

Chapter 7

Putting It All Together

This chapter is directed primarily at local or state government agency personnel working to bring former gas station sites into compliance.

Each Site is Different

The primary characteristic that non-compliant former gas station sites have in common is that they are all different. Each site represents the personal story of its owners, former owners, and their financial ability (or lack of ability) to pay costs of UST removal and remediation. In many cases, owners were not aware of environmental regulations when they acquired the sites. Many sites were inherited, left to them by well-meaning relatives who were themselves unaware of the liabilities involved. We have found that there is no formula that can be applied to these sites. Instead, each one must be evaluated individually, keeping in mind the sources of funding that may be available given the circumstances of each case. Two primary issues are paramount – 1) Funding and 2) Site Access. Strategies to address funding and site access are discussed in detail in other chapters. This chapter walks you through the steps of evaluating a site to demonstrate how various strategies can be used.

Sites Eligible for the State UST Fund

The first goal on most sites where USTs are no longer being used is to have them removed. If the owner can pay to have this done, he or she should do so. Following UST removal, if contamination is identified, the owner can be assisted in obtaining reimbursement for cleanup expenses from the State UST Fund. Since this is a reimbursement program, remediation expenses need to be paid up front. If the owner does not have the funds to do so, some contractors will forgo payment until the UST Fund payment is received. This is possible because the UST Fund will provide pre-approval for expenses. Once pre-approval is received, the owner and contractor know that the reimbursement will be paid. Otherwise a loan may be needed. [Chapter 4](#) and [Appendix E](#) have more detailed information on the UST Fund. [Appendix A](#) gives additional sources of information on this Fund. To be eligible for the UST Fund, the owner must have cooperated with enforcement officials and the site must be in compliance, including UST removal. If the owner is absent, not cooperative, or financially unable to address contamination, utilizing the EAR Account should be considered.

Recalcitrant and Absent Owners

If the site owner is unable or unwilling to address contamination, Emergency, Abandoned Recalcitrant Account (EAR Account) should be considered. The California Water Resources Control Board makes funds available to address such sites. EAR Account funds can be requested by a UST regulating agency for qualifying sites where contamination is indicated. These funds can be requested each year by nominating a site or sites to the local Regional Water

Quality Control Board in January or February. The EAR Account is described in detail in [Chapter 4](#) of this Guide and [Appendix A](#) has contact information.

On many of these sites, an agency may know that a UST is present but testing is required to determine whether or not it has leaked and caused contamination. Most likely the owner cannot or will not provide this testing. In this case, CDBG funds may be used for this purpose if the site is located in a CDBG eligible census tract and the project will correct blighted conditions. Additionally, if the owner will not grant site access, obtaining legal access can be difficult. A summary of methods for obtaining site access is located in [Chapter 6](#).

If No Contamination is Found

If tests are conducted and no contamination is found but the owner lacks funds to remove the tanks, the environmental threat of leaving the USTs alone is not great. However since such properties cannot easily be sold, they often end up blighted. Therefore, CDBG funds can be used to remove the UST. Other potential strategies are: 1) funding for tank removal could be loaned to the owner to be paid back when the property is sold; 2) an agency could conduct the tank removal and place a lien on the property to be repaid when ownership changes; 3) the information gained from a site investigation can be made available to encourage someone to purchase the property at a reduced price and then remove the tanks; 4) occasionally the regulating agency may allow the UST to be filled with an inert substance and abandoned in place. See [Appendix B](#) for information on legal requirements.

At this writing, we are considering adopting some of these strategies. If any other jurisdictions have experience with these or other strategies, we request they share their experience with us. We plan to post such information as a further appendix to this publication.

Government Taking Ownership

If an agency desires to acquire the site for a public use, other strategies can be utilized. Note that government ownership will **disqualify** the site from EAR Account funding as the government agency will become the responsible party. If ownership is pursued, the agency and owner can cooperate in accessing funds from State UST Fund either before the purchase or afterwards. Accomplishing this is complex, so consult with an UST Fund specialist and an attorney before undertaking this approach. Where a cooperative approach is not feasible, a jurisdiction can undertake condemnation action against the owner. The law requires that the jurisdiction pay fair market value for the property, minus the cost of remediation. In consideration of this, several approaches can be taken. If the remediation can be expected to cost less than the market value of the property, the jurisdiction can purchase the property for its market value minus the cost to remediate. If remediation will cost more than the market value, the jurisdiction may be able to obtain ownership through eminent domain at no cost and pay for the cleanup.

Sites in Designated Redevelopment Areas

If the site is located in a designated redevelopment area, there are mechanisms such as the Polanco Act held by Redevelopment Agencies in California that are especially useful in forcing removal of USTs and contamination resulting from them. It is hoped that this publication will assist redevelopment officials in planning how to combine their normal operating procedures with legal and financial methods specific to UST properties in order to redevelop these difficult sites. The Polanco Act is discussed in [Chapter 6](#).

Sites Not in Designated Redevelopment Areas

If the site is small and vacant, it may be addressed under provisions of a new California law, SB 32. This law gives local jurisdictions the same powers of the Polanco Act but the power can be used in non-redevelopment areas. This law is discussed in more detail in [Chapter 6](#) and [Appendix F](#).

Getting Through the Process

Addressing a particular site will most likely utilize more than one of the strategies described in this Guide. Activities such as enforcement, funding, and site access will be addressed simultaneously at various points in the process. Dealing with uncooperative owners entails substantial time and legal expense. Unexpected events can and do occur. The City of Los Angeles Brownfields Program experience with former gas stations has been one of the most challenging we have faced. It is hoped that this Guide will make it easier for others.