
State Water Resources Control Board

EXPEDITED CLEANUP ACCOUNT PROGRAM PROPOSAL SUMMARY

Version 3/27/2015

SB 445 (Hill, 2014) transfers \$100 million from the UST Cleanup Fund to the new Expedited Cleanup Account (ECA) to be used in a process that will be developed with stakeholders to reduce cleanup costs and the amount of time to reach site closure. Fund staff will be assigned to develop, implement, track and report on the effectiveness of the Pilot Project.

The ECA is set aside to pay claims that have been selected to participate in the Pilot Project. SB 445 requires the State Water Board to:

1. With stakeholder input, establish the Pilot Project to:
 - Reduce the overall cost for site cleanup and
 - Reduce the time to reach closure by increasing coordination with the claimant, consultant, regulator, and the Fund and by using multi-year funding plans.
2. With stakeholder input, investigate potential methods for reducing the overall cost for site cleanup and the time to reach closure including, but not limited to, establishment of multiyear funding plans for claims; increased collaboration between Fund staff, regulatory staff, and claimants and their consultants; establishment of project milestones and cost estimates; and establishment of reimbursement submission schedules.
3. Select a limited number of claims to participate in the Pilot Project.
4. Before January 1, 2018, prepare a report analyzing the effectiveness and efficiency of the Pilot Project in expediting the funding of claims and completions of site cleanups.
5. Include information on the expenditure of funds transferred to the ECA, as well as the amount of all claims filed by claimants participating in the Pilot Project and the amount of reimbursements made to claimants in the pilot project, in its annual report.
6. In consultation with stakeholders, work to develop metrics to forecast long-term demand on the Fund and include this information in the report.
7. Post the report on the State Water Board's Internet Web site.

Expedited Cleanup Account Program

The program will be referred to as the Expedited Cleanup Account Program (ECAP). The ECAP will not only implement the Pilot Project, but also continue at least until the \$100 million in the ECA is expended, and may include claims that do not meet the criteria for the Pilot Project but could benefit from the increased collaboration to the extent that the Fund could absorb the workload.

Stakeholder Outreach

Stakeholders are being engaged as interest groups. Discussions have occurred with representatives from industry representatives, Regional Water Boards, and certified Local Oversight Program agencies. This proposal is being shared with each group and will be sent out via the State Water Board's listserv. The Fund has scheduled a workshop to hear feedback from the larger stakeholder group. Claimants whose claims meet the Pilot Project criteria will be solicited to participate, and a subset will become part of the Pilot Project.

Summary of ECAP Proposal

Increased Collaboration

We plan to implement a process borrowing concepts from other programs, where a team develops a Joint Execution Plan (JEP) that is reviewed regularly and revised as necessary.

- A Joint Execution Team (JET) would be formed for each case with a claim in the ECAP, which consists of the regulator, the claimant, and Fund staff.
- Starting from the Path to Closure documents the regulator has prepared, the JET would develop and document Joint Execution Plans (JEP).
- The JEP would be a multi-year plan that includes the activities needed to move the case to closure, the reason for each activity, schedule, estimated cost for each activity.
- The JEP would represent a multi-year funding plan and be the basis for the annual site budget for each fiscal year.
- The JEP would be dynamic based on real-world needs.
- Fund staff would track progress, and the JET would meet periodically to assess the case's progress toward closure.
- Periodic meetings and progress tracking are expected to greatly reduce the submittal of costs for reimbursement that are determined to be ineligible.

Development of Metrics used in Pilot Project

Metrics will be developed with stakeholder input to reflect the criteria of the Pilot Project claims and the required goals of the Pilot Project. Metrics will be developed to compare claims in the ECAP Pilot Project against those claims not in the ECAP. An ECAP Pilot Project group and a non-ECAP group with similar criteria will be identified. Because all JEPs cannot be developed instantly, these paired groups will need to be identified in batches, such that the first batch of ECAP Pilot Projects with JEPs developed has a non-ECAP group identified, then the next batch, and so on. The batches could be variable starting with 10 claims per batch. A smaller batch number would ensure an earlier launch of the ECAP Pilot Project.

For better comparison of metrics, the Pilot Project study claimants would submit invoices

electronically on a schedule agreed upon in the JEP.

Criteria for Claims in Pilot Project

The State Water Board must develop criteria for the selection of claims to participate in the ECAP Pilot Project. Each claim would not be required to meet all of the following criteria. Also, not all the claims that meet on the criteria can be selected to participate in the ECAP Pilot Project due to limited resources and time before the report is due.

The first three criteria implement the requirements in SB 445:

1. Claims with cases that pose a significant threat to human health, safety, or the environment caused by contamination at the site that is the subject of the claim.
 - Include cases that have impacted a drinking water well and cases that pose a significant risk of vapor intrusion.
2. Claims in all priority ranks defined by pursuant to Section 25299.52.
 - Include claims with priorities representative of the proportion of claim priorities in the Fund.
3. Claims with cases showing little cleanup progress.
 - Include claims with cases showing the same status code in GeoTracker for over five (5) years or without substantive regulator action for more than one (1) year,

Additional proposed categories:

4. Claims that have expended more than the average, and might exceed the cap.
 - Include cases with claims reimbursed to date over \$750 thousand.
5. Cases where the claimant perceives corrective action progress is limited due to inadequate set-aside for reimbursement by Fund in annual site budget amount.
 - Include claims with Budget Change Requests not approved by Fund staff.
6. Claims that can test the goal of meeting case closure criteria and close within five (5) years and reimbursement under \$500 thousand after the Unauthorized Release is discovered.
 - Include new regulatory cases with claims.

Study Period for Expedited Cleanup Pilot Project

The study period is scheduled to end June 30, 2017, allowing the report to be prepared with appropriate agency review by the January 1, 2018 deadline. The concept in SB 445 was to be able to report on results from a two-year period beginning July 1, 2015. The ECAP Pilot Project study start date is dependent on formalizing the implementation plan for the ECAP, identification of participating claimants, staffing, formation of JETs and their shared understanding of expectations.

ECAP after Pilot Project Report

SB 445 anticipates that the ECAP continue until the \$100 million in the ECA is expended, with the likelihood that the report results would show that the JET/JEP process is beneficial and will continue. SB 445 states that “Funds in the Expedited Claim Account that are not expended in a fiscal year shall remain in the Expedited Claim Account. Funds remaining in the Expedited Claim Account on January 1, 2026, shall be transferred to the Underground Storage Tank Cleanup Fund.”

SB 445 (Hill, 2014), partial:

SEC. 10. Section 25299.50.7 is added to the Health and Safety Code, to read:

25299.50.7. (a) The Expedited Claim Account is hereby created in the Underground Storage Tank Cleanup Fund for expenditure by the board to pay claims that have been selected to participate in the pilot project established by this section.

(b) The sum of one hundred million dollars (\$100,000,000) shall be transferred in the 2015-16 fiscal year from the Underground Storage Tank Cleanup Fund to the Expedited Claim Account for expenditure, upon appropriation by the Legislature, for the payment of claims pursuant to this section. Claims shall be paid from the Expedited Claim Account until moneys in the account are exhausted.

(c) Funds in the Expedited Claim Account that are not expended in a fiscal year shall remain in the Expedited Claim Account. Funds remaining in the Expedited Claim Account on January 1, 2026, shall be transferred to the Underground Storage Tank Cleanup Fund.

(d) The board shall, with stakeholder input, establish the Expedited Claim Pilot Project to reduce the overall cost for site cleanup and the time to reach closure by increasing coordination with the responsible party, consultant, regulator, and the fund and by using multiyear budgets.

(1) The board shall, with stakeholder input, investigate potential methods for reducing the overall cost for site cleanup and the time to reach closure including, but not limited to, establishment of multiyear funding for claims, increased collaboration between fund staff, regulatory staff, and claimants and their contractors, establishment of project milestones and cost estimates, and establishment of reimbursement submission schedules.

(2) The board shall solicit fund claims from all priority rankings for participation in the pilot project to implement potential improvement methods. The board shall select a limited number of claims to participate in the project.

(3) The board shall develop criteria for the selection of claims to participate in the pilot project and, at a minimum, shall consider the threat to human health, safety, or the environment caused by contamination at the site that is the subject of the claim, the priority ranking assigned to the claim pursuant to Section 25299.52, and the progress of cleanup at the site that is the subject of the claim.

(4) The development of criteria and procedures pursuant to this subdivision shall not be considered as regulations subject to, and shall be exempt from, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) The board shall include information on the expenditure of funds transferred to the Expedited Claim Account, as well as the amount of all claims filed by claimants participating in the Expedited Claim Pilot Project and the amount of reimbursements made to claimants in the pilot project, in its annual report.

(f) On or before January 1, 2018, the board shall prepare a report analyzing the effectiveness and efficiency of the Expedited Claim Pilot Project in expediting the funding of claims and completions of site cleanups. The board, in consultation with stakeholders, shall work to develop metrics to forecast long-term demand on the fund and shall include this information in the report. This report shall be posted on the board's Internet Web site, and updated periodically.

(g) This section shall remain in effect only until January 1,

2026, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2026, deletes or extends that date.