

California UST Cleanup Financing Options;

an informal review

16th Annual Fund Administrators Meeting

June 6, 2007 St Petersburg FL

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Objective:

Determine the viability of “polluter pays” options for financing UST leak prevention and cleanup after 2010, ...

...and compare those to a modified version of the Cleanup Fund, for their relative ability to satisfy specific objective criteria.

Mandatory Criterion

Guarantee federal and state
statutory and regulatory
compliance

Philosophical Criteria

Provide effective incentives for
O/O to

- avoid releases, and
- reduce costs,

Management Criteria

- Satisfy Water Board and UST goals,
- Guarantee adequate \$\$ resources,
- Finance legacy and future cleanup,
- Ensure affordability for O/O, and
- Avoid adverse economic impacts

Background

- California Cleanup Fund is **NOT** funded from taxes
- "STORAGE FEE" of **1.4 cents/gallon**
- Fee income was **~\$224,000,000** in 2006 (**~\$13,000/site**)

Background, cont.

- Storage Fee due to sunset in 2010, support for extension appears strong
- Cleanup cost: \$192,042; 2 x National cost ~\$100,000
- UST inspection and cleanup regulated by local government NOT by the state

Possible Organizational Structures

- State as Sole Insurer
- State Revolving Fund
- Hybrid: State Fund + Private Insurance
- Modify and extend the Cleanup Fund
- Private Insurance as Sole Insurer

State as Sole Insurer

1. How to capitalize?
2. How to fund legacy cleanup?
3. Do we insure prior conditions?
4. Do we insure every UST site?
5. Will premiums be affordable?

State UST Revolving Fund

every applicant repays 100+% of costs,
performance-based interest rates

However there is a Major Solvency Risk:

Unlike the *California Clean Water Revolving Fund* applicants,

.... applicants to a UST Revolving Fund
have neither taxing authority to
guarantee repayment, nor acceptable
collateral.

Hybrid: State Fund + Private Insurance

- Continue storage fee after 2010 to address legacy and uninsurable sites
- State is inclined to regulate insurance policy terms, conditions, and exclusions in order to limit claims denials
- Expect premiums to go up if exclusions are limited
- What if underwriters decline to offer UST insurance in California?

Private Sector Insurance Only

what can California learn from other states?

We understand there have been problems transitioning from Fund to insurance.

We also understand that private UST insurance is not meeting expectations in other states.

A Contemporary History of Private UST Insurance: Reports from Other States

- Insurance industry declining coverage sites that are not completely free of contamination.
- Insurers declining coverage for older UST.
- *Upgrading, replacing, or removing UST may result in policy renewal application denied.*
- Some insurers terminating UST coverage in some states.
- Claims denied for both compliance and non-compliance.
- No “first dollar” coverage.

Questions asked by Water Board Management pg 1/3

- Will soil and groundwater sampling prior to issuing a policy resolve the "prior or existing condition" dilemma?
- Will insurers be satisfied with a baseline, or will they require "cleanup" prior to new policy?
- What will groundwater and soils sampling required by insurers cost?
- What "exclusions" will California allow?

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Questions; pg 2/3

- What about contamination from spills, overfills, and leak repairs?
- Who pays costs of establishing a release date?
- How long does it take to settle a claim?
- What % of claims have been settled in full?

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Questions; pg 3/3

- Is the burden of proof on the insurance company?
- Are premiums based on the type and age of the system, compliance history, and the product stored?
- Will the insurer inform the State when a claim is made?
- Will insurers agree to exclude the State as a possible "Primary Insurer"?

Pre-Existing Conditions
Accounted for

74%

of the questions raised by Water
Board management

More Viable Private Insurance

- Eliminate “prior condition” issue / insurers establish affordable soil & groundwater baseline upfront
- Eliminate high risk systems / state mandates upgrades and reimburses cost

Ranking California's Options

Criteria/Options	State as Insurer	Modify Cleanup Fund	Hybrid: State/Private	State Revolving Fund	Vanilla UST Insurance <small>There are innovative exceptions</small>
Satisfies Federal Statutes	YES	YES	YES	YES	coincidentally
Satisfies CCR, HSC	YES	YES	YES	YES	coincidentally
Meets UST Program goals	YES	YES	YES	possibly	coincidentally
Meets cleanup standards	YES	YES	YES	YES	uncertain
Adequate and timely funds	YES	YES	Not always	Not always	Not always
Legacy sites cleanup	YES	YES	YES	YES	NO
Affordable to small facilities	?	YES	?	?	?
Discourages future releases	likely	likely	possibly	possibly	Not always
Motivates cost containment	likely	likely	possibly	possibly	Not always
Maximum use of resources	YES	YES	possibly	possibly	NO
Minimum program disruption	some	YES	some	some	major
In place by Jan 1 2011	possibly	probably	not likely	possibly	uncertain
Sustainable/dependable	probably	Until sunset	possibly	Not always	Not always
No new state fiscal impacts	OK	OK	OK	OK	OK
Min. local and CUPA impacts	?	OK	?	NO	NO

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California's Next Steps:

Define methods to modify O/O behavior

Set contractor and manufacturer liability

Draft new legislation by September 2007

Establish program performance metrics

Conclusion ...

of my informal options review
and recommendations

June 6, 2007

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References

- **State clean-up funds:** WA, IA, WI, MI, OR, AK, MO, DE, FL
- **ASTSWAMO:** 2002, 2004, 2007 surveys
- **Underwriter contacts:** AIG, Zürich
- **UST insurance brokers:** California and New York
- **California agencies:** Department of Insurance, BOE
- **FAIR:** California's brownfields' insurance experiment

Background

- California storage fees ~ \$13,300/site
- Private UST insurance premium ~ "\$1,500"/site
- California cleanup cost: \$192,042
- National cleanup cost: \$98,292
- More than a dozen states have already opted for private insurance: Washington, Oregon, Hawaii, New York, ...Michigan, Wisconsin, Texas, Florida, Delaware, Alaska, Missouri, Iowa, New York, and West Virginia.
- UST insurance performance to date:
 - Insurance claims denied for prior conditions,
 - insurers requiring soil and groundwater testing plus cleanup prior to writing policy,
 - policies cancelled for non-compliance,
 - claims denied due to UST system compliance,
 - proof of compatibility prior to storing alternative fuels, and
 - insurers have dropped coverage in some states due to rising cost of claims.
- Is California the only state whose cleanup fund is NOT funded from taxes?
 - No, at least one other: Missouri

Objective Criteria

1. Mandatory
2. Philosophical
3. Management