



Enforcement News

Ninety British Petroleum Underground Storage Tank Sites Banned from Cleanup Reimbursement Following Legal Settlement

Settlement includes cleanup claim offsets of nearly \$3.9 million against BP's remaining sites

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SACRAMENTO – As part of a settlement agreement, the State Water Resources Control Board has permanently disqualified 90 of British Petroleum North America's (BPNA) underground storage tank (UST) cleanup sites from the Underground Storage Tank Cleanup Fund for allegedly claiming reimbursement through false or misleading statements.

The agreement significantly reduces BPNA's future claims against the cleanup fund, which is administered by the State Water Board. Disqualifying these 90 sites could save up to \$135 million. In addition, BPNA's 153 remaining cleanup sites that are eligible for reimbursement will each have a \$25,400 offset levied against them, reducing future claims by nearly \$3.9 million.

As part of the agreement, BPNA also has agreed to pay \$7.9 million as part of a False Claims Act settlement with the State Water Board, the state Attorney General's Office and a third-party plaintiff.

"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, chief 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 monetary offsets against claims in addition to judicial remedies under the False Claims Act."

Working with the Attorney General's Office, the State Water Board reviewed company records, invoices, Fund documentation and other paperwork to determine that false or misleading statements were allegedly used to gain reimbursement at BPNA UST sites. The State Water Board and the Attorney General's Office uncovered evidence that BPNA failed to report reimbursements it received from insurance companies for the same sites it was claiming Fund reimbursement. Claimants are prohibited from receiving Fund reimbursement for cleanup costs that have been, or will be, reimbursed from another source.

Background on Allegations

On April 6, 2010, a third party filed a complaint in Sacramento Superior Court against BPNA claiming fraud under the California False Claims Act. The complaint alleged that when BPNA submitted applications to the Fund for reimbursement of costs at these sites, BPNA failed to disclose it had also received reimbursement from a series of insurance claims, litigation and settlements for these same sites. This action resulted in an impermissible “double payment.”

The complaint stated BPNA’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, attorney fees and costs against BPNA. After the complaint was filed, the Attorney General’s Office coordinated its investigation with the State Water Board to determine whether to intervene in the lawsuit, and how to best pursue and potentially resolve the claims asserted in the third-party 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. BPNA cooperated with the State Water Board and the Attorney General’s Office in the investigation.

The 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 Act’s regulations allow the State Water Board to disqualify and offset 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, BPNA will pay more than \$3.9 million to the State Water Board and more than \$2.6 million to the Attorney General’s Office. In addition, BPNA will pay \$1.38 million to the third-party plaintiff and reimburse the third-party plaintiff \$250,000 in attorney fees.

Under the terms of the Barry Keene Act component of the settlement agreement, 90 of the 243 cleanup sites where BPNA was previously qualified to receive reimbursements will now be permanently barred from the Fund. These claims are no longer eligible to receive any reimbursement for cleanup costs. The fund’s average reimbursement is about \$500,000 per eligible site, but many sites use the entire \$1.5 million allotment, so the saving for the Fund is between \$45 million and \$135 million.

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

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