



UST CLEANUP FUND

SPRING/SUMMER 2002

UPDATE

UST CLEANUP FUND UPDATE Issue No. 13

• MANAGER	ALLAN PATTON
• ASSISTANT MANAGER	STEVE PARADA
• PAYMENTS & PRIORITY	ANNA TORRES
• PAYMENTS & CLOSEOUTS	TORU OKAMOTO
• CLAIMS REVIEW	DIANA ROMERO
• TECHNICAL UNIT # 1	DAVID CHARTER
• TECHNICAL UNIT # 2	ROBERT TROMMER
• ADMINISTRATION	DOUG WILSON
• EDITOR	WES WILKINSON

The UST Cleanup Fund UPDATE is provided only as a general information guide and is intended to respond to many of the questions being asked about the Fund.

The information provided in this publication is not intended as legal advice.

We invite your comments and encourage written suggestions on how and what you would like to see in future issues of the UPDATE. Suggestions and comments can be mailed to:

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF CLEAN WATER PROGRAMS
UST CLEANUP FUND
PO Box 944212
SACRAMENTO, CA 94244-2120

IN THIS ISSUE

- ◆ *Pay For Performance (PFP)*
- ◆ *Allan Patton Returns as New Fund Manager*
- ◆ *Changes to Health & Safety Code Now Available*
- ◆ *How to Get the Most out of the Cost Pre-approval Process*
- ◆ *Fund Resumes Payment for Priority Class "D" Claims*

Cleanup Fund Implements New Pay-For-Performance Pilot Program

Pay-for-performance (PFP) is an alternative way to contract for environmental cleanup at underground storage tank (UST) sites. Under a PFP agreement, contractors are paid a predetermined amount of money for reaching specific contamination reduction goals. The specific price, interim payment milestones, contamination level goals and time for reaching the goals are all agreed to at the beginning of the cleanup and not changed thereafter. Contamination reduction is measured and payments are made as contamination levels go down and cleanup goals are achieved and maintained. Paying for cleanups through such agreements rewards contractors for quickly and efficiently reaching cleanup goals and results in speedier cleanups that protect health and the environment.

PFP offers contractors prompt payment for real environmental results and larger profits from smart, innovative engineering. Under a PFP agreement, payments to cleanup contractors de-

pend on them reaching environmental goals. The sooner the contractor reaches the goals, the sooner the contractor gets paid. This allows contractors to maximize their profit by managing their sites more efficiently and minimizing their paperwork, administrative costs and delays.

Using PFP agreements can reduce paperwork significantly by eliminating reporting contractors' time and materials. PFP cleanup agreements require only documentation of environmental results instead of paper-intensive documentation of the contractor's internal costs. They enable Fund staff to focus their attention on the environmental results instead of reviewing cost-accounting details.

PFP claims are generally paid within 30 days from receipt of documentation by the Fund. This prompt, reliable payment of claims provides the contractor with a further incentive to improve cleanup

(See Pay-For-Performance on page 2)

Allan Patton



Allan Patton

In March 2000, we welcomed Allan Patton's return as the UST Cleanup Fund's Program Manager. He replaced the former Fund Manager, Dave Deaner who retired in February 2000. Allan brings with him over 21 years of experience working for the SWRCB.

Allan was previously the Chief of the Technical Review Unit for the Fund from July 1991 – April 1996.

Returns as New Fund

He left the Cleanup Fund to manage the Underground Storage Tank, Leak Prevention and Cleanup Programs for four years. Allan holds a master's degree in Geography from Cal State, Chico. In August 2001, Allan was presented with a *Supervisory Performance Award* from the SWRCB for his outstanding job performance achievements and dedication.

Congratulations and Welcome Back! □



From the Fund Manager's Desk....

"A new way to pay for cleanups."

What if someone told you that you could get your site cleaned up more quickly, with less paperwork, improved cash-flow and lower overall cost. You'd probably want to hear more. That's how we reacted when we first learned about Pay for Performance (PFP) cleanups. The use of PFP as a way to pay for cleanups began in Florida and other eastern states and is growing in popularity nationally. The concept is simple, a fixed, lump sum price is negotiated, a target cleanup goal is set and the contractor receives progress payments as pollutant concentrations are reduced. While the concept is simple, we believe the results will be revolutionary as PFP changes the incentives for completing the cleanup. We are committed to giving PFP a fair try in California, and have been spreading the word to regulators and consultants. Read the story on Page 1, and if it sounds like something you would like to try, give us a call.

Sincerely,

Allan V. Patton, Manager

Pay-For-Performance (Continued from page 1)

techniques and management.

Fund representatives have recently been visiting various Regional Boards and county agencies to explain the PFP approach to UST cleanup. Several claimants/consultants have already signed PFP agreements and interest con-



tinues to grow in this innovative approach.

If you are interested in learning more about PFP or have a site that you believe may be a candidate for PFP, please call either Bob Trommer at (916) 341-5684 or Dave Charter at (916) 341-5652. □

Updated California Health & Safety Code – Chapter 6.75 Now Available

We have recently updated our publication of the California Health & Safety Code - Chapter 6.75 to reflect statute changes from the past two years. The new publication is available on our Web site and the changes are summarized below.

Assembly Bill 2872 (Statutes 2000, Chapter 144), authored by Assemblyman Kevin Shelley, was approved by Governor Davis on July 19, 2000. AB 2872 created the Fire Safety Subaccount within the Fund, and transferred \$5 million to the Subaccount. In addition, the bill authorized the State Water Resources Control Board (SWRCB) to expend the money in the subaccount to pay claims filed by fire safety agencies before January 1, 2000.

Assembly Bill 2886 (Statutes 2000, Chapter 727), authored by Assemblywoman Sheila Kuehl, was approved by Governor Gray Davis on September 25, 2000. AB 2886 made several typographical and wording clarifications to the Statutes and authorized the Department of General Services to enter into contracts on behalf of the SWRCB for corrective action.

Assembly Bill 1465 (Statutes 2001, Chapter 154), authored by Assemblyman Joe Nation, was approved by Governor Gray Davis on August 6, 2001. AB 1465 made the following changes to the Statutes:

Requires Cleanup Fund claimants to demonstrate that required tank storage fees have been paid.

Previous law requires every owner of a UST for which a permit is required to pay a storage fee for each gallon of petroleum placed in the UST. Except when seeking a permit waiver previous law did not require Cleanup Fund claimants to demonstrate that they have paid the required storage fees prior to making a claim to the Fund. AB 1465 requires claimants, as a condition of eligibility to the Cleanup Fund, to pay all storage fees, interest, and penalties for the UST that is the subject of the

claim. The bill also requires claimants to furnish, under penalty of perjury, any information about storage fees that a local agency, Regional Water Quality Control Board, or the SWRCB requires.

Revises the definition of "claim."

Chapter 6.75 previously defined "claim" as a written request for payment of costs eligible for reimbursement from the Cleanup Fund. AB 1465 makes it clear that "claim" refers to all of the documents submitted to the Cleanup Fund for reimbursement of costs incurred due to an occurrence, including, but not limited to, the application, reimbursement requests, and verification documents.

Amends the definition of "UST" to be consistent with Chapter 6.7 and include non-residential heating oil tanks.

AB 1465 amends the definition of "UST," eliminating incorporation of the federal "UST" definition and thus making the Cleanup Fund definition consistent with the Chapter 6.7 definition. AB 1465 subjects owners of specified heating oil tanks to the storage fee requirement and, assuming other eligibility conditions are met, permits the SWRCB to accept Cleanup Fund claims from owners or operators of these tanks.

Clarifies the Cleanup Fund sunset provision.

Previous law provided that, with certain exceptions, Chapter 6.75 would remain in effect only until January 1, 2011, and as of that date is repealed, unless extended by statute. AB 1465 declares that there is continued authority to recover moneys reimbursed to a claimant to which the claimant is not entitled. This bill also provides continued authority to collect unpaid storage fees that become due on or before December 31, 2010, and any accrued interest or penalties associated with those unpaid fees. □

How to Get the Most out of the Cost Pre-approval Process

- Coordinate your Reimbursement Request with your cost pre-approval to speed up your payment



Cleanup Fund technical staff processes over 250 Cost Pre-Approval (PA) requests each month. The primary purpose of obtaining cost pre-approval is to identify and resolve any issues on cost or scope of work before the corrective action is completed, thereby reducing the risk that costs won't be paid when submitted for reimbursement. But PA's can be even more powerful. If properly coordinated with your Reimbursement Request (RR), PA's can also help speed up your payment by eliminating the need to have the costs reviewed by the Fund's technical staff a second time. Included with every PA letter is a spreadsheet showing approved costs by (work plan) task. After work totaling \$10,000 or more is completed, you may submit a RR to recover those costs. To speed your payment:

- Invoices must be organized by task and include only work covered in the PA.
- You must use the spreadsheet included with your PA, breaking out invoiced costs by completed task.
- The work being billed for each task must be at or under budget.
- The RR must include only costs that are part of the PA. Inclusion of other costs will delay the RR.
- Costs from two PAs should not be mixed. If tasks for more than one PA are included in the RR, fill out the PA-Specific spreadsheet for each PA, using the proper task columns for each PA.

Rs submitted for less than \$10,000 will be returned unless for groundwater monitoring or if submitting the final RR for the claim.

- Reduce delays in work by combining small tasks into a single PA request

Submitting numerous pre-approval requests for small individual tasks is not efficient, and slows the corrective action process. To optimize your PA and minimize delay of work, submit one pre-approval request that includes a budget for all tasks related to a larger scope of work. For example, submit a budget for all costs to start a cleanup, including equipment purchase or rental, construction, permitting, utilities, etc. It wastes time and money to begin corrective action, only to realize that you have to go back to the Fund to request additional costs that were left out of the original request. Similarly, submit a budget for one year or more of groundwater monitoring, rather than one or two quarters, assuming that the site won't be closed for at least a year. The Fund would rather review one large proposal than several small pre-approvals submitted separately a few months apart. One exception would be when

(See Pre-approval Process on page 5)



Need information or a form?

We are in the process of updating our Web site. The site will be available soon featuring a new design format containing Fund information, forms and current publications.

***We're on the Web! Visit us at:
[www.swrcb.ca.gov/~cwphome/
fundhome.htm](http://www.swrcb.ca.gov/~cwphome/fundhome.htm)***

Fund Resumes Payment of Priority Class “D” Claims

On January 10, 2002, the Fund suspended all amendments to Letters of Commitment (LOC) for Priority Class “D” claims. This was the first time the Fund had to take such action, but it was necessary due to a higher than expected level of activity for Priority Class A, B & older C claims during the first part of this fiscal year. State fiscal years run from July through the following June. Priority Class “D” claimants, with active LOCs, were instructed to continue submitting Reimbursement Requests (RR), with the understanding that these payments would be released in priority order once funds became available.



In mid May, the level of activity in higher priority claims had slowed enough to allow payment of all Priority Class “D” claims with active LOCs.

This episode has caused the Fund to change its approach to paying D claims in the future. LOCs for Priority Class “D” claims will now only be increased when a RR has been approved for payment and increases will be limited to the amount of the payment. Each fiscal year, the Fund will pay active D claims until the annual minimum

statutory allocation of 14% of the appropriation has been reached (Next year that is expected to be approximately \$25 million). At that time, additional payments to D claimants will be suspended until late in the fiscal year when it can be determined whether additional funds are available for D claimants. If funds are available, payments will be issued in priority order. For this approach to work, it is imperative that Priority Class “D” claimants with active LOCs continue to submit RRs. These will be processed and paid or held, depending on the availability of funds at the time. □

Pre-approval Process (Continued from page 4)

later work is dependent on the findings of earlier work. For example, you generally shouldn't include cleanup tasks and investigation tasks in the same PA request. Be sure to structure your tasks in discrete units that can be completed in a relatively short time period, to allow for faster processing of your payment as described above. For example, each quarterly monitoring event or month of treatment system O & M should be covered as a separate task. Call your technical reviewer if you have questions. □

Are You Moving?

Are you planning to move in the future? Have you moved recently? If you have filed a claim with the Fund, it is very important to notify us of your new mailing address and telephone/fax numbers. If we do not have your correct mailing address, staff cannot contact you regarding your application, changes in regulations and changes to the payment process.



To request a change of mailing address, simply contact the Fund and request an “Address Change Form.” We will be happy to fax or mail the form to you, or you can download a copy of the form

from our Web site.

Submit your request to:

**State Water Resources Control Board
Division of Clean Water Programs
Underground Storage Tank Cleanup Fund
P.O. Box 944212
Sacramento, CA 94244-2120**

Please reference your claim number on your correspondence. Please also include the name of the contact person if your claim was submitted as a business/corporation. The form must be signed by the claimant, assignee or power of attorney. □

UST CLEANUP FUND UPDATE

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF CLEAN WATER PROGRAMS
PO BOX 944212
SACRAMENTO, CA 94244-2120

4

Highlights...

- ◆ *Pay For Performance (PFP)*
- ◆ *Allan Patton Returns as New Fund Manager*
- ◆ *Changes to Health and Safety Code Now Available*
- ◆ *How to get the Most out of the Cost Pre-Approval Process*
- ◆ *Fund Resumes Payments of Priority Class "D" Claims*

Fund Passes 10 Year Anniversary!

The Cleanup Fund began processing claims in January 1992 and as of April 2002:

- ◆ The Fund has received 17,229 claim applications.
- ◆ 13,847 claims have been approved.
- ◆ The Fund has issued 9,210 Letters of Commitment (LOCs). The breakdown is as follows: 356 "A" claimants, 4,096 "B" claimants, 3,465 "C" claimants, and 1,293 "D" claimants totaling over \$1.290 billion.
- ◆ The Fund has paid 30,467 reimbursement requests for \$1.159 billion. □

1-800-813-FUND

