

*ORPHAN SITE CLEANUP ACCOUNT
GENERAL PROGRAM
INFORMATION*

An informational guide to
California's Orphan Site Cleanup Account Program

September 2006

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ORPHAN SITE CLEANUP ACCOUNT PROGRAM SUMMARY

(The following is a summary of program requirements. This informational guidance document does not create any new requirements and when there is a question or conflict the OSCA Program regulations prevail.)

The Orphan Site Cleanup Subaccount (OSCA) was added to Chapter 6.75 of the California Health & Safety Code (H & SC), effective January 1, 2005. The OSCA Program was created to provide grants to cleanup “brownfield” sites contaminated by petroleum underground storage tanks (USTs) where there is no financially responsible party to pay for response actions at the site. These sites represent a special problem because they prevent and delay community redevelopment. The major component of the OSCA program is to provide financial assistance to eligible projects for clean up.

The OSCA Program will receive a \$10,000,000 appropriation from the UST Cleanup Fund for each of the fiscal years 2005, 2006, and 2007. Because of the short duration of the Program, timely cleanups will be essential. The OSCA Program will reimburse eligible response costs paid or incurred for cleanup of these sites after January 1, 2005.

Eligible projects will receive grant funding based on priority and availability of funds. There are two types of grants, an assessment grant and a cleanup grant. An applicant may apply for an assessment or cleanup grant or both.

Assessment Grants provide funding for response actions that characterize, assess, and investigate an unauthorized release from a petroleum UST. These actions include, but are not limited to, a preliminary site assessment and soil and water investigation and the preparation of a corrective action plan as defined in accordance with California Code of Regulations, Chapter 16, Article 11. Assessment grants may also provide funding for UST removal, free product removal and limited soil excavation.

Cleanup Grants provide funding for response actions that carry out cleanup activities and include, but are not limited to implementing a corrective action plan and verification monitoring. Cleanup grants will be awarded once a applicant demonstrates that a corrective action plan is complete and approved by the regulatory agency overseeing the response actions at the site or the applicant demonstrates that response actions are necessary during the site development process and are necessary to protect human health, safety and the environment.

The total maximum reimbursement allowed under the OSCA account is \$1.5 million per eligible site. No more than \$3 million may be awarded in grant agreements to any one applicant in a fiscal year. There is no Program deductible.

Sections cited in the OSCA General Program Information document are found in the OSCA Regulations, Title 23, Division 3, Chapter 18, Article 7, of the California Code of Regulations. You can review the regulations online at:

<http://www.waterboards.ca.gov/cwphome/ustcf/osca.html>

HOW TO APPLY – FILING YOUR APPLICATION

All interested parties seeking OSCA grant funding should complete and submit an OSCA application for eligibility review. Applications are available online at:

www.waterboards.ca.gov/cwphome/ustcf/osca.html

or copies can be requested by contacting the Special Programs Unit at (916) 341-5760 or 341-5756.

A complete application submittal includes 1) a completed and original signed OSCA application and 2) submittal of all required supporting documentation. Applicants are encouraged to submit complete packages to avoid processing delays. ***Electronic application submittals will not be accepted.***

The application will be reviewed to determine eligibility. Applicants must meet the following Program eligibility requirements:

- Applicant eligibility
- Site eligibility
- No financially responsible party has been identified to pay for cleanup costs.

ELIGIBILITY REQUIREMENTS

Applicant Eligibility

Applicants must meet the following criteria:

- 1) Does not qualify for the UST Cleanup Fund.
- 2) Did not cause, contribute or exacerbate the effects of the unauthorized release at the site.
- 3) Has no affiliation with any person who caused or contributed to the unauthorized release.
- 4) For purposes of this Program, a person causes or contributes to an unauthorized release if the person operates a UST or if the person owns the UST unless either of the following apply:
 - The unauthorized release began before applicant became the UST owner and applicant properly removed, closed or permitted the UST within a reasonable period of time from when he became the owner; or
 - Applicant acquired the property and despite the exercise of reasonable diligence, was not aware of the existence of the UST at that time. Applicant did properly remove, close or permit the UST within a reasonable period of time, from when the applicant should have become aware of the existence of the UST and the unauthorized release began before the applicant closed or permitted the UST.

Property Ownership:

The purpose of the OSCA Program is to encourage the cleanup of “brownfields” contaminated by unauthorized releases from petroleum USTs. Many times these brownfield sites are abandoned by the responsible parties because they are unable to finance the cleanup. Often, prospective buyers of these sites are unwilling to take on the risk of purchasing the site due to liability issues associated with the contamination.

To promote the use of the OSCA Program, applicants are not required to be a property owner for an assessment grant. This feature allows prospective buyers to conduct a complete site assessment and evaluate their risks before making a commitment to acquire the site. If an applicant requests a cleanup grant, they will be required to demonstrate either equitable or legal ownership of the property prior to receiving payment pursuant to a cleanup grant. *Public agencies are exempt from the property ownership requirement.*

NOTE: If an applicant is not a property owner, they will need to demonstrate that they have authority to access the site to perform response actions.

Site Eligibility

The site must meet the following criteria:

- 1) The site must qualify as a brownfield. A brownfield is defined by the following criteria:
 - The site is located in an urban area. An urban area means the central portion of a city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile. *An application appendix has been prepared using 2000 United States Census Bureau data that identifies California cities that have a population of 50,000 or more. Program staff will verify whether sites located in these cities meet the definition of an urban area. If a site city is not listed on the appendix, provide an explanation and supporting information that the site qualifies as an urban area based on the above definition.*
 - The site was previously the site of an economic activity that is no longer in operation at this location. *Applicants must identify the former economic activity at the site and the date activity ceased.*
 - The site has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months before the date of application. *If the site has been used for any economic activity 12 months prior to the submittal of an application, the applicant will be asked to describe the use of the site.*
- 2) The site is not listed or proposed for listing on the National Priorities List pursuant to section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq.).
- 3) The site is not currently and was not previously owned or operated by a department, agency or instrumentality of the United States government.
- 4) The site will not be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the site meets the requirements of an eligible site as defined in Section 2814.20, subdivision (c) and is the site of contiguous expansion of an operating industrial or commercial facility owned or operated by one of the following:
 - A small business.
 - A nonprofit corporation formed under the Nonprofit Public Benefit Corporation Law.
 - A small business incubator that is undertaking the expansion with the assistance of a grant authorized by Section 15339.3 of the Government Code or a loan guarantee provided pursuant to Section 14090 of the Corporations Code.
- 5) For the site to qualify, the principal source of contamination must be from a petroleum UST, as defined in section 25299.24 of the H & SC. Other sources of contamination may be present, but the principal source must be a petroleum UST. *Farm tanks, hydraulic lift tanks, tanks in vaults, and above ground tanks do not fit within the definition of a UST.*

- 6) There must have been an unauthorized release from a petroleum UST discovered and reported to the responsible regulatory agency. The applicant will need to provide verification from a regulatory agency of an unauthorized release from a petroleum UST and 1) directives requiring response actions at the site or 2) that the response actions are necessary during the site development process and are necessary to protect human health, safety and the environment.

Financially Responsible Party (FRP) Requirement

The applicant is required to demonstrate there is no viable FRP identified to pay for site cleanup costs. The applicant is required to research current and former UST owners and operators and property owners identified as Responsible Parties (RPs) by the regulatory agency overseeing site cleanup. Applicants that are also RPs are excluded from this financial viability analysis.

Applications submitted by co-applicants that are also identified as RPs, must designate a primary applicant. The financial ability of the primary applicant will not be considered. The financial ability of all RP co-applicants will be subject to a financial viability analysis.

The applicant is required to:

- Make a reasonable effort to contact and obtain information from the identified RP(s).
- Request identified RP(s) to complete the a RP Worksheet (Appendix B, OSCA Application).
- State the efforts made by the applicant to contact or obtain the information from the RPs(s) e.g. certified mail, property tax records, public agency records.

When determining if a RP is financially able to pay, the State Water Board will take into account the following:

- Anticipated cost of the assessment and cleanup;
- Income and assets of the RP;
- Insurance available to pay for the response actions; and
- Other financial assistance available to the RP for cleanup.

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| APPLICATION INFORMATION AND SUPPORTING DOCUMENT SUBMITTAL |
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The following information will be requested on the application:

- Applicant identification information
- Site description
- Lead regulatory agency overseeing the site cleanup, regulatory contact and case number assigned
- History of response actions from date of discovery of an unauthorized release to present
- Site eligibility information
- Site history – Former property owners, tank owners and operators
- Applicant eligibility information
- Financially responsible party information
- Certification disclosure for double payment
- Priority ranking information
- Estimated response costs
- Original Signature(s) of applicant(s)

All applicants are required to submit the following application supporting documents:

- Site map: detailed site map with locations of all petroleum and non-petroleum USTs and other known or potential sources of contamination.
- Unauthorized release: 1) verification from a regulatory agency of an unauthorized release from a petroleum UST, 2) directives requiring cleanup activities at the site or that response actions are necessary during the site development process and are necessary to protect human health, safety and the environment, and 3) any other information necessary to demonstrate that the principal source of contamination is from a petroleum UST.
- Technical reports: copies of all technical reports associated with UST removal, site investigation and cleanup activities, and quarterly monitoring reports associated with the unauthorized release that is the subject of the application and that are available to the applicant.

The above information can generally be located and copies retrieved from the regulatory agencies. Depending on the site, it may be necessary to contact both the local regulatory agency and the designated Regional Water Quality Control Board.

Additional documents *that may be required* include:

- Written site access agreement
- Responsible party worksheet
- Property ownership document
- Priority ranking documents
- Small business documents
- On behalf of agreement
- Power of Attorney form
- Site Closure documents
- Other regulatory agency letters or permits that acknowledge/approve of response work to be conducted at the site as part of the development process

PRIORITY RANKING

OSCA Program applications will be assigned a priority ranking for the OSCA Priority List based on the following two-tier priority system:

Tier 1 All completed applications received within the first forty-five (45) calendar days after the effective date of the OSCA regulations, November 28, 2005, were ranked as if received on the same date. The applications were then randomly ranked to determine the order of priority. Completed applications that are received after forty-five (45) calendar days after the effective date of the OSCA regulations, will be ranked according to the date they are received. Applications received on the same day will be randomly ranked.

Tier 2 If the State Water Board determines that sufficient funding to meet the demand for OSCA grants will not be available in a given fiscal year, the State Water Board will assign or reassign priority ranking by calculating a priority score to rank each application by the following factors:

Water Quality - Forty (40) percent of the priority score is based on whether the unauthorized release is located within 1,000 feet of a drinking water well or a surface water body used as a source of drinking water. See below:

Public drinking water wells - OSCA Program staff will verify whether a site is located within 1,000 feet of a public drinking water well using Geotracker, a web based tool that assists government agencies in determining whether a project site lies within 1,000 feet of a *public* drinking water well.

Private drinking water wells - Applicant can verify whether the site is located within 1,000 feet of a private drinking water well by submitting verification documentation from a water purveyor or other reliable source that the site is located within 1,000 feet of a private drinking water well.

Surface water body used as a drinking water source – Applicant can verify whether a site is located within 1,000 feet of a surface water body used as a drinking water source by submitting official verification documents. (e.g. county, city or community documents or maps, water purveyor document).

Environmental Justice - Thirty (30) percent of the priority score is based on whether the site is located in a census tract with a median household income (MHI) of less than 80% of the statewide MHI based on the most recent census data collected by the United States Census Bureau. To determine the MHI for the applicable census tract, go to www.census.gov or call the Bureau of the Census at the following numbers: Northern California (800) 233-3308 and Southern California 800-992-3530.

Smart Growth - Thirty (30) percent of the priority score is based on the potential for the project to result in development of affordable inner city housing or other infill development.

Applicant may submit county, city or local community plans, proposals or letters of intent/consideration to demonstrate this.

The priority of applications that receive the same total priority score will be ranked on the date the completed application was received by the State Water Board and random number assigned for applications received on the same date.

PRIORITY LIST

Within 60 days of receipt of a completed application, OSCA Program staff will determine eligibility. If the application is eligible, a notice of eligibility will be issued to the applicant and the application will be placed on the OSCA Priority List (List).

At least once each calendar year, the State Water Board will adopt a revised List. An eligible application must be received at least 30 days prior to the adoption of the revised List. Applications from the previous List that have received commitments for OSCA grant funds will be removed the revised List. Applications on the previous List that have not yet received OSCA grant funding will retain their previous ranking on the revised List, except in the case where the State Water Board determines that sufficient funding to meet the demand for OSCA grants will not be available in a given fiscal year and the Tier 2 system described earlier is triggered.

GRANT AGREEMENT FUNDING

Applicants will be notified in writing of application acceptance. If funds are available, an applicant will also receive pre grant agreement paperwork to conduct work necessary for an assessment or cleanup grant. OSCA grant agreements will identify the State Water Board as the grantor and the applicant as the grantee.

Assessment Grants

Once an application is approved by the State Water Board, and it is determined that funds are available, the applicant will be asked to provide a scope of work and estimated budget to complete site assessment including a corrective action plan. The scope of work should include a brief and quantified description of the tasks that will be performed. For each task, the budget should include the total amount, a breakdown

of the estimated number of hours, the job classification and hourly rate of personnel performing the task, subcontractor charges and any other information reasonably required by the State Water Board to finalize the scope of work and budget.

A sample assessment grant agreement is sent with the pre-grant paperwork package for guidance. Applicants are not required to submit bids for work conducted under an assessment grant. The budget will be negotiated between the applicant and State Water Board staff.

Applicants are expected to work closely with their lead regulatory agency in obtaining the required approvals to conduct response actions at the site. OSCA encourages expedited site assessments and supports workplans that provide for a flexible, expandable scope of work if additional assessment work is required.

Applicants who have received assessment grant funding do not have to submit a new application for cleanup grant funds. Once an applicant has a corrective action plan approved by the regulatory agency, OSCA Program staff will send pre cleanup grant agreement paperwork (subject to availability of funds).

Cleanup Grants and Bidding Requirements

Before entering into a cleanup grant, the applicant will be expected to follow the appropriate course of action as identified below:

For sites where the State Water Board, Regional Water Board or local agency has determined that an unauthorized release has *impacted groundwater*, the response actions that carry out cleanup activities are to be conducted in accordance with Article 6.5 (Performance Based Contracts) of Chapter 6.75 of the H & SC unless the State Water Board finds that compliance with Article 6.5 of Chapter 6.75 of the H & SC is unreasonable or impossible under the circumstances pertaining to a particular application.

Cleanup Work conducted in accordance with Article 6.5 (Performance Based Contracts)

Projects that require cleanup work to be conducted in accordance with 6.5 of Chapter 6.75 of the H & SC will be governed by a Pay For Performance (PFP) Condition of Payment Agreement. The PFP Condition of Payment Agreement identifies a fixed price to cleanup up the site, a time limit, remediation goals and contamination-reduction payments. The PFP Condition of Payment is negotiated with the applicant and includes an appendix outlining regulatory agency performance requirements. A signed PFP Condition of Payment will become the scope of work and budget in the cleanup grant agreement.

PFP Condition of Payment Steps:

- 1) Request regulator to establish remediation target levels for contamination.
- 2) Applicant, State Water Board and regulator discuss regulatory requirements.
- 3) Applicant works with consultant to prepare bid package for cleanup work.
- 4) Applicant receives PFP bid packages.
- 5) Applicant and State Water Board agree on price, and PFP Condition of Payment document is signed by applicant.
- 6) Baseline split sampling event occurs and results are sent to the State Water Board and the regulator.
- 7) Cleanup grant agreement executed.

Applicants can learn about Performance Based Contracts and the PFP Condition of Payment Agreement at: www.waterboards.ca.gov/cwphome/ustcf/technicalformsinfo.html or by contacting the Special Programs Unit for information on this topic.

The applicant will be required to submit at least three *responsive* proposals or bids in accordance with section 25299.65 of the H & SC for the work to be performed in the PFP Condition of Payment Agreement.

Cleanup Work not conducted in accordance with Article 6.5 (Time and Materials Contracts)

Projects that require cleanup but are not conducted in accordance with article 6.5 of chapter 6.75 of the H&SC, must submit a proposed scope of work and proposed budget for the response actions that are covered with the cleanup grant. The scope of work should include a brief and quantified description of the tasks that will be performed. For each task, the budget should include the total amount, a breakdown of the estimated number of hours, the job classification and hourly rate of personnel performing the task, subcontractor charges and any other information reasonably required by the State Water Board to finalize the scope of work and budget.

The applicant must submit at least three *responsive* proposals or bids in accordance with section 2814.31 of the OSCA regulations.

Executed Grant Agreements

Once grant agreement negotiations are final and the State Water Board Administrative Unit has processed and executed the grant agreement, the executed grant agreement will be mailed to the grantee. An applicant may submit payment requests on an ongoing basis for eligible response action costs provided that the request is for \$5,000 or more.

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| GRANT PAYMENT REQUESTS |
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Payment requests must be prepared and submitted pursuant to the requirements of the Grant Agreement.

A payment request submittal for work conducted in accordance with Article 6.5 includes:

- 1) A report detailing the attainment of a remediation milestone in accordance with article 6.5 of chapter 6.75 of H & SC;
- 2) A letter from the regulatory agency overseeing response actions that verifies that the remediation milestone has been attained;
- 3) Invoices and auxiliary documentation that demonstrate that the costs of response actions claimed by the applicant are eligible for payment;
- 4) Any other information reasonably required by the State Water Board to demonstrate that the performance-based contract is consistent with Article 6.5 of chapter 6.75 of the H & SC.

A payment request submittal for work **not** conducted in accordance with Article 6.5

Payment requests for assessment and cleanup grant funds, where the response actions were not conducted pursuant to article 6.5 of chapter 6.75 of H & SC , must include invoices and auxiliary documentation that demonstrate to the State Water Board's satisfaction that the response action costs claimed by the applicant are eligible. Payment request requirements will be outlined in the grant agreement. See minimum invoice requirements Section 2814.30(c).

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| ELIGIBLE AND INELIGIBLE COSTS |
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OSCA funds may be used to reimburse eligible applicants for response action costs that are both **reasonable and necessary**.

“Response Actions” means removal actions and remedial actions, and includes corrective action as defined in section 25299.14 of the H & SC.

- (1) Costs of response actions also include:
- a) Professional fees and costs that are directly related to removal actions and remedial actions.
 - b) Costs of supervision by an applicant of response actions.
 - c) Costs of UST system removal if there is an unauthorized release or threat of unauthorized release.
- (2) Costs of response actions exclude, among other costs:
- a) Costs of environmental audits or pre-purchase site investigations, unless performed in response to an unauthorized release or threatened unauthorized release.
 - b) Economic losses and damages, including but not limited to damages for lost business and diminution in property value.

*OSCA grants monies are for eligible response costs incurred on and after
January 1, 2005.*

OSCA BUSINESS PROCESS

1. Receive and review new OSCA application.
2. Send acceptance/rejection notification letter to applicant.
3. Establish priority ranking and submit to State Water Board to adopt OSCA Priority List.
4. Send pre grant agreement paperwork to eligible applicant.
5. Negotiate grant agreement.
6. Process and execute grant agreement.
7. Receive and process payment requests pursuant to grant agreement.

REJECTED APPLICATIONS

If an application is denied by the State Water Board, the applicant does not have a right to administratively appeal the decision. The applicant may reapply at any time unless the previously denied application or any other information submitted to the State Water Board by the applicant contained a material error that was a result of misrepresentation or fraud or other misconduct.

OSCA PROGRAM CONTACTS

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| Judy Reid | (916) 341-5760 | jreid@waterboards.ca.gov |
| Pat Preslar | (916) 341-5756 | ppreslar@waterboards.ca.gov |

All OSCA documents including the OSCA regulations and application can be reviewed and downloaded on the OSCA home page at:

<http://www.waterboards.ca.gov/cwphome/ustcf/osc.html>

Interested parties can signup and subscribe to the OSCA electronic mailing list AB 1906 (Orphan Site Cleanup Account) for future OSCA Program updates at the OSCA homepage following or at the following website:

http://www.waterboards.ca.gov/lyrisforms/swrcb_subscribe.html