB for closure under the 5-Year Review process.

The Task Force acknowledges that this issue is complex and as mentioned previously, fully supports facilitating closure of appropriate sites. The Task Force recommends that the USTCF continue to present cases on a quarterly basis to the SWRCB for closure under the 5-Year Review process and supports the Board exercising existing authority to close the cases when deemed appropriate.

### **Recommendation 6: Monitor Progress on Un-suspended Priority C Claims**

Outcome: Obtain information needed on a regular basis to determine whether process improvements are effective in reducing Priority C processing time and payment delays. Provide a timely opportunity to implement additional measures, if necessary, to reduce delays and apprise stakeholders of progress and forecasts.

Issues: A short-staffed Payments Unit may not be able to keep up with the backlog of RRs despite efforts to improve processes and additional revenue provided by AB 1188.

Action Requested: The USTCF's management and the SWRCB should closely monitor the financial demand on the USTCF and continually post progress reports to the USTCF web site for public review. Potential funding shortfalls should be identified before they materialize and necessary changes evaluated and implemented in a timely manner.

On December 14, 2009, the DFA notified approximately 1,100 Priority C claimants that the suspension of their Letters of Commitment (LOC) would be lifted effective January 1, 2010. With the passing of AB 1188, the Task Force supported the DFA's decision. However, the Task Force remains concerned that the existing backlog of RRs will be exacerbated by the demand associated with these unsuspected claims and that payments will be significantly delayed despite the availability of additional revenue from AB 1188. The following projections were provided by the USTCF as of January 7, 2010:

- In total, there is a backlog of almost 1,500 Priority C RRs.
- 441 RRs have been approved, but placed on hold for revenue;
- 23 RRs are being processed; and,
- 967 RRs have been received, but are awaiting processing.

The anticipated additional case load is likely to extend the payment cycle beyond a reasonable time frame. The Task Force is hopeful that other recommendations described in this Final Report will lessen the burden on the system. However, in addition to implementing those recommendations, it is very important that the financial demand on the Program be closely monitored by the USTCF's management and the SWRCB, and be continually posted to the USTCF web site for public review.

### **Recommendation 7: Improve Communication, Outreach, and Training**

**Outcome:** Process improvement, better information exchange, improved quality of RR submittals and reduced RR review time.

**Issues:** A diffuse service provider and responsible party community complicates the dissemination of information and makes implementation of process improvement difficult. Lack of comprehensive communication has, among other things, resulted in RRs submitted being incomplete or insufficient leading to an increase in the time and cost to review and process them.

**Action Requested:** The USTCF should increase its public outreach efforts. This should include a combination of the following suggestions: continuing to post information to its website, providing e-mail updates through the ListServ Management System, and hosting webinars, seminars or conferences.

Given the scope and importance of the changes to result from Resolution 2009-0042 and the Task Force process, the Task Force recommends that the USTCF increase its public outreach efforts. Expanded outreach activities should be planned and coordinated with the assistance of the recommended Advisory Group. The Task Force recommends that, in addition to continuing to post information on its web site and providing e-mail updates through the ListServ Management System, the USTCF should consider webinars, seminars and a UST program development conference. These forums would provide an opportunity to roll out and communicate developments in USTCF practices and changes in regulatory policy. In the past, the SWRCB convened regular UST conferences. These conferences were excellent forums for the exchange of ideas and best practices, though over the years the challenges of their coordination and funding resulted in their elimination. If appropriate, the conferences could be underwritten by EPA grants and corporate sponsorship.

### **Recommendation 8: Increase Functionality of Cost Guidelines**

**Outcome:** Updated, consistent guidelines for cost estimating, pre-approvals and RRs.

**Issues:** The USTCF cost guidelines are outdated, incomplete and unwieldy.

**Action Requested:** The USTCF should create a small working group to evaluate and update the cost guidelines including, but not limited to, equipment expenses, labor rates and project tasks.

The Task Force recommends the USTCF create a small working group, which may include members of the Advisory Group and the Pilot Project, to evaluate and update the cost guidelines. The work of this group should in no way take away from the more pressing task at hand – processing and paying the backlog of outstanding claims. Some of the key Guideline categories to be evaluated include:

- Equipment expense – The USTCF’s current policy concerning whether certain remediation equipment costs are reimbursable is often challenged. To reduce the number of appeals related to equipment purchases, leases and rentals, the Task Force recommends that the working group develop a new equipment policy.
- Labor rates – Restrictions on labor rates have deterred some qualified firms from participation in the UST marketplace. The working group should consider whether the lack of participation by firms with hourly rates in excess of the guidelines actually contributes to excessive project lifetime and overall expense. At a minimum, a fee schedule survey should be immediately conducted to update the “approved” labor rates which are now almost five years out of date. The survey should result in the publication of revised rates which reflect regional differences in the cost of living in California, much that way prevailing wage determinations are similarly based on regional differences.
- Project Tasks – The Guidelines attempt to establish costs for particular project tasks. To be accurate, this approach requires a substantial investment in research (regional costs vary considerably) and updates to the Guidelines. The Task Force recommends the working group consider an option for best estimating practices to replace task by task USTCF-created line item cost ceilings. A best practice, for instance, could involve detailed cost estimates, wherein all sub-components of a particular undertaking are sufficiently well described so as to afford a reasonable level-of-effort analysis during the pre-approval process. Task-based approaches in other States should also be considered.

### **Recommendation 9: Creation of USTCF Advisory Group**

- Outcome: Information exchange, improved communication, ongoing process improvements.
- Issues: The USTCF is to a degree isolated – from its clients and from the market that affects its claim exposure. An Advisory Group would give senior USTCF staff access to perspective and opinions, enhancing its ability to respond to developing issues in real-time and fostering a culture of continuous improvement.
- Action requested: The USTCF should form an Advisory Group to serve as a “sounding board” for USTCF staff, to facilitate the exchange of information with the regulated community, to encourage a transparent process for the program and provide regular input regarding opportunities to improve processes.

The Task Force recommends the USTCF form a 12 member advisory. Participation would be voluntary, at the invitation of the Fund Manager or other Advisory Group members. The Advisory Group should be comprised of individuals with first-hand knowledge of USTCF purpose and procedures. The Advisory Group, like the Task Force, should be diverse and balanced in experience and perspective (e.g., owners, operators, consultants, regulators, environmentalists, etc.) The purpose of the Advisory Group would be to serve as a “sounding board” for USTCF staff, to facilitate the exchange of information with the regulated community, to encourage a transparent and program process and identify opportunities for process improvement.

## **LONG TERM ISSUES**

The Task Force identified several issues that warrant further consideration and discussion in the future. However, the Task Force believes that these issues should not be addressed until after the USTCF has resolved the more immediate concerns which are the focus of the Task Force’s recommendations as set forth above.

USTCF Eligibility – USTCF regulations presently restrict access to certain types of UST sites. Without describing them in detail, the Task Force recommends that criteria for eligibility be reconsidered at an appropriate time in the future by USTCF staff and the Advisory Group.

Improve Appeals Process - The Task Force recommends that the USTCF streamline the appeals process to reduce the delays of decisions in such appeals. This includes, but is not limited to, Fund Manager decisions, Final Division decisions and petitions for SWRCB review on claimant eligibility, priority classification, assignments and on behalf of agreements as well as specific costs in RRs. Timeframes for reviewing and processing appeals need to be established and adhered to.

Environmental Effectiveness –The SWRCB and the USTCF should evaluate prioritizing funding for sites which present the most significant risk to water quality and public health. The Task Force believes this is consistent with the SWRCB Strategic Plan (Action 5.1.4) and the approach taken by some other states. The Task Force recognizes the complexity of this change including issues of fairness to current stakeholders and claimants and the potential for hindering progress toward closure of lower risk sites. Accordingly, in evaluating funding priorities, care would need to be taken to ensure that a change be equitable. For example, prioritization by risk within each existing priority class may be appropriate.

## **CLOSING**

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The members of this Task Force are pleased to have had the opportunity to assist the USTCF and the SWRCB in this important undertaking. We have taken our responsibility very seriously, and hope that the product of our work will bring immediate and long-lasting benefit to the Program and the constituents it serves. Subject to the approval of the SWRCB, the members of the Task Force have agreed to meet after the results of the audit of the USTCF which should be complete by March 1.

## **TASK FORCE MEMBERS**

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### **MEMBERSHIP NAMES**

### **REPRESENTING**

Barbara Dunn	Consultant
Rich Premzic	Consultant
Ron Chinn	Consultant
Zack Moran	Consultant
Deborah Lichtenberger	Consultant
Dan Johnson	Consultant
David Arrieta	Western States Petroleum Assn.
Nick Bokides	California Independent Oil Marketers Assn.
Julie Thompson	Owner/Operator
Jerry Piritz	Owner/Operator
Steven Goldberg	Owner/Operator
Jim Arnold	Owner/Operator
Markus Niebanck	Environmental Community
Eric Swenson	Regulator
Charles Ice	Regulator

### **ALTERNATES**

Dwayne Ziegler	Consultant
Mark Magargee	Consultant
Nicole Gleason	Owner/Operator
David Zedrick	Owner/Operator
Hans W. Herb	Owner/Operator
Misty Kaltreider	Regulator

## **STATE WATER BOARD STAFF SUPPORT**

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Allan Patton	UST Cleanup Fund
Ron Duff	UST Cleanup Fund (retired 11/09)
Selica Potter	UST Cleanup Fund
Toru Okamoto	UST Cleanup Fund
Jennifer Nitta	UST Cleanup Fund

## **ATTACHMENT 1**

September 2, 2009 USTCF Task Force Recommendations for Auditor



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board

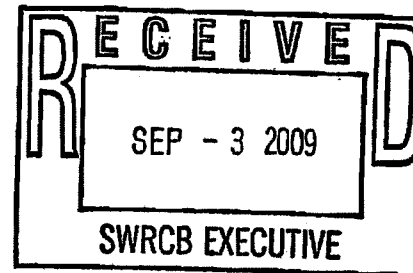
## Executive Office

Charles R. Hoppin, Chairman  
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Arnold Schwarzenegger  
Governor

September 2, 2009



Members of the Board  
State Water Resources Control Board  
1001 I Street, 25<sup>th</sup> Floor  
Sacramento, CA 95814

Members of the Board:

The UST Cleanup Fund Task Force is pleased to submit the attached recommendations, pursuant to State Water Board Resolution No. 2009-0042, adopted by the Board on May 19, 2009. The UST Cleanup Fund is currently undergoing a program evaluation by the consulting firm of Sjoberg Evashenk. These recommendations will be included as part of the evaluation.

Please contact me at (510) 839-4000, extension 234, if you have any questions related to the recommendations.

Sincerely,

Markus Niebanck, Chairman  
UST Cleanup Fund Task Force

Attachment

cc: Dorothy Rice, Executive Director

Allan Patton, Assistant Deputy Director  
Division of Financial Assistance

Miles Burnett, Assistant Deputy Director  
Division of Administrative Services

**Underground Storage Tank Cleanup Fund ("USTCF")  
Program Evaluation – Task Force Recommendations.**

The Task Force has organized its comments and suggestions in a format below that is consistent with the State Water Resources Control Board's (State Water Board) Request for Offer, dated March 27, 2008, Task II: Program Evaluation (RFO). The RFO identified 10 categories for a comprehensive program evaluation for the State Water Board's fiscal and administrative management of the USTCF. An eleventh category was added that includes Task Force comments and suggestions that did not easily fit into an existing RFO category.

1. Compliance with Statutes, Regulations, Policies and Procedures

A. If the USTCF is not in compliance with the previously listed statutes and regulations, what steps can the USTCF take to comply with the following statutes and regulations?

- The 60-day deadline to pay reimbursement requests (Title 23 Code of Regulations [Title 23], section 2812 General Procedures for Reimbursement)
- 30-day deadline for a Fund Manager decision on an appeal of a staff decision (Title 23, section 2814 Fund Manager Decision)
- 30-day deadline for final division decision on an appeal of a Fund Manager Decision (2814)

2. Efficiency and Effectiveness for Reimbursement Eligibility and Awarding Funds (Claimant)

A. How is the USTCF staff time currently allocated for review of claim/claimant eligibility?

B. Is there duplication of effort by USTCF staff (e.g., review by different units of the USTCF for the same task)? If so, what would be the appropriate workflow?

C. How could these processes be improved?

D. How are technical reviewers trained in procedures and processes for determining claim eligibility? How is their performance evaluated?

E. What procedures are in place to ensure that there is consistency between the various technical reviewers (claim eligibility)?

F. How could the USTCF facilitate bridge financing or other financial mechanisms to assist claimants while USTCF reimbursement requests (RR) are being reviewed, processed, prioritized and then payment issued?

G. How is the USTCF staff time currently allocated for review of claimant eligibility?

3. Efficiency and Effectiveness for Processing and Paying Claims (Including Processing Applications and Reimbursement Requests)

The USTCF Task Force incorporates 2A, 2B, 2C, 2D and 2E in its requests for evaluation of this task. Additionally it requests the program evaluation include the following:

- A. Provide data on delays in processing RR's, including the five most common reasons why RR review is delayed. Similarly, provide data on the five most common reasons payments are delayed and recommendations to improve the claims review and payment processes.
- Example: How much of re-submitted and pending costs are eventually approved and paid by the USTCF? How long does it take to review and process? How can this be made more efficient?
- B. Provide data (dollar amounts as well as percentages) that compares the amount requested in a RR with the actual amount paid.
- C. Provide data (dollar amounts as well as percentages) on processing of re-submitted and pending costs, including the time to process and the five most common reasons the review and payments are delayed, and recommendations to improve the process.
- Do the results provide any indicators of weakness in the initial claim review process?
- D. Evaluate how the USTCF determines and applies "commensurate" when reviewing and approving RRs .
- E. Evaluate the consistency of USTCF staff in the application of "reasonable and necessary" reimbursable corrective action costs.
- F. Does the USTCF staff consistently follow the 10/1/20001 USTCF Cost Guidelines? Do the Cost Guidelines need to be revised and updated?
- G. Costs Denied by the USTCF staff:
- How frequently does the USTCF staff deny requests for reimbursement of work previously approved by the oversight agencies because the USTCF staff independently determines the work is not reasonable or necessary?
  - When USTCF staff denies costs approved by the oversight agencies, are the denials justifiable (i.e., has a system been running for a number of years with no significant reduction in contamination levels)?
  - Evaluate the dispute resolution process between USTCF staff and the oversight agencies and make recommendations.
  - Evaluate the amount of USTCF resources devoted to denials and related disputes for oversight agency approved tasks?
- H. Evaluate the impact of implementing a peer review of claims to facilitate consistency in the RR review process.
- I. Evaluate the current process of informal communication with claimants when RR's are deficient. Are Technical Reviewer's and Fund Staff consistent with the current process? Can it be improved?

- J. Does the USTCF have performance metrics in place at the organization/department/staff levels? Are these effective methods?
4. Efficiency and Effectiveness of Review for Claims, Payments, Cost Pre-Approval, Settlements, Assignments, Closure, and Five-Year Review
- A. Provide a comparison of orphan sites vs. standard USTCF sites including the time for closure of USTCF eligible sites vs. non USTCF petroleum UST sites, and analyze by priority category for USTCF sites.
  - B. Assess and recommend ways to improve the efficiency of dispute resolution procedures.
  - C. Evaluate USTCF's current use of electronic processes and whether expansion of electronic processes for claims processing, RRs, etc., would be cost effective. If so, how should these be implemented?
  - D. Provide feedback/data regarding the completeness of RRs received.
  - E. Evaluate the effectiveness of the five-year review process and recommend improvements to increase case closures or other changes in site status.
5. Efficiency and Effectiveness of Accounting for Revenue and Expenditures
- A. Are USTCF revenues being used by the State Water Board, Regional Water Quality Control Boards (Regional Water Boards) or Local Oversight Program agencies (LOPs) to support other state or local programs not related to the USTCF?
  - B. Use of the USTCF account as a clearing account for other State Water Board special funds:
    - 1. Should the USTCF account be used as a clearing account for other State Water Board special funds? Are there other options for the clearing account?
    - 2. Should administrative costs associated with managing the USTCF as a clearing account for other State Water Board programs/funds be reimbursed to the USTCF?
    - 3. Should other State Water Board funds/programs reimburse the USTCF with interest? If so, what should be the appropriate interest rate?
  - C. Compare California administrative and oversight costs for the USTCF against other states' similar costs. Comment on the comparison, – i.e. how does California compare?
6. Efficiency and Effectiveness for Ensuring Reimbursement Requests Are for Allowable and Appropriate Use of Reimbursement Funds by Claimants
- A. How effective is the USTCF in identifying and recovering inappropriately reimbursed funds?

7. Internal Controls

The USTCF Task Force has no additional comments on this task.

8. Cash Flow Management Practices

- A. Determine whether there are other sources of short-term cash available to pay RRs right away.
- B. Evaluate the current reserve amount of the USTCF. Is it consistent with other governmental programs of its relative size? What is an appropriate reserve amount for the USTCF?
- C. Evaluate the causes of the increase in administrative and overhead costs over the last five years.
- D. Would a continuous appropriation for the USTCF have a positive effect on cash flow and RR payments? If so, how?

9. Revenue and Expenditure Forecasting Practices

- A. Evaluate the USTCF's current method of Revenue and Expenditure Forecasting Practices. How can the USTCF improve its forecasting of revenues and expenditures?
- B. Does the USTCF have a mechanism in place to account for the future payment of all claims (active and inactive by priority)?
- C. Identify alternatives used by other states other than suspension of claims to address cash shortages.

10. Funding, Accounting For and Managing Activities and Accounts Supported by the USTCF

The USTCF Task Force has no additional comments on this task.

11. Other

- A. Benchmark California's USTCF program against similar reimbursement programs in other states to evaluate program costs and efficiency and effectiveness, and to help provide recommendations for improvements (e.g., preapproved costs, frequency of RR submittal, work orders). Specifically evaluate other states' cost and method to administer the reimbursement program (internally managed or outsourced to a third party).
- B. Evaluate current claim and project data and cost information tracking and recommend improvements and efficiencies.
  - Examples: How much does an assessment typically cost? How long does a typical assessment take? What is the relationship between assessment costs and the number of tanks or extent of release?

- C. Evaluate the interaction between the USTCF staff and oversight agencies for consistency and potential opportunities for decreased claim processing time.
- D. Provide feedback/data regarding completeness of RRs received.
- E. Determine the financial impact, if any, of entities receiving reimbursement from the USTCF, but not paying fees into the fund. This should include broad categories of claimants as well as individual entities (i.e., entities delinquent in paying fees, but still receiving reimbursement).

## **ATTACHMENT 2**

October 1, 2009 USTCF Task Force Recommendations for Immediate-Term Action



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board

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Underground Storage Tank Cleanup Fund Task Force  
USTCF\_TaskForce@waterboards.ca.gov  
www.waterboards.ca.gov/water\_issues/programs/ustcf/



Arnold Schwarzenegger  
Governor

October 1, 2009

Members of the Board  
State Water Resources Control Board  
1001 I Street, 25<sup>th</sup> Floor  
Sacramento, CA 95814

Re: Underground Storage Tank Clean Up Fund Task Force ("USTCF") (Resolution No. 2009-0042)  
Recommendations for Immediate Term Action

Members of the Board:

Resolution 2009-0042 directed the Division of Financial Assistance (DFA) and the Division of Water Quality (DWQ) to create a Task Force to make improvements to USTCF administrative procedures and respond to the current cash shortage. The USTCF Task Force has been meeting with USTCF staff twice a month since June. We have made progress in identifying potential problems with the USTCF and we have been working with the staff on improvements to the USTCF program. Our efforts have focused on the immediate, short term problems of the USTCF. Working collaboratively with the USTCF staff, we have identified and the USTCF has already corrected some problems and implemented some improvements to the USTCF program. **Nevertheless an emergency still exists, particularly for small business owners. Urgent action is required with respect to issuance of payment on reimbursement requests, amongst other things.**

This letter transmits a brief summary of our evaluative work thus far and our immediate term recommendations.

At our earliest meeting we recognized that the work of this task force be divided into three action areas:

- 1) As required by the Resolution, the identification of issues to be addressed in the independent audit;
- 2) An evaluation of actions that should be considered in the immediate term – either because these actions would increase access to capital (by the USTCF or the claimants) or because the action was simply overdue; and
- 3) An examination of issues pertaining to USTCF structure and practice – issues whose modification will result in process improvement to prevent future upsets, but whose attention would not make a measurable difference in the short term.

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*California Environmental Protection Agency*



### **Summary of Task Force/USTCF Staff Accomplishments to Date**

From our first meeting, Task Force members and USTCF staff worked to examine cash flow, reserves and administrative procedure to identify USTCF funds that could be made available earlier in this fiscal year to pay claims and help reduce the backlog and delays in payment by the USTCF. As a result of this collaborative effort between the Task Force and the USTCF Staff, the USTCF was able to reduce certain expenditures and reallocate program funding so that \$11.5 million was moved from third quarter and fourth quarter fiscal year 2009-'10 and made available for claim reimbursement in the first and second quarters of the fiscal year 2009-'10.

The Task Force discussions with the USTCF staff further illuminated the importance of administrative procedure and cost-management for a reliable and robust reimbursement program.

Finally, our initial examination and dialogue identified several immediate term procedural cures, such as the manner and frequency of USTCF staff and claimant/service provider communication during claim review and processing. The USTCF again has internally examined these concerns and made changes to improve communications and efficiencies in the handling of USTCF claims. We have received positive feedback from USTCF claimants and consultants regarding these communications modifications and believe they have already yielded promising results in terms of turn-around time and the timely flow of information between parties.

USTCF staff have participated in the process, educated Task Force members with respect to USTCF program details, and rolled up their sleeves to help tackle the difficult tasks identified. We are confident that the continuation of this collaborative effort will yield the most positive and productive outcome possible.

### **USTCF Program Audit Issues**

As noted above, the Task Force spent several hours learning about the State Board's program audit for the USTCF and identifying and prioritizing issues and concerns that should be further evaluated by the auditors. The Task Force completed this task and submitted a letter with our recommendations to the State Board on September 2, 2009.

### **Immediate Term Issues**

At the earliest stage in the Task Force evaluative process it became clear that a number of issues required immediate attention. This interim report transmits a description of these issues and our associated recommendations.

- A. Expedite Disbursement of Currently Approved Payments** – Funds are presently available for disbursement from July revenues. Staffing and procedural constraints slow the payment of this existing and available resource. The Task Force asks that these funds be disbursed as quickly as possible. Further, the Task Force asks the SWRCB to direct staff to take all reasonable actions required to:

- 1) disburse a minimum of 50% of funding within 30 days after receipt from BOE; and,
- 2) distribute the balance within 45 days.

- B. **Access to Capital** – Work is underway to provide access to outside capital and, for a defined period, allow the cost of capital (finance charges) to be claimed as an eligible expense for reimbursement. We do not believe any action is necessary on the part of the SWRCB in this regard; we recommend only that the SWRCB support this undertaking in any manner practicable and appropriate.
- C. **Un-Suspending Letters of Commitment** – The Task Force requests that the USTCF unsuspend the Letters of Commitment it issued previously to hundreds of "C" and "D" claimants. As the Board's Resolution noted, the suspension of LOCs is a hardship for claimants and consultants who depend on a reliable and consistent USTCF program to pay for clean up costs. This hardship continues. The USTCF program's rationale for suspending LOCs rests on the 60 day statutory requirement for payment of Reimbursement Requests. However, even with the suspension of LOCs the USTCF has not met the 60 day requirement while acknowledging the disruption and hardship created by the suspension policy. The Task Force believes that the issuance of LOCs to suspended claimants will allow claimants and consultants to secure interim financing and thereby provide needed financial relief, while the USTCF, the Task Force, and the State Board work on longer term solutions that will enable the USTCF to meet the 60 day reimbursement requirement.
- D. **Processing of Reimbursement Requests Presently In-House** – The Task Force has learned that a large number of reimbursement requests are presently awaiting review. We request the SWRCB to direct staff to prepare a plan which allocates additional staff resources to address the backlog of unprocessed Reimbursement Requests. Irrespective of their actual pay-date, Reimbursement Requests have collateral value. Once processed, and a commitment to pay a defined amount has been made – a claimant can use this commitment to secure financing.
- E. **Health & Safety Code Section 25296.25** – Enacted many years ago, this statute intended to provide relief for new USTCF claimants who had applied to the Fund but had yet received a Letter of Commitment. For non-emergency sites, sites where no immediate corrective action was required to protect human or ecologic health, the statute allowed claimants to defer corrective action at these sites until the claim to the USTCF was accepted and the claimant obtained corresponding access to reimbursement funds.
- The statute further required the DFA or the DWQ to draft regulations before the statute could take effect. We understand that these regulations were never written, and as a consequence USTCF claimants cannot benefit from this statute as the Legislature intended. Moreover, at a time when the USTCF does not have adequate funding to pay claims, it has become more important that this statute be available to claimants in appropriate circumstances. We ask the SWRCB direct the DFA and DFQ to immediately commence work on these regulations and fulfill the intent of the legislature in enacting this statute.
- F. **Caseload Relief** – Resolution 2009-0042 directed Regional Boards and Local Oversight Program (LOP) agencies to commence a review of existing cases in an effort to identify cases appropriate for **immediate** closure consideration. The DWQ was directed to compile the results of this agency action and post them to the SWRCB website beginning January 2010. Resolution 2009-042 was adopted in May 2009.

The burden of unnecessary cases on the resources of the USTCF is great. In order to provide the SWRCB, stakeholders and members of the Task Force with valuable process-related information, we ask the SWRCB to direct the DWQ to prepare a short interim report on the success of their effort to date. This comprehensive report should include:

- 1) The number of case reviews completed (by agency group – LOP and RWQCB – not by individual agency or office);
- 2) The number of total open cases per group (so as to provide context for comparison);
- 3) The number of cases identified by agency review thus far as eligible for immediate closure consideration.

It must be noted – this requested interim report is intended only to document the number of sites closed thus far and by so doing illuminate the effectiveness of the action mandated by the Resolution. The interim report may be instructive with respect to the potential success of a mandated approach for other programmatic problems.

This concludes our immediate-term issue request for action. Our work now will turn to the evaluation of broader issues and practices that, while critically important to the mission and viability of the USTCF, are not in our view, short term in nature. The Task Force will, as requested by the Board in the Resolution, submit a further report by the end of this calendar year with our recommendations for additional changes to the USTCF program, including some which will likely require additional legislation.

One recommendation we will include in our end of the year submittal is that the SWRCB allow the Task Force to reconvene in 2010 following delivery of the independent auditor's report rather than dissolving the Task Force at the end of 2009. As the Task Force developed its letter for the auditors it became clear that the audit would include valuable information, findings and recommendations that the Task Force should evaluate and consider for possible further recommendations to the State Board. We will address this further as we work with the USTCF staff and the State Board on our report later this year.

Thank you for your time, your attention and the opportunity to serve this very important undertaking.

Most sincerely,

Markus Niebanck, Chairman  
UST Cleanup Fund Task Force

cc: Dorothy Rice, Executive Director

Allan Patton, Assistant Deputy Director  
Division of Financial Assistance