

## Chapter 5

# How to Pay for Site Assessment, UST Removal, and Remediation

### Funding Sources for Remediation of Former Gas Station Sites

	California Petroleum UST Cleanup Fund	Calif. Petroleum UST Fund – EAR Account	Calif. Orphan Site Cleanup Account (OSCA)	US EPA Brownfields Grants	CDBG Funds (US HUD)
<b>Amount</b>	\$1.5 million / site	\$1.5 million / site	\$1.5 million / site	\$200,000* / grant	Depends on population of the jurisdiction
<b>Activities Covered</b>	<ul style="list-style-type: none"> <li>- Assessment ordered by Regulator</li> <li>- Remediation from leaking USTs</li> <li>- UST removal NOT covered</li> </ul>	<ul style="list-style-type: none"> <li>- Assessment</li> <li>- UST Removal</li> <li>- Remediation</li> </ul>	<ul style="list-style-type: none"> <li>- Site assessment</li> <li>- Site remediation</li> <li>- Removal of USTs</li> </ul>	<ul style="list-style-type: none"> <li>- Assessment</li> <li>- Remediation</li> <li>- UST removal if needed for assessment</li> </ul>	<ul style="list-style-type: none"> <li>- Assessment</li> <li>- UST Removal</li> <li>- Remediation</li> </ul>
<b>Key Eligibility Criteria**</b>	<ul style="list-style-type: none"> <li>- Contamination identified</li> <li>- Funding to UST owner or operator on reimbursed basis</li> <li>- Site is in compliance</li> <li>- Owner eligible for Fund</li> </ul>	<ul style="list-style-type: none"> <li>- Potential contamination indicated</li> <li><u>Owner is either</u></li> <li>- not found</li> <li>- lacks sufficient funds</li> <li>- recalcitrant</li> </ul>	<ul style="list-style-type: none"> <li>- Site in urban area</li> <li>- Site previously had economic activity, vacant for 12 months</li> <li>- Applicant not eligible for Cleanup Fund</li> </ul>	Contamination indicated or suspected	Site must be in a CDBG eligible census tract. Municipality must allocate CDBG funds for this purpose.
<b>Time Schedule</b>	Application to UST Fund by May is best.	Application to Regional Board by March 1 <sup>st</sup> of each year	Applications will be available Dec. 2005	See <a href="#">US EPA web site</a> for criteria and application deadline.	Funds budgeted by local government annually.

\* Applicants can request a waiver to receive up to \$350,000 for assessment of certain contaminated sites including petroleum sites. Up to \$1,000,000 is available to establish a revolving loan fund.

\*\* This is not a complete list of eligibility criteria

### Federal Funding Sources

#### Community Development Block Grant (CDBG) Funds

Community Development Block Grant funds are provided by U.S. Department of Housing and Urban Development (HUD) to cities and counties to improve housing and economic development opportunities in low-income communities. The City of Los Angeles has chosen to

fund a portion of its Brownfields Program through CDBG funds allocated each year for this purpose. Cities can choose to spend these funds for site assessment, remediation, agency oversight costs, legal support, and other expenses related to economic development of sites in qualifying census tracts. Consult with the agency in your city or county that handles CDBG funds for details. The [HUD website](#) also has information on this program.

#### U. S. Environmental Protection Agency Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants

US EPA offers grants to local governmental agencies for assessment and cleanup of Brownfields, including petroleum sites. Additional funds are available to initiate a revolving loan program. Grants are available that will cover Phase Is, Phase IIs, cleanup and reuse plans, cleanup costs, community involvement, purchase of environmental insurance, and removal of USTs if needed to complete an assessment. The grants are available to states, local government, tribes, and non-profit organizations. Check the [US EPA web site](#) under “Grants and Funding” for details and deadlines. Also consult your local U.S. EPA Regional Office web site or call them about other programs that may be available.

## **California State Funding Sources**

### California Petroleum Underground Storage Tank Cleanup Fund (Fund)

This program, administered by the California State Water Resources Control Board (SWRCB), may be thought of as an insurance program that enables UST owners and operators to satisfy federal and state financial responsibility requirements and to assist with the costs of cleanup of contaminated soil and groundwater caused by leaking petroleum USTs. The Fund will reimburse up to \$1.5 million in eligible expenses per site and provides coverage for third-party liability due to releases, but does not pay for UST removal. Eligible recipients are grouped into categories that have different priorities for payment.

For a UST owner or operator to be eligible, the tanks must be in compliance with all regulations, i.e. removed or upgraded to local regulatory requirements by December of 1998. Sites with USTs still in place can only qualify for the Fund under a waiver provision. Consult [Appendix E](#) for a summary of Fund provisions, including waiver provisions. In California, UST removal contractors are familiar with the Fund and can advise on the eligibility of particular sites. The Fund provides up to \$3,000 to pay a consultant to prepare the documentation for application to the Fund. Fund staff can provide the names of such consultants. Consult the [Appendix A](#) - List of Resources for how to contact the Fund office. In some cases, the Fund also includes provisions for owners of USTs to pass their rights to the Fund to future owners. Municipalities that are considering taking ownership of sites need to take great care to review all the regulations thoroughly to determine if they will be eligible to receive reimbursement from the Fund. It is worth noting that this is a reimbursement program. Owners or operators that qualify for the Fund may be able to find an environmental consultant that will wait for payment until the reimbursement payment is received. Otherwise, a loan may be needed.

This program can be of great benefit by providing funding for remediation of former gas station sites, but criteria for qualification are complex. The City's Redevelopment Agency retained the services of an UST Fund consultant to advise on eligibility issues. There are limitations on the expenses that qualify. For example, the Cleanup Fund will not reimburse costs of removing USTs and Fund staff can only determine a site's eligibility after tanks have been removed and contamination has been identified and confirmed by the lead agency.

#### Emergency, Abandoned, Recalcitrant (EAR) Account

This is a specific pool of money allocated each year by the SWRCB for use at sites that present an emergency situation (Emergency), at sites whose owners have no resources or cannot be located (Abandoned), or at sites whose owners refuse to undertake cleanup (Recalcitrant).

Local UST regulating agencies can nominate sites to receive funds to cleanup sites that have identified contamination under the "abandoned" or "recalcitrant" categories. Local UST regulating agencies can nominate sites with identified contamination to receive funds under the "abandoned" or "recalcitrant" categories as follows: The local agency that oversees USTs must nominate sites to their Regional Water Quality Control Board (RWQCB) by March 1<sup>st</sup>. Regional Boards submit priority sites the SWRCB by May 1<sup>st</sup>. In July, the EAR Account Administrator will establish a statewide priority list of proposed UST leak sites and amounts to be allocated and present the list to the SWRCB for adoption. The City of Los Angeles Brownfields Program worked closely with their Fire Department and the RWQCB to prepare and submit the nomination. For more information on the EAR Account, contact the EAR Account Staff in Sacramento and see their website (<http://www.swrcb.ca.gov/tankpage.html>).

#### California Water Resources Control Board Orphan Site Cleanup Account (OSCA)

In October of 2005, the Water Resources Control Board released details of this new program that will fund cleanup at sites with contamination from leaking petroleum underground storage tanks where there is no financially responsible party. To qualify a site must be a brownfield as defined by the program. To be eligible, an applicant did not cause or contribute to the release, have no affiliation with a person who caused or contributed to the release and is not-qualified for the Cleanup Fund. This is a reimbursement program but it will cover the costs to remove USTs. Application criteria, contacts and deadlines for this program are available on the website of the California Water Resources Control Board ([www.waterboards.ca.gov/cwphome.ustcf](http://www.waterboards.ca.gov/cwphome.ustcf) under OSCF Program or contact Judy Reid at (916) 341-5760 ([jreid@waterboards.ca.gov](mailto:jreid@waterboards.ca.gov)).

## **Loans**

In many cases, a bank will not accept a property with an non-compliant UST as collateral on a loan. This is because if contamination is found, the costs to remediate it may exceed the value of the property. If the borrower defaults on the loan, it is difficult for the bank to recover its loan. Because of this, it is difficult to find buyers for such properties. If an owner has no other property to use as collateral, he or she is unlikely to obtain a conventional loan to pay for the removal of USTs.

However, there are some non-profit community development corporations that will provide a loan to remove USTs based on the owner's credit history and other factors. This is because the non-profit's goal is to support redevelopment in low-income neighborhoods. To obtain a referral to a community development corporation in your area, check with the California Community Economic Development Association. Also, the California State Department of Community Services can provide the name of an economic development agency that can refer you to a non-profit organization that makes loans to small businesses. A list of agencies is available on their web site. Contact information on these organizations can be found in [Appendix A](#).

## Insurance Policies

Sometimes it is possible to receive payment through a business liability insurance policy held by a former owner of the site. Prior to approximately 1972, most general liability insurance had no exclusions related to pollution. After that, some policies had some exclusions. After 1986, most policies had total exclusions for pollution related claims. At the same time, pollution insurance began to develop as a separate product although few UST owners obtained it. In the 1990's federal law began to phase in a requirement that UST obtain pollution insurance. Since 1998, all UST have been required to have pollution insurance.

It is possible to hire the services of an insurance archeologist who searches for old insurance policies that can be used to cover the cost of contamination cleanup. The City's Brownfields Program has not tried this strategy but the cost to retain the expert could be cost effective on larger sites. Appendix A lists web sites with more information on insurance archeology.

## Responsible Parties

Sites with owners who have the ability to address contamination but refuse to do so can be dealt with through enforcement actions by the appropriate agency ranging from the local UST regulator to the RWQCB, the Department of Toxic Substances Control (DTSC), or occasionally through the USEPA. For California cities that cannot undertake these actions, the EAR Account (see above) may be a beneficial resource. For sites that are in Redevelopment Areas, the Polanco Act can be used to gain access and force recalcitrant owners to pay. [Chapter 6](#) provides more information on the Polanco Act.