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Underground Storage Tank Cleanup Fund Task Force
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Arnold Schwarzenegger
Governor

October 1, 2009

Members of the Board
State Water Resources Control Board
1001 I Street, 25th 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.

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