



Enforcement News

State Water Board Bans 100 Shell Oil Company Underground Storage Tank Sites from Cleanup Fund

\$20 Million to be Paid in Largest Settlement of its Kind

FOR IMMEDIATE RELEASE
Sept. 23, 2016

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SACRAMENTO – As part of a settlement agreement, the State Water Resources Control Board has permanently banned 100 of Shell Oil Company’s underground storage tank (UST) claims, held by a subsidiary Equilon Enterprises LLC, from the UST Cleanup Fund for allegedly claiming reimbursement through false or misleading statements on claim forms.

Disqualifying these 100 claims could save the UST Cleanup Fund up to \$150 million, significantly reducing Shell’s future reimbursements from the UST Cleanup Fund. In addition, the settlement agreement required Shell to pay \$20 million to the parties to the settlement agreement. Specifically, Shell has paid the State Water Board more than \$11 million to settle the State Water Board’s administrative claims and alleged False Claims Act violations.

Shell has paid an additional \$8 million in settlement moneys to the state’s Office of the Attorney General and a whistleblower related to the alleged violations of the False Claims Act. The State Water Board’s portion of the settlement moneys will go to the UST Cleanup Fund and be used to reimburse other UST Cleanup Fund claims.

“The UST Cleanup Fund is a critical tool the State Water Board uses to protect public health and safety and the environment,” said Cris Carrigan, director of the State Water Board’s Office of Enforcement. “It is imperative that claimants not engage in bad faith or fraud when accessing these vitally important public-benefit funds by submitting false or misleading statements. If they do, the State Water Board has powerful administrative authority to disqualify and take deductions against claims.”

This settlement is the third one reached by the UST Cleanup Fund for similar conduct by a major oil company, and the State Water Board has been in touch with other state administrators nationwide regarding such conduct by multiple major oil companies.

“The UST Cleanup Fund relies on accurate and truthful claimant self-reporting when issuing reimbursements,” said UST Cleanup Fund Manager Lisa Babcock. “We are pleased that Shell



has now complied with the requirement and recognizes the critical need for full disclosure to the UST Cleanup Fund.”

State Water Board staff had challenged Shell’s UST Cleanup Fund claims since 2007, and developed an administrative case to disqualify certain claims from seeking reimbursement. The State Water Board and the Office of the Attorney General uncovered evidence that Shell failed to disclose reimbursements it received from insurance companies for the same sites where Shell was seeking UST Cleanup Fund reimbursement. Claimants are prohibited from receiving UST Cleanup Fund reimbursement for cleanup costs that have been, or will be, reimbursed from another source. Shell UST Cleanup Fund claims were placed on hold during the dispute between Shell and government agencies. As part of the settlement, the State Water Board will process reimbursement of up to \$20 million in eligible claims subject to certain conditions set forth in the settlement.

Allegations and Settlement Agreement

On April 6, 2010, a whistleblower filed a complaint in Sacramento Superior Court against Shell alleging fraud under the California False Claims Act. The complaint alleged that when Shell submitted applications to the UST Cleanup Fund seeking reimbursement of costs at UST sites, it failed to disclose it previously had received reimbursement from a series of insurance claims, litigation, and settlements for the same sites on its Non-Recovery Certifications. This action resulted in a misrepresentation to the State Water Board as all types of monies received from other sources must be disclosed on its Non-Recovery Certifications. Double payments are not allowed under the UST Cleanup Fund.

The whistleblower complaint stated Shell’s failure to accurately report to the State Water Board the sources of other payments constituted a violation under the False Claims Act. The judicial action sought triple damages, penalties and attorney fees and costs against Shell. After the complaint was filed, the Office of the Attorney General coordinated its investigation with the State Water Board to determine how to best pursue and potentially resolve the claims asserted in the false claims lawsuit, as well as the State Water Board’s administrative claims.

Although the State Water Board was not a party to the False Claims Act litigation, it joined in the settlement negotiations arguing that it had independent administrative and litigation claims it could pursue. Shell cooperated with the State Water Board and the Office of the Attorney General in the investigation. The State Water Board’s resolution of the matter was contingent upon the settlement containing both a disqualification of certain claims and a reimbursement of funds previously paid to Shell from the UST Cleanup Fund. The disqualification of certain claims sends a strong message to all UST Cleanup Fund claimants of the importance of fully disclosing all monies that have been, or will be, reimbursed from another source.

The UST Cleanup Fund was created by the Barry Keene Underground Storage Tank Cleanup Fund Trust Act of 1989 and is administered by the State Water Board. The regulations implementing the Act allow the State Water Board to disqualify and deduct claims for reimbursement if claimants fail to disclose cleanup cost payments from another source.

Under the terms of the False Claims Act component of the settlement agreement, Shell will pay more than \$11.3 million to the State Water Board and almost \$5 million to the Office of the Attorney General in damages. In addition, Shell will pay more than \$3.4 million to the whistleblower, in addition to reimbursing the third-party plaintiff for attorney fees and costs. Under the terms of the Barry Keene Act component of the settlement agreement, 100 UST Cleanup Fund claims where Shell was previously qualified to receive reimbursements will now be permanently barred from the UST Cleanup Fund. These claims are no longer eligible to receive any reimbursement for cleanup costs. The UST Cleanup Fund's average reimbursement is about \$500,000 per eligible claim, but many claims use the entire \$1.5 million allotment, so the savings for the UST Cleanup Fund is between \$50 million and \$150 million.

A copy of the settlement agreement approved by the Sacramento County Superior Court can be found at the State Water Board enforcement [webpage](#).

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