



STATE WATER RESOURCES CONTROL BOARD

UNDERGROUND STORAGE TANK CLEANUP FUND

LEGISLATIVE REPORT

March 2018



Water Boards

STATE WATER RESOURCES CONTROL BOARD
REGIONAL WATER QUALITY CONTROL BOARDS

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Executive Summary

In the 2017 Budget Act, the Legislature approved an increase of \$1 million and seven positions for the Underground Storage Tank Cleanup Fund in the State Water Resources Control Board (State Water Board) budget. These positions were authorized to increase the speed of payment processing and reduce excessive payment times to people who have incurred and paid costs for regulatory compliance work to clean up contamination from leaking petroleum underground storage tanks.

Additionally, the Legislature included the following Budget Bill Language:

“The State Water Resources Control Board shall report to the Legislature, by March 1, 2018, on the number of underground storage tank cleanup claim payments completed since July 1, 2017, the average processing time of these claims payments, and a comparison of these measures to the prior two fiscal years. The State Water Resources Control Board shall also report whether the positions funded in the 2017 Budget Act to expedite claim payment processing have been filled, remain vacant, or redirected, including the current duties of those positions.”

The report has been prepared in response to the Budget Bill Language.

The State Water Resources Control Board Underground Storage Tank Cleanup Fund Program (Cleanup Fund Program) has made significant improvements since the passage of the 2017 Budget Act in processing reimbursement requests and addressing a backlog of reimbursement requests that had accumulated.

Between July 1, 2017 and March 1, 2018, Cleanup Fund Program staff reduced the number of reimbursement requests requiring review by 100 percent – from 1,097 in July 1, 2017 to 0 on March 1, 2018 (see Table 1). As of March 1, 2018, the reimbursement request backlog has been eliminated. Additionally, the average overall processing time for reimbursement requests submitted in Fiscal Year 2017-2018 was reduced to 118 days compared to 205 days for reimbursement requests submitted in Fiscal Year 2016-2017. Staff are processing complete reimbursement requests within a month of when they are received.

Table 1
Reimbursement Request Backlog

	A, B, and C Claims	D Claims	Total
July 1, 2017	903	194	1,097
March 1, 2018	0	0	0

The State Water Board made it a priority to reduce the backlog. The reduction was achieved through the additional positions that were provided in the 2017 Budget Act and the temporary reallocation of staff resources from other functions to assist in reducing the backlog, as well as by instituting some process changes. Some of the redirected staff have returned to their original assignments and are now focusing on eliminating short-term backlogs that developed in other areas while they were reassigned to processing reimbursement claims.

The seven positions received in the 2017 Budget Act will continue to be necessary to process reimbursements in a timely manner and ensure a backlog does not redevelop. In addition, the

Cleanup Fund Program anticipates it will receive an increase in reimbursement requests associated with the increased activation of claims from the Priority List. The program has approximately 3,000 claims on the Priority List and is activating 500 claims during Fiscal Year 2017-18. The Cleanup Fund Program anticipates activating over 500 claims from the Priority List during Fiscal Year 2018-19. The program is currently working with stakeholders on a plan to activate all claims from the Priority List because adequate funding is available to reimburse claimants for their eligible costs.

Program Description

The Barry Keene Underground Storage Tank Cleanup Fund Act of 1989 created the Cleanup Fund Program to help owners and operators of petroleum underground storage tanks (USTs) satisfy federal and state financial responsibility requirements. The Cleanup Fund Program is available to assist petroleum UST owners and operators with the costs of cleaning up contaminated soil and groundwater caused by leakage from petroleum USTs. The federal financial responsibility requirements also require coverage for third-party liability due to unauthorized releases of petroleum from USTs. The Cleanup Fund Program receives funding from fees paid by UST owners for every gallon of fuel that is placed into a UST. The Cleanup Fund Program has been a critical resource for both cleaning up immediate impacts of UST releases, and preventing significant migration of petroleum products in groundwater and soil.

The Cleanup Fund Program's mission is to contribute to the protection of California's water quality, public health, and safety, through:

- Establishing an alternative mechanism to meet federal financial responsibility requirements for owners and operators of USTs, and
- Reimbursing eligible corrective action costs incurred for the cleanup of pollution resulting from the unauthorized release of petroleum from USTs.

UST owners and operators who have leaking USTs are required to pay for the costs of soil and groundwater contamination that results from the leak. Under the Cleanup Fund Program, the owners and operators submit claims to the State Water Board for reimbursement of the costs of cleanup, and the State Water Board reimburses them for their cleanup costs. Statute requires payment of only eligible reasonable and necessary costs. Staff in the Cleanup Fund Program determine eligibility for reimbursement; review the reimbursement requests for proper documentation, regulatory directives, and reasonable and necessary work; and evaluate the requests for duplication and fraud. A reimbursement request review consists of a line item review of each invoice submitted. Cleanup Fund Program staff must review technical reports, correspondence and data uploaded into the statewide regulatory database (GeoTracker) to verify whether the work associated with the invoices was reasonable and necessary, directed by the regulatory agency, and completed at reasonable cost.

The Cleanup Fund Program benefits numerous small, medium, and large businesses and individuals by providing reimbursement for expenses associated with the cleanup of leakage from petroleum USTs. The program uses a claim priority system based on specified claimant characteristics relating to the claimant's ability to pay. There are four priority classes for claims:

- Priority Class A: Highest priority claimants owning residential tanks.
- Priority Class B: Reserved for small California businesses, governmental agencies, and nonprofit organizations with 100 employees or less and gross receipts below \$14 million.

- Priority Class C: Certain California businesses, governmental agencies, and nonprofit organizations not meeting the criteria for Priority B, but who have fewer than 500 employees. The Cleanup Fund Program statutes mandate that a minimum of 14 to 16 percent of the funds committed are awarded to Priority C claimants.
- Priority Class D: All other eligible claimants are the lowest priority. The Cleanup Fund Program statutes mandate that a minimum of 14 to 16 percent of the funds committed are awarded to Priority D claimants.

The Cleanup Fund Program places eligible claims on the Priority List, ranked by the assigned Priority Class and the date of complete application. As funding is available, the Cleanup Fund Program issues Letters of Commitment (LOC) to claimants, thus activating their claim from the Priority List and enabling submission of reimbursement requests. The program has 2,000 active claims, and the current Priority List consists of approximately 3,000 Priority Class D claims. The Cleanup Fund Program is currently reimbursing costs associated with the higher Priority Class A, Class B, and Class C claims, with remaining funding to be applied to the Priority Class D claims (lowest priority for cost reimbursement). The UST Cleanup Fund is issuing LOCs to the remaining 3,000 Priority List claims in Priority Class D to utilize the remaining funding. The activation of these claims will result in the submittal of many additional reimbursement requests to the Cleanup Fund Program.

Payments Completed

The Cleanup Fund Program receives an average of 3,300 reimbursement requests annually from approximately 2,000 active claims. Each claim may have multiple reimbursement requests because the cleanup work associated with the underground storage tank cases are open for several years. Claimants are able to submit reimbursement requests over the life of the cleanup for possible reimbursement from the program.

In past fiscal years, Cleanup Fund Program staff have been unable to complete all reimbursement requests submitted in the fiscal year. Many reimbursement requests cannot be processed due to missing documentation or forms, inability to determine the correct entity for payment, or simply because of the volume being submitted to the program. Typically, the Cleanup Fund Program has had a carryover of approximately 600 to 800 reimbursement requests between fiscal years. In July 2017, the Cleanup Fund Program had a backlog of approximately 1,100 reimbursement requests that were not completed. Table 1 above and Table 2 below show the monthly progress to eliminate the reimbursement request backlog. These tables show the reimbursements for claim priorities A, B, and C separately from Priority D, because Priority D claim reimbursements are frequently larger and more complex. Priority D claim reimbursements often cover the entire cleanup and may span periods of over 20 years.

The State Water Board made it a priority to reduce the backlog and reduced the number of reimbursement requests requiring review by 100 percent – from 1,097 on July 1, 2017 to 0 on March 1, 2018. Additionally, the average overall processing time for reimbursement requests submitted in Fiscal Year 2017-2018 was reduced to 118 days compared to 205 days for reimbursement requests submitted in Fiscal Year 2016-2017.

The Cleanup Fund Program achieved the reduction through the additional positions that were provided in the 2017 Budget Act, as well as by the temporary reallocation of staff resources from other Cleanup Fund Program functions to assist in reducing the backlog, and by instituting some

process changes. These included processing all reimbursements from a particular claim at the same time rather than strictly by oldest reimbursement request first. This allowed the analysts processing the claims to more quickly review for duplicative costs, and determine whether the work being conducted was consistent with the phase of the cleanup. Also, a triage process was instituted for technical review so simple issues could be resolved quickly, and those reimbursement requests processed, rather than being caught behind reimbursement requests that took more technical staff time to resolve.

The reimbursement request backlog has been eliminated as of March 1, 2018. As a result, the Cleanup Fund Program staff will be processing reimbursement requests in the month in which the reimbursement request is submitted. Processing reimbursement requests this quickly has not occurred since inception of the program. Cleanup Fund Program staff that were temporarily redirected to the task of processing reimbursement requests will resume their normal workload when all of the remaining new positions are filled and the additional staff are trained to process reimbursements.

Table 2
Reimbursement Request (RR) Backlog Reduction by Priority and Month

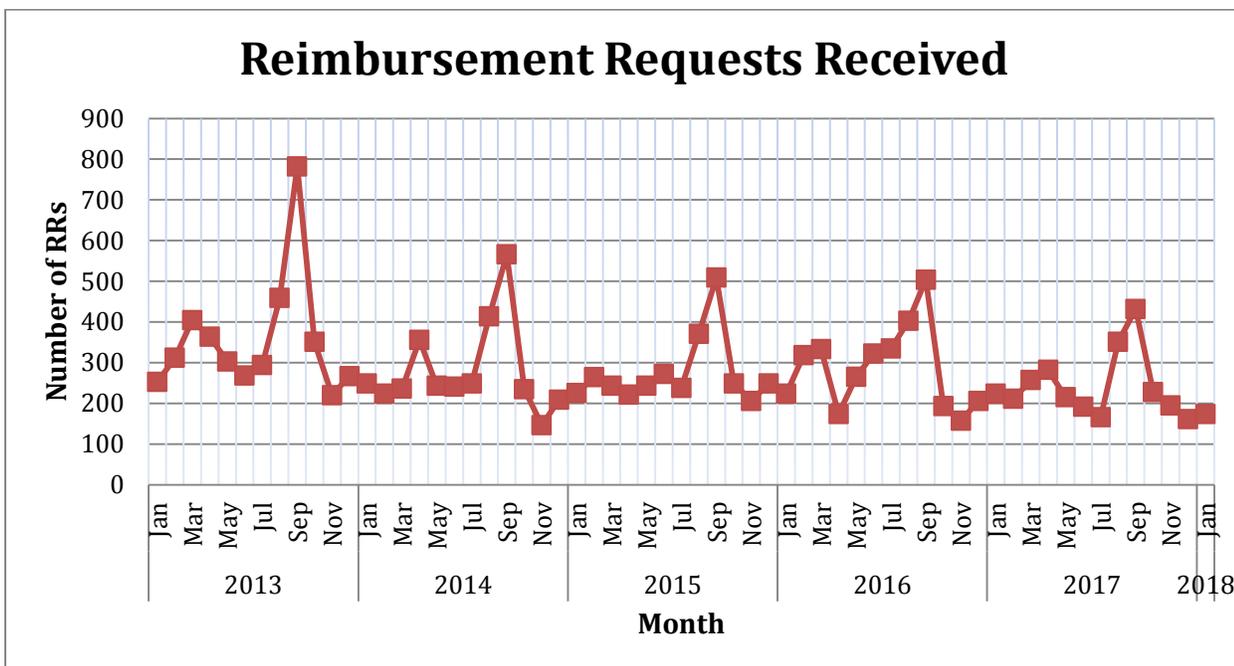
PRIORITY A, B, & C CLAIMS						PRIORITY D CLAIMS					
Data as of 2/28/18	Beginning Balance (includes 60-100 RRs on hold)	# RRs Rec'd	# RRs On Hold*	# RRs Completed	Ending Balance	Data as of 2/28/18	Beginning Balance (includes 60-100 RRs on hold)	# RRs Rec'd	# RRs On Hold*	# RRs Completed	Ending Balance
2017						2017					
July	903	147	160	263	857	July	194	11	102	82	63
Aug	857	275	167	312	827	Aug	63	35	99	18	77
Sept	827	406	195	367	894	Sept	77	26	97	26	75
Oct	894	177	197	280	793	Oct	75	51	97	59	67
Nov	793	181	197	307	667	Nov	67	14	97	19	62
Dec	667	142	200	233	579	Dec	62	22	77	9	55
2018						2018					
Jan	579	164	247	593	197	Jan	55	10	83	80	0
Feb	197	134	389	304	0	Feb	0	22	82	49	0

* # RRs on Hold - The number of Reimbursement Requests that cannot be paid by the Cleanup Fund due to missing documentation or forms, inability to determine correct entity for payment, or no Letter of Commitment issued. During any given month, some Reimbursement Requests are put on hold and some are released from hold.

** The UST Cleanup Fund Program physically moved locations. Operations were reduced during this time.

Payment Processing Times

The statutory requirement for payment processing is 60 days, which is calculated from the time the reimbursement request is received by the Cleanup Fund Program to the date a check has been issued by the State Controller's Office. This includes time for the State Water Board's Accounting Office to send the payment to the State Controller's Office (typically 2 to 4 weeks) and the State Controller's Office to issue the reimbursement check (typically 2 weeks). Historically, the Cleanup Fund Program has had difficulty meeting the 60-day statutory requirement due to the large carryover balances of reimbursement requests between fiscal years and the variability in the number of claims submitted each month. The chart below shows the number of reimbursements received by month for the period 2013 to 2018. There is an annual influx of reimbursement requests received between August and September because claimants are complying with a September 30 deadline to submit costs against their previous fiscal year's annual site budget. The Cleanup Fund Program sets aside a yearly allotment for each claim depending upon the cleanup activities occurring at the site for the underground storage tank case.



The actual time it takes to review a reimbursement request by Cleanup Fund Program staff is relatively short, approximately 30 days. However, the amount of time the reimbursement requests wait prior to the start of a review historically has been significant. Therefore, to reduce the overall processing time of reimbursement requests, Cleanup Fund Program staff must begin reviewing reimbursement requests immediately upon submission. There was a significant wait time because the Cleanup Fund Program did not have adequate staffing to handle the volume of reimbursement requests submitted to the program for review and processing, and a large backlog of reimbursements waiting for review developed.

Processing times have fluctuated in past fiscal years. However, the Cleanup Fund Program staff is working diligently to reduce processing times to the 60-day statutory requirement. With the efforts to decrease the yearly carryover of reimbursement requests, the Cleanup Fund Program anticipates being closer to the 60-day goal with reimbursement requests submitted in February 2018. Progress

toward this goal may not yet be reflected immediately in the overall processing time because older reimbursement request submissions are averaging over the 60-day requirement.

The following table shows the average processing times by fiscal year. The more recent reimbursement request submissions are averaging 81 days for processing within the Cleanup Fund Program, which is calculated from the reimbursement request submission to Cleanup Fund Program staff sending the payment to the State Water Board’s Accounting Office. The average time to check issuance for Fiscal Year 2017-2018 will fluctuate because all payments sent to the State Water Board’s Accounting Office during the current fiscal year have not yet received a reimbursement check.

Table 3
Reimbursement Request Processing Times by Fiscal Year

	FY 15/16	FY 16/17	FY 17/18*
Date Reimbursement Request Rec'd to Start of Review	99 days	142 days	60 days
Start of Review to Date Sent to Accounting	84 days	35 days	17 days
Date Reimbursement Request Rec'd to Check Issuance Date	208 days	205 days	118 days

*Data as of January 31, 2018

New Positions Authorized

In the 2017 Budget Act, the State Water Board received seven positions for the Cleanup Fund Program to assist with expediting payment processing. Of these seven positions, four are hired, and the remaining three have been advertised multiple times due to an insufficient candidate pool, and have not yet been filled. Table 4 shows a breakdown of the seven authorized positions with their hiring status and duties.

The remaining Engineering Geologist position was posted multiple times without attracting appropriately qualified candidates. This position was reclassified and advertised as a Water Resource Control Engineer with the same result. Recruitment for the Engineering Geologist and Water Resource Control Engineer classifications is proving to be challenging, possibly because there are many vacancies for the same classifications elsewhere in the State Water Board and in other agencies. The Water Resource Control Engineer has again been reposted with an anticipated hiring date of June 1, 2018.

The remaining two analyst positions were also advertised twice due to a low response rate. However, recent repostings have resulted in a sufficient candidate pool with hiring anticipated by April 1, 2018.

The additional seven positions, when fully filled, will allow the Cleanup Fund Program to maintain the current pace of reimbursement request processing, while keeping pace with current workload in non-reimbursement request processing areas. By maintaining this level of productivity, the program will be closer to consistently meeting the 60-day statutory requirement for payment processing and allow activation of additional claims from the Priority List in order for claimants to have an opportunity to submit reimbursement requests for payment of eligible costs.

Table 4
2017 Budget Act Authorized Positions

Classification	Positions Authorized	Positions Hired	Positions Remaining to Hire	Duties of Position
Associate Governmental Program Analyst	3	1	2	Processing Reimbursement Requests
Staff Services Manager I	1	1	0	Managing Reimbursement Request Processing, Process Improvements, and Reporting
Engineering Geologist/Water Resource Control Engineer	3	2	1	Processing Technical Reimbursement Requests
Total	7	4	3	

Conclusions

The Cleanup Fund Program has faced and continues to face many different challenges. The biggest challenge of the program is to meet the 60-day statutory requirement for reimbursement payments, while balancing the statutory requirement of reimbursing only costs that are reasonable and necessary and preventing fraud. Cleanup Fund Program staff are continuing to work on process improvements to ensure that both statutory obligations are met.

During the current fiscal year, the Cleanup Fund Program has reduced the average processing time of payments and the overall number of reimbursement requests that have yet to be reviewed. The reimbursement request backlog has been eliminated as of January 31, 2018, and Cleanup Fund Program staff will be processing reimbursement requests in the month in which they are submitted. This is a major accomplishment, given that the program has not been within this target since program inception. Continuing to operate in this fashion will allow claimants and their vendors to have a better understanding of when reimbursement moneys will be paid, and reduce delays in completing corrective action work to clean up contaminated sites. Additionally, the Cleanup Fund Program will see a reduction in the number of stakeholder complaints regarding payment delays.

The additional seven positions will allow the Cleanup Fund Program to maintain the current pace of reimbursement request processing, while keeping pace with current workload in non-reimbursement request processing areas. By maintaining this level of productivity, the program will be closer to consistently meeting the 60-day statutory requirement for payment processing and allow activation of additional claims from the Priority List in order for claimants to have an opportunity to submit reimbursement requests for payment of eligible costs. With the acceleration of activation of claims from the Priority List, the program is anticipating activating all claims and reimbursing most of these claims by the program's current sunset date.