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# State Water Resources Control Board

## Division of Financial Assistance

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Arnold Schwarzenegger  
Governor

January 28, 2009

To: Underground Storage Tank (UST) Cleanup Fund (Fund) Claimants and Interested Parties

## **IMPORTANT NOTICE: UPDATE ON FUND ACTIVITIES & DELAY IN REIMBURSEMENTS**

This is an update of our October 23, 2008, notice regarding the actions we are taking in response to a continuing imbalance between revenue and payment demand against the Fund. We regret having to alert you to this further bad news that affects the State Water Board and many UST owners and their consultants. The downturn in the economy, combined with other factors, force us to take the actions described below.

### **Background**

The Fund was established in 1989 by the State Legislature to benefit businesses, individuals, and the environment by providing reimbursement for unexpected and catastrophic expenses associated with the cleanup of leaking petroleum USTs. In 1992, the Fund began paying claims for corrective action costs incurred for cleanup of contamination. Since the inception of the 16-year old program through June 2008, the Fund has paid approximately 60,000 reimbursement requests totaling \$2.4 billion covering cleanups at more than 9,000 sites. This has helped residents and businesses involved in the petroleum fuel industry pay for pollution associated with leaks from their tanks. The responsibility for the pollution has always been the tank owners' or operators', but the Fund has been able to relieve many businesses of much of the financial consequences of those leaks.

The Fund's revenues are generated by a storage fee (currently 1.4 cents) for every gallon of petroleum products placed into USTs. The fee is collected quarterly from owners of active USTs by the State Board of Equalization (BOE). The decline in revenue has steepened somewhat due to the general slowdown of the economy, with the BOE's latest projections indicating that this year's revenue will be down \$20 million from the peak of two years ago.

### **Summary of Actions**

For the first time since its inception, the Fund is facing a significant decline in revenue and a depleted cash reserve. Meanwhile the demand for funds is at an all time high. This has caused the program to take two primary actions:

1. **Delay payments on active claims due to the lack of funds.** We continue to receive payment requests faster than they can be paid, and a large backlog has developed in all priority classes except Priority Class A. We have had to invoke the contingency contained in the Letter of Commitment (LOC) document which makes payment subject to availability of funds. In general, payments will be made in order of priority class and date of receipt of the payment request. See below for details.

*California Environmental Protection Agency*



2. **Suspend active LOCs to begin to bring long-term payment demands into balance with revenue.** Suspensions are occurring consistent with the legislatively mandated priority system.

### **Payment Processing Details**

Payment requests for active claims will continue to be received and processed. Payments for claims with a suspended LOC will also be processed to cover costs incurred up to ten days following the date of suspension. A letter specifying the approved payment amount will be mailed. With the possible exception of Priority Class A, the letter will state that the payment will be held until funds become available.

As you may know, Fund statutes dictate that each priority class must be paid a minimum of 14% of the annual allocation for claims if there are not adequate funds to pay all claims in a given year. In recent years, the demand by priority class has been approximately as follows: Priority Class A – 1%, Priority Class B -- 46%, Priority Class C – 38% and Priority Class D – 14%. However, with lower funds available in the future, we will need to reduce payments to Priority Class C, resulting in the following approximate distribution of funds: Priority Class A – 2%, Priority Class B – 70%, Priority Class C – 14% and Priority Class D – 14%.

For the current Fiscal Year (FY) (July 1, 2008 through June 30, 2009) Priority Class C has already exceeded the 14% minimum and almost no Priority Class D payments have been made. To meet the minimum statutory level, for the remainder of this FY, Priority D claims will be paid up to the minimum 14% required by law and any remaining funds will be paid to Priority Class A and B. No additional payments will be made to Priority Class C.

Beginning next FY (starting July 1, 2009), we will pay some C and D claims throughout the year at approximately the minimum rate required.

### **Priority Class Detail**

Following is a discussion of actions taken and possible future actions we may need to take as we evaluate the demand for funds against the rate of revenue. We will update all estimates in the future as we are able.

1. Priority Class A (Residential claimants):<sup>1</sup>
  - Priority Class A claims are the highest priority and payment requests are being processed and payments made as funds become available. These payments will be delayed less than 3 months, if at all.
  - Priority Class A claimants represent less than 2 percent of the historic payment demand on the Fund's net revenues.
  - Priority Class A claims will not have their LOCs suspended. New LOCs will continue to be issued to claimants in this class.

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<sup>1</sup> These are simplified priority class descriptions. The full definition of the Fund's priority classes is provided in Health and Safety Code section 25299.52.

2. Priority Class B (Small businesses with 100 or fewer employees and 3-year annual average gross receipts of \$12 million or less):<sup>1</sup>
  - Priority Class B claims are the second priority and their payment requests are being processed and the payments placed on hold pending the availability of funds. Based on the rate of receipt of payment requests and the current backlog, we estimate that Priority Class B payments will be delayed 6 to 18 months.
  - In future fiscal years, we estimate Priority Class B claimants will receive about 70 percent of the Fund's available revenues for claims. There is a possibility that some active LOCs will be suspended in the near future in order to keep projected payment demand to the 70 percent level. Those suspensions will be based on the filing date of the claim application, with the most recent claims being suspended first.
  - Until we can determine that no active Priority Class B LOCs will need to be suspended, we will not issue any new LOCs for Priority Class B claims. A notice to this effect will be mailed to Priority Class B claims on the priority list.
3. Priority Class C (Businesses with 500 or fewer employees):<sup>1</sup>
  - Priority Class C claims are the third priority and their claims are most affected by the Fund's revenue and cash flow issues. Payment requests will be processed and the payments placed on hold pending the availability of funds. Current projections indicate that the delay for Priority Class C payments may be as long as 30 months.
  - On November 7, 2008, a letter was mailed to 612 claimants notifying them that their LOCs were suspended. Payment requests for those LOCs covering costs incurred through November 17, 2008 will be accepted and processed as funds become available.
  - On January 7, 2009, a letter was mailed to an additional 617 claimants notifying them that their LOCs were suspended. Payment requests for those LOCs covering costs incurred through January 17, 2009 will be accepted and processed as funds become available.
  - On January 9, 2009, a letter was mailed to all Priority Class C applicants on the Fund's Priority List notifying them that until sufficient revenue is received, no new LOCs would be issued for the remainder of FY 2008-2009, and it is unlikely that funds will be available for several years.
4. Priority Class D (Other claimants, typically major oil companies, businesses, and municipalities):<sup>1</sup>
  - Priority Class D claims are the fourth and lowest priority. Payment requests for these claims are being processed and the payments placed on hold pending the availability of funds. The Fund is currently making payments to meet the 14 percent minimum requirement for this FY.
  - On January 5, 2009, a letter was mailed to 127 claimants notifying them that their LOCs were suspended. Payment requests for those LOCs covering costs incurred through January 15, 2009 will be accepted and processed as funds become available.
  - In future FYs, payments to Priority Class D claimants will continue to be limited to the statutory minimum of 14 percent of the Fund's net revenues.
  - No new LOCs will be issued for Priority Class D claims for the remainder of FY 2008-2009, and it is unlikely that funds will be available for new LOCs for several years.

### **18-Month Line Item Budget**

On December 29, 2008, a letter was sent to all active Priority Class B and C claimants reminding them of the need to submit an 18-month line item budget by February 1, 2009. The purpose of the budget is to allow us to better anticipate cash needs and evaluate planned corrective action.

### **Appeal Process to Request Change to Priority Class B**

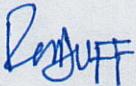
On October 31, 2008, notification was made available via the Fund's web page to all claimants, informing them about the appeal process for assigning their Priority Class "C" claim to the higher Priority Class "B." The notification also gave the criteria for a Priority Class B classification. Those appeals are being reviewed in the order in which they are received.

**Please note that these actions are for Fund matters only. You are still responsible for complying with any regulatory directives/time schedule orders issued by the UST Local Oversight Program and/or the Regional Water Quality Control Board office directing the corrective actions on your site. We recommend that you obtain prior approval from the appropriate UST regulatory agency before modifying any corrective action activities on your site.**

All letters referenced in this Notice and related information can be viewed at the Fund's web page: [http://www.waterboards.ca.gov/water\\_issues/program/ustcf/](http://www.waterboards.ca.gov/water_issues/program/ustcf/).

If you have questions, please contact the Fund at (800) 813-FUND (3863) or by e-mail at [USTCleanupFund@waterboards.ca.gov](mailto:USTCleanupFund@waterboards.ca.gov).

Sincerely,



Ronald M. Duff, P.E., Fund Manager  
Underground Storage Tank Cleanup Fund

cc: Regional Water Board UST Program Managers and Contacts (via e-mail only)  
UST Local Oversight Program Managers (via e-mail only)  
UST Program Manager, USEPA Region 9 (via e-mail only)