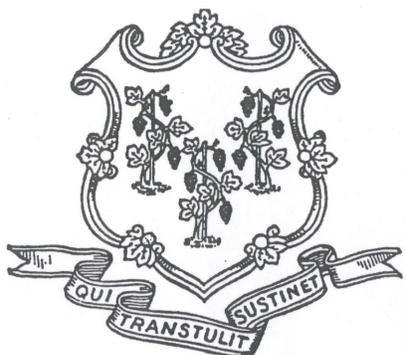


**REGULATION OF
UNDERGROUND
STORAGE TANKS**

Connecticut
General Assembly



LEGISLATIVE
PROGRAM REVIEW
AND
INVESTIGATIONS
COMMITTEE

December 1998

**CONNECTICUT GENERAL ASSEMBLY
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE**

The Legislative Program Review and Investigations Committee is a joint, bipartisan, statutory committee of the Connecticut General Assembly. It was established in 1972 to evaluate the efficiency, effectiveness, and statutory compliance of selected state agencies and programs, recommending remedies where needed. In 1975, the General Assembly expanded the committee's function to include investigations, and during the 1977 session added responsibility for "sunset" (automatic program termination) performance reviews. The committee was given authority to raise and report bills in 1985.

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**LEGISLATIVE PROGRAM REVIEW
& INVESTIGATIONS COMMITTEE**

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DECEMBER 1998

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KEY POINTS

REGULATION OF UNDERGROUND STORAGE TANKS

- Connecticut has made better progress than most other states in meeting federal 1998 deadlines to upgrade or close underground storage tanks (USTs).
- To date, DEP's enforcement efforts have emphasized compliance assistance; tougher measures will need to be implemented with tank owners and operators who remain out of compliance.
- DEP's underground storage tank enforcement unit has inspected fewer than 1 percent of regulated tanks annually; the unit will need additional staff resources, and a more rigorous compliance inspection program, to adequately verify and enforce compliance with UST regulations.
- There is no publicly supported program to help homeowners finance removal of their underground home heating oil tanks or to clean up any contamination releases from them may have caused.
- The Leaking Underground Storage Tank (LUST) unit's database is deficient, making it difficult to identify sites with spills and releases, or assess current clean-up status at sites.
- The major purpose of the UST Clean-up Account is not well defined and has had weak DEP management support.
- There is a continued need for the account given the societal and economic benefit to cleaning up contaminated sites, and the uncertainty of the private insurance market covering historical contamination.
- The portion of the gross receipts tax earmarked for the Clean-up Account has mostly gone to the General Fund because of the account's financial triggers. The statutory ceiling and floor thresholds have not changed since the account was created in 1989, even though claims activity and costs have increased.
- Substantial progress has been made in reducing the backlog of claims at the Clean-up Account but many deficiencies still exist in the claims review process, including: the lengthy application form; the lack of clarity regarding third party status; and the time-consuming process of linking noncompliance to proximate cause of the release and assigning a reimbursement reduction.

- Currently there are no performance measures that Clean-up Account staff are expected to meet in terms of workload or claim processing times. Guidelines to help staff review a claim have not been established, nor have parameters been developed as to appropriate levels of claims approval and denial.

- The Clean-up Account board needs its own legal counsel to provide advice, develop documents, and carry out preparatory work on appeals of board decisions.

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Regulation of Underground Storage Tanks

The Legislative Program Review and Investigations Committee voted to conduct a study of Connecticut's regulation of underground storage tanks as carried out by the Department of Environmental Protection (DEP) in March 1998. The study focus is to: assess Connecticut's performance in regulating these tanks; identify any obstacles or delays in obtaining compliance; and develop proposals to improve the regulatory system and promote compliance.

Both aspects of the state's underground storage tank program were examined: efforts to *prevent* pollution and other damages from leaking tanks through regulation and enforcement; and activities to *remediate* releases from regulated tanks through the federally funded Leaking Underground Storage Tank (LUST) program and the state funded Underground Storage Tank Petroleum Clean-up Account. Specifically, the study addresses the:

- scope of regulation and tanks covered in Connecticut;
- extent of compliance with registration and 1998 federal upgrade requirements;
- adequacy of DEP's underground storage tank programs to enforce regulations, respond to sites with leaking tanks, and oversee corrective action to clean up; and
- performance of the underground storage tank Clean-up Account.

The program review committee found that Connecticut made better progress than most states in upgrading or removing tanks by the December 1998 federal deadline. To date, DEP's efforts have emphasized technical assistance, education, and other compliance guidance rather than strong enforcement. Stronger measures will have to be taken with tank owners and operators who remain out of compliance beyond the deadline. The committee recommends additional enforcement personnel be hired, and that tanks not meeting requirements be red-tagged to prohibit petroleum deliveries.

Residential tanks are not currently required to be upgraded or removed. The program review committee does not endorse regulating such tanks, but recommends the state support a goal of removal through a grant and loan program. Increasingly residential tanks are the source of leaks, and while most of these releases do not result in significant contamination, the committee supports access to the Clean-up Account for residential tank owners. The program review committee finds the LUST program's policy to focus its investigative and remediation resources on sites posing the highest potential risk to public health and the environment is realistic and reasonable. However, deficiencies in the unit's database make it difficult to track less risky sites, determine legitimate sites of spills and releases, or assess their current clean-up status.

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The committee's review focused heavily on the Underground Storage Tank Clean-up Account. The major purpose of the Clean-up Account is not well defined in statute and the account, as a mechanism to clean up sites, has had weak support from DEP management. The program review committee recommends continuation of the account, but with a statutory clarification of purpose, and improved management support. The committee also proposes no restrictions on current statutory eligibility, and no sunset provisions on the account or on covered release dates.

Much of the gross receipts tax earmarked for the Clean-up Account have been allocated to the General Fund because of the statutory triggers in place. The ceiling and floor levels were established when the account was created in 1989, and have not been modified since. Because claims activities have increased, the committee recommends the triggers be modified so the account will not be faced with an inability to pay claims when they come due. The committee also recommends an actuarial study be conducted to determine the account's future liability.

Substantial progress has been made in reducing the claims backlog, but the committee found many deficiencies still exist with the claims review process. Recommendations to simplify application forms, develop guidance materials for applicants, and require staff to follow established categories for noncompliance reductions will all expedite claims review. Clarification of third party status and assignment of community responsibility where no *one* responsible party clearly exists, and using risk-based closure standards on account claims are also recommended as methods of making the account work more efficiently and cleaning up more sites quickly.

Because of confusion in roles, consideration was given to changing the Clean-up Account staff from DEP personnel to independent board staff, or outside contractors, but program review rejected the option as not cost-effective, and too disruptive after eight years of operating under the current structure. Instead, the committee recommends the board hire its own legal counsel to provide advice on claims, as well as develop a decision index to help the board make more consistent decisions, and create and standardize documents for the board's use.

Membership of the board should be expanded to include a member with mandated environmental consulting experience, and the board should develop a consent agenda to facilitate processing those claims where there is agreement and no discussion is required. Finally, the process to appeal a board's decision takes too long, needs greater attention from staff with a formal legal background, and the board needs better information on the status of appeals.

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RECOMMENDATIONS

Regulation and Enforcement

1. Three staff should be added to the enforcement unit.
2. DEP immediately shall develop the regulations necessary to implement the fee inspection program, including who the fee will apply to, and how and when it will be collected.
3. Beginning July 1, 1999, all regulated petroleum underground storage tanks not in compliance with the 1998 upgrade requirements shall be red-tagged and no deliveries of petroleum to those tanks permitted.
4. To implement red-tagging, DEP UST enforcement staff shall:
 - give the red-tagging program highest priority;
 - before the July 1999 red-tagging date, identify and verify through the UST registration database and other means, the noncompliant tanks in the state; and
 - tag noncompliant tanks promptly either on, or shortly after, the date delivery prohibition takes effect.
5. DEP shall:
 - put all regulated underground storage tanks sites on a five-year compliance inspection schedule;
 - inspect each site at least once every five years according to schedule;
 - issue a letter of compliance once a site has been inspected and found to be in compliance;
 - file a copy of the compliance letter with the Clean-up Account, which shall remain in effect until the next five-year inspection schedule, unless the site comes under a DEP enforcement action during that period;
 - issue a notice of violation if the site is found to be noncompliant. The notice of violation will allow the site a period of time, as established by DEP enforcement staff, to take corrective action;
 - reinspect the site at the end of the established period, and if the violations have not been corrected, a letter stating the areas of noncompliance shall be issued and filed with the Clean-up Account. The letter of noncompliance shall be kept on file with the Clean-up Account until the next regularly scheduled compliance inspection.

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6. Regarding residential tanks, the state shall:
 - Establish a goal in statute to remove, by the year 2005, all residential underground storage tanks over 20 years old.
 - Implement the goal through education, outreach and technical assistance provided primarily by DEP.
 - Establish a state-funded grant and loan program coordinated by the Department of Economic and Community Development and administered by the community action program (CAP) agencies. The grant program would be limited to households 80 percent or below the median household income for the area. The loan program would offer low-interest loans, with no income eligibility restrictions, to be repaid over five years. Individual grants and loans would be subject to a maximum amount of \$3,500 per tank
 - Fund the grant and loan program at \$10 million annually. The fund would be financed through an allocation from the gross receipts tax on petroleum products. The grant and loan program would sunset on December 31, 2005.
7. Section 22a-449 of the Connecticut General Statutes shall be modified to:
 - Allow residential tank owners to apply to the Underground Storage Petroleum Clean-up Account for payment of clean-up costs incurred as a result of a leaking underground heating oil tank.
 - Residential tank owners shall be responsible for the first \$2,500 in clean-up costs, with the Clean-up Account paying for clean-up costs over \$2,500 up to a maximum of \$50,000 for a residential site.
 - The required \$2,500 deductible must be spent only on clean-up costs. Tank removal and/or replacement costs shall not be considered clean-up costs in meeting the deductible.

LUST Program

8. Make correcting, updating, and maintaining the information used by the LUST program a priority; the reported release database and LUST component of the underground storage tank program information system should be made current by July 31, 1999.

Clean-up Account

9. The statutes shall be amended to include a statement that the primary purpose of Clean-up Account is to protect environment and public health by cleaning up releases from underground storage tanks.

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10. The Underground Storage Petroleum Clean-up Account shall be continued:
 - be a publicly supported clean-up fund financed through one-third of the gross receipts tax on petroleum products;
 - be available to those who are currently eligible by statute;
 - have no sunset date applied at this time; and
 - have an actuarial study of the account conducted with the results publicly available by July 1, 2000.
11. Both the financial triggers established in Section 22a-449b(b) shall be modified so the account floor is \$10 million and the ceiling is \$30 million
12. The Clean-up Account issue a report on September 1, 1999, and annually thereafter, which shall include, but not be limited, to:
 - statutory authority for the account;
 - a list of board members;
 - a summary of the application process, what constitutes an eligible party, and what applicants can expect from the account in terms of processing times, and staff and board procedures; and
 - statutory and/or administrative changes occurring over the prior year
13. To address the variation in staff treatment of claims and applicants:
 - The purpose of the Clean-up Account -- to quickly clean up sites with underground storage tanks that have leaked and caused contamination -- shall be clearly communicated to account staff by DEP management and account supervisors.
 - Management and supervisory staff will provide written guidance and staff training in how claims should be reviewed with the declared purpose in mind.
 - Supervisory personnel shall review the work of the claims review staff to ensure the account purpose is being achieved, and for consistency and uniformity.
 - DEP should provide training to Clean-up Account staff in communication skills and customer relations.
14. To address the current workload variation:
 - DEP management and Clean-up Account supervisory staff shall establish performance standards for the number of claims technical staff should review per month.
 - Claims review standards shall be used as part of Clean-up Account staff performance evaluations.
 - No future statutory changes should be made in the total amount of DEP's administrative expenses for the Clean-up Account, unless management can

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demonstrate that such performance standards are in place and staff are meeting them, but that the workload has increased due to growing number of claims.

15. The Clean-up Account database should be used as a supervisory and management tool to generate both overall account and staff statistics on workload, processing times and claims outcomes.

The Clean-up Account database should also be used as a mechanism to detect abuse or fraud in obtaining payment or reimbursement through the account:

- The Clean-up Account Board and DEP staff shall communicate the intent to use the database for this purpose.
- The board and DEP shall develop procedures on how it will follow up on areas it red-flags as potential problems. Such procedures might include requiring an independent audit, and, where fraud or abuse is found, repayment to the account, prohibition against future access to the account, and other penalties.

16. The Clean-up Account application should be simplified and separate forms be developed for responsible parties and third parties. Guidance materials outlining the steps in the process, what constitutes a complete application, and basic eligibility requirements in plain language should be developed and provided to applicants. The new application forms and guidance materials should be in place by July 1999.

17. At least one field inspection shall be conducted of the site of each application filed with the account.

18. Standard reduction categories for noncompliance shall be established in statute. Specifically:

- C.G.S. Section 22a-449f should be amended to remove reference to proximate cause and to include language that permits the board to reduce the reimbursement or payment of a Clean-up Account claim by 25 percent for serious noncompliance and 10 percent for minor noncompliance with the state underground storage tank regulations.
- A written policy to guide staff and applicants about the statutory noncompliance reduction should be developed within six months of the effective date of the proposed statutory change.

19. The review board establish a policy promoting community responsibility for cases involving multiple sites and commingled contamination. Under this policy:

- parties involved in commingled sites could develop an agreement to work cooperatively on clean-up activities, including how to share investigation and remediation costs;

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- the allocation of responsibility worked out by the parties would be accepted by the board in reviewing claims for reimbursement; and
 - if parties are unable to reach an agreement within a time specified by the board, the department would be directed by the review board to undertake the investigation and remediation work required, using account funds, and the parties would be subject to cost recovery actions and any related penalties.
20. Statutes shall be amended to establish two categories of third party status: 1) innocent property owners, specifically those parties who have been damaged by a release from eligible underground tanks not located on their site; and 2) property owners with leaking tanks located on their site who never operated them *and* will not be operating tanks in the future.

Further, a graduated deductible amount related to the applicant's status should be established, under which:

- the first category of third parties is exempt from any deductible amount (as current law provides for any third party);
 - the second category of third parties is responsible for clean-up costs up to \$5,000; and
 - all other applicants are subject to the present deductible of \$10,000.
21. Statutes shall be amended to:
- Make clear that a third party may independently apply to the account for payment of damages from an eligible tank release after making reasonable attempts to contact the responsible party for compensation.
 - Any legal action a third party may bring against the responsible party does not have to be finally adjudicated before an application is made to the account.
 - The account's rights to reimbursement of its expenditures for third party claims, as well as other claims that may be awarded a financial settlement through private means, should also be clarified in statute. Claimants shall be required, as part of the application process, to sign a document stating that amounts reimbursed from the Clean-up Account will be repaid if they later receive financial settlements through other means.
22. The board should continue to determine property damage in third party claims on a case-by-case basis.
23. A site closure standard based on a risk-based corrective action (RBCA) process shall be established for Clean-up Account cases. The statutes should be amended to require a RBCA analysis be conducted for each clean-up account case that has been active for three years or been awarded a total of \$200,000 dollars. The purpose of the analysis is to determine whether further remediation is necessary to control risk to human health and the

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environment, and if not, to close the case to any further claims for clean-up cost reimbursement. Claims for third party compensation would not be affected.

24. A position of legal counsel to the Clean-up Account review board should be established by July 1, 1999. The counsel will be an employee of the board with the position's expenses to be paid from account revenues. The board should adopt, in writing, a job description and the procedures to be followed in hiring its legal counsel.
25. The statutes shall be amended to expand the review board membership to 13, with the new position representing environmental professionals involved in investigating and remediating underground storage tank sites, to be appointed by the Senate President Pro Tempore.
26. Orientation materials should be developed and provided to all new members upon their appointment to the board.
27. The account staff should send out summaries of claims for the 30-day review and require applicants to respond at least seven days prior to the board meeting date as to whether they agree or not with the staff's recommended action. If an applicant is in agreement with the staff, the claim is placed on a consent agenda; if not, the claim goes on a discussion agenda. All items on the consent agenda can be acted upon through one vote by the board. Claims can be moved from the consent agenda to the discussion agenda at the request of any board member.
28. An index of Clean-up Account review board decisions should be developed by January 1, 2000.
29. Section 22a-449f(c) of the C.G.S. shall be modified to require that a hearing be held within 90 days after an appeal has been filed, and that a decision be issued 60 days after the close of hearings and or dates of filing final legal documents related to the proceedings.
30. Board's legal counsel recommended earlier should be assigned to handle all preparatory work on appeals from board decisions.
31. Appeal status update should be placed on the agenda for Clean-up Account board meetings.

REGULATION OF UNDERGROUND STORAGE TANKS

Leaks from underground storage tanks represent a significant source of hazardous waste contamination and can threaten groundwater quality. In 1984, responding to the leaking underground storage tank problem, Congress enacted a new section to the Resource Conservation and Recovery Act (RCRA) that mandates a comprehensive regulatory program for underground storage tanks.

Similar to other federal environmental regulatory programs, states may assume regulation of underground storage tanks if they have a program that is at least as stringent as the federal one and if it has been approved by the federal Environmental Protection Agency (EPA). The state Department of Environmental Protection (DEP) has federal approval to regulate underground storage tanks in Connecticut.

One of the federal regulatory requirements is that certain tanks must demonstrate financial responsibility in case of accidental releases. States may establish a financial assurance fund as one method of owner compliance with the financial responsibility requirements. Connecticut established an Underground Storage Clean-up Account in 1989, which is funded by a portion of the gross receipts tax on petroleum products.

Scope. The Legislative Program Review and Investigations Committee authorized a study of Connecticut's underground storage tank (UST) program in March 1998. The purpose was to assess Connecticut's performance in regulating underground storage tanks, identify obstacles and delays in obtaining compliance, and develop proposals to improve the regulatory system and compliance. The areas of examination included:

- the extent of the regulation;
- compliance with the regulatory requirements;
- DEP's program for responding to leaks when they occur and corrective actions taken; and
- the performance of the Clean-up Account, in terms of the application and approval process, criteria for funding approval, and claims paid.

Methods. Information for the report was obtained through a variety of sources. Committee staff reviewed state statutes and regulations, budget documents, as well as documents and reports from the Department of Environmental Protection. Federal Environmental Protection Agency regulations, reports, and documents, as well as materials from national environmental organizations and the regulated industry associations were also examined.

Committee staff interviewed both state and federal environmental agency staff, all Clean-up Account board members, environmental consultants, as well as representatives

from the regulated industry and other interested parties. The committee distributed a survey to all board members of the Clean-up Account and a second one to the account staff. Surveys were also sent to sites on a DEP list of reported releases from underground storage petroleum tanks, and to applicants to the Clean-up Account designated as third parties. Data from DEP's automated claims database, maintained and administered by the Clean-up Account staff, were also examined. Finally, the program review committee held a public hearing on the study in October 1998 and testimony from the hearing was also reviewed.

Report organization. The report is organized into six chapters. The opening chapter provides background information on the regulatory program, and Chapter Two lays out how the program is organized, including its staffing and resources. The third chapter: outlines the scope of regulations; assesses Connecticut's progress in meeting the federal 1998 deadline; analyzes Connecticut's enforcement activities; and makes several recommendations including a program to help with removal of old residential underground storage tanks. Chapter Four describes the program that deals with leaks from USTs, and the extent of the problem in Connecticut. Chapter Five discusses the Clean-up Account, including why the account was established, who is eligible, and the status and management of the account.

Chapter Six discusses the Clean-up Account application and decision-making process. An analysis of claims data -- applicants, trends in claims and awards, as well as staff handling of claims, current to July 1998 -- and claims processing times and backlog information current to October 1998 is also provided in Chapter Six. Copies of surveys sent to Clean-up Account board members, staff, and sites with reported leaks and third parties and analysis of survey responses are presented in Appendices C and D, respectively.

Agency response. It is the policy of the Legislative Program Review and Investigations Committee to provide agencies subject to review with an opportunity to comment on recommendations in writing prior to the publication of the committee's final report. Responses to the committee's final report were solicited from the Department of Environmental Protection and the Clean-up Account board. The written responses from DEP and the board are contained in Appendices A and B, respectively.

Chapter One

HISTORY AND PURPOSE OF UNDERGROUND STORAGE TANK REGULATION

During the 1980s, the federal government and many states enacted regulatory programs to address the problems of leaking underground storage tanks. It was recognized that substances released from old or poorly designed and maintained tanks can contaminate groundwater, a primary source of drinking water for nearly half of all Americans, as well as pose other serious risks to public health and the environment.

Federal programs. Federal legislation, adopted as the 1984 amendments to the Resource Conservation and Recovery Act,¹ established a nationwide program aimed at preventing and detecting leaks from new and existing nonresidential underground storage tanks. The U.S. Environmental Protection Agency was mandated to set requirements and standards for tank design and installation, leak detection, spill and overfill control, corrective action, and facility closure. EPA regulations setting technical standards and corrective action requirements were developed and phased in beginning in 1988.

EPA was authorized to enforce underground storage tank regulations and respond to leaks and spills under the 1986 Superfund Amendments and Reauthorization Act (SARA).² To fund federal response efforts, the act established the Leaking Underground Storage Tank (LUST) Trust Fund established under SARA, which is financed by a federal tax on motor fuels and several other petroleum products. In general, EPA allocates LUST funding to states with approved underground storage tank programs to pay for enforcement activities as well as clean-up costs in emergency situations or at sites where the owner/operator is unknown or unable or unwilling to remediate a release.

The 1986 amendments also required EPA to set financial responsibility requirements for the owners and operators of underground storage tanks to cover the costs of corrective actions and third party claims for damages due to leaks. Under EPA regulations, as required by law, owners and operators of petroleum tanks must demonstrate minimum financial responsibility insurance coverage of

¹ The original RCRA of 1976, which established a regulatory program for handling hazardous waste, did not apply to the storage of petroleum or hazardous chemicals.

² Prior to the 1986 amendments, EPA lacked authority to clean up contamination from underground storage tanks containing motor fuels or other petroleum products as they were specifically excluded from the Superfund law.

\$1 million. States may establish funds, which are subject to EPA approval, that can be used by tank owners to comply with federal financial responsibility requirements.

EPA has phased in its technical and operational standards for underground storage tanks. However, under federal law, nonresidential petroleum tanks must be upgraded, replaced, or closed by December 1998. After this deadline, any new and all existing tanks must have spill, overfill, and corrosion protection to comply with federal requirements.

Connecticut's program. Regulation of underground storage tanks in Connecticut predates the federal program. Public Act 82-233 required the state Department of Environmental Protection (DEP), in consultation with the commissioner of public safety, to adopt regulations establishing criteria and standards for nonresidential underground storage of petroleum and chemical liquids.³ Among the areas the regulations could address were design, installation, operation, maintenance, and monitoring requirements for underground tank facilities.

Under P.A. 83-142, DEP was allowed to determine underground storage tank life expectancy or expected failure through monitoring or other means. The department began operating its tank regulation program in 1985.

In 1988, the monitoring function established under P.A. 83-142 was repealed and replaced by statutory provisions authorizing the environmental protection department to establish a program and adopt regulations to implement federal underground storage tank requirements contained in Subtitle I of RCRA (P.A. 88-119). Regulations consolidating the federal and state underground storage tank requirements were finalized and promulgated by DEP in 1994.

An underground storage tank petroleum clean-up fund, financed through an increase in the state gross earnings tax on the sale of petroleum products, was created in 1989 (P.A. 89-373). The fund is used to reimburse responsible parties for costs incurred to clean up releases from nonresidential tanks as well as pay for damages to third parties. The clean-up fund enabling legislation also established a board to review and act on applications for reimbursement, required the DEP commissioner in consultation with the board to adopt regulations outlining reimbursement procedures, and set a limit on the portion of the fund used for administrative expenses.⁴

In 1990, through P.A. 90-231, the General Assembly enacted a new, comprehensive environmental fee structure, which increased some existing fees and created new ones. Among the newly instituted charges were a \$50 per-tank fee for all underground storage tanks registered

³ The public safety commissioner is statutorily responsible for making and enforcing regulations for the safe storage, use, and transportation of flammable or combustible liquids (C.G.S. Sec. 29-320). The Department of Public Safety role in underground storage tanks relates primarily to fire hazards.

⁴ Initially, administrative expenses were limited to 2 percent of the fund balance. The administrative cost ceiling was increased to: 5 percent of the fund's highest balance in the preceding year or \$600,000, whichever was greater in 1991 under P.A. 91-254; \$850,000 in 1996 under P.A. 96-132; and the current limit of \$1,150,000 in 1997 under P.A. 97-241.

after July 1, 1990, and an inspection fee of \$50 per tank, to be assessed only once every five years.

Federal and State Roles

Federal law permits the U.S. Environmental Protection Agency to approve state underground storage tank programs to operate in lieu of federal requirements provided:

- 1) state standards are at least as stringent as federal standards; and
- 2) adequate enforcement of compliance is demonstrated.

Congress intended the federal agency to play a leadership role -- establish criteria, oversee and provide funding -- while state and local governments would implement and enforce underground storage tank policies and regulations. States with approved programs have primary enforcement responsibility for UST program requirements although EPA retains authority to take enforcement action as necessary. As of October 1997, 25 states including Connecticut and the District of Columbia had approved federal underground storage tank programs.

Regulation of UST system management at state or local level is preferred under federal law for a number of reasons. One is the size and nature of the regulated community. Unlike many other environmental protection programs, UST regulations apply to a very large number of facilities, an estimated 1.1 million nonresidential underground storage tanks nationwide, and many owners are small businesses with limited resources and little experience with environmental regulation.

Additionally, tank releases are often multifaceted problems, caused by facility failure, overfills, spills, or a combination of factors. All phases of a facility's operation, from installation through closure and clean-up, therefore, need to be carefully managed to prevent or reduce any adverse impact. When releases occur, the goal is to take action as quickly as possible to minimize contamination. Because state and local agencies are closest to the problem, they can respond quickly, maintain a presence, and develop a working relationship with their regulated facilities' owners and operators.

EPA's role in underground storage tank regulation is primarily as a funding source. The federal agency distributes funding allocations to the states through its regional offices. The main responsibility of the regional offices is to manage the UST enforcement and LUST trust fund grants awarded to states within the region. Grant funds are generally provided through cooperative agreements which outline how the state will implement its underground storage tank program in accordance with federal standards and requirements.

States are required to submit semi-annual and year-end standardized reports on their UST and LUST activities to EPA. Regional office staff also check state compliance with provisions of cooperative agreements through periodic performance reviews. A mid-year review of Connecticut's programs was conducted in April 1998 by staff from the EPA Region I office in Boston. From time to time, EPA Region I staff participate in DEP field enforcement efforts in

Connecticut. In addition to supplementing the state's enforcement resources, the field work provides another opportunity for regional office personnel to monitor state performance and to provide technical assistance.

ORGANIZATION AND RESOURCES

The overall organization of Connecticut's underground storage tank program is represented in Figure II-1. As the figure indicates, three separate sections of DEP staff within the Bureau of Waste Management carry out UST enforcement activities, the federal leaking underground storage tank program, and administrative duties related to the state Clean-Up Account. The account is overseen by the Underground Storage Tank Petroleum Clean-Up Account Review Board, an independent decision-making body, whose members, in accordance with statute, include representatives from several state agencies as well as appointees of the governor and legislative leaders.

Staff Resources

An organization chart showing UST program staffing as of September 1998 is presented in Figure II-2. Each program component -- enforcement, LUST, and the Clean-Up Account -- is overseen by a supervising environmental analyst who reports to the director and assistant director of the Pesticides, PCB, Underground Storage Tank and Terminal Division of the Bureau of Waste Management.

A total of 29 DEP staff positions, not including two seasonal general workers currently within the enforcement section, are assigned to the three underground storage tank areas at present. The majority (19) are Clean-Up Account staff and include seven two-year durational positions added during the current fiscal year to address the backlog of applications for cost reimbursement. Account staffing has increased over time, growing from an original level of seven positions in FY 93 to 12 in FY 95 to the current level in FY 98. Prior to 1992, staff from other DEP units, primarily enforcement, worked part time on account activities.

In contrast, staffing for enforcement and LUST has remained constant at four and six positions, respectively, since those programs were initiated. The federal LUST grant actually provides DEP with funding for 10 positions -- the six assigned to the leaking tank section as well as three positions within the Oil and Chemical Spill Response Division and one within the potable water section of the water management bureau.

As of September 1998, all UST program positions were filled except for two durational positions assigned to the account. Both are new fiscal administrator positions that the department has been unable to fill since they were authorized last year. According to account program managers, qualified financial

Figure II-1 Overview of Connecticut's Underground Storage Tank Program

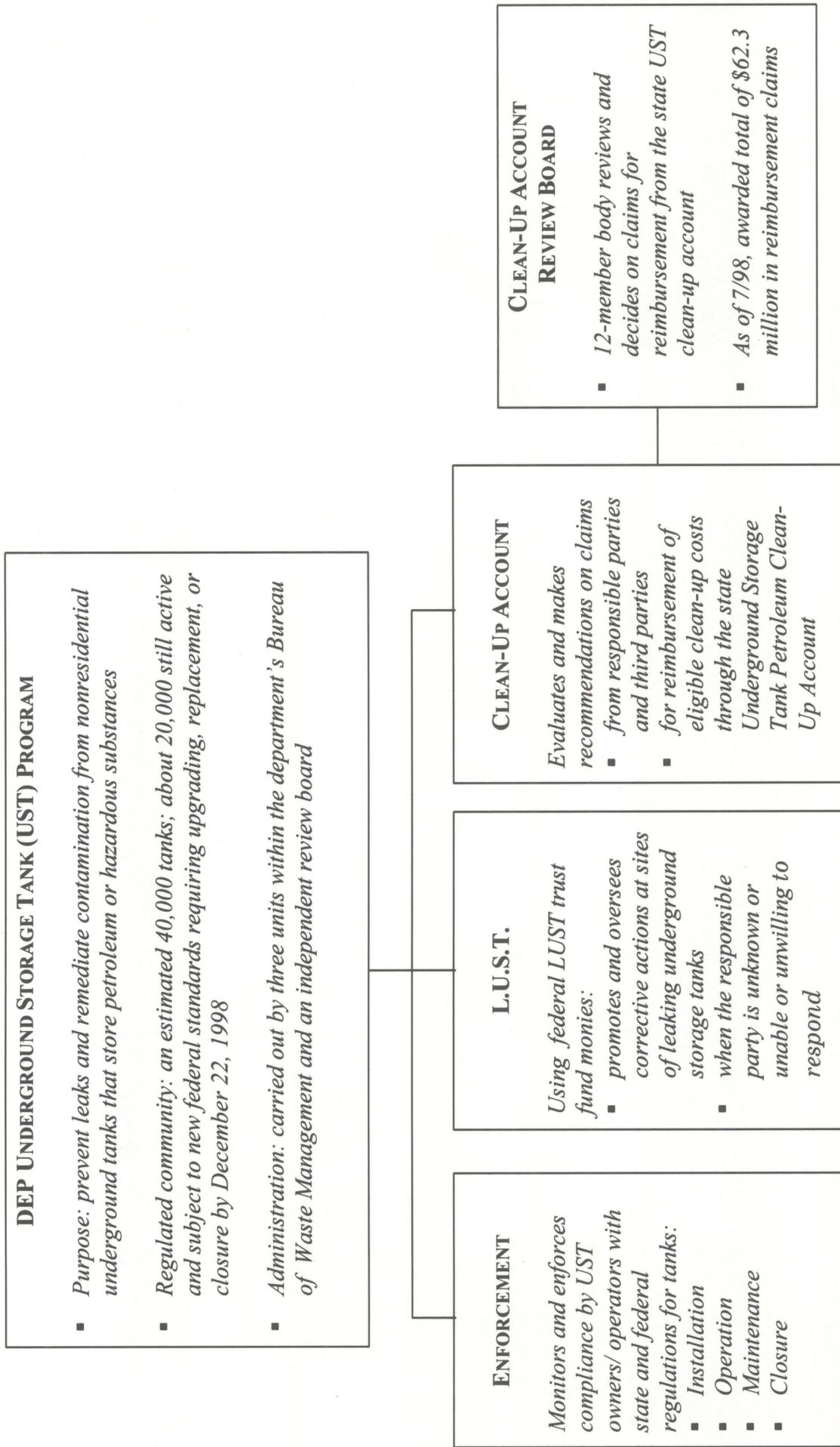
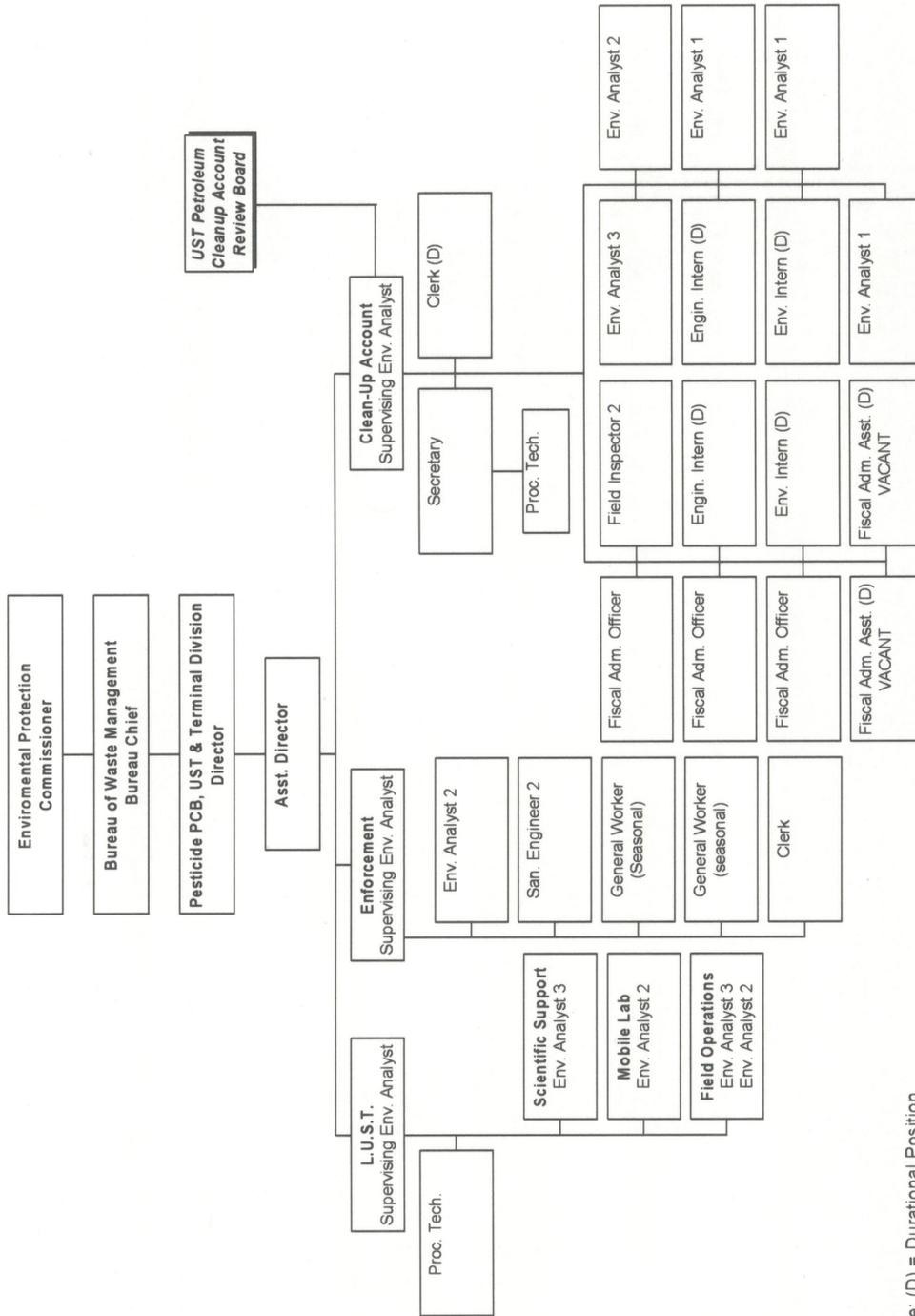


Figure II-2. DEP Underground Storage Tank Program: Current Organization



Note: (D) = Durational Position

personnel within state service are not interested in transferring since they would lose seniority status and related bargaining rights for a durational position. It also appears the private sector job market for fiscal staff is good, as outside applicants have been few and in four cases where the position was offered, it was not accepted. This should not be an obstacle in the future, however, as the department is seeking and expects to receive approval from the Office of Policy and Management to convert all of the account's durational positions to permanent status.

Qualifications and experience. The professional staff employed by the underground storage tank program are primarily environmental analysts although one is a sanitary engineer and one is a field inspector. The Clean-Up Account program also employs financial staff who review the eligibility and reasonableness of costs submitted for reimbursement while the environmental professionals are responsible for analyzing the programmatic aspects of claims (e.g., site and applicant eligibility, regulatory compliance, etc.).

The minimum qualifications for the various levels of environmental analyst, other technical, and fiscal administration positions are summarized in Appendix E. In general, the technical positions require an educational background and experience in the biological, physical, or earth sciences, engineering, or environmental planning or economics. The financial positions, as expected, call for accounting, budgeting, and financial examining experience. The education and experience of the professional personnel working on UST program activities meet the minimum requirements of the positions held in all cases and in many cases greatly exceed them.

All five of the LUST program technical staff have bachelor's degrees in an environmental science and two also have science-related master's degrees. Their years of relevant experience range from nine to 15 years, primarily with DEP but two analysts had worked in private industry for about four years and five years, respectively.

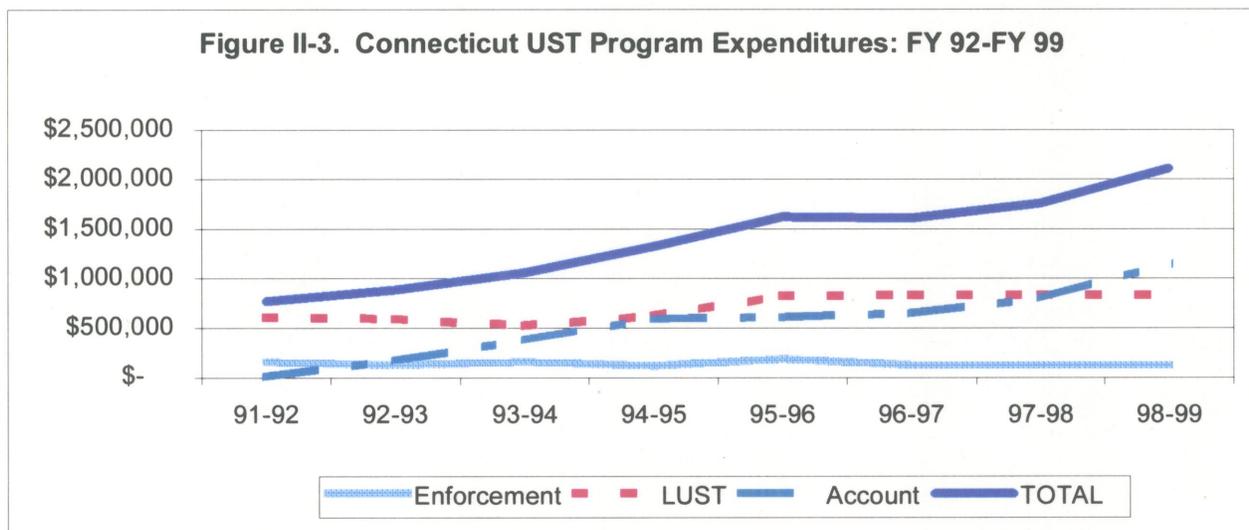
The three professional staff with the UST enforcement section all have bachelor's degrees (one in engineering, one in biology, and one in economics) and the supervising environmental analyst also has science-related master's degree. The enforcement personnel have between 11 and 16 years of work experience, most of which have been in positions with DEP or the U.S. Environmental Protection Agency.

Four of the 11 Clean-Up Account technical staff, because they are in the recently added durational intern positions, have been with the program less than one year. All four, however, have science-related bachelor's degrees and two also have between two and three years of relevant private sector experience. One of the engineering interns also has a master's degree in environmental engineering.

All but one of the account's seven technical staff in permanent positions have a science-related bachelor's degree and two have environmentally related advanced degrees (an M.S. in geology and a J.D. in environmental law). The permanent staff's years of experience range from four to more than 15, mainly within the environmental protection department although two analysts were previously employed by private environmental firms.

Funding Resources

The state UST program is relatively small; administrative expenditures for all three sections totaled less than \$2 million in state and federal funds for FY 97 and are estimated to be at about this same level for the just-completed and current fiscal years. The department was unable to provide exact figures for the UST enforcement program after FY 97 since the federal funding mechanism for it and several other environmental activities recently changed to a combined performance-based grant. Available funding information for each UST program component since FY 92 is summarized in Figure II-3. The numbers shown for enforcement and total expenses after FY 97 are estimates.



Total expenditures have grown about 175 percent over the eight-year period shown in the figure, due primarily to the steady increases in Clean-Up Account administrative funding for additional staff. In recent years, Clean-Up Account and LUST program expenses each comprise between 40 and 55 percent of total funding. Annual enforcement funding, which has never exceeded \$189,000, is a minor portion of the overall underground storage tank program.

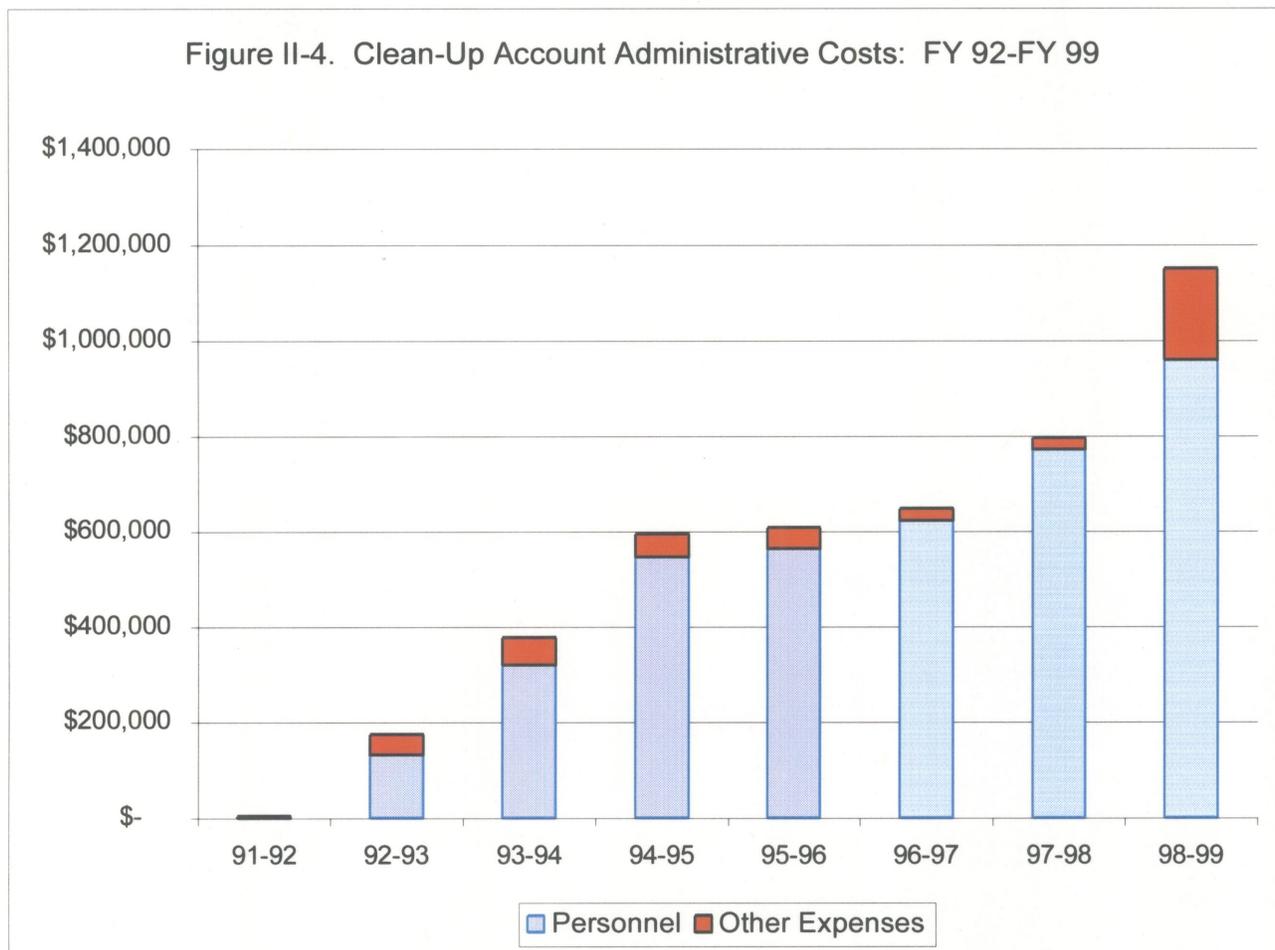
The LUST and enforcement programs are essentially all federally funded. A state match requirement (10 percent for LUST and 25 percent for enforcement) is met, as allowed by federal regulation, through in-kind contributions from the department.

Federal funding for enforcement and LUST have been fairly stable over the years. Annual federal enforcement grants have ranged between \$180,000 and \$200,000 while “core” funding for Connecticut’s LUST program has been \$600,000 each year. The state has periodically received additional federal LUST grants for site remediation work and other specific purposes. Since federal FY 95, the DEP LUST program has been awarded a total of \$1.3 million in additional grants.

The administrative expenses of the Clean-Up Account, like claims for clean-up cost reimbursement, are paid totally with funds from the state tax on petroleum products. The portion

of tax revenues that can be used for administrative costs is limited by statute. The cost ceiling, which has been modified upward several times, was set at the current limit of \$1,150,000 in 1997.

The account's expenditures on administrative costs are quite low in comparison to reimbursement claims paid; total administrative expenses through FY 98 (\$3.2 million) are about 5 percent of the total dollar value of payments awarded as of July 1998 (\$62.3 million). As Figure II-4 shows, the major portion of the account's annual administrative budget is related to personnel costs, making up at least 83 percent and up to 97 percent of total expenditures since FY 93, the account's first full year with full-time staff.



REGULATION AND ENFORCEMENT

Scope of Regulation

The regulation of underground storage tanks is greatly influenced nationwide by what the federal Environmental Protection Agency requires. States must regulate no less stringently than the federal requirements, but regulations may be stricter if a particular state chooses. Connecticut has chosen standards that are stricter than federal requirements.⁵

Nature of regulations. The regulations that govern underground storage tanks are preventive in nature. Both the federal and state regulations are designed to require tank owners and operators to remove or close their old tanks made of materials that corrode, and install new tank equipment so leaks will not occur. In addition, the tanks must be equipped with overfill protection and leak detection devices, so that if a spill occurs the operator will become aware immediately. The federal regulations must have been complied with by December 22, 1998.

What is regulated. The regulations govern tanks that are *underground*, defined as those with 10 percent or more of the volume capacity under the ground. The tank must serve a commercial, industrial, or institutional purpose and not primarily a residential one. For example, all tanks, regardless of size, used at public or commercial facilities like hotels, boarding houses, hospitals, nursing homes, and correctional institutions are all regulated in Connecticut; residential tanks serving private homes are not. Currently, neither the federal or state environmental regulations cover residential underground heating oil tanks in Connecticut, although a number of Connecticut towns have adopted restrictions or ordinances covering these tanks.

There are three basic regulatory requirements: 1) tank owners and operators must notify DEP of the existence and location of the tanks; 2) they must keep accurate records on the maintenance and leak detection procedures for the tanks; and 3) tanks must meet certain material and equipment standards by a certain date.

⁵ Connecticut regulates heating oil tanks for consumptive use if the tank contains 2,100 gallons or more, while the federal government does not. The state also regulates motor fuel tanks for non-commercial use (like farms) no matter what the size, while the federal program oversees only tanks of more than 1,100 gallons. Further, the federal government allows USTs to be made of either non-corrosive materials or have cathodic protection, while Connecticut's regulatory program requires both. In addition, Connecticut's standards for record keeping on tank maintenance and leak detection are stricter than the federal requirements.

There are two categories of facilities that need to notify DEP. *Type 1* facilities include underground storage tanks used for storing hazardous substances (except waste) covered under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA otherwise known as Superfund). This includes farm and residential facilities with tanks in excess of 1,100 gallons that are used for storing motor fuels for non-commercial purposes. This category of tank only has to notify DEP once, and falls under federal regulations only, and is not subject to equipment upgrade or closure requirements.

Type 2 facilities are underground storage tanks storing oil or petroleum products of any kind in liquid form, including but not limited to waste oil and distillation products including fuel oil, kerosene, naphtha, gasoline, and benzene. These tanks must comply with notification requirements, and conform with standards for upgrading equipment, and ongoing maintenance and monitoring.

Exemptions from regulations. A number of other tank categories are exempt from the notification requirements. These include:

- tanks storing hazardous wastes regulated under RCRA;
- tanks that would be required to notify under CERCLA (Superfund), except for abandoned tanks containing oil and petroleum products;
- septic tanks;
- pipelines (these are regulated by the Natural Gas Pipeline Safety Act of 1968, or the Hazardous Liquid Pipeline Safety Act of 1979);
- pits, lagoons, surface impoundments;
- stormwater or wastewater from wastewater collection systems;
- liquid traps or gathering lines;
- facilities in underground areas – such as basement, cellar, mineworking shaft or tunnel, if the tank itself is situated above or upon surface of floor; and
- facilities with less than 2,100 gallon capacity and that are used for on-site heating provided the oil or petroleum product is not a waste oil and is not for resale.

Regulatory requirements. Tank owners and operators must take several actions to be in compliance with the regulations. As described above, the tank owner or operator must notify the DEP of the tank's existence. Notification dates are dependent on the dates the tanks were brought into or taken out of service. The owner or operator must replace the tank and piping with upgraded materials, or close the tank by a certain date depending on the life of tank and when it was put in the ground.

Equipment that protects against leaks and overfills, and monitors product inventory to detect leaks promptly must also be installed. Until new leak detection equipment is installed, regulations require that owners and operators keep records on the methods used to detect leaks in their tanks.

Federal regulations also require that tank owners and operators pumping a certain amount of product each month demonstrate some form of financial responsibility in case of an accidental leak or spill from a regulated tank. Finally, the owner/operator of a regulated tank must notify

DEP within a certain amount of time if a leak occurs, and provide DEP with a corrective action plan if there is a danger to drinking water or surface water. The corrective action plan indicates how the site will be cleaned up to meet department remediation standards.

Notification requirements. Tank owners and operators must notify DEP of the date the tank was installed, the total life expectancy of the tank from the date of installation, the tank capacity, the tank status (i.e., in use, temporarily out of service, or abandoned), the contents of the tank, and the specific tank construction materials. One copy of the written notice is sent to DEP, and another to the local fire marshal. The owner/operator is required to keep the third copy at the site.

Tank material requirements. Since 1985, any non-residential underground storage tank or component installed must be made of noncorrosive materials -- fiberglass-reinforced plastic or manufacturer-applied anti-corrosive coating and have cathodic protection.⁶ If tanks meet these requirements they are also in compliance with the 1998 federal EPA mandates.

Tanks that were installed before 1985 could have been constructed of materials that do not meet current standards (e.g., bare steel or concrete), but they cannot be in ground longer than 20 years from installation (15 years average tank life expectancy and a five-year grace period.) Thus, except for tanks installed just prior to the 1985 regulatory requirements, most tanks should have come up against the 1998 federal standards by now. However, the 1998 federal deadline takes priority, and therefore the 20-year period granted additional time to tank owners that last installed their tanks around 1980.

Further, Connecticut regulations allowed that tanks were allowed the five-year grace period beyond the 15-year life expectancy only if the owners or operators did annual failure detection tests starting 12 years after the tank was installed, and the results showed the tanks were not leaking.

Variations. The underground storage tank regulations allow the commissioner of DEP to grant a variance or partial variance from the regulatory requirements, provided the variance does not endanger the public health or safety or allow pollution. An owner or operator may apply to the commissioner, and the application will be evaluated by balancing any undue hardship on the client against the benefit strict compliance would bring to the environment and the public. The Connecticut DEP has been reluctant to grant deadline extensions or other regulatory variances to owners or operators that request them. Since 1987, there have been 287 requests and only 26 have been approved. Four minor extensions have also been granted.

Tank closures. If the owner or operator decides to close the tank rather than install a new one, the closure must be done according to federal and state requirements. In order to be closed properly, tanks must be either excavated or abandoned in place, by cleaning and filling with a solid inert material, usually dry sand or concrete.

⁶ Cathodic protection is a technique to prevent corrosion by making the surface of a tank system the cathode of an electrochemical cell. The protection can be obtained through application of either galvanic anodes or impressed current.

The tank owner and operator must also file a closure report, which includes a sampling of soils, and in some cases groundwater, to verify that petroleum or a chemical regulated by CERCLA is not present. If contamination is discovered, those releases must be reported to DEP immediately and the site cleaned up to bring levels of contaminants below current remediation standards.

Leak detection. As mentioned above, one of the regulatory requirements owners and operators of USTs must meet is to install leak detection equipment. In addition to the equipment upgrades, owners and operators must continue to maintain and monitor product inventory records. Daily inventories and weekly reconciliation of the results must be conducted for tanks containing motor fuels. Daily losses or gains exceeding one-half of 1 percent of the total tank capacity are considered thresholds and must be investigated and reported as a suspected leak.

In addition to inventory records, UST owners and operators must conduct annual failure determination tests to comply with federal and state leak detection requirements. Other methods of complying with detecting leaks include automatic tank gauges, intertank monitoring (if the tanks are double-walled), or monthly sampling of groundwater monitoring wells or vapor sniffing wells. Pipes must also be tested periodically. After December 1998, manual “sticking” of USTs containing motor fuel or waste oil is no longer considered acceptable monitoring.

Transfer of a facility. State regulations governing underground storage tanks prohibit any owner or operator of a facility that has underground storage tanks on the premises from transferring possession or control of the site without full disclosure to the transferee of the status of regulatory compliance. The disclosure is required to be made at least 15 days prior to the transfer, and must include the most recent notification records sent to the DEP.

Scope of Regulated Community

There are currently more than 11,000 registered sites and about 40,000 registered tanks that fall under federal and state underground storage tank regulations. While a great number are commercial gasoline stations, hotels, churches, schools, town garages, state facilities, and commercial buildings that have underground heating oil and/or gasoline tanks are also included in these numbers. The table below shows the number of registered sites and the number of tanks that are regulated in Connecticut from 1992 to 1997.

<i>Year</i>	<i>Registered Sites</i>	<i>Registered Tanks</i>
1992	10,433	35,953
1993	10,471	35,998
1994	10,588	36,480
1995	10,838	37,988
1996	11,508	40,278
1997	11,150	39,659
Source: DEP Program Activity Reports		

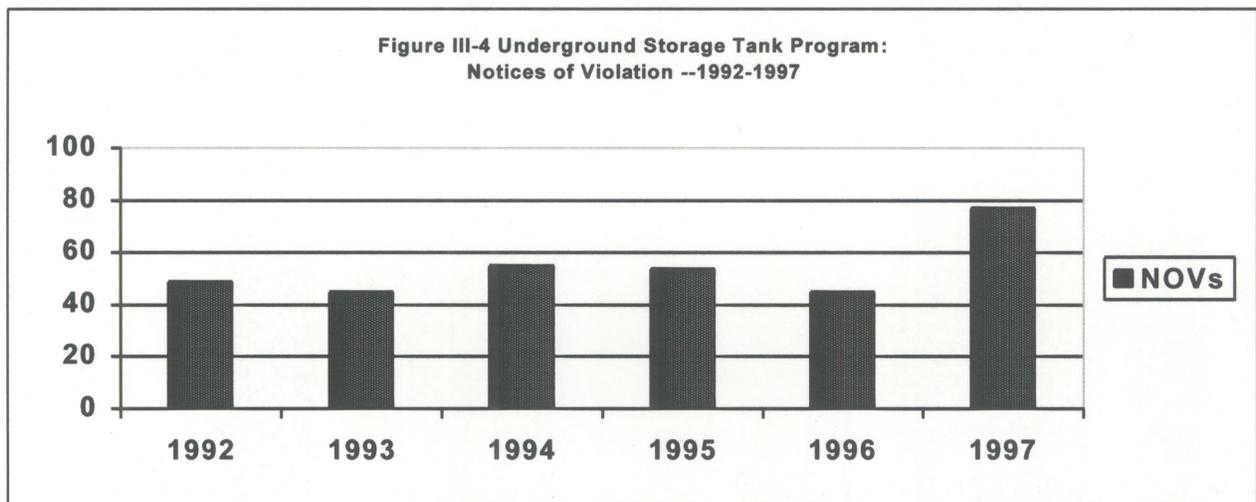
As the table indicates, both the number of registered sites and the number of tanks have been increasing as compliance with the notification requirements has grown. The increasing numbers should not be seen as an expansion of the industry or regulated community, but rather better reporting on the total number of sites and tanks in the state. The drop in numbers for 1997 shown in the table are due to DEP's verification of information in its database, and removal of duplicate site and tank data.

The regulations require reporting of closed tanks as well as open ones, so that the numbers reflect the total number of tanks – both in-use and closed. Permanently shutting down a tank offers owners and operators a method of bringing a tank into compliance, but the closed tank still comprises a part of the universe of regulated underground storage tanks. DEP requires agency notification about closed tanks so that it can locate individual closed tanks to verify they have been shut down properly as well as track the regulatory progress of all tanks in the state.

Figure III-1 below shows the status of regulated tanks in Connecticut. The figure illustrates the cumulative changes in the total universe of tanks from 1990 to 1997. The three categories of tanks are:

- closed or replaced tanks;
- tanks that are still in use but are made of unprotected materials; and
- tanks that are in use and have been upgraded to meet the new material requirements.

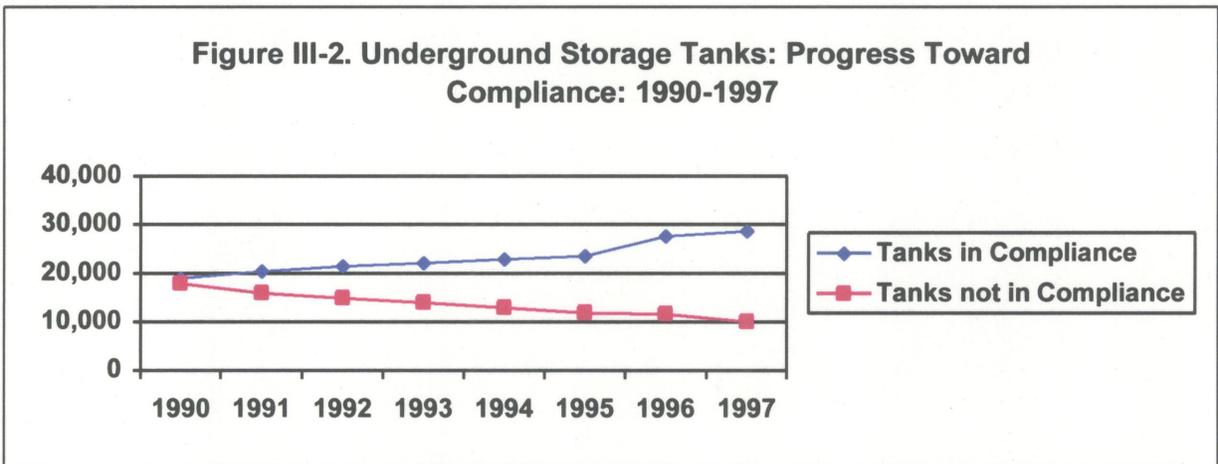
As the figure illustrates, there has been an almost direct shift in the number of unprotected tanks with the number of closed tanks. In 1990, there were about 18,000 unprotected tanks, and in 1997 that number had shrunk to about 10,000. Conversely, there were about 13,000 closed tanks in 1990, and that has grown to 18,000 in 1997. Protected tanks are those that are still active but have been upgraded to meet the 1998 deadline requirements. That category has gradually increased from 6,000 in 1990 to 10,000 in 1997.



Compliance With Regulations

As noted earlier, there are two ways to comply with the 1998 upgrade regulations for underground storage tanks: 1) install or replace with a tank and piping made of approved materials; or 2) close the tank. In addition to self-reporting to assess the size and locations of the regulated tank universe, the Department of Environmental Protection relies almost exclusively on owner/operator notification and self-reporting to gauge compliance with the regulations. DEP has recently begun conducting a “sweep” of tank sites in the state to monitor compliance. Results thus far indicate that actual compliance is better than what the self-reported data stated. It appears that many times operators had upgraded their tanks, but had not notified DEP of the upgrade.⁷

Recognizing that the database information is somewhat flawed, and may actually undercount the number of tanks in compliance, it is still the best source of aggregate state data on UST compliance. Using information from the UST database, Figure III-2 indicates the progress toward compliance with the 1998 regulations. The number of tanks shown in compliance are a combination of closed tanks or tanks that have been upgraded. For purposes of this analysis, program review assumes that all closed tanks have been properly closed, and all protected tanks are made of proper materials and installed properly. These two categories comprise the tanks in compliance, and is indicated by the top line on the graph. The remainder of tanks are those that have not been upgraded or closed, and are considered out of compliance. That number is trended on the bottom line of the graph.



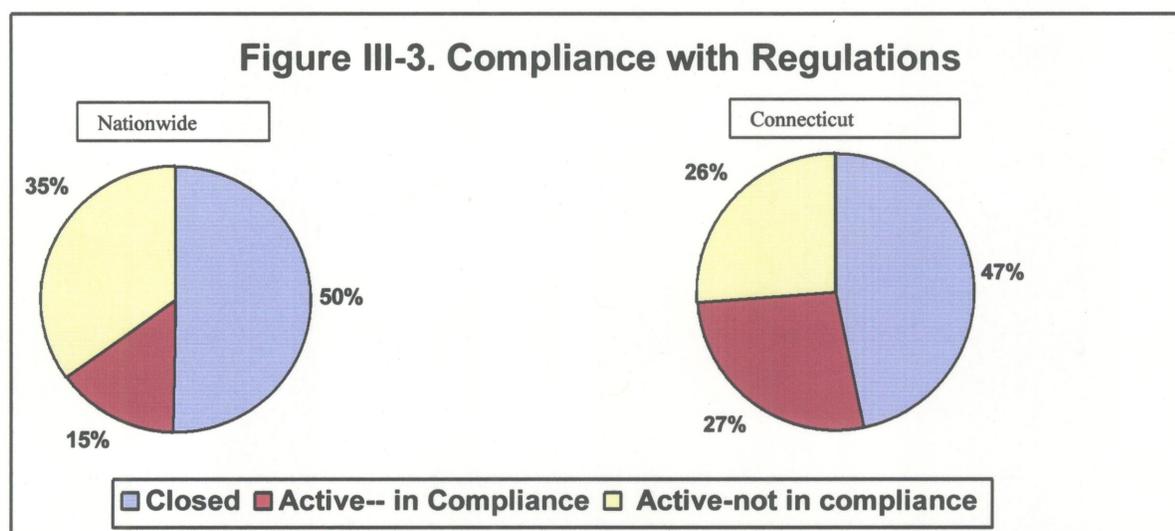
As the graph indicates, the number of tanks in compliance has increased, from fewer than 20,000 in 1990 to almost 30,000 in 1997. At the same time, the number of out-of-compliance tanks has almost been cut in half, from almost 20,000 in 1990 to about 10,000 in 1997.

³As an example, committee staff accompanied DEP staff conducting sweep inspections one day in early 1998, and at three sites tanks had been upgraded but DEP did not have the updated notification. The owner/operator believed in each case that someone else had notified DEP – e.g., the installer of the new tank, another DEP staff person the operator indicated was on the site at the time the new tank was installed, or the local fire marshal.

Comparison With Other States

Annually, each state is required to report to the Office on Underground Storage Tanks (OUST) program in its EPA region on the state's progress toward compliance with UST regulations. While the national information is based on data that are reported from the states, and there can be reliability questions on data from states that rely heavily on the regulated community to self-report. However, it is still the best source of available information on comparative progress towards the 1998 deadline, which applies to all states.

The two graphs contained in Figure III-3 compare nationwide compliance status of the tank universe with compliance in Connecticut. The data used in the graph were issued in January 1998 by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), but are based on 1996 statistics. The figure on the left shows the nationwide compliance and the figure on the right depicts Connecticut's status.



As the graph depicts, the largest portion of the tank universe for both Connecticut and countrywide is the "inactive" or "closed" tank category. The figure indicates Connecticut's progress is better than the country's in getting tanks upgraded. Twenty-seven percent of active tanks are in compliance in Connecticut, but only 15 percent meet the 1998 standards nationwide. Similarly, Connecticut has a smaller percentage of its tanks to bring into compliance than does the country overall, with only 26 percent left to comply. Nationwide, 35 percent of regulated tanks had yet to meet the 1998 year-end deadline, according to the data.

Enforcement

Connecticut's progress in achieving compliance is the result of two major regulatory thrusts. First, the state had regulations in place before the federal requirements and thus some of the success has been that tank owners and operators have had earlier deadlines to meet. Second, success to date has been due largely to education, outreach, and technical assistance.

The committee reviewed the UST unit's enforcement efforts and found they have not been a major emphasis of the program's goal to obtain compliance with tank upgrade or closure regulations. The numbers of annual compliance inspections, which, according to DEP staff, include sweep inspections conducted jointly with EPA, are included in Table III-2 below. As the table indicates, annual inspection numbers vary. In 1992, the unit completed only 37 inspections, while in 1995, 96 inspections were conducted. However, in each of the years, fewer than 1 percent of the registered sites was inspected.

Year	Inspections
1992	37
1993	50
1994	46
1995	96
1996	68
1997	70

Source: DEP Annual Program Activity Reports

While there has been heavy reliance on compliance assistance and outreach, DEP has also employed more "traditional" enforcement activities. Notices of violations, enforcement orders, and attorney general referrals have all been used. Table III-3 indicates the numbers of enforcement activities the UST program has used since 1992. The low number of actions used for a regulatory universe of more than 10,000 sites again indicates that enforcement has not been the primary tool in obtaining regulatory compliance.

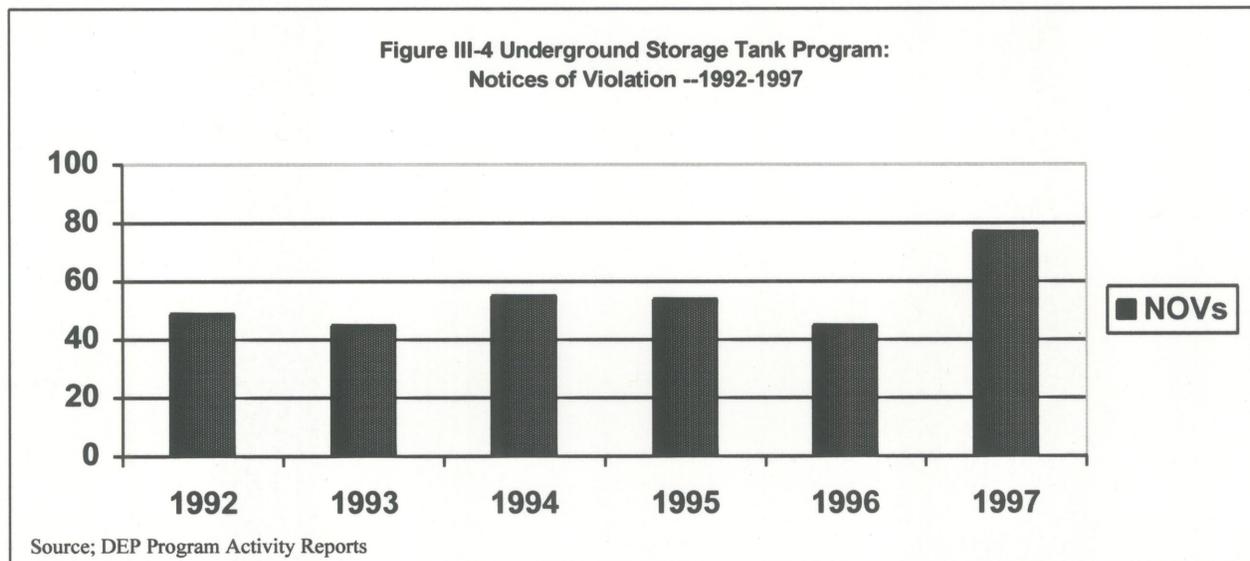
Year	Notices of Violation	Admin Orders	Consent Orders	AG Referrals	Penalties Imposed	
					Judic.	Admin.
1992	49	0	1	0	\$11,000	\$2,353
1993	45	2	1	4	\$42,500	\$10,000
1994	55	6	2	1	\$23,100	0
1995	54	0	1	1	\$30,000	0
1996	45	0	1	0	\$5,700	0
1997	77	1	1	2	0	0

Source: Bureau of Waste Management, Program Activity Reports, and DEP's AG Referral Database

The department uses a continuum of actions to obtain compliance. For example, DEP can issue a notice of violation (NOV) where the site is notified in writing that a violation was found. A response letter from the violator, indicating that corrective action has been taken, is required. A more serious action is to refer a case to the attorney general's office where potential penalties may be assessed for cases with continued noncompliance. It is important to note that a

division other than the agency's UST program may initiate enforcement efforts involving underground storage tanks that may not be reflected in Table III-3. For example, if drinking water or surface water is impacted from an underground tank release, the Bureau of Water Management may take enforcement action separately from the Underground Storage Tank program.⁸

As the numbers in Table III-3 show, by far the most frequent action is the notice of violation, with DEP issuing 325 between 1992 and 1997. Figure III-4 graphs the number of NOVs by year, and indicates that there has been a substantial increase in that enforcement activity – 77 were issued in 1997, almost 50 percent more than any other year.



The department recently automated a tracking system for all NOVs, and supplied the committee with data from the log on notices of violation issued in the underground storage tank program. The log indicates DEP had received compliance responses from all violators for NOVs issued since 1996, with violators self-reporting a corrective action has taken place.

Other enforcement activities included in the table are administrative and consent orders, which DEP issues, as well as referrals to the attorney general's office. Referrals to the attorney general's office are tracked on a database indicating cases referred, the date referred, the assistant attorney general handling the case and whether the case is active or settled. As one would expect, those cases referred are for more serious violations, typically involving a failure or lack of diligence in cleaning up a leaking UST site.

The department indicates that, after the 1998 deadline, it will take a more punitive approach to enforcement of the upgrade or closure regulations. In a department information bulletin, DEP states that "owners and/or operators of non-complying regulated UST systems which have not been properly closed before December 22, 1998 invite stiff fines from both state

8. Enforcement activity within DEP was the subject of another program review committee study during 1998. For a more in-depth analysis of department enforcement activities, see Department of Environmental Protection: Enforcement Policies and Practices, LPR&IC report, December 1998.

and federal agencies, as well as possible revocation of licenses in conjunction with other state programs.”⁹

Program review believes that DEP has taken the right approach thus far in helping owners and operators to comply with the 1998 requirements. *However, the committee finds that with current resources DEP will be unable to adequately verify and enforce compliance on underground storage tank facilities in Connecticut. Since 1992, Connecticut’s enforcement unit has conducted fewer than 100 site compliance inspections annually – less than 1 percent of the regulated community per year.*

One reason the number of inspections is low is the enforcement unit is understaffed. DEP’s enforcement unit has only four professional full-time staff; the lowest number of any of the states in the New England Region (EPA Region I), as indicated in Table III-4. As the table also shows, Connecticut’s number of active tanks is the second highest in the region.

<i>State</i>	<i>Number of Regulated Active Tanks</i>	<i>Number of Enforcement Staff</i>	<i>Tanks per Enforcement Staff</i>
Connecticut	20,700	4	5,175
Maine	6,462	8	808
Massachusetts	177,000	9	19,667
New Hampshire	4,903	6	817
Rhode Island	6,129	6	1,022
Vermont	3,275	5	655

Sources of Data: EPA Region I, EPA/Petroleum Equipment Institute Joint Survey of States, and Association of State and Territorial Solid Waste Management Officials Report Card, January 1998

To more adequately address enforcement of underground storage tanks, **the program review committee recommends that three additional staff be added to the enforcement unit.** The committee believes the funding to support the hiring of additional staff should come from the assessment of tank registration and inspection fees, as outlined below.

Inspection fees. As indicated in Chapter One, legislation passed in 1990 established a fee structure that included a one-time registration fee of \$50 for tanks, and a tank inspection fee of \$50 per tank not to be paid more than once every five years. The registration fee has generated about \$48,000.

⁹ DEP informational bulletin on 1998 regulatory deadline, issued January 1998.

DEP was authorized under P.A. 90-231 to adopt regulations for an inspection fee program. Once the regulations were developed, the fees were to be prescribed in regulation. *To date, no regulations have been adopted and no fees from the inspection program have been collected.* The inspection fee program could generate about \$1 million every five years if every tank were assessed during that period.

Therefore, the program review committee recommends that DEP immediately develop the regulations necessary to implement the fee inspection program, including who the fee will apply to, and how and when it will be collected.

Program review believes that full implementation of a fee inspection program would have several benefits. First, the committee estimates that if all regulated tanks are charged an inspection fee once every five years it would raise, on an annual basis, about \$200,000. This amount could more than pay for the three additional inspectors recommended above. (Estimated \$40,000 salary per inspector plus fringe = \$54,000 * 3 inspectors = \$162,000 a year).

Increasing staff alone, however, will not accomplish a successful compliance inspection program. The enforcement unit must also change its emphasis from the technical assistance and guidance approach it has been using to one of field inspection and enforcement for those that remain out of compliance.

Post-1998 deadline enforcement. DEP has overseen the progress in meeting the 1998 deadline primarily through guidance rather than enforcement using punitive measures. The department indicates that approach will change after the end of 1998. The program review committee believes that stronger measures must be taken with those who remain in noncompliance after the deadline for a number of reasons:

- *tank owners and operators have had more than 10 years to upgrade, remove, or properly close their tanks;*
- *the deadline has been well-publicized and EPA has repeatedly indicated there will be no extensions so tank owners should be aware of the requirements;*
- *it would not be fair to those who have spent the money to comply with the requirements by upgrading or removing old tanks to be put at a competitive disadvantage by those who haven't expended finances or incurred the inconvenience and potential business loss while tank removals and upgrades were done; and*
- *DEP has used outreach, technical assistance, and other compliance guidance to date, and although those mechanisms have worked well with most tank owners, a tougher approach will be needed for the remaining noncompliant group.*

For the above reasons, the program review committee believes enforcement must be punitive after the 1998 deadline, and **recommends beginning July 1, 1999, all regulated**

petroleum underground storage tanks not in compliance with the 1998 upgrade requirements be red-tagged and no deliveries of petroleum to those tanks be permitted.

Twenty states¹⁰ have already passed legislation to enforce such delivery restrictions, informing the regulated industry in advance what enforcement will be taken. This prohibition should be a more effective tool than other measures DEP could take. Notices of violation, enforcement orders, and civil penalties all take time, often result in litigation, referrals to the attorney general's office, with the violation continuing while the matter is resolved.

The states planning delivery prohibitions indicated they consider red-tagging the best enforcement mechanism of the options available. Further, from national reports it appears that petroleum distributors will comply willingly with the requirements, and in fact, may consider such action on their own even without a mandate.

To implement the red-tagging, **the committee recommends that DEP UST enforcement staff:**

- 1) give the red-tagging program highest priority;**
- 2) before the July 1999 red-tagging date, identify and verify through the UST registration database and other means, the noncompliant tanks in the state; and**
- 3) tag noncompliant tanks promptly either on, or shortly after, the date delivery prohibition takes effect.**

Other enforcement. The committee believes the limited enforcement staff resources, and the related lack of site compliance inspections, have had an impact on tanks owners and operators who request reimbursement from the Clean-up Account for remediating a contaminated site.

Rather than the enforcement unit conducting compliance inspections, informing tank owners and operators of deficiencies, and outlining required corrective actions, reimbursement reduction or claim denial is done after the fact, in a "gotcha" fashion in some cases. Tank owners or operators determined by account staff not to be in compliance with UST statutes and regulations, or with DEP enforcement orders, can have their award reduced; where lack of compliance is determined to be the proximate cause of a tank release, no reimbursement is granted. To be a fair enforcement tool, those regulated must clearly know what they must do to

¹⁰ According to the September 1998 *L.U.S.T.Line*, a publication of the New England Interstate Water Pollution Control Commission, which included a report on federal and state underground storage tank programs, Massachusetts, Michigan, Minnesota, Oklahoma, Vermont and Wisconsin all will red-tag noncomplying tanks to prohibit delivery. Alaska, California, Georgia, Illinois, Iowa, Kansas, Louisiana, North Carolina, Oregon, South Carolina, Utah, and Washington will issue certificates of compliance to allow deliveries to only certified tanks.

comply with the regulations, and know the consequences if they are determined to be noncompliant.

The committee believes that a link between enforcement and access to the account should not be prohibited. There should be penalties for noncompliance, but the link must be prospective and owners and operators must be notified. In this way, the process is similar to providing health insurance coverage to a person after a physical examination verifies the person is healthy. This is much preferable to thinking you're covered, until you file a claim and are denied coverage because the insurer says it's a pre-existing condition.

Therefore, the program review committee recommends that DEP:

- **put all regulated underground storage tanks sites on a five-year compliance inspection schedule;**
- **inspect each site at least once every five years according to schedule;**
- **issue a letter of compliance once a site has been inspected and found to be in compliance,**
- **file a copy of the compliance letter with the Clean-up Account, which shall remain in effect until the next five-year inspection schedule, unless the site comes under a DEP enforcement action during that period;**
- **issue a notice of violation if a site is found to be noncompliant (The notice of violation will allow the site a period of time, as established by DEP enforcement staff, to take corrective action.);**
- **reinspect the site at the end of the established period, and if the violations have not been corrected, a letter stating the areas of noncompliance shall be issued and filed with the Clean-up Account. The letter of noncompliance shall be kept on file with the Clean-up Account until the next regularly scheduled compliance inspection.**

There are a number of benefits to implementation of a new compliance enforcement plan as recommended. First, tanks will be inspected regularly, and owners will clearly know whether or not they are in compliance. Second, there will be a link to the account, but the connection will be prospective through the compliance letter. Indeed, the link to the account will be an incentive for sites to comply with UST laws and regulations. Third, it will significantly diminish the retrospective check on compliance at the Clean-up Account that tanks owners and operators often perceive as unfair. Finally, it will streamline the claims review process so Clean-up Account decisions can be made more quickly, and fulfill the purpose of the account.

The first, and most obvious, steps toward compliance -- the equipment and tank upgrade standards -- will be more easily checked than other compliance issues. All will involve the unit responsible for enforcing compliance conducting the recommended actions and, depending on

the inspection outcome, issuing the letter stating that the site is in compliance. The letter is sent to the Clean-up Account as verification of the site's compliance. The letter serves much the same purpose as an insurance policy, with the coverage period indicated on the compliance letter.

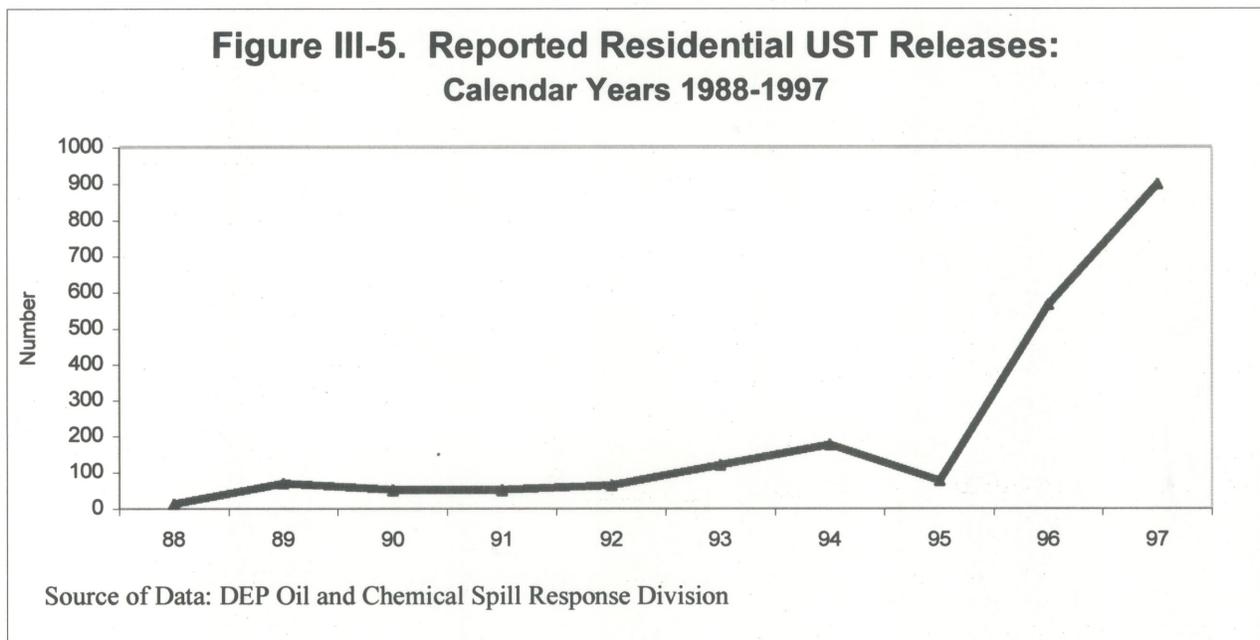
The letter of compliance (or noncompliance) will help streamline the Clean-up Account claims review process, as discussed in more detail later in the report. Clean-up Account staff will no longer have to conduct a post-claim compliance check; the letter of compliance will serve as verification.

Residential Tanks

Both federal and state environmental protection regulations apply only to non-residential tanks. Connecticut, like most other states, does not regulate residential heating oil tanks. Some 30-40 towns in Connecticut, however, regulate underground tanks in some way; most prohibit their use in areas with aquifers or locales with certain groundwater classifications. Only Simsbury has a requirement that generally all tanks over 20 years old be pulled or properly abandoned in place.

Since there are no statewide upgrade or closure regulations that residential tank owners must meet, DEP cannot enforce anything with this body of tanks unless a leak occurs. The DEP, however, indicates that it advises homeowners to replace or close their old tanks, citing as incentive how relatively inexpensive those options are if there is no leak compared to clean up after a leak is found.

The Department of Environmental Protection maintains a database on all sites in the state with reported leaking underground storage tanks. Figure III-5 below shows the number of reported releases from residential tanks over the past 10 years.



As Figure III-5 shows, a dramatic rise occurs after 1995, but the committee determined some of the increase shown is probably an overrepresentation of actual releases. Through discussions with DEP staff, program review learned that some of the increase is due to a change in reporting. After 1995, the department began recording all declared releases, even those where no DEP inspector was sent. Further, the committee concluded many of these “releases” included in the department’s spill records were actually reported pulled tanks, with no accompanying spill or release. Despite the shortcoming of reporting, it is likely there has been some increase in releases from residential heating oil tanks.

There is no *one* reason for this; rather there are a number of contributing factors. Since 1995, statutes require that prior to transfer of residential property the seller must disclose existence of any environmental concerns, including whether there is an underground tank on the property. As a result of that law, many lenders will not write a mortgage unless the tank is either pulled or tested to verify there is no contamination. Some lenders also require similar actions to be taken for refinancing of residential properties, if the mortgage will be sold to the secondary market.

In addition, real estate agents and brokers advise potential sellers to remove their tanks to help promote the sale of the property. The disclosure requirements are prompting more testing, and many tanks will be found with leaks because they are now reaching – and many are far beyond – the life expectancy of 20 years. It also appears tank removal contractors are also being careful to report any spill or release amounts.

To deal with the problem of increasing residential heating oil tank failures, **the program review committee recommends the state of Connecticut implement the following measures.**

- **Establish a goal in statute to remove, by the year 2005, all residential underground storage tanks over 20 years old.**
- **Implement the goal through education, outreach and technical assistance provided primarily by DEP.**
- **Establish a state-funded grant and loan program coordinated by the Department of Economic and Community Development and administered by the community action program (CAP) agencies. The grant program would be limited to households 80 percent or below the median household income for the area. The loan program would offer low-interest loans, with no income eligibility restrictions, to be repaid over five years. Individual grants and loans would be subject to a maximum amount of \$3,500 per tank.**
- **Fund the grant and loan program at \$10 million annually. The fund would be financed through an allocation from the gross receipts tax on petroleum products. The grant and loan program would sunset on December 31, 2005.**

The program review committee believes these recommendations will provide a positive incentive for residential tank owners to remove their tanks, and concludes this is preferable, and will have better results, than a punitive regulatory approach. In addition, the committee concludes the purpose of the program should be to remove old tanks, and therefore makes no proposals for how residents replace their tanks. Committee members recognize that homeowners replacing their tanks must meet state requirements for tank materials as well as any local ordinances that might be in effect in a town.

A few other states – e.g., Maine, Oregon and New Jersey – have instituted grant and loan programs similar to the one proposed here. Further, there are already similar “consumer” loan programs for home improvements funded through DECD and administered by local community action agencies, so a new structure would not have to be created to operate the program. Checks with DECD and the CAPs indicate that if the verification of income were not complicated, and the individual grant and loan amounts were not large, fees required for administration should not be more than 10 percent of the programs costs.

The committee proposes the program eligibility threshold of 80 percent of median area income since that is a common benchmark used to determine whether households qualify for state and federal housing and rental programs.

A precise number, or even an estimate, of residential underground storage tanks does not exist. In its efforts to determine the number staff concluded it could be as low as 25,000, based on Maine’s experience¹¹, or as high as 100,000 according to one DEP estimate. The program review committee’s estimate is about in the middle. Based on: 1990 census data on single-family, and up to four-unit multifamily residential units; the extent of home heating oil usage in Connecticut; and petroleum industry estimates on the percentage of residential home heating oil tanks that are underground, program review determined there are about 50,000 to 55,000 underground tanks in the state.

However, it is likely that many of residential underground heating oil tanks have already been pulled because of mortgage requirements imposed by private lenders or to fulfill a private real estate transaction. Another portion of residential owners have the resources to finance tank removal on their own. Program review believes that the \$10 million allocation each year over five years should adequately address the demand, particularly since loan repayments will put money back into the program.

The Connecticut General Assembly saw the value of a loan program when it passed P.A. 95-190, an act that allowed the DEP commissioner to make loans available to homeowners to pull underground home heating oil tanks at risk of leaking or in certain groundwater classification areas. Unfortunately, the program was not funded and was repealed in 1996.

¹¹ Since 1987, Maine has required residential tanks owners to pull their underground tanks. As of October 1997, about 8,000 tanks had been pulled. Using that number and assuming Connecticut’s population is about three times Maine’s population, staff estimates about 24,000 tanks.

Residential Tank Access to the Clean-up Account

Currently, residential tank owners are not eligible to draw on the Underground Storage Petroleum Tank Clean-up Account. The state fund was established to help owners and operators of underground petroleum tanks, including municipalities, that had to meet EPA's financial responsibility requirements. State agencies with any type of gasoline or heating oil tank, even though exempt from the federal financial responsibility requirements, are considered eligible for the account by state statutes. The program review committee believes residential owners of home heating oil tanks should be allowed access to the account as well, for a number of reasons.

Residential tanks can leak and cause contamination. For the most part, home heating oil does not cause the extent of contamination gasoline does, because it does not move as quickly, nor is it as harmful. However, depending on the proximity of the residential tank to wells or other sensitive receptors, an individual homeowner may incur significant expenses to clean up.¹² One Connecticut tank contractor estimated if groundwater is affected, clean-up costs for a leaking residential tank can be up to \$20,000.

Typically, homeowner insurance excludes coverage for underground storage tank contamination. A couple of insurers had been underwriting such coverage as a rider on homeowner policies, but the state insurance department indicates coverage is not being extended to new policyholders. Service contracts through the heating oil deliverers, reinsured through surplus lines insurers, do provide some coverage for contamination, but most limit exposure to current releases.

The Clean-up Account is funded through a portion of the gross receipts tax on petroleum products. It is a tax that filters down to all gasoline consumers, even though it is not a direct tax paid at the pumps. Therefore, extending benefits to homeowners who incur clean-up costs is not unreasonable.

The committee does not expect that there will be a great number of residential claims that come to the account.¹³ Estimates from a Connecticut tank contractor and information provided by the state of Oregon indicate that one in every three to four residential tanks have some contamination, but typically can be cleaned up for about \$2,500. If groundwater is affected, however, the costs are significantly more.

Further, residential claims should not pose an administrative burden on the account. These applications will not take the same amount of time for Clean-up Account staff to review as claims from commercial applicants because eligibility and compliance would not be issues with homeowners, and their claims would be reviewed for cost reasonableness only.

The program review committee also believes continuing to restrict the account to non-residential applicants will impede the state's goal of removing residential underground tanks

¹² A letter in the DEP commissioner's correspondence file indicates that residential tank clean-up can be a hardship; the homeowner in this case spent slightly more than \$15,000.

¹³ Maine has allowed residential tanks owners to apply to its account, if they meet a \$2,500 deductible; fewer than 10 have applied to date, indicating to its clean-up account staff that most clean-ups cost less than the deductible.

recommended earlier. If homeowners are afraid they will be unable to afford clean-up if contamination is found when they remove their underground storage tanks, they might well decide to ignore their tanks, allowing any pollution problem to worsen. The committee believes the account should be accessed by homeowners who incur a substantial cost for clean-up and should not be available for small amounts of contamination. Those minor situations should be viewed as a homeowner's responsibility for routine upkeep and maintenance, and thus a deductible for clean-up costs is appropriate.

For these reasons, **the program review committee recommends the following:**

- **Section 22a-449 of the Connecticut General Statutes be modified to allow residential tank owners to apply to the Underground Storage Petroleum Tank Clean-up Account for payment of clean-up costs incurred as a result of a leaking underground heating oil tank.**
- **Residential tank owners shall be responsible for the first \$2,500 in clean-up costs, with the Clean-up Account paying for clean-up costs over \$2,500 up to a maximum of \$50,000 for a residential site.**
- **The required \$2,500 deductible must have been spent only on clean-up costs. Tank removal and/or replacement costs shall not be considered clean-up costs in meeting the deductible.**

Chapter Four

LUST PROGRAM

The federal leaking underground storage tank program in Connecticut is operated by DEP under a cooperative agreement with the U.S. Environmental Protection Agency. All states except Florida carry out LUST programs under cooperative agreements with EPA. The Connecticut program has been in place since 1988.

Federal funding for LUST programs, which comes from a trust fund financed through a national tax on motor fuel, is provided to states for two purposes:

- 1) overseeing corrective actions undertaken by the owner or operator of a leaking tank; and
- 2) paying for cleanups at sites where the owner or operator is unknown, unwilling, or unable to respond, or where emergency action is required.

LUST funding is allocated to EPA regional offices and distributed among states based on a formula. States receive a base allocation plus additional money that depends on: the number of confirmed releases; the number of notified petroleum tanks; the number of residents relying on groundwater for drinking water; and the number of clean-ups initiated and completed as a percent of total confirmed releases. Information on federal leaking underground storage tank funding provided to Connecticut and other EPA Region I states is summarized in Table IV-1.

Table IV-1. Federal LUST Awards in EPA Region I Federal FY 87 through FY 97			
<i>State</i>	<i>Total LUST Awards Federal FY 87-97</i>	<i>Cumulative Amount Spent Federal FY 87-97</i>	<i>Percent Spent</i>
Connecticut	\$ 7,564,013	\$ 6,267,211	83%
Massachusetts	\$ 9,198,245	\$ 8,078,543	88%
Maine	\$ 5,799,245	\$ 5,115,843	88%
New Hampshire	\$ 8,099,400	\$ 7,351,707	91%
Rhode Island	\$ 6,871,872	\$ 6,439,364	94%
Vermont	\$ 5,450,100	\$ 5,109,813	94%
Region I Total	\$ 42,982,875	\$ 38,362,481	89%
National Total	\$ 562,727,058	\$ 454,785,925	81%
Source of Data: EPA FY 97 Semiannual (End-Of-Year) Activity Report.			

Among the Region I states, as Table IV-1 shows, Connecticut has received the third highest amount of federal LUST grants – a total of \$7.564 million between federal FY 87 and FY 97. During this same period, the department's LUST program has expended about 83 percent of the state's total grant awards. Most of Connecticut's LUST allocation is spent on site remediation. For example, in federal FY 97, LUST expenditures totaled about \$622,000 with nearly \$456,000 spent on site clean-up, \$144,000 spent on administrative costs, and the remainder (\$22,420) went to enforcement.

Responsibilities and Process

The main responsibilities of the six staff of the Connecticut LUST program are field operations, scientific support, and mobile lab operations. The LUST staff conduct on-site investigations of suspected leaking tanks to: 1) assess if a release has occurred and the extent of any damage caused; and 2) identify the cause of the release and the party(ies) responsible for the failed facility.

Process. In most cases, the LUST section becomes aware of suspected leaking tanks from the department's Oil and Chemical Spill Response Division. Under Connecticut law, the release in any manner of any oil, petroleum product, chemical, or waste, including leaks from an underground storage tank, is considered a spill. State law requires the party causing a spill and owner of property where a spill occurred to report it immediately to DEP and local authorities.

OCSRSD is responsible for receiving and investigating all spill reports. If the spill is known or suspected to be related to an underground storage tank, the division will notify the LUST section. Referrals may be made to other DEP sections, such as enforcement staff of the UST program if regulatory noncompliance seems to be an issue, the potable water unit if it is suspected drinking water has been effected by a release, or other water bureau staff is there appear to be groundwater problems.

Under the state spill law, the party causing a release and the property owner are liable for site clean-up. Responsible parties must take steps to immediately contain a spill and carry out necessary corrective action. If the responsible party is unknown or unresponsive, the department is authorized to hire a contractor to contain, and remove or mitigate the effects of the release.

Federal regulations require certain steps be taken within set time frames, as outlined in Table IV-2 below, in response to an underground storage tank release. The owner or operator of a suspected leaking tank is expected to take immediate steps to abate hazards posed by a release. For example, tanks may need to be emptied of all product to prevent possible groundwater contamination. As noted in the table, DEP, as the state implementing agency for the underground storage tank program, is given discretion under federal directives to establish what specific actions will be required and when they must be accomplished at a particular site.

Table IV-2. UST Release Response and Corrective Action Report Requirements

<i>ACTION</i>	<i>SCHEDULE</i>
Initial Response	Within 24 hrs of confirmation or <i>reasonable time period</i>
Initial Abatement	Within 20 days of confirmation or <i>reasonable time period</i>
Initial Site Characterization (general site characteristics)	Within 45 days of confirmation for <i>reasonable time period</i>
Free-Product Removal	Within 45 days of confirmation unless <i>directed otherwise</i>
Investigation for Soil and Groundwater Cleanup (Formal site assessment)	As soon as practicable or <i>in accordance with set schedule</i>
Corrective Action Plan	<i>As required</i> after initial site characterization report
Results Monitoring and Evaluation	<i>As directed</i>

Note: Requirements in italics text are determined or directed by the state implementing agency

Source: EPA OSWER Directive 9650.13, November 1992

The LUST staff oversee all reported release sites to some extent but are not actively involved in any corrective actions if the responsible party is voluntarily remediating any damages, the case is not complex, and the spill is not in a highly sensitive area. Cases handled directly by the LUST unit are closely monitored but there is seldom a papertrail regarding the final status of other leaking tank sites. Plans and reports if submitted by responsible parties are maintained in a case file but they are seldom solicited by the LUST staff. The unit relies on self-reporting from leaking tank owners and operators. Field visits to confirm reported information are carried out mainly at the sites of cases where the LUST program has lead responsibility.

With money from an EPA technical improvement grant, the unit recently contracted with the University of Connecticut Environmental Research Institute (ERI) for a follow-up study of sites included on the department's master list of leaking underground storage tanks. The ERI personnel are checking files throughout the department to determine the status of reported releases and are entering information gathered into a new automated UST program database. In

the future, the database will permit better tracking of compliance since the LUST staff expects to log in a variety of site information as it is received, including if and when corrective action plans and monitoring reports are submitted.

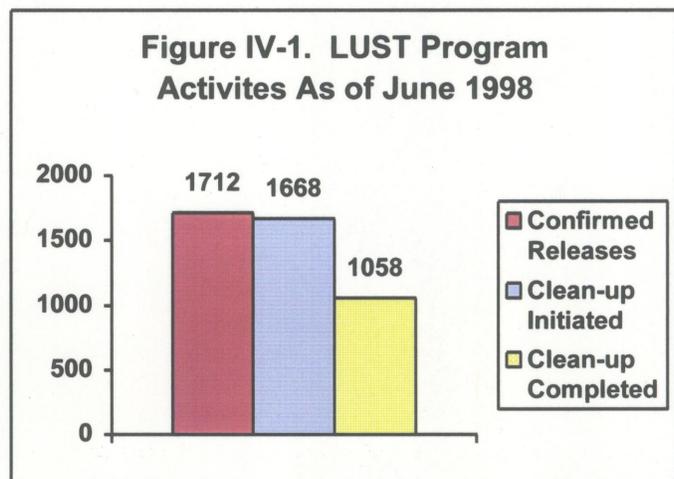
Because LUST resources are limited, the unit prioritizes which sites it will investigate and which will be funded with federal grant money. States are allowed to set their own priorities although they are subject to EPA review and approval. In Connecticut, in accordance with the department's LUST grant application, highest priority is given to cases with the most significant pollution concerns -- cases where present or future drinking water supplies are at risk. In deciding which sites to fund with federal monies, the LUST staff also consider availability of other remediation funding, ability to identify culpable parties, and degree of threat the release poses to human health and the environment.

By statute, owners or operators of a site polluted by an underground storage tank must restore the environment to a condition acceptable to the environmental protection commissioner. In the majority of cases, once an underground storage tank release is confirmed, the responsible party voluntarily undertakes corrective action and the LUST staff will monitor the status of the site. If no responsible party can be found, or if immediate action is required, the staff can arrange for necessary mitigation and remediation work using the state's federal LUST grant funds. Usually a private contractor will be engaged to develop and carry out a corrective action plan for the site. The department will then seek to recover the site remediation costs from responsible parties, if any are identified.

Activities

State LUST programs are required to submit semi-annual activity reports to the regional EPA offices. According to the Connecticut program activity reports, a cumulative total of 1,712 confirmed releases from federally regulated petroleum product underground storage tanks have been reported in Connecticut since the inception of the LUST program in 1988 through June 1, 1998.

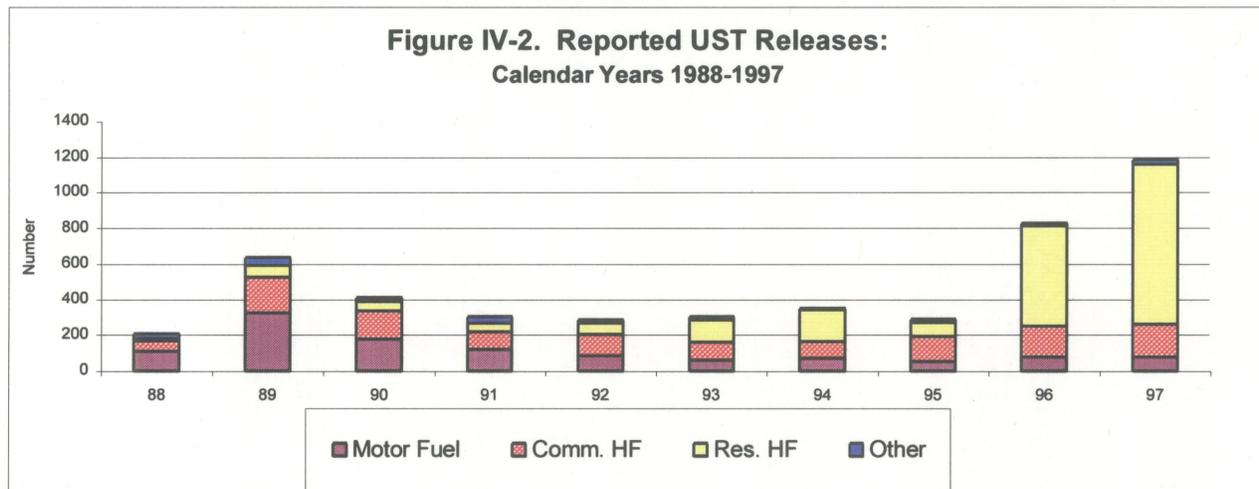
As Figure IV-1 indicates, clean-up had been initiated at 97 percent of the releases and completed at 62 percent. Clean-up completed does not necessarily mean a site is free of any contamination or meets the state site remediation standards established in 1996 in accordance with C.G.S. Section 22a-133k. Instead, the department's LUST program considers clean-up complete when the site poses no threat to human health or the environment. What constitutes a completed clean-up is left to each state and the federal program has no working definition.



LUST cases. LUST staff estimates about 100 sites are investigated each year but corrective actions are closely monitored only at sites that involve serious or complex environmental issues. To date, the program has taken lead responsibility for clean-up activities at a total of 36 leaking tank sites and used LUST funds to pay for remediation at 29. At some of these sites the DEP Oil and Chemical Spill Response Division has expended state funds for emergency response measures and in 15 cases, both federal LUST funds and spill response monies have been spent on clean-up work.

Overall, costs totaling more than \$3.3 million had been incurred by the DEP for remediation at the LUST sites. Of the total, \$1,596,526 were paid with LUST funds and \$1,723,386 were paid with state spill response funds. As required by law, the department seeks recovery of these costs and as of May 1998 had collected over \$1.8 million from responsible parties involved with 13 sites.

Trends in reported releases. Data on releases from all types of underground storage tanks (regulated and residential and other unregulated facilities), which is based on reports made to the department's oil and chemical spills division, is summarized in Figure IV-2. From the figure, it appears reported motor fuel tank releases peaked in 1989, shortly after the federal and state regulatory programs went into effect, then declined and leveled off since 1992. DEP staff believe this trend reflects the impact of the UST program in terms of instituting requirements for tank facility closures, replacements, and equipment upgrades.



The substantial increase in residential heating fuel releases beginning in 1996 is primarily the result of reporting change the department instituted that year. Previously, only releases investigated by a DEP staff person were included in the count; now all releases reported are tracked. Agency underground storage tank program staff also have noticed an increase in reports concerning residential tanks which is thought to be due to a number of factors, including: increased public awareness of leaking tank issues; the fact that tanks in many private homes are reaching the end of their life expectancy; and governmental and nongovernmental influences

(e.g., municipal ordinances, home mortgage requirements, etc., as discussed in the previous chapter) that are prompting homeowners to remove their underground tanks.

The status of many sites with reported releases is unknown or uncertain in many cases. As noted above, the LUST section, partly because of limited resources, is involved in only a small portion of the cases related to tanks that are subject to state or federal regulation. Also, while the LUST section is not prohibited from investigating sites of leaking residential tanks they would generally be a low priority and any clean-up activities required at such sites would not be eligible for federal LUST funding.

The LUST supervisor estimates perhaps 30 to 50 percent of reported spill sites are not visited by any state personnel based on the description given over the phone to OCSR staff. For example, if local fire or health authorities are reporting a case of simple overfill, which can be taken care of through soil removal, or have determined the release poses no serious threat, the decision is usually made not to send out a DEP inspector. In addition, many reported releases begin and end with OCSR because they are the result of a simple spill. Identification of the responsible party and an initial response to contain the release are all that is required to protect public health and the environment.

Findings and Recommendations

The program review committee believes the LUST program's policy to focus its investigation and remediation resources on sites presenting the highest potential risk to the environment and public health is realistic and reasonable. A hierarchy for addressing cases of reported releases for underground tanks has been established with EPA approval and it appears to be followed.

The committee is concerned, however, that lower priority LUST cases are not being monitored. Responsible parties in these cases are essentially left to self-report on compliance with proposed corrective actions. The LUST staff rarely checks if compliance reports have been filed or corrective actions taken so the current status of many reported releases is unknown.

An automated information system developed by EPA for state underground tank enforcement program (UST-ACCESS), which is capable of tracking the status of sites with reported releases, is now available to the LUST program. *The committee found most of the system's records on leaking tanks are incomplete.* Technical problems, along with a lack of staff time to collect and input data, have contributed to delays in getting this database operational. If working, the UST-ACCESS system could be used by LUST staff to more easily:

- determine if responsible parties voluntarily cleaning up tank releases are meeting corrective action and reporting requirements; as well as
- assess remediation progress at all sites.

The program review committee also found the database the LUST program developed on its own to track the status of leaking tank sites is inadequate and the information it contains is unreliable. To meet EPA activity reporting requirements, the LUST staff has maintained a list of sites with reported tank releases based on information it receives from the Oil and Chemical Spills Response Division since the program's inception in 1988. Committee staff used the list to develop the mailing for its survey of leaking tank site owners and found many duplications along with inaccurate or incomplete names and addresses. Not unexpectedly, many of the addresses on the list were no longer valid since the release reports go back at least 10 years. About one-third of the more than 1,000 surveys mailed by the committee to leaking tank sites on the LUST list were returned as undeliverable.

Often it was difficult to determine the reason a site was included on the LUST list (e.g., a leak, spill, overfill, tank removal, etc.) and information on site status (e.g., no remediation needed, clean-up completed, etc.) was frequently missing. Program review staff received a number of calls from survey recipients inquiring why their site was listed since they had never experienced a spill or release. Analysis by committee staff also revealed fewer than one-quarter of the nearly 700 sites that have applied to the Clean-up Account for reimbursement appear on the LUST list of reported release sites.

Last year, recognizing the deficiencies of its program information, the LUST staff used special EPA grant money to contract with the Environmental Research Institute of the University of Connecticut to research agency records and files to update the LUST database. One goal of the project is to improve the program statistics reported to EPA by identifying any sites where clean-up is still listed as initiated but has actually been completed. The LUST staff believe a significant number of leaking tank sites have been remediated but just not reported as such to the department.

Preliminary results of the ERI project drafted in November 1998 indicate that tracking the status of reported leaking tanks often requires extensive searches of documents and files located throughout the agency. The project staff noted department files are frequently incomplete and sometimes inconsistent, or even contradictory, since a site may:

- have gone through multiple purchasing transactions;
- have been investigated and remediated by more than one consultant or contractor; and
- involve a variety of types and sources of soil and groundwater contamination.

As a result, field visits, correspondence, and phone calls will be required in a number of cases to determine the site's current status.

The project also discovered more than 2,600 tank sites referenced in agency files that are not included in the LUST program's master list of sites. Over the next few months, ERI will be checking these new sites, many of which are expected to be minor spills or unconfirmed releases, as well as following up on old sites with unknown clean-up status. The project, which includes

correcting and entering new information in the UST-ACCESS system, is expected to be completed in July 1999.

Accurate and complete information on reported releases and their current status is critical to the effective operation of the LUST program. **The program review committee recommends the department make correcting, updating, and maintaining the information used by the LUST program a priority. Both the reported release database and LUST component of the underground storage tank program information system should be made current by July 31, 1999.**

Improved automated information will permit better tracking of LUST cases and strengthen the staff's oversight ability. Compliance with corrective action should be promoted as a result. Staff time now spent on researching paper files for site information can be redirected to monitoring corrective action, preferably through field visits and other contact with responsible parties.

Ensuring the accuracy of the list of reported releases from underground tanks is especially important. The LUST database may be used by prospective property buyers to check for possible contamination problems. Incorrect information about the status of a release site could give a buyer false security about the property's condition or discourage a sale unnecessarily.

In the past, the LUST program has undertaken several initiatives to maximize the impact of its activities. For example, the Connecticut LUST program has been a leader in expedited site assessment. In 1993, DEP, along with the EPA Region I office, developed written guidance for field data collection and reporting at leaking tank sites to make the investigations process more efficient. A certified mobile laboratory, which permits quick, on-site analysis of samples from suspected underground tank releases, was also established. The mobile lab has become a valuable investigatory resource for the whole agency and has been suggested as a model for other states. The committee believes similar efforts devoted to improving the quality of the LUST database can significantly contribute to more efficient use of the program's limited resources.

CLEAN-UP ACCOUNT: PURPOSE, STATUS, AND MANAGEMENT

Background

The Clean-up Account is a critical component of Connecticut's underground storage tank program, which provides financial assistance for the remediation of sites contaminated by leaking petroleum tanks. The account's background as well as funding, management, and the continued need and benefits of the account are all discussed in this chapter. Findings and recommendations related to these issues are contained throughout the chapter.

Purpose. In 1986, federal regulations regarding underground storage tanks were amended to initiate a financial responsibility requirement on commercial tank owners so that there would be money available to clean up sites and/or compensate third parties who suffer damages in the case of accidental spills or releases. Several mechanisms to meet the financial responsibility requirements were allowed by regulation. Those included: private insurance or risk retention; self-insurance; financial guarantee; surety bond; letter of credit; and a state fund or other state assurance.

The federal requirements for financial responsibility had a gradual phase-in period, from 1989 through 1993. Tank owners having the greatest product volume were mandated to comply earliest.

In response to the financial responsibility requirement, there was a possibility some small gasoline station owners would not be able to obtain financial assurance through the private market and might be forced out of business. The state took measures to prevent this from occurring, and in 1989 the Connecticut General Assembly passed legislation creating the Underground Storage Tank Clean-up Account.

Legislative history. The original purpose of Senate Bill 915 was two-fold: 1) to provide funds for costs of clean-up and damage to third parties that result from leaking underground storage tanks; and 2) to allow relining of underground tanks as a method of complying with regulations. At a public hearing held on the bill, the Department of Environmental Protection opposed the part of the bill that allowed tank relining but did not speak to the other part of the bill. At the same hearing, the Department of Transportation opposed the section of the bill establishing the account, because the bill, as originally drafted, used the Special Transportation Fund as the funding mechanism for clean-up, and the department testified that any diversion from the Special Transportation Fund was not in keeping with the fund's purpose.

Support for the bill came from the Connecticut Motor Transport Association, the Connecticut Petroleum Association, the Connecticut Bus Association, the Connecticut School Transport Association, and the Independent Petroleum Association of Connecticut. Testimony presented indicated that, in 1989, 20 states had similar state funds to clean up leaking tanks.

The legislation, which ultimately passed (P.A. 89-373), contained modifications that: excluded the section allowing tank relining; established the funding through a portion of the gross receipts tax on petroleum products; and instituted a ceiling and floor on the account's balance. The act also allowed school districts an extra year to comply with upgrading or replacing their tanks, and ensured that municipalities and state agencies would be eligible for funding from the Clean-up Account. The legislation also created an independent 12-member board to oversee the account.

Once the fund was statutorily created, a number of changes were made to the legislation early after enactment. In 1990, at the request of DEP, compliance requirements for site eligibility to the account were expanded. The original legislation, which required sites to be in compliance with enforcement orders of the commissioner was changed to [compliance with]

general statutes and regulations governing the installation, operation and maintenance of underground storage tanks, and such lack of compliance was a proximate cause of such release (C.G.S. Sec.22a-449f (b)).

Other early statutory modifications included instituting the \$10,000 deductible for all responsible parties, allowed cost recoveries from responsible parties for the first \$10,000 paid to third parties, added an appeal process from board decisions, and required the regulations, which the commissioner of DEP was already mandated to develop, to include certain provisions.

EPA approval. Federal regulations required that, in order to meet the financial responsibility provisions, all state funds must receive EPA approval. The Connecticut Department of Environmental Protection first applied for such approval in October 1989. EPA denied DEP's initial request for approval, indicating several problems with the account including: potential for discretionary transfer of funds from the account (the legislature moved \$6 million from the account to fund low-income energy assistance in 1990); the payment of defense costs for third party claims; and the fact the fund did not clearly allow DEP to tap into the account when the department found it necessary to clean up a site where the owner or operator was not known or was unwilling to clean up. EPA also requested that DEP "submit an analysis of the amounts which have been collected thus far and what projections DEP has made for costs of investigation, corrective action, and third party liability payments out of the fund".¹⁴

The DEP sought changes to remedy EPA's concerns via 1991 legislation. On July 26, 1991, EPA officially approved Connecticut's Clean-up Account as a financial responsibility mechanism. The EPA indicated the state DEP had 60 days to notify all owners who would be covered by the fund describing the nature of the state's assumption of responsibility. The

¹⁴ November 20, 1990, letter from Julie Belaga, EPA Region I Administrator, to Leslie A Carothers, then commissioner of Connecticut DEP.

required letter, which tank owners or operators must keep on file at the site as proof of financial responsibility, was sent out by DEP in October 1991.

Once initial approval of the account mechanism has been granted by EPA, the federal agency does not have any ongoing monitoring or oversight role of the fund. Similarly, after the initial notification of tank owners about the existence of the account, there is no requirement that DEP periodically communicate the coverage or financial assurance aspects of the account to them.

Early operations. The Clean-up Account and board operations did not start smoothly. Although applications for reimbursement from the account had been filed in 1989 and 1990, the board did not hold its first meeting until July 1991.

In 1991, a mandamus action¹⁵ was brought against the board by Petrol Plus, a private petroleum company, claiming that although the board was created in statute in 1989, and that numerous requests for reimbursement had been submitted to the board, it had never met to act on any claims. The court found that:

A more than reasonable time has elapsed within which the board should have adopted the procedural regulations to carry out the mandate of the statute. The board's failure to adopt the necessary regulations and their refusal to hear applications of the plaintiff Petrol Plus has caused the plaintiff to suffer irreparable harm.¹⁶

Further, the court ordered that the board had until July 10, 1991 (about one month after the date the court issued its decision) to develop procedural regulations. If the regulations were not developed by then, the board was ordered by the court to act upon the plaintiff's application no later than July 21, 1991. The first awards were made in the summer of 1991, and the regulations were developed and approved in October 1991.

Account Funding

Funding history. In 1989, as part of the legislation establishing the Underground Storage Tank Clean-up Account, the General Assembly required that one-third of the total amount collected from the gross receipts tax on petroleum products go to the Clean-up Account. To support that funding stream, the legislature also passed P.A. 89-313, which raised the petroleum products gross receipts tax from 2 percent to 3 percent. In 1991, the rate was again raised – from 3 percent to 5 percent. The tax rate has remained at 5 percent since 1991, and the percentage of the tax allocated to the Clean-up Account has also remained at one-third.

The original legislation creating the account set statutory monetary limits on the upper and lower amounts that could go to the fund. The ceiling was set at \$15 million; when the

¹⁵ A legal action brought against an agency, board or other entity asking the court to require that entity to perform a specific act.

¹⁶ Petrol Plus, Inc. v. Underground Storage, Superior Court at Milford, No. CV91 03 56 03S, Memorandum Filed June 14, 1991

account reaches that amount, the portion of the tax supporting the fund then starts going to the General Fund. Once the account then reaches a floor of \$5 million, the tax is funneled to the account again, until the ceiling is reached. The statutory upper and lower limits on the account have not changed since the enabling 1989 legislation.

In 1995, the Governor's budget had recommended that expenses for staff and administration be transferred from the Clean-up Account and that claims for reimbursement for cleaning up leaking underground petroleum tank sites instead be funded through the bonding process. However, the legislature rejected the proposed changes and kept the petroleum clean-up monies as a separate non-appropriated account.

Organization and Structure

The Clean-up Account is administered by a 12-member statutorily created board. The appointed members of the review board represent a variety of parties with interests in underground storage tank regulation as well as a member of the general public. Current membership of the review board is presented in Table V-1.

**Table V-1. UST Petroleum Clean-Up Account Review Board:
Members as of December 1998**

Representing	Appointed By	Current Member
Dept. of Environmental Protection		Richard Barlow, Vice Chair
Dept. of Revenue Services		Marc Papandrea, Secretary
Office of Policy & Management		John Radacsi
State Fire Marshal		John Doucette (William Baldwin, alternate)
Ct. Petroleum Council	Ho. Speaker	Steven Guveyan
Service Station Dealers Assoc.	Sen. Maj. Leader	Thomas Troy
Public	Ho. Maj. Leader	Paul McCullough
Independent Ct. Petroleum Assoc.	Sen. Pres. PT	Kenneth Gostyla
Ct. Gasoline Retailers Assoc.	Ho. Min. Leader	Albert Barr
Municipality greater than 100,000	Governor	Dr. Henry Voegeli
Municipality less than 100,000	Sen. Min. Leader	John Mitchell, Chair
Mfg. Company employ fewer 75	Ho. Speaker	Bernard Schilberg

The board has a number of statutory responsibilities including: receiving applications for reimbursement from the account; determining whether a release occurred and damage resulted; and if so, the amount of the damage. Statutorily, the board may hold hearings, administer oaths, and subpoena witnesses and documents (through the chairman). The board may designate an agent to perform any of duties it deems necessary except the responsibility to render a final decision to order reimbursement or payment from the account. DEP currently provides staffing for the Clean-up Account and the board, as described in Chapter Two.

Account Purpose

The legislature established Connecticut's Clean-up Account in response to concerns from the petroleum industry that owners/operators of regulated underground storage tanks, particularly small service station businesses, would be unable to meet federal financial responsibility

requirements. The point of federal law is to require commercial tanks owners to prove that, in the event of a release from their facility, they have the resources necessary for remediation costs and third party compensation. The requirement is based on a belief that when responsible parties are unable to pay for clean-up and damages caused by leaking tanks, or to obtain the appropriate insurance for such purposes, the impact of a petroleum release can be prolonged and even magnified.

Like an insurance company, a state clean-up fund needs to protect against fraud and unsound fiscal practices. Unlike an insurance company, there is no incentive for a state fund to increase its earnings by restricting liability and denying claims. A state fund should offer the possibility of a quick, thorough clean-up response and the avoidance of expensive and time-consuming litigation for innocent third parties seeking compensation for damages.

There was a strong consensus among staff and board members that the fund lacks a clearly articulated purpose. Responses to a committee survey indicated board members were about evenly divided in their views on the main reason the account was established -- five thought it was created to be a financial assurance mechanism while four thought it was created to clean up the environment.

Survey responses from the account's professional staff indicated a majority believe the account's primary purpose is remediation but one-third saw its primary purpose as a way for tank owner/operators to meet federal financial responsibility requirements. Further, while all staff who responded to the committee survey thought there would be less remediation and more site abandonment if the account did not exist, just over half thought eligibility for reimbursement to the account should be limited to applicants in full or nearly full compliance with tank regulations. (See Appendix D for analysis of surveys.)

Analysis of actions on claims, discussed later in this chapter, indicates the level of commitment to the fund's legislatively mandated purpose of reimbursing tank owners and operators for reasonable and necessary clean-up costs varies among staff members. In addition, efforts by some staff members to protect the integrity of the fund by requiring extensive, sometimes excessive, proof of eligibility, can interfere with the environmental goal of quickly cleaning up contaminated sites. Strict interpretation of compliance requirements by some account personnel also appears to be almost punitive at times, with the account's reimbursement process being used to address an applicant's regulatory deficiencies well after the fact.

Without consensus on the account's purpose, consistent treatment of claims is less likely, making the process unfair to applicants. Debate over the intent of the Clean-up Account at the time claims are being decided by the board prolongs processing times and could be reduced or perhaps avoided by developing a clear statement of the program's goals and objectives.

Therefore, the program review committee recommends the statutes be amended to include a statement that the primary purpose of the Clean-up Account is to protect the environment and public health by cleaning up releases from underground storage tanks.

The state fund was established to ensure UST owners and operators could actually pay clean-up costs and damages, not to merely provide for paper compliance with financial responsibility requirements. Furthermore, the account was not intended to be funding of last resort for cleaning up releases from leaking underground tanks but a substitute for private insurance. Parties making claims generally have paid into the fund through the tax on petroleum products and should expect to receive reimbursement for their necessary and reasonable clean-up costs.

Continued Need for the Clean-up Account

Almost 10 years have passed since the Clean-up Account was created, and the fund has helped clean up more than 600 sites with petroleum contamination. Some have questioned whether there is a continued need for the account, given its age and accomplishments, and the 10 years regulated tanks have had to comply with EPA's 1998 upgrade standards. *The program review committee believes there is a continued need for the account for a number of reasons.*

Societal benefit. There is a societal benefit to cleaning up contaminated sites and ensuring they be restored or maintained as economically viable enterprises. It does neither an individual business nor the community any good to have a site that cannot be cleaned up because no one will furnish the funding. The legislature recognized this when it established the Clean-up Account and funded it through a portion of the gross receipts tax on petroleum products, a tax that all gasoline consumers ultimately pay. In the committee's opinion, it continues to make sense to have at least part of the tax pay for the societal benefits of cleaning up contaminated sites.

Access to the account. All tanks owners and operators that had to meet the EPA 1988 financial responsibility requirements are currently eligible for the account. Generally this includes commercial petroleum tank owners/operators of varying sizes, and municipalities. While state and federal government agencies were exempt from demonstrating financial responsibility, the Connecticut General Assembly included state agencies as eligible parties to the Clean-up Account.¹⁷

Some states restrict the account to tank owners/operators with a limited number of tanks, business operators under a certain net worth, or operators that can demonstrate they are unable to obtain a commercial loan.

The committee believes that restricting access to Connecticut's Clean-up Account is not appropriate. The account was never set up as a fund of last resort, either by virtue of parties authorized as eligible in statute, or in the way the account is funded. It serves as a publicly financed substitute for private insurance. Further, restrictions on access invite abuse in efforts to prove a party's eligibility (e.g., asking a bank not to approve a loan, and the like), and administrative checks on these items add time and costs to the process.

¹⁷ Although state agencies are considered eligible responsible parties to access the account, their success at obtaining reimbursement has been limited. Excluding the major claim reimbursement for Hartford's Vernon St. bus garage, only 12 percent of all amounts requested by state agencies have been reimbursed, mainly due to poor compliance.

Private insurance. Private insurance for underground storage tanks is more available and affordable than it was in 1989, but the policy coverage is limited. Checks with several large insurers offering coverage for underground storage tanks found private insurance could be purchased in Connecticut. However, not much business is being underwritten in the state because, with the account available, tank owners have no need to purchase it.

The insurance appears affordable – about \$200 a tank per year for smaller, upgraded tanks. However, a review of insurance policy coverage documents for tanks, and discussions with insurance company staff both indicate coverage is limited to releases that occur during the policy coverage period. Thus, the committee believes it may often be difficult for tank owners/operators to prove a release occurred during the policy period.

During the course of the study, program review repeatedly heard how difficult it is to determine the exact date of a release, whether all contamination is from the same source or partially due to historical overfills, spills, and releases. The program review committee concludes *private insurance is available and affordable, but foresees private insurance paying for few tank claims. Given the restrictions on liability and coverage for the policy period only, the lack of precision in pinpointing release dates, and the prevalence of historical contamination, the committee believes it will be difficult for tank owners/operators to prove their claims are payable.*

Historical contamination. No one knows the extent to which historical contamination from underground storage tanks at commercial, municipal, and state sites has been addressed. With the federal EPA deadline of December 22, 1998, for upgrading tanks and equipment, one might assume that any contamination would have been found and remediated. But registration of tanks was not required until the 1980s, making it likely there are old underground tanks that no one is yet aware exist. Given the age of yet-undiscovered tanks, it is also likely many of them have leaked. But unless there is a Clean-up Account to help with remediation, there will be no incentive to uncover this historical contamination from tanks.

Similarly, *the committee concluded it would be unfair to establish a two-tier system, limiting the account to releases occurring after a certain date.* This would mean the account would cover only new releases, the very exposure that private insurers are willing to underwrite, while leaving historical contamination, which may not yet be discovered, with no financial assistance for clean-up. At the same time, *it would be just as arbitrary to restrict eligibility only to historical releases, while making other owners and operators of upgraded tanks pay for private insurance.*

Sunset provisions. Some states have implemented or proposed terminations or restrictions to their accounts. For example, 12 states have imposed a sunset provision on their accounts, while 20 others have added sunset requirements on dates for which releases will be eligible for reimbursement. Connecticut has enacted neither, although legislation DEP attempted to have passed during 1998 would have restricted the account to releases after December 1998.

The reasons for sunset provisions, like the state funds for remediation of leaking underground storage tanks themselves, vary tremendously. Some states run their accounts much

like an insurance company with premiums paid by individual tank owners, and thus the shift to private insurance is not a great one. In addition, *not all states have funds as well-financed or that use such a broad-based tax to support their funds as Connecticut.* Other states' accounts, mostly due to inadequate financing, have run into solvency problems. These states have been forced to find alternatives.

Future claims. While Connecticut's Clean-up Account is well-funded, it operates on a pay-as-you-go basis, and does not reserve for future claims. There has never been an actuarial study of the Clean-up Account to determine its unfunded liability. Current statutes allow reimbursement of up to \$1 million per release from the account. There are now about 700 active cases in the account. Except for the very few that have reached their cap, none, as will be discussed later in this report, have been "closed." Of course, very few sites will probably reach the \$1 million limit. To date, average clean-up cost per site is approximately \$100,000. This amount, however, is likely to grow since supplemental claims -- those claims for additional costs submitted after initial eligibility has been established -- now far outpace initial claims. *Thus, as additional claims come into the account for open sites, the demand on the account is likely to grow. Such trends need to be considered in analyzing future impact on the account.*

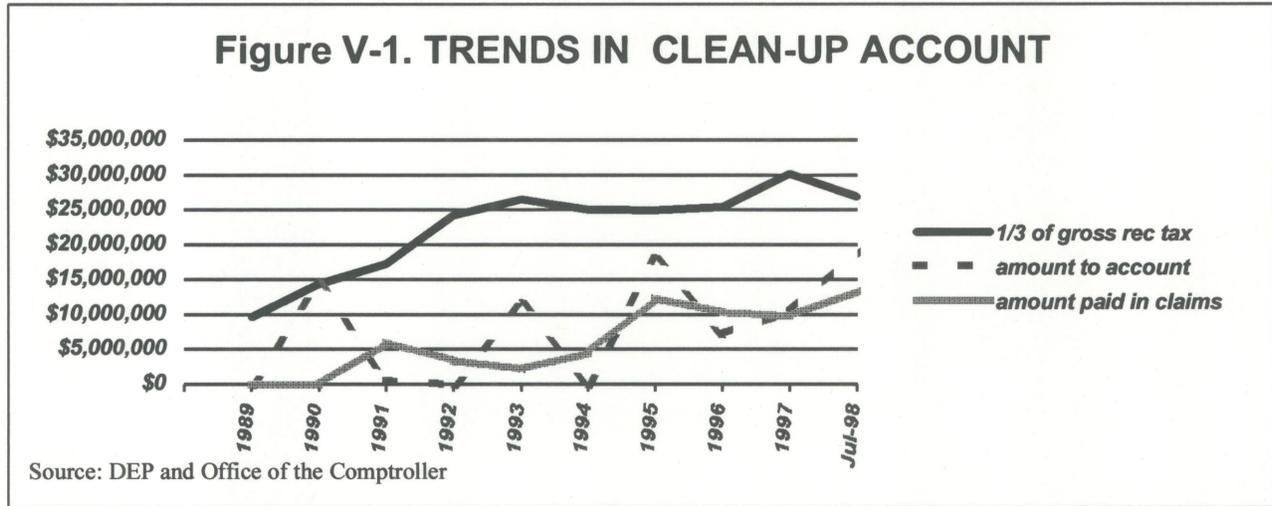
While the committee does not recommend changing the way the account pays claims to a cash-reserved basis, an actuarial assessment should be conducted to determine what the account might ultimately have to pay out, and if financial reserves should be established to pay future claims. Based on discussions with insurance department staff and an independent actuarial consultant, program review estimates the cost for such a study would be between \$50,000 to \$150,000.

The committee determined the Clean-up Account was created to be a publicly funded substitute for private insurance, open to commercial and municipal motor fuel tank owners of all sizes, as well state agencies with any type of fuel tank. *The committee finds there is a continued need for the account and recommends the Underground Storage Tank Clean-up Account:*

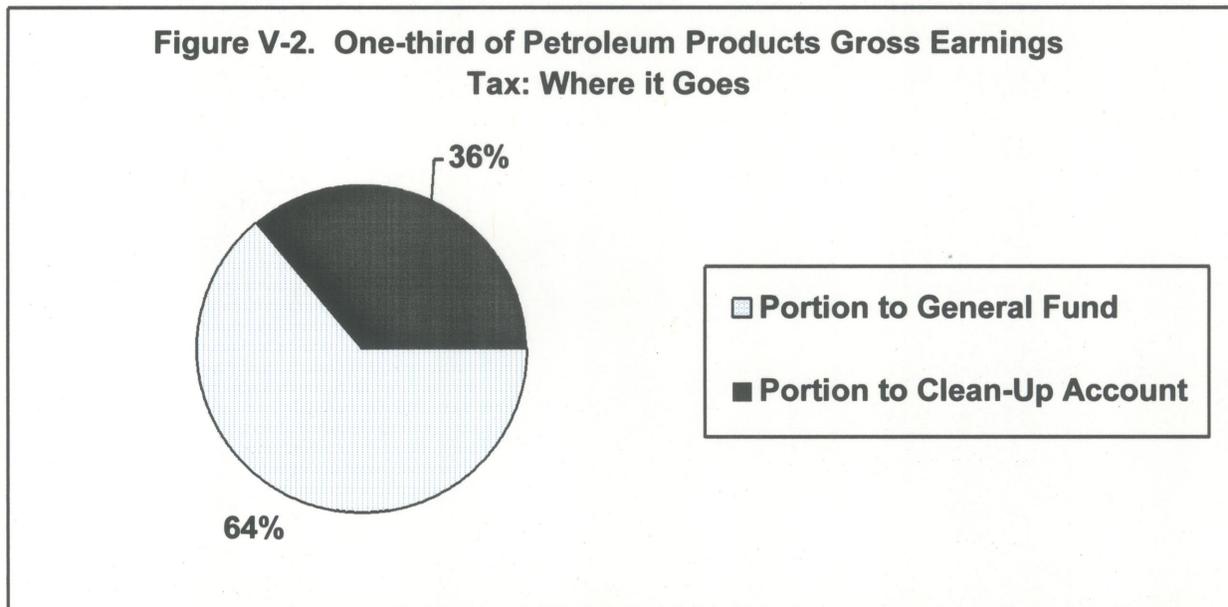
- 1) **be continued;**
- 2) **continue as a publicly supported clean-up fund financed through one-third of the gross receipts tax on petroleum products;**
- 3) **continue to be available to those who are currently eligible by statute;**
- 4) **have no sunset date applied at this time; and**
- 5) **have an actuarial study of it conducted with the results publicly available by July 1, 2000.**

Status of the Fund

The program review committee examined the funding to the account since its inception in 1989. The year-to-year funding trends are shown in Figure V-1. The one-third portion of gross receipts tax to support the account (shown by the top line in the graph) generates more than ever goes into the fund. The tax typically has generated about \$25 million a year in revenue, but the account has had an annual allocation of more than \$15 million only twice in nine years. Amounts paid out in claims have been even less, averaging \$7.8 million annually over the eight-year period.



In total, the one-third portion of the tax has generated more than \$225 million over the 1989-1998 period. However, as Figure V-2 indicates, 64 percent of the portion of the tax earmarked for the account actually goes to the General Fund as a result of the ceiling and floor triggers. Only slightly more than one-third (36 percent) of the total amount goes into the account.



The program review committee believes the funding information illustrated in the above graphs indicates current statutory ceiling and floor limits have created problems for the account that need to be addressed. First, the ceiling has been viewed as a self-imposed appropriation on the Clean-up Account staff who acted on claims accordingly. The committee believes there has been a broader expectation that the General Fund can depend on any amount from the tax over \$15 million.¹⁸

The Clean-up Account's portion of the tax is funneled to it quarterly, as the tax is collected. The Clean-up Account recently increased its claims processing dramatically, and because of a flurry of costly claims processed in one quarter, the fund dipped below its floor, and was close to a zero balance.

Ceiling and floor limits were set in 1989 based on estimates of what future activity levels on the account would be. Both the cost per-claim and the number of claims processed have increased over time, but the statutory limits have not, even though there have been sufficient resources raised from the gross receipts tax. *The committee finds the ceiling and floor statutory triggers potentially place the account in danger of not being able to pay claims in the quarter they are due.* Parties to the account have often experienced a long wait while their applications have been reviewed and cost reimbursements determined. Once an award is made by the board, it would be frustrating for a party to have to wait additional months until the account could afford to pay the claim.

Therefore, the program review committee recommends both the financial triggers established in Section 22a-449b(b) be modified so that the account floor is \$10 million and the ceiling is \$30 million.

This would double the current statutory limits and should ensure the account will have enough in any one quarter to pay claims that come due. The new triggers allocate a greater portion of the gross receipts tax to the Clean-up Account and not the General Fund, as has been the case, and lessens the unstated financial barrier that seemed to dampen quick claims processing in the past.

Fund status information. The committee believes the Clean-up Account board and the general public are not sufficiently informed of the financial status of the Clean-up Account, including: the Clean-up Account's portion of the petroleum products gross receipts tax; the amount allocated to the account; the total paid on claims; and the total requested.

Survey responses were mixed regarding information on how satisfied board members are with the information they receive on the status of the account. Three members surveyed

¹⁸ Connecticut State Budget 1997-1999. In the budgetary notes regarding P.A. 97-241, which increased the amounts that DEP could spend on administrative functions to the Clean-up Account, the Office of Fiscal Analysis cautioned that increasing staff would accelerate the revenue loss to the General Fund over the next two years, because it would process claims more quickly. It stated that UST account expenditures had been averaging \$12 million a year.

indicated quarterly updates would be an improvement. The committee found this frequency of updates would be appropriate, but also believes an annual report to the general public should be issued. Currently, there is no easily accessed public reporting of recent account activities. Most other states issue a yearly report on their accounts and their accomplishments. The program review committee believes Connecticut should as well.

Therefore, the Legislative Program Review and Investigations Committee recommends the DEP Clean-up Account issue a report on September 1, 1999, and annually thereafter, which shall include, but not be limited to:

- **statutory authority for the Clean-up Account;**
- **a list of board members;**
- **summary of the application process, what constitutes an eligible party, and what applicants can expect in terms of processing times, and staff and board procedures; and**
- **statutory and/or administrative changes occurring over the prior year.**

The framework for such a report already exists within DEP's administrative report to the governor. Expansion of that information, with material focused on the account, and increased availability of the report should meet the objectives of this recommendation without significant additional staff time or resources. The program review committee also believes the Environment Committee of the General Assembly should be notified of the report's availability each year.

Management and Supervision

Weak commitment for the account. The program review committee concluded that DEP management has been torn about the efficacy of and need for the account, and has never clearly endorsed its usefulness as a way of cleaning up pollution. Historically, DEP has demonstrated a lack of support for the account, through commission or omission, in the following ways:

- In 1989, when a legislative public hearing was held on the bill creating the Clean-up Account, DEP offered no testimony supporting the bill.
- DEP was slow in developing initial regulations for the department and Clean-up Account board to begin reviewing claims and issuing awards.
- The department and board were forced to develop regulations through a mandamus action in 1991 (discussed earlier in this chapter).
- The statutes established the Clean-up Account and board in 1989, and included administrative monies to hire persons to staff it, yet DEP did not hire technical personnel dedicated to the account until 1992.

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- The time to have a claim decided takes overly long; until this year, two years for a claim to be decided was not unusual. As will be discussed in Chapter Six, four of five experienced staff reviewers took more than 400 days on average to review a claim.
 - Claims processing times did not even come close to meeting the statutory requirement of a decision in 90 days; DEP sought additional funding from the legislature in 1997 to address the backlog, but internal operations were not addressed until the board was threatened with another mandamus action.
 - Additional funding for durational staff was approved during the 1997 legislative session (P.A. 97-241), but DEP has still not filled all fiscal slots, and current staff must work overtime.
 - A review of board minutes indicates the board, and not DEP, took the lead in developing procedural strategies to deal with the backlog, and staff took several months to implement those initiatives.
 - Interviews with some DEP managers and staff indicate a lack of support for the account's purpose, and question the need for the board.
 - DEP sought legislation in 1998 -- which according to minutes was done without prior board knowledge -- restricting eligibility for and reimbursement from the account to only releases occurring after a certain date.
 - Drafts of new application forms -- including one for third parties, that would be easier for tank owners/operators to complete -- have sat, awaiting review, in legal counsel's office for over a year, indicating management put little emphasis on issuing a new application.

As a result of management's lukewarm support of the account, and no clear statement of its purpose, the program review committee believes individual Clean-up Account staff have applied their own notions of what the purpose of the Clean-up Account is and acted on them in making decisions on claims.

In the committee's opinion, some of the Clean-up Account staff appear to use the technical review of the claim as a search for a reason to deny it, and/or impose added requirements on the applicant to prove the eligibility and compliance of the tanks. Other staff are more predisposed to assume the eligibility of claim and review the application for reasonableness of remediation activities and costs.

The committee finds the result is unpredictable treatment of claims by staff. Among the staff, claims workload is significantly different, processing times vary substantially, and the award outcomes differ dramatically.

Supervisory input. Currently, there is little supervisory review or input to a staff person's examination or decision on a claim. In the press of business to lessen the claims backlog, there is no supervisory review of the summary of claims to ensure they are: consistent;

uniform; or meet the purpose of the account and its statutory and regulatory guidelines before the decision goes to the applicant or the board. Neither department management nor account supervisory staff has developed guidelines for how a claim should be examined or acceptable award and denial parameters. *Thus, the committee found that lack of supervisory review and input also contribute to the variation in claims treatment.*

In addition to variation of claims review and outcomes by staff, applicants appear to be treated differently depending on the staff person. Based on program review observations of a number of Clean-up Account Board meetings, it appears some DEP Clean-up Account staff are overly adversarial and their treatment of applicants and board members is unhelpful and borders on rude.

To address the variation in staff treatment of claims and applicants, **the program review committee recommends that:**

- **The purpose of the Clean-up Account – to quickly clean-up sites with underground storage tanks that have leaked and caused contamination - shall be clearly communicated to account staff by DEP management and account supervisors.**
- **Management and supervisory staff will provide written guidance and staff training in how claims should be reviewed with the declared purpose in mind.**
- **Supervisory personnel shall review the work of the claims review staff to ensure the account purpose is being achieved, and for consistency and uniformity.**
- **DEP should provide training to Clean-up Account staff in communication skills and customer relations.**

Staff workload. There are no performance standards at the Clean-up Account for the number of claims a staff person is expected to review, or how long a review should take. *Despite the statutory 90-day time frame for a decision on a claim, and a backlog of claims, DEP has not established guidelines or staff performance measures for the review of claims.*

With no performance standards in place, the current workload is extremely uneven among staff, as will be pointed out in Chapter Six. For example, among experienced staff reviewers, one person handled 38 percent of the claims, while another person reviewed only 8 percent. The person handling more claims also did so more quickly than staff who did fewer, reflecting the Clean-up Account's policy that once a staff person is finished reviewing a case he/she take the next claim in line.

Rather than imposing workload standards, DEP has sought additional resources from the legislature to review claims and administer the account when backlogs develop. Program review

believes additional resources should be granted when they are warranted, but the backlog at the Clean-up Account could have been partially addressed through staff working more productively.

To address the current workload variation **the committee recommends that:**

- **DEP management and Clean-up Account supervisory staff establish performance standards for the number of claims technical staff should review per month;**
- **claims review standards be used as part of Clean-up Account staff performance evaluations; and**
- **no future statutory changes should be made in the total amount of DEP's administrative expenses for the Clean-up Account, unless management can demonstrate that such performance standards are in place and staff are meeting them, but that the workload has increased due to a growing number of claims.**

Database as a management tool. It is unclear whether DEP managers were aware (prior to the committee's September briefing report) of the great variations in the workload or outcomes of claims among staff. If they were previously aware, it seems clear they did not address them, and that is further confirmation management allows staff to apply whatever standards they wish in reviewing and deciding a claim.

The committee believes DEP management and supervisors should have been aware of the variations if they were not. One source of such information is the database on the Clean-up Account which could be used to generate overall performance measures on workload, processing times, and claims outcomes both overall and by individual staff. To date, Clean-up Account staff appear to use the database as a tracking and accounting mechanism for individual claims and sites, and little use is made of the database as a management tool. **The committee therefore recommends the Clean-up Account claims database be used as a supervisory and management tool to generate both overall account and staff statistics on workload, processing times, and claims outcomes.**

Another use for the Clean-up Account database not implemented to date is to prevent and detect fraud and abuse by consultants and applicants. If claims are only reviewed individually, there is little opportunity for red-flagging areas that might need further investigation. For example, a consultant billing for work at different sites at the same time, excessive testing or other questionable procedures may not raise questions if only single claims are examined. But if the database were used to review many sites by the applicant or contractor involved, problems may well surface. Costs submitted on all sites worked on by an individual contractor might also point to cases of expenses continuously outside the norm, and be cause for further investigation.

Fraud and abuse are problems in other large publicly (or even privately) funded reimbursement or payment mechanisms like Medicaid, Medicare, food stamps, or

workers' compensation. It would be foolish to think that it could not happen in this program, with more than \$60 million paid in claims over the past eight years.

Therefore, the program review committee recommends that:

- **The Clean-up Account database be used as a mechanism to detect abuse or fraud in obtaining payment or reimbursement through the account.**
- **DEP Clean-up Account Board and staff shall communicate its intent to use the database for this purpose.**
- **DEP and the board shall develop procedures on how it will follow up on areas it red-flags as potential problems. Such procedures might include requiring an independent audit, and, where fraud or abuse is found, repayment to the account, prohibition against future access to the account, and other penalties.**

Other federal, state, and private insurance programs have implemented fraud and abuse detection programs. Some states have also begun initiating such programs for their clean-up accounts. Connecticut should use the database review as a first step in confronting fraud and abuse. Clean-up Account staff could contact other states, as well as private insurers, to explore what detection methods they use and how they might be adapted for Connecticut's fund.

In addition, federal EPA has developed a software package called *Tank Racer*, which can be used to determine reasonable costs for clean-ups on a site-specific basis, and is designed to enable those who pay for or review costs to avoid paying inflated prices. EPA indicates the software is customized for underground storage tank sites and is faster and more accurate in determining costs and comparing remediation alternatives. The software is relatively inexpensive -- less than \$4,000 could purchase the software for three licensed users and train them in its use.

CLEAN-UP ACCOUNT PROCESS AND OUTCOMES

Little of the process for reviewing and deciding on Clean-up Account claims is established in state law. Certain eligibility requirements and a deadline for board action on applications is set by statute. In addition, the DEP commissioner, in consultation with the review board, is required to adopt regulations setting forth procedures for reimbursement and payment and including provisions for: notifying eligible parties of the account's existence; the records required for claim submission and payment; and periodic and partial reimbursement and payment.

Regulations covering the specified areas were promulgated by the department in October 1991. Certain other procedural aspects, primarily concerning contested cases and administrative hearings, are governed by the environmental protection department's general rules of practice. Rules of practice for the board, which have been in draft form since 1995, have not been formally adopted.

Many of the policies and procedures regarding Clean-up Account claims have developed informally over time and are based on prior decisions as remembered by board and staff members. The only written guidance on board precedents is what may be contained in minutes from board meetings.

In late 1996, the board asked the account staff to study what possible policy and procedural revisions, as well as additional resources, were needed to improve processing times. Staff suggestions to reduce the serious backlog of applications – more than 200 initial claims and nearly 200 supplemental reimbursement requests were pending in January 1997 – were discussed at a special board meeting in February 1997.

Several account staff proposals, such as setting thresholds for the submission of supplemental claims and preauthorized cost payment requests, were adopted by the board. In addition, the board set priorities for processing claims, directing the staff to give highest priority to new claims, followed by new preauthorization requests, supplemental claims applications, and resubmitted costs. The revised policies and procedures were instituted throughout the remainder of 1997. Additional staff were authorized, as discussed earlier in Chapter Two, and hiring began at the end of 1997.

The board's current application and review process are described in detail below. An analysis by program review committee staff of all claims handled by the board through mid-July 1998 follows. Program review committee findings concerning the claims review and approval process along with recommended

changes to improve the performance of the Clean-Up Account staff and the review board in a number of areas are also presented in this chapter.

Steps in the Claims Process

Potential applicants for clean-up cost reimbursement become aware of the account in a variety of ways. Staff from the DEP underground storage tank enforcement or LUST sections may tell parties about the account and even provide applications during their field visits. Oil and chemical spills division personnel also may alert owners of spill sites about the Clean-Up Account program when they respond to reported releases. Owners and operators may also learn about the account from a tank replacement contractor or environmental consultants or attorney they hire as part of an upgrade, closure, or clean-up project. Business associations are frequently a source of information about the account for members of the petroleum industry. In accordance with federal requirements, the department sent a notice about the fund's existence to all known UST owners and operators in October 1991.

Major steps in the Clean-Up Account claims review and approval process once the board receives an application are outlined in Figure VI-1. As the figure indicates, the process begins with the receipt of an application. Parties seeking reimbursement from the Clean-Up Account must complete a 30-page application form that requires the following information:

- general descriptive information on the applicant and the site;
- details on compliance with UST regulations (e.g., documentation of tank registration, product inventory records, etc.);
- a report on the current compliance status of the facility prepared by an outside consultant;
- a report prepared by qualified professionals that outlines in detail and documents all clean-up costs claimed as eligible for reimbursement; and
- a timeline of major events associated with the clean-up.

The applicant is required to certify to the accuracy of all information submitted to the board.

The same form is used for both initial and supplemental claims as well as preauthorization requests and for applications from responsible and third parties although the information required for each type of claim and party varies. Revised application forms were developed by the account staff and submitted for upper management approval in October 1997, but, as noted in the prior chapter, have not yet been approved for use.

Claims are processed in numerical sequence, based on the date the application was received by the Clean-up Account staff. Upon written request of the applicant, the board may direct the staff to expedite a claim (i.e., take up an application immediately, before its "number comes up"). To date, few applications have been expedited. No formal guidelines exist but it is board policy to consider financial hardship and the applicant's financial status (e.g., a nonprofit or governmental entity) in deciding whether to expedite a claim.

By statute, the board has 90 days after the receipt of an application to render its decision. In the case of a second or subsequent claim, the board has 45 days following receipt of the application to take action. To date, the statutory deadlines have rarely been met.

Eligible applicants. In processing applications for reimbursement, Clean-up Account staff must first determine if the facility and the type of release, as well as the costs submitted meet the program's eligibility requirements. By law, eligibility for reimbursement from the state Clean-up Account is limited to the following three categories of applicants:

- 1) responsible parties -- owners/operators of underground storage tank facilities subject to federal financial responsibility requirements, (i.e., any nonresidential tank with a volume of 1,100 gallons that contains motor fuel -- gasoline, diesel, jet fuel, nonhazardous waste oil -- or heating oil for resale and not for on-site consumptive use), including those owned by municipal governments;
- 2) state government agencies responsible for a leaking underground storage tank; and
- 3) third parties who can show damage or personal injury has been suffered from an UST release and the responsible party denies there was a release or does not apply to the board for payment of the third party's claim.

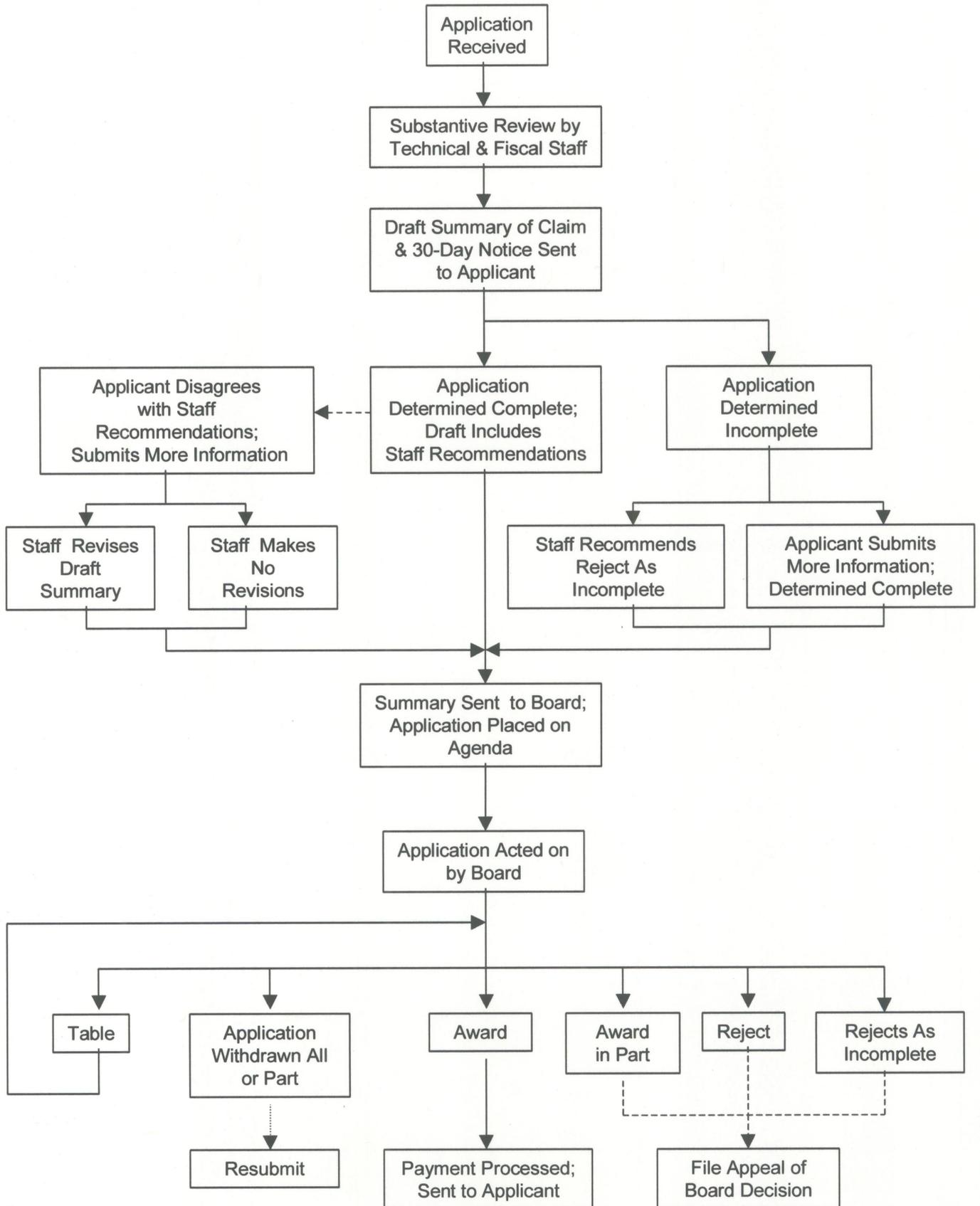
For the purposes of the account, third parties include property owners damaged by an eligible UST release at a neighboring site as well as purchasers of properties with failed tank facilities, and UST owner/operators damaged by a release from another party's tank.

Under the Clean-up Account law, eligibility for reimbursement is also dependent on the responsible party's compliance status. Claims for reimbursement can be rejected or reduced if it is determined that the release:

- 1) was subject to the spill law and the responsible party knowingly and intentionally failed to notify the department as required by statute; or
- 2) resulted from a reckless, willful, wanton or intentional act or omission of a responsible party; or
- 3) occurred from a facility not in compliance with a DEP enforcement order or with state UST laws and regulations on facility installation, operation, and maintenance and that lack of compliance was the proximate cause of the release.

Compliance with statutes and regulations requiring responsible parties to notify the Clean-up Account board as soon as practicable of a tank release and any resulting third party claim is also considered during the staff review of eligibility.

Figure VI-1. Major Steps in the Claims Process



Note: -----
Indicates possible action

Eligible costs. According to statute, only clean-up costs related to a release or suspected release from an eligible tank and incurred after July 5, 1989 can be reimbursed. Furthermore, applicants other than third parties are responsible for the first \$10,000 of clean-up expenses and in nearly all cases, total reimbursement from the account is limited to \$1 million per release.¹⁹

By regulation, eligible costs are defined as reasonable costs incurred as a result of a release and resulting from activities performed in accordance with all applicable laws. Furthermore, costs for any services rendered after November 1991 and exceeding \$5,000 (except for medical or legal services or those associated with emergency mitigation) are only eligible for reimbursement if the applicant obtained three written bids for the services and can submit copies of the bids received.

The types of costs eligible for Clean-up Account reimbursement generally include the following:

- Implementation of emergency mitigation actions (e.g., eliminating the pollution source, recovering free product, preventing the possibility of fire or explosion);
- Site investigation studies;
- Site characterization studies;
- Engineering reports on proposed remedial actions;
- Implementation of remedial actions such as removal of contaminated soil and groundwater clean-up;
- Studies and monitoring of the effectiveness of remedial actions;
- Related consultant fees;
- Payments made to third parties by responsible parties, provided the third party claims have been settled (finally adjudicated) and were approved in writing by the review board; and
- Certain legal or technical fees (related to the preparation of contracts for remedial actions or to obtaining required permits for such actions).

If the applicant is the responsible party, expenses related to removing an UST system for any reason but emergency mitigation or installing a new system or components clearly are not eligible for reimbursement from the Clean-up Account. In some cases, however, the board has permitted third party applicants to be reimbursed for the costs of a tank removal. Third party applicants, unlike responsible parties also can obtain reimbursement for costs related to the preparation of their claim, including fees for legal advice and representation.

Staff review. The technical and the fiscal staff independently review applications for clean-up cost reimbursement. In general, technical staff are assessing the eligibility of the site and clean-up activities, as well as the applicant's level of compliance with underground storage

¹⁹ State statutes provide if a release was reported to the department prior to December 31, 1987, and the responsible party expended more than \$500,000 to remediate the release before June 19, 1991, the ceiling on reimbursement from the account is increased to \$3 million. The limit was increased from \$2 million under Public Act 97-241. To date, only two applications are eligible for the increased limit.

tank regulations. The financial staff's review focuses on whether the costs submitted are eligible and reasonable.

There are no formal guidelines for assessing an applicant's degree of compliance or whether a cost is ineligible or unreasonable. Recommendations on reimbursement claims are based on the assigned staff person's judgement and experience. The fiscal staff recently developed a written "general overview of the fiscal review", which provides some guidance on what are eligible costs, but it is only in draft form at this time.

For the most part, new claims are assigned at random to whatever technical staff person is available. The individual who handled the initial application generally reviews any supplemental claims related to the case. Technical staff typically work on four to five applications at a time. Once a staff person has completed a review, he/she takes the next claim in line. In addition, more experienced staff are assigned to work together with the newer technical staff on their claims. The fiscal staff's workload is similarly assigned although one fiscal administrative officer is responsible for processing all preauthorization requests.

Once the substantive review of the application is completed, the technical staff person prepares a draft "summary of claim" document that outlines: whether the application is complete; whether the claim is eligible; what costs should be reimbursed; and whether the award should be reduced because of noncompliance. If the application is determined to be complete, the fiscal staff's cost analysis document called the "fiscal review summary" will be also be attached.

There is no standard format for the claim summary but each includes the staff recommendations on the amount to award as well as any amounts to reject or question along with a brief explanation of why any costs should be rejected. Sometimes, a condensed history of the site and the applicant's compliance status may also be included. The fiscal staff's review is presented as an itemized analysis of all costs submitted by the applicant. While any staff member may ask for advice or input in preparing a summary of claim, only the drafts prepared by newer staff are subject to an internal review process before they are sent to the applicants.

The draft summary is sent to the applicant for review and comment along with a "30-day notice" which states the claim will be placed on the agenda of the next board meeting unless the staff is advised otherwise by the applicant. It is board policy to allow applicants up to 30 days to submit additional information if they disagree with the staff review and recommendations or if the staff has found the application to be incomplete. The account staff may grant an applicant more time to supply information or may adhere to 30-day time frame and submit to the board for formal action including a recommendation to reject an application as incomplete. The applicant is also allowed to review any revisions made to a draft summary before it is sent to the board members.

The account program supervisor makes the final decisions on what items will be placed on the board's agenda. In accordance with the board policies adopted in February 1997, new claims are given the highest priority for board consideration. They appear first on the board agenda, followed by supplemental claims and requests for preauthorization.

Board meeting. The review board meets one afternoon per month to decide on applications. Materials, including a summary of claim for each item on the agenda, are sent to the board approximately one week before the meeting date. About an hour before the scheduled start of the meeting, the board chairman and senior staff, and sometimes other board members, meet to go over the agenda items.

At the meeting, the technical staff present their recommendations for each claim to the board for consideration. Applicants or their representatives, usually an environmental consultant or attorney, are given the opportunity to address board if they wish. After any discussion by board members, a separate vote is taken on each claim. Any legal advice the board may require during its considerations is provided by its assigned state assistant attorney general. Over the past 18 months, however, the board's attorney was absent from one-third of the board meetings.

Board decisions. A variety of actions may be taken on a claim and the board may accept, reject or modify any staff recommendations. Claims may be awarded or rejected in whole or in part. Most commonly, the staff recommends and the board concurs that some costs are eligible for reimbursement and should be paid, some costs should be rejected as ineligible or questionable, or cost reimbursement should be reduced by a certain percentage because of the applicant's noncompliance with UST program requirements.

"Ineligible" means reimbursement of the submitted cost is not permitted under the account program statutes or regulations. For example, the costs of upgrading tank equipment to meet new regulatory standards, because it is not considered related to remediation of a release, or remediation work carried out before July 1989, the statutory cutoff date, would be rejected as ineligible.

Usually, costs are considered questionable when staff find the documentation submitted to be inadequate or unclear for determination of reasonableness as well as eligibility. If a submitted invoice does not detail the unit cost of an item or service or does not specifically identify the purpose for the work, fiscal reviewers may recommend the board reject the cost. Applicants can resubmit questionable costs but often, when further information is provided, such costs are found ineligible.

If a release occurred from an underground storage tank not in compliance with UST regulations or a DEP order, and the lack of compliance was the proximate cause of the release, the board, as permitted by statute, may reject or reduce a reimbursement claim for otherwise eligible costs from a responsible party. Noncompliance is determined by the technical staff on a case-by-case basis and can be the subject of considerable negotiation with an applicant. If the board decides to apply a percentage reduction for noncompliance on an initial claim, that same amount will be applied to any later, supplemental claims. The fiscal staff maintain a list of all claims with noncompliance reductions and the reduction percentage.

If the board believes it needs more time to consider the issues raised by a claim or facts need to be clarified with further information, a claim may be tabled, meaning it will be taken up at a subsequent, usually the following, board meeting. Applicants may also request board

approval to withdraw a claim or certain costs included in a claim because of questions raised by the review process. Withdrawn costs may be resubmitted at a later time.

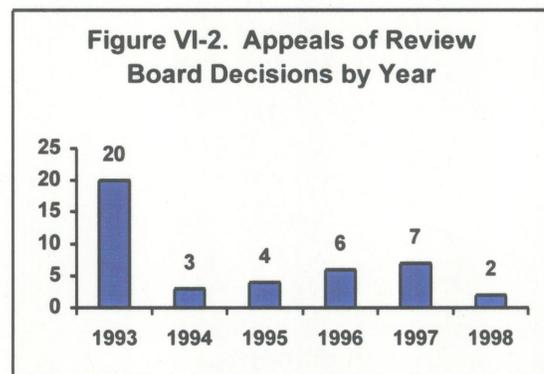
In addition to acting on new claims and supplemental requests related to existing claims, the board also makes decisions on requests for preauthorization of clean-up activity work plans and budgets. The preauthorization process, established about three years ago, was intended to help smaller owner/operators overcome cash flow problems that might delay their clean-up efforts but can be requested by any applicant. An application for preauthorization must include a detailed scope of work, with estimates on time, materials, and costs. Board approval of a preauthorization request includes any conditions the applicant must adhere to in carrying out the workplan and typically limits funding to a preset amount over a specific time period.

Final processing. Once the board has acted, a letter containing its decision on each claim is prepared by the account staff. Decision letters are reviewed and signed by the board chairman and copies are sent to the applicant and the DEP commissioner. The account fiscal staff use the decision letter to prepare the payment request form which is sent to the department's administrative services bureau for processing. Requests are forwarded to the comptroller's office which issues the actual payments. Applicants generally receive their awards within a few weeks of the board meeting.

Appeals. By law, within 20 days after a decision is issued, either party -- the DEP or the applicant -- may file an appeal. While the statute (Sec. 22a-449f) states that the party shall request a hearing before the board, in actuality the decision of the board is appealed to the Commissioner of the Department of Environmental Protection, with a notification to the board. The board has delegated its authority to hold a hearing to the Commissioner, although the board can and currently is hearing an appeal itself. The hearing process followed is the statutorily required process for "contested cases" laid out in C.G.S. Chapter 54, the Uniform Administrative Procedures Act (U.A.P.A.). This is the same administrative appeal process that would be followed if a party were aggrieved by any department decision (e.g., a permit or an enforcement order).

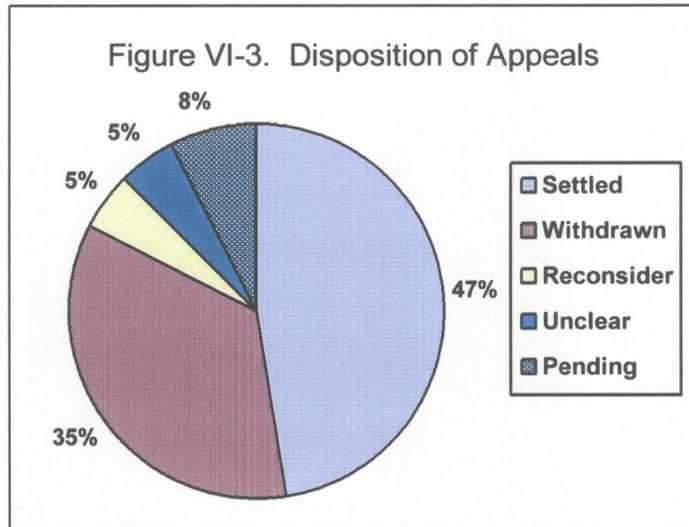
Once the commissioner receives the notification of the appeal, he appoints a hearing officer, typically an attorney in the department's Adjudications Division. The DEP has developed regulations setting forth more specific rules of practice to implement the U.A.P.A. The practice rules cover the scheduling of hearings and procedures for issuing discovery requests, subpoenas, filing legal briefs, and the like.

Through mid-1998, the Clean-up Account board has decided more than 600 cases and 41 appeals of board decision have been filed. The number of appeals filed each year since the first was filed in 1993 are shown in Figure VI-2. Claimants to the account had filed 39 appeals and DEP had filed two. Some appeals involve multiple sites while others may pertain to a single site but include different issues related to the same initial claim.



Issues involved in appeals have included: rejection of claim because of incompleteness or noncompliance; dispute over payment of legal fees; and status of the applicant as third party. Program review staff reviewed all the appeal files maintained in the department's adjudications division to get a flavor for the issues and the process. Only 13 files were available, however, since appeals that are later withdrawn or those still pending are not kept in the division's filing system.

Figure VI-3 depicts how appeals of review board decisions have been disposed of and shows the "settled" category makes up nearly half of all dispositions. This number is high because one settlement agreement involved one applicant with 11 different sites. As of mid-1998, no appeals had gone all the way through a formal hearing. (In October 1998, a formal hearing was held but, as of December 1998, no decision had been issued). However, rulings by the assigned hearing officer have been issued in a few cases, which may guide parties as to an eventual outcome, and hasten the final settlement of the case. Time to resolve appeals varied, ranging from 28 days to 327 days for withdrawn cases and from 46 to 998 days for cases that settled.



Clean-up recovery actions. Another action that requires legal involvement is the effort to recover costs paid by the Clean-Up Account that should be paid by the responsible party. In cases where the board issues an award to a third party, or where DEP has expended funds to provide potable water or conducted emergency clean-up actions and the responsible party is known, the board requests the state attorney general's office to pursue a court action to recover costs.

As of early 1998 there were 10 cost recovery cases referred to the Office of the Attorney General. The status of these cost recovery actions, according to information provided by the attorney general's office was: four cases were referred back to the board for more information in order to support a lawsuit; one case was settled for \$10,000 and payments are being made over time; one case involves ongoing settlement negotiations; one case was referred back to the board (since the attorney general's office indicated a demand letter from the board to a responsible party must first be sent before legal action can be taken); one referral was withdrawn; and two cases are being reviewed to decide the most appropriate action.

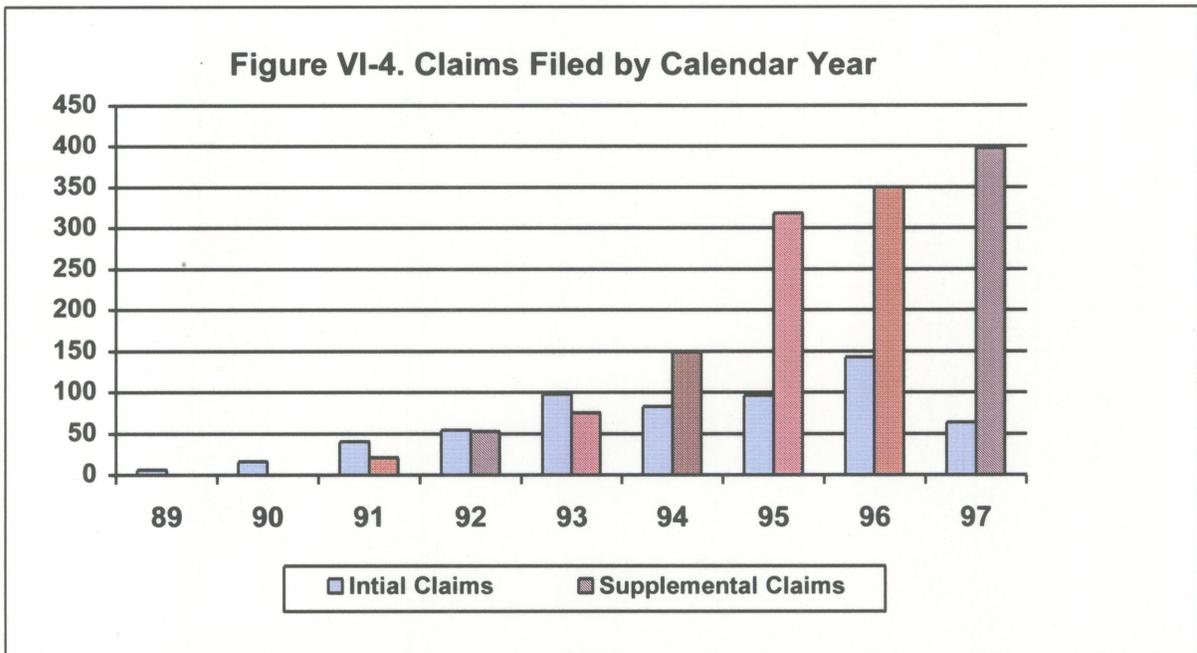
Analysis of Claims

The program review committee received a copy of the Clean-up Account claims database, with information current as of July 1998. As of July 1998, there had been 697 initial

claims filed for sites with leaking underground storage tanks and the total amount paid out by the account was more than \$60 million. The information contained in the database was analyzed to determine the type of claims received, the processing times for claims, the average awards on claims paid, and any payment variations among types of applicants, as well as by staff assigned to claims.

The two basic types of claims, initial and supplemental, were examined separately in the committee analysis. As previously noted, an initial claim is the first-time application for a particular site; it is the one on which the review board determines a party's eligibility for reimbursement from the account. Supplemental claims are applications made for subsequent clean-up costs incurred for a release already found eligible. There are no limits to the number of supplemental claims that may be filed (provided the total amount paid in claims is below the statutory cap) and, since February 1997, the minimum amount for each claim filed is at least \$5,000.

Initial claims. The number of initial claims filed each year since the Clean-up Account was created in 1989 is shown in Figure VI-4. In the start-up years, claims activity was slow; for the first four years, with as few as six and no more than 55 initial claims filed annually. By 1993, the number of initial claims filed almost doubled, totaling 98. The following year, initial claims dipped to 83 but increased again to 96 in 1995. In 1996 the number of new claims filed reached a peak of 143.



According to DEP, new applications to the account increased greatly in late 1995 and early 1996 because a change in the account's funding mechanism was under consideration by the General Assembly during the state budget deliberations.²⁰ Initial claims filed dropped to 64 in

²⁰ Many parties thought the proposal (to fund the account with state bonding rather than revenues from the petroleum tax) would limit claims in the future and decided to make sure their applications were submitted under the existing funding mechanism. In fact, no changes were made to the account's financial structure.

1997. By July of 1998, 48 initial claims had been filed but since complete information was not available at time of the committee's analysis, 1998 is not included in the figure.

Supplemental claims. Figure VI-4 also shows the numbers of supplemental claims received by the review board each year. Beginning in 1994, claims for supplemental costs outpaced new claim applications. By 1997, six times as many supplemental claims as initial claims were filed.

A total of 2,403 supplemental claims had been filed as of July 1998. As already discussed, each supplemental claim is attached to an initial claim related to a particular site. There was an almost even split between sites that had supplemental claims and those that did not; 333 sites involved only an initial claim while 364 had at least one supplemental claim. This is certainly likely to change as applications for reimbursement of subsequent clean-up expenses incurred that are related to initial awards more recently approved by the board begin to be submitted.

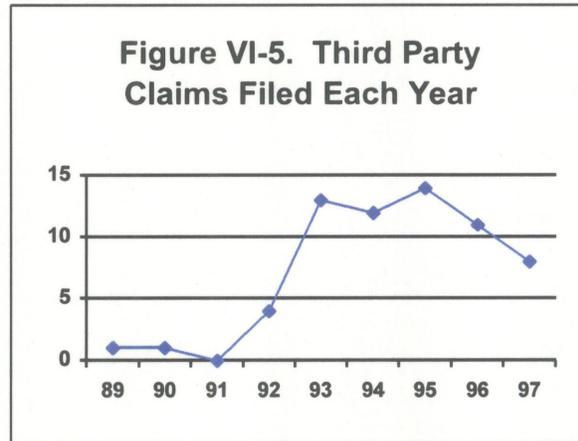
The distribution of supplemental claims per site is shown in Table VI-1. As one might expect, most sites have only a few supplementals. Almost 70 percent of sites (252) have between one and five supplemental claims. Thirty-four sites, or less than 10 percent of 364 locations with supplementals, have had more than 15 such claims filed. For those sites that have submitted supplementals, 6.6 claims have been filed on average.

Table VI-1. Distribution of Supplemental Claims (Per Initial Claim/Site)	
<i>Total Supplemental Claims:</i>	2,403
<i>Total Sites with Supplemental Claims:</i>	364
<i>Supplemental Claims Per Initial Claim/Site</i>	<i>Number of Sites</i>
Sites with 0:	333
Sites with 1-5:	252
Sites with 6-15:	78
Sites with 16 or more:	34

The data in the table provide a current snapshot of supplemental claims for sites, because as long as a claim is open -- approved and has not reached its cap -- additional claims may be filed. In general, older claims are more likely to have built up a greater number of supplemental than newer claims. In fact, 25 of the 34 sites that have 16 or more supplementals had original claims filed in 1993 or before. This indicates there is a long period for paying out on claims, and is a consideration in analyzing future impact on the account.

Third party claims. Connecticut statutes allow for a third party to recover monies from the account if that person claims to have suffered damage or personal injury from a release, and the responsible party either denies there was a release or does not apply to the board for payment. The numbers of third party claims filed with the review board each calendar year are shown in Figure VI-5.

There are not a great number of third party claims filed in any given year, as the figure shows. As of 1997, the highest number received in any one year was 14 (1996) while in one year (1991) no third party claims were submitted. Overall, third party claims do not comprise a great percentage of either total initial claims (10 percent) or supplemental claims (14 percent). As discussed more fully later in the chapter, third party claims as a proportion of new claims submitted recently have increased, which the Clean-up Account staff believes may be the beginning of a trend.



Processing times. One of the issues that prompted the program review committee study was concern about the time it takes to have a claim determined eligible or not after it is filed at the account. If a primary purpose of the Clean-up Account is to make funds available for prompt clean-up of sites where there have been petroleum product releases, long delays in determining eligibility and paying claims impede the program's goal.

Program review staff analysis of claims processing times, calculated as the number of days from the date of the application to the date the board reviews the claim, found tremendous variations. Table VI-2 summarizes key information from the analysis of processing times for those claims with complete information. (A substantial number of supplemental claims included in the account database, for example, were missing the date of application, as that information was often not recorded in the early years.)

According to the committee staff analysis, the time to process all claims ranged from one day to 1,436 days or almost four years. Initial claims obviously take longer to process, since the account staff conduct a comprehensive review of the original application to determine overall eligibility. Initial claim processing times, on average, are long – 416 days, or somewhat more than one year. The 25 percent of initial claims that went through the process fastest took 203 days or less, while the slowest 25 percent of initial claims took 652 days (1.8 years) or longer to process.

	<i>Range</i>	<i>Average</i>	<i>Fastest 25% of Claims</i>	<i>Median</i>	<i>Slowest 25% of Claims</i>
All Claims (N=1,715)	1 – 1,436	268	115 or less	201	354 or more
Initial Claims (N=519)	15 - 1,436	416	203 or less	371	652 or more
Supplemental Claims (N=1,196)	1- 1,180	204	99 or less	168	253 or more

Source: LPR&IC Staff Analysis of Account Database

Pending claims. Directly related to the processing time issue confronting the Clean-up Account program is the large backlog of applications pending review and action by the board. Until last year, when new staff were added and modified procedures were adopted, new applicants could expect to wait two years before their claims would be scheduled for action at a board meeting. When the board made its decision to seek additional staff resources in February 1997, more than 400 applications were pending; about half were initial claims (214) and half were supplemental claims (188).

According to analysis of the Clean-up Account database, 2,668 (86 percent) of the 3,099 total applications submitted to the account for reimbursement as of July 14, 1998, had gone to the board for some type of action. Claims awaiting board action totaled 417 -- about one-third (126) of the pending applications were initial claims while the majority (291) were supplemental claims. Thus, it appears the backlog of initial applications has been reduced, while supplemental claims have increased.

Over three-quarters (77 percent) of the 126 pending initial claim applications had been filed since January 1, 1997. Thirty-seven were filed during the current calendar year, 60 during calendar 1997, 22 during 1996 and seven had application dates from 1995 or before. Later information on the claims backlog gathered by program review staff showed 93 initial claims and 229 supplemental claims were awaiting board action following the September 1998 meeting. All but 17 of the initial claims had exceeded the 90-day statutory review period.

Staff workload. During interviews program review staff conducted with a variety of interested parties, concerns that individual Clean-up Account staff treats claims very differently were raised several times. It was indicated a claim's processing time, its initial eligibility determination, and the eventual award decision all vary depending on the particular staff person that reviews the claim. As part of the analysis of claims, various components of claims database were examined by individual account staff reviewer.

The claims database contains information regarding Clean-up Account staff assignments. Committee staff analyzed the total number of cases handled by each Clean-up Account staff person with full-time technical review responsibilities and hired on or before May 1995. Only five of the 11 current technical staff has this experience; four have been hired during the last year, and the other two technical staff persons have other primary duties.

To compensate for the fact that the longer a person has been working, the more cases he or she is likely to have reviewed, committee staff calculated an annual average workload (total number of cases divided by the number of years since employed). This annual average was determined for both initial and supplemental cases. There are fewer numbers of initial cases received; thus fewer of these are reviewed by all staff. However, the results of the analysis, summarized in Table VI-3, show dramatic differences in workload activity by staff person.

Table VI-3. Analysis of Workload for Experienced Technical Staff Persons				
<i>Staff Person</i>	<i>Average Annual Number Initial Claims</i>	<i>Percent of Total</i>	<i>Average Annual Number Supplemental Claims</i>	<i>Percent of Total</i>
I	25	24%	142	24%
II	30	29%	172	30%
III	13	13%	49	8%
IV	21	20%	148	25%
V	15	14%	72	12%

Source: LPR&IC Staff Analysis of Claims Data

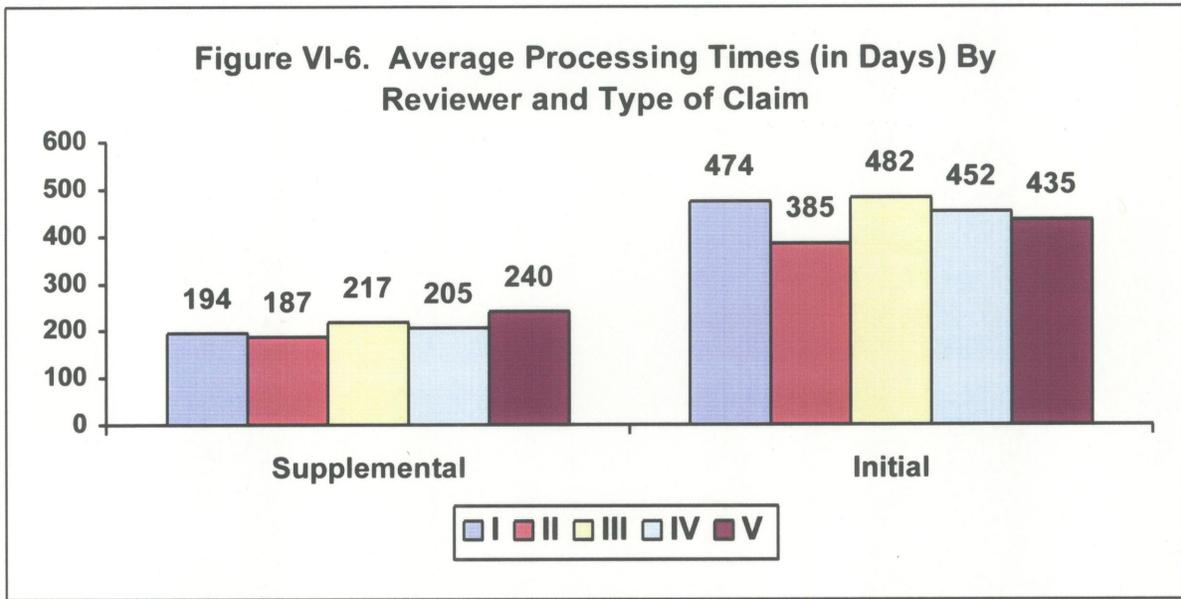
A workload analysis of staff recommendations presented to the board over the past year provides similar results. The number of recommendations made regarding both initial and supplemental claims by the five experienced staff persons during April 1997 through March 1998 were analyzed using minutes from monthly review board meetings. Results of this analysis are presented in Table VI-4.

Table VI-4. Claim Recommendations Presented to Board by Technical Staff Person: April 1997 - March 1998		
<i>Staff Person</i>	<i>Number Of Claims</i>	<i>Percent of Total</i>
I	105	25%
II	164	40%
III	27	7%
IV	65	16%
V	53	13%

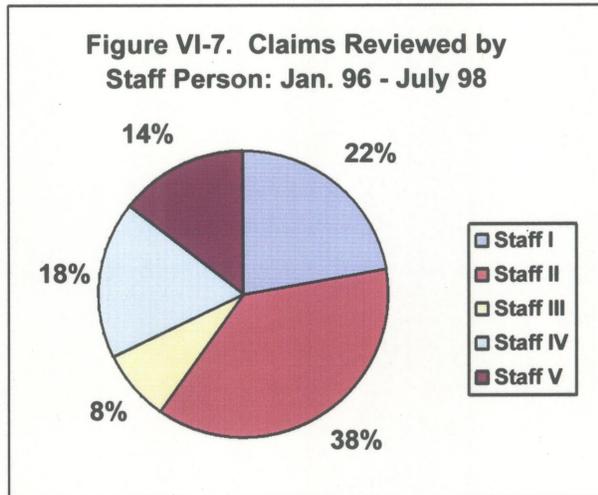
Source: LPR&IC Staff Analysis of Board Minutes

Processing times by staff member. Committee staff also examined the claims processing times for each of the experienced technical reviewers to assess whether there were major differences. Figure VI-6 below shows the average time (in calendar days) each reviewer took to process initial and supplemental claims.

Initial claims take much longer to process than supplemental claims for all reviewers, which is shown in the figure by comparing the bars on the right with those on the left. All but one staff member took more than 400 days on average to examine an initial claim while supplemental claims were processed in less than 250 days on average by all reviewers. As noted earlier, the number of days to process a supplemental claim generally is less because the review is not as comprehensive, since initial eligibility has already been determined. Figure VI-6, however, also shows there are considerable differences among staff in processing times. There is almost 100 days difference between the average processing times for quickest and slowest reviewers for initial claims and more than 50 days difference for supplemental claims.



Longer processing times seem to be negatively related to greater claims workload. The portion of claims the five staff reviewed relative to one another is depicted in Figure VI-7. Examining the previous figure on staff processing times and Figure VI-7 together, shows that, in fact, staff persons reviewing fewer cases took longer on average to process them than reviewers with the largest workloads. According to DEP, when a staff person finishes reviewing a claims, he or she takes the next claim in the queue. Thus, it would make sense that those staff who are reviewing more quickly are also processing additional cases.



Payment of claims. Since the account was first established in 1989, more than \$60 million has been paid on about 2,600 initial and supplementary claims. Table VI-5 below indicates the average awards made for all claims, including those claims receiving a zero award since the board began operating through mid-July 1998. The average payments for initial and supplemental claims are also shown. There have been a few very high awards, including one for nearly \$1 million, that tend to skew the average. Therefore, the median claim award (i.e., the amount at which half the awards are above and half are below), which may be a more accurate reflection of the typical claim, is also presented in the table.

Table VI-5. Award Amounts by Type of Claim

<i>Type of Claim</i>	<i>Number</i>	<i>Average Award</i>	<i>Median Award</i>	<i>Min-Max. Awards</i>
All	2,599	\$24,002	\$6,400	0-\$990,000
Initial	547	\$56,475	\$24,398	0-\$990,000
Supplemental	2,052	\$15,346	\$5,744	0-\$363,242

Source: LPR&IC Staff Analysis of Claims Data

As Table VI-5 shows, the average claim award is just over \$24,000. As noted above, this average includes claims that were awarded \$0; if only claims where a positive award was made are counted, the average award climbs to \$26,433. The median award for all claims is much lower, however, at \$6,400, showing the influence of the highest-cost claims. When claims involving a \$0 award are excluded, the median is \$7,493.

Initial claim awards tend to run much higher on average than supplemental ones – \$56,475 compared to \$15,346. Again, the median awards for both types of claims are much lower, less than \$25,000 for an initial claim, and almost \$6,000 for a supplemental claim. Awards by site, which include all cost reimbursements made for a given location, are on average more than \$100,000, as of July 1998. However, if the median measure is used, the typical total site claim cost is much less, \$43,773.

Claims paid by staff. Committee staff also examined the outcomes of claims by individual staff reviewers with at least three years of technical review experience in a number of different ways. Depending on the way claims are analyzed, slightly different results are produced for each staff person. Overall, the analysis indicates that staff members vary in how much of an applicant's request is granted.

Committee staff examined how each experienced staff person treated both initial and supplemental claims. The average and median of the percentages awarded of the amounts requested for all initial and supplemental claims reviewed by each staff person were calculated and analyzed. The number of claims where the reviewer awarded no dollars were also tabulated. Only claims that had gone to the board for action and not those pending a decision were included in the analysis.

The analysis is summarized in Table VI-6 below. Information presented in the top segment shows the substantial variation by staff person in the average and median percentage awarded of the amount requested, as well as zero awards, for initial claims. Two staff members award about 60 percent of amounts requested on average, while another staff member awards only about one-third of the amounts applied for on initial claims. Another wide variation occurs in the portion of initial claims that are rejected outright by a reviewer. Thirty-five percent of one staff member's initial claims received no reimbursement, while at the other extreme another staffer had only about 6 percent of initial claims that received no reimbursement.

Table VI-6. Initial and Supplemental Claims Awards by Reviewer

<i>ANALYSIS OF INITIAL CLAIMS AWARDS</i>					
<i>Staff</i>	<i>Number</i>	<i>Average % Award of Requested \$</i>	<i>Median % Award</i>	<i>Number \$0 Awards</i>	<i>\$0 Awards % of Reviewer's Total</i>
I	69	61.5	74.7	9	13%
II	153	46.9	54.5	33	21.5%
III	35	61.2	62.7	2	5.7%
IV	83	32.7	27.4	27	35%
V	77	55.5	61.9	11	14.2%
<i>ANALYSIS OF SUPPLEMENTAL CLAIM AWARDS</i>					
<i>Staff</i>	<i>Number</i>	<i>Average % Award of Requested \$</i>	<i>Median % Award</i>	<i>Number \$0 Awards</i>	<i>\$0 Awards % of Reviewer's Total</i>
I	185	71.6	92.3	11	5.9%
II	428	70.5	87.9	24	5.6%
III	56	71	90.7	4	7.1%
IV	297	64.8	76.2	14	4.7%
V	157	68	92.9	22	14%
Source of Data: Clean-Up Account Claims Database					

The bottom segment of Table VI-6 shows much less variation in the average percentages of supplemental claim amounts requested awarded by individual reviewer. Staff average percentages awarded were within a narrow band – almost 65 percent to about 72 percent. This probably reflects that once eligibility is determined through the initial claim, there is much less staff discretion in determining what is reimbursable in a supplemental claim.

If the requested and awarded amounts related to all supplemental and initial claims reviewed by a staff member are combined together and analyzed, the percentages change but still show wide variation: 69.7 (Staff I); 61.8 (Staff II); 46.2 (Staff III); 55.4 (Staff IV); 71.7 (Staff V); and overall, 65. This analysis lessens the impact of the staff treatment of initial claims and balances somewhat the influence of the higher number of supplemental claims on an individual's percentage awarded.

However, the initial review of the claim determines the ultimate outcome of the total amount awarded for site clean-up. In other words, if the initial claim is denied, the site is awarded nothing since no supplemental claims can be submitted. To assess the impact the decision on the original claim has on the overall site, committee staff also examined the percentage of claim amounts awarded by individual sites by each staff reviewer. The analysis combined initial claims with all supplemental submissions for each individual site reviewed and compared the total requested with the total awarded. The average award percentage for all sites handled by a staff reviewer is presented in Table VI-7.

There is substantial variation among staff in the results of this analysis as well. Two staff members award more than 68 percent of site amounts requested, while another staff member

reimburses less than 40 percent to sites on average. If the results of this table are compared with the information in the first segment of Table VI-8 above, it shows the impact initial review outcomes have on ultimate site awards. If a reviewer has a low percentage of initial award approvals, he or she is more likely to also award a low average percentage of requested amounts by site.

<i>Staff</i>	<i>Number of Sites</i>	<i>Average % \$ Awarded of Total \$ Requested</i>	<i>Number Sites with \$0 Award</i>	<i>\$0 Awards as % of Reviewer's Total Cases</i>
I	71	68.6%	6	8.5%
II	150	58.7%	28	18.7%
III	36	62.6%	2	5.6%
IV	82	39.5%	25	30.5%
V	77	68.1%	9	11.7%
ALL	520	54.5%	115*	22.1%

*Includes 14 claims that were withdrawn with 0%, but are not included in reviewer numbers.

Source of Data: LPR&IC Staff Analysis of Claims Database

It is also worth noting that most account staff recommendations are upheld by the board. As was discussed earlier, committee staff's observation of board meetings and its review of board minutes from April 1997 to March 1998 indicate board decisions agree with staff recommendations the vast majority of the time (board agrees with between 79 and 100 percent of staff recommendations). Most times a disagreeing action is to table a decision until the following month or to award the applicant more than the staff recommended. The board rarely decides to reduce an award amount recommended by staff, and especially rare for the board to outright deny payment. Thus, the board's action on a claim in nearly all cases is an endorsement of the staff's recommendations for reductions, denials, and approval of cost reimbursement claims.

Requests and awards by applicant. Committee staff also examined the claims data to determine the categories of applicants and how they fare in getting claims paid. Applicants to the Clean-up Account include the major oil companies, large petroleum distributors, large and small service station owners, municipalities and state agencies, and individuals damaged by an UST release filing claims as third parties. Program review analysis of the account database shows approximately 330 different applicants have filed claims since the program's inception.

The five major oil companies operating businesses in Connecticut – Mobil, Exxon, Shell, Amoco, and Star (Texaco) -- have been frequent applicants to the account. Twenty-five percent of the more than \$62 million awarded by the board as of July 14, 1998, had been paid in awards to the five majors. In total, these companies had received 61 percent (\$15.6 million) of the \$25,531,414 they had requested in clean-up cost reimbursements. The Connecticut Petroleum Council, which represents the major oil companies in the state, indicated at the committee's

October 1, 1998, public hearing that the majors own about 22 percent of service stations, and sell about half the gas in the state.

As Table VI-8 shows, the five major oil companies are among the 15 Clean-up Account applicants who had received over \$1 million in total awards as of July 1998. These 15 applicants are only five percent of all applicants, but their 272 sites account for 40 percent of the total sites with claims filed. The dollar value of all awards made to these 15 applicants (\$37,875,280) represents about 60 percent total account payouts (\$62,382,095).

<i>Applicant</i>	<i>Total Awarded</i>	<i>Total Requested</i>	<i>%Received</i>	<i>No. Sites</i>
Mobil	\$ 7,669,105.69	\$ 11,719,485.41	65.4	63
Petro Plus	\$ 4,955,764.36	\$ 6,907,199.20	71.8	31
DPW	\$ 3,160,747.00	\$ 4,953,746.56	63.8	20
Aldin	\$ 2,996,136.00	\$ 3,915,252.61	76.5	11
Getty	\$ 2,756,313.00	\$ 4,128,461.94	66.7	40
Exxon	\$ 2,454,519.61	\$ 4,010,068.75	61.2	33
Shell	\$ 2,200,124.42	\$ 3,388,095.59	64.9	15
Amoco	\$ 1,950,955.48	\$ 3,334,431.39	58.5	9
Troiano	\$ 1,863,815.41	\$ 2,018,247.80	92.3	1
Aetna Station	\$ 1,609,835.00	\$ 1,929,989.22	83.4	9
Unocal	\$ 1,453,029.00	\$ 1,659,119.75	87.5	3
Star	\$ 1,326,640.74	\$ 3,079,333.14	43.1	18
Sun	\$ 1,239,252.99	\$ 1,615,737.04	76.7	13
SNET	\$ 1,126,584.80	\$ 2,259,895.82	49.8	4
Hendell	\$ 1,112,457.48	\$ 1,406,078.71	79.1	2
Total	\$ 37,875,280.98	\$ 56,325,142.93	67.2	272

Source of Data: Clean-up Account Claims Database.

One state agency, the Department of Public Works, is included in Table VI-8 having been awarded over \$3.1 million from the Clean-up Account. However, awards related to one site, the former Vernon Street bus garage in Hartford, account for nearly all of the Clean-up Account payments received by DPW. As of mid-July 1998, the board had awarded \$3.1 million (about 80 percent) of \$3.9 million requested for the Vernon Street site. Excluding the Vernon Street claims, DPW had received a total of \$38,874, or only 4 percent of the \$1,053,994 requested for clean-up reimbursement at 13 other sites.

DPW often files the application to the Clean-up Account, even though the site is operated by another state agency. For example, DPW applied on behalf of seven higher education facilities, five sites operated by the Department of Public Safety, two Department of Mental Health hospitals, and three state correctional institutions.

Other state agencies that have applied on their own to the fund include DOT, which had been awarded \$205,216 (about 25 percent of what it requested), and DPS, which requested \$127,082 but received no award from the board. Overall, state agencies received only 12 percent

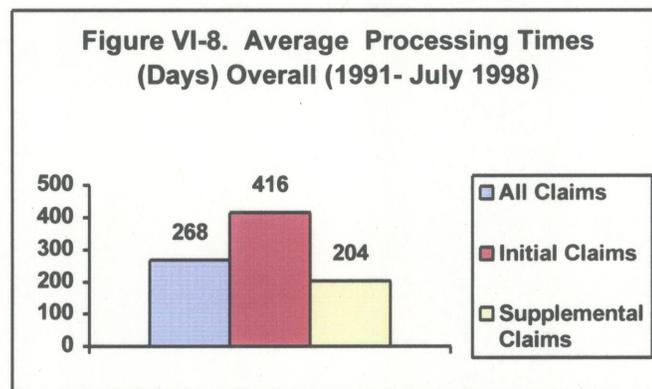
of the total amount applied for, not including claims related to the Vernon Street bus garage site. Noncompliance issues and the lack of required documentation are the main reasons state agency claims receive greatly reduced or no awards.

As of July 1998, 18 municipalities had submitted claims to the Clean-up Account, both as responsible parties and third parties. The board as of mid-July 1998 had acted on applications from 13 cities and towns. A total of \$4,592,647 had been requested by these municipalities and \$1,828,963 (about 40 percent), had been awarded by the board. Ten municipal applicants had received some part of their request (between 33 and 82 percent) and three had received no award.

Findings and Recommendations

Analysis of the account database, described in detail above, shows the claims process is neither efficient nor consistent. In submitting a claim for reimbursement of clean-up costs to the review board, applicants should expect the review and approval process to be quick and fair. By statute, maximum processing times are set at 90 days for initial claims and 45 days for subsequent cost reimbursement applications or supplemental claims. However, until very recently, timeliness of the application process has been a serious problem.

The program review committee found few applications were processed within the statutory deadlines. Average processing times, in fact, have far exceeded the deadlines, as Figure VI-8 demonstrates. Backlogs and delays not only have a negative financial impact on applicants but lengthy processing times can have environmental and health implications if clean-up activities are delayed.



Improvements in the processing of initial claims have occurred since the beginning of 1998 due to:

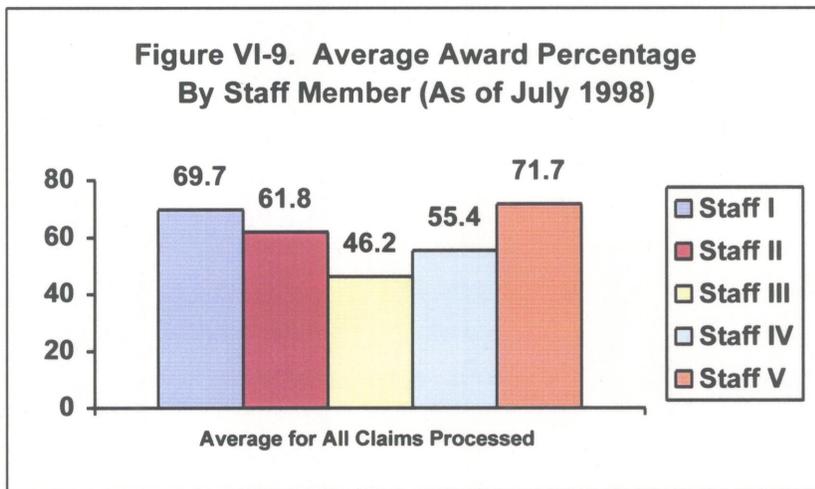
- new board policies and priorities for claims processing;
- increased staffing (from five to nine technical reviewer positions as of December 1997); and
- a drop in the numbers of new applications received (from a high of 12 per month on average in 1996 to between six and seven per month on average in the past two years).

In testimony to the program review committee at an October 1, 1998, public hearing, the account staff estimated they will be able to process all initial and supplemental claims within the statutory time frames by January 1999.

However, it was noted if the December 1998 federal deadline for compliance with new tank equipment and materials standards results in a large influx of new claims, processing times

could again fall behind these goals. Also, improved claims processing times have been dependent on additional staff. The four new technical reviewers are in durational positions scheduled to expire next year, although the department is seeking Office of Policy and Management approval to make them permanent. If the durational positions are not retained and productivity of existing permanent staff remains unchanged, another backlog of claims could develop. The program review committee believes, however, a number of policy and procedure changes can be implemented that will make the claims process more efficient regardless of fluctuations in workload or staff resources.

The program review committee also believes changes in the process are needed to address the inconsistent treatment of applications revealed by its analysis of claims outcomes. The committee found how much an applicant is awarded, compared with the amount of reimbursement requested, varied widely among the account's technical review staff. As Figure VI-9 summarizes, the amount awarded versus requested for initial and supplemental claims



processed, on average, ranged from about 46 percent for staff person III to almost 72 percent for staff person V for all claims processed.

It is likely some of the inconsistency in the processing of applications is due to the lack of written guidelines for the Clean-Up Account staff on what constitutes reasonable costs, necessary remediation activities, and noncompliance. Further,

there are no clear standards for determining the eligibility of an applicant or a release or even the completeness of an application.

The program review committee identified a number of ways, through administrative and statutory changes, to streamline the claims process and make for more consistency. The first set of recommendations presented below addresses functions carried out by the account staff while the second relates to review board matters. *The overall intent of the following series of recommendations is to make the account claims process less expensive, more timely, and result in more consistent decisions. The committee believes by processing claims more quickly and fairly, access to the account can be expanded, more sites can be cleaned up, and protection of public health and the environment -- the main goal of the program -- is promoted.*

Staff Functions

Application form. The current application for the Clean-up Account is complex, consisting of 30 pages with little written guidance on how to complete it other than brief instructions included in the form itself. While used for all types of applicants, the form is not

suitable for third parties as the majority of questions relate to tank facility operations and regulatory compliance.

According to survey responses from review board members, all but one thought the application process should be simple enough to complete without an attorney's assistance but only two thought that the current process could be completed without a lawyer. Interviews program review staff conducted with attorneys, consultants, and businesses familiar with the account process found there was general agreement the application form is too complicated and can be very expensive to complete. Forty-seven owners of sites with reported releases who returned committee surveys had applied to the Clean-up Account and 62 percent reported dissatisfaction with the ease of completing the form. The majority (29) of the 40 third party applicants who responded to a committee survey about the account reported they had used an attorney, as well as an environmental consultant to prepare their applications.

Data from program review committee surveys of site owners and third party applicants on the costs to apply to the account, while anecdotal, illustrate how expensive the process can be. The median amount spent to prepare and present their applications by the 42 owners of leaking tank sites who responded to the committee's survey question on costs was \$6,100; reported application costs ranged from \$200 to \$100,000. The 35 third parties who responded to the survey question on application preparation costs reported spending between \$150 and \$100,000; the median amount spent was about \$10,000.

Over a year ago, the account staff developed new application forms including a separate one for third parties and submitted them for review by DEP management and legal counsel. The draft applications are still under review. While an improvement over the present application, the committee believes the revised forms are still too long and lack plain language explanations of how to complete them.

The program review committee recommends the Clean-up Account application be simplified and separate forms be developed for responsible parties and third parties. Guidance materials outlining the steps in the process, what constitutes a complete application, and basic eligibility requirements in plain language should be developed and provided to applicants. The new application forms and guidance materials should be in place by July 1999.

Simpler forms would be easier and less costly for the applicants to prepare and the staff to process. Written guidance materials should also reduce the time the account staff now spend answering basic questions and explaining procedures to applicants. Application forms in several other states contacted the committee staff appeared simpler and more concise than the one used in Connecticut, although it is difficult to make comparisons. For example, some state funds preapprove corrective action work, so less information and a shorter form is needed at the cost reimbursement phase. Still, other state funds have made efforts to make their claims process easier by having application forms available on an agency website and some also have a variety of clearly written instruction booklets and guidance materials available for applicants.

Field inspections. At present, the focus of the claims process is a paperwork review. At one time, the account program tried to ensure each site was inspected by its personnel. There were two field inspector positions assigned to the account and the technical analysts and even the fiscal staff sometimes went to a site to investigate a claim. Now the account's technical staff rarely visit a site to either verify or gather information. Even the account's one field inspector spends three days per week in the office processing applications and only two days conducting on-site inspections of prospective or existing claim locations.

As of mid-October 1998, 320 sites had been inspected at least once by the account field inspector. It is estimated as many as 80 percent of these sites were visited more than one time. Only 255 of the total inspected sites are current account cases; the others were sites of potential applications. Based on these statistics, it appears nearly two-thirds of the approximately 700 sites that have applied to the account have not been the subject of an official field inspection. **The program review committee recommends at least one field inspection be conducted of the site of each application filed with the account.**

The recommended field visit would serve a number of purposes. Questions of necessary and reasonable remediation costs that come up during application review could be simplified by having "objective" information gathered by the account's field inspector. The site visit could also serve as an opportunity to advise and educate the applicant about the claims process as well as provide guidance regarding corrective action. It should be made clear, however, that field inspections by account personnel are not being made for enforcement purposes. Ultimately, the inspection should be used to control fraud or abuse by verifying the site and remediation work exist as presented in application materials.

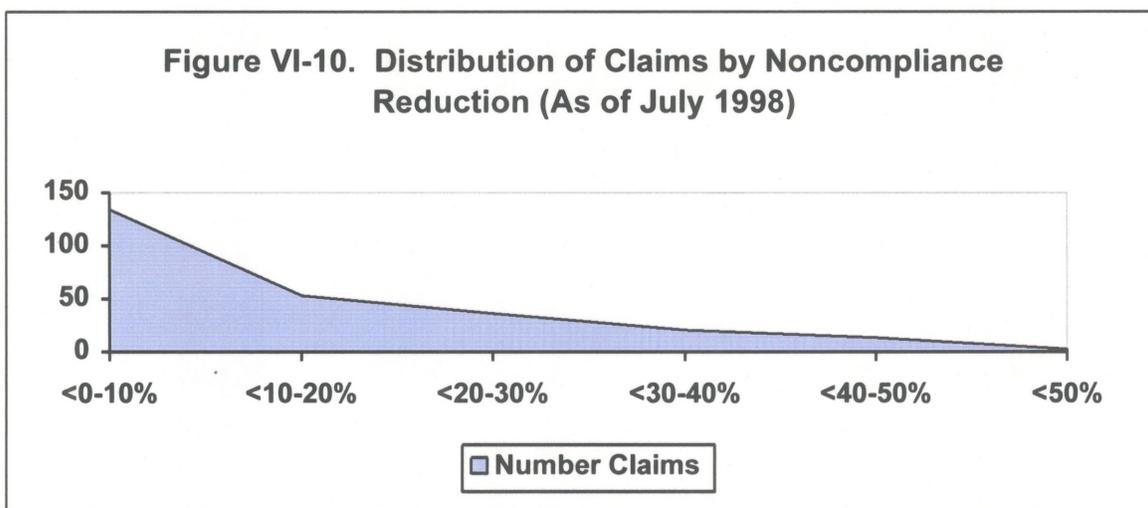
Other state funds contacted during the committee study had policies requiring field inspections of applicant sites. It appears field inspection was considered a valuable function when the account was established since two positions were assigned to that task originally. It appears no new staff resources would be needed to carry out the committee recommendation, although the claims processing workload would need adjustment. The current field inspector estimates he would be able to handle the recommended site visits if able to devote full time to that function.

Noncompliance reduction. Connecticut's Clean-up Account, like tank funds in other states, completely disallows reimbursement of costs related to tank releases that resulted from a responsible party's "...reckless, willful, wanton, or intentional act or omission...." Eligibility for cost reimbursement is also dependent on a responsible party's regulatory compliance status. By state statute, if it is determined a responsible party was not in compliance with UST laws and regulations or any DEP enforcement order, *and* that lack of compliance was a proximate cause of a tank release, the review board can deny payment of a claim related to that release.

If strictly interpreted, claims from parties not in full compliance with all underground storage tank regulations could be totally rejected. Instead, the board has developed a policy of reducing the payment of otherwise eligible costs by a percentage amount that represents the relative impact of an applicant's noncompliance. Under this policy, the awards to responsible parties with minor paperwork deficiencies would be reduced by a lesser amount than a tank

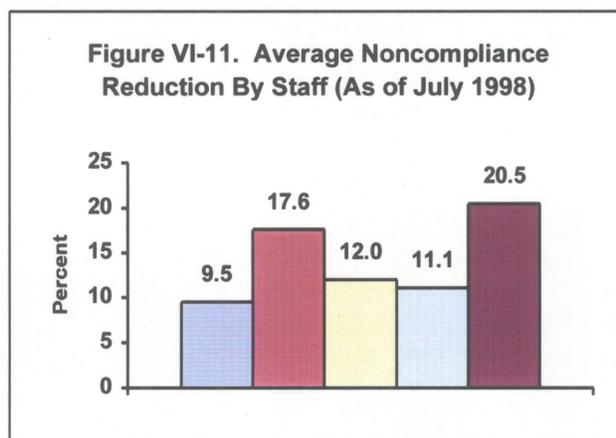
owner/operator who had routinely failed to follow proper maintenance procedures, although no formal guidelines for noncompliance reductions have been established.

Analysis of the account database information on amounts requested and awarded for claims processed as of July 1998 found reductions for noncompliance ranged from less than 1 percent to 100 percent. However, as Figure VI-10 shows, approximately half of the 263 claims with noncompliance issues were reduced by 10 percent or less. About 80 percent of claims penalized for noncompliance had reductions of 25 percent or less and nearly 99 percent were reduced 50 percent or less. It appears in all but a few cases, claims involving a noncompliance rate over 50 percent are fully denied.



The program review committee supports considering regulatory compliance when making decisions on reimbursement claims. To be fair, the process should reward applicants who have been diligent about following UST program requirements and penalize noncompliance. However, the committee is concerned the focus now placed on determining responsible party compliance and proximate cause is retrospective and adds significantly to the time and costs of the claims process for applicants and the account staff. Resources spent to investigate and document the exact reasons for a tank release, especially at sites with historic contamination and many years of operation, can be significant and might be better used on remediation efforts. It can also be somewhat unfair to judge past performance at a site, especially if accepted practices of the time were being followed, by the regulatory standards of today.

Another concern is the variation among account staff in terms of applying noncompliance reductions. As Figure VI-11 indicates, average reductions for noncompliance by staff member range from about 10 percent to over 20 percent. The



committee found there are no guidelines to make sure reductions for noncompliance matters are applied similarly and there is little review for consistency among the staff recommendations on claims. The committee believes the amount of reimbursement a party receives should not depend on which staff person happened to review the application.

To simplify the claims process and promote consistent treatment of applications, **the program review committee recommends standard reduction categories for noncompliance be established in statute. Specifically, C.G.S. Section 22a-449f should be amended to remove reference to proximate cause and to include language that permits the board to reduce the reimbursement or payment of a Clean-up Account claim by 25 percent for serious noncompliance and 10 percent for minor noncompliance with the state underground storage tank regulations. In addition, a written policy to guide staff and applicants about the statutory noncompliance reduction should be developed within six months of the effective date of the proposed statutory change.**

Removing the need to determine proximate cause and standardizing the reductions for categories of noncompliance is another way of streamlining the claims review process so the board and staff can focus on the primary purpose of the account – promoting clean-up of underground tank releases. Simplifying the compliance determination process should also reduce a responsible party's cost to prepare and present a claim to the board and the time spent by the account staff and board on reviewing applications.

Written policy that clearly specifies what constitutes minor noncompliance (e.g., incomplete inventory records) and serious noncompliance (e.g., an uncorrected notice of violation) will promote consistent treatment of claims. Evaluation of an applicant's compliance by the account staff also should be made easier once the UST enforcement staff, as recommended earlier, begin inspecting regulated tanks and documenting their compliance status. The letter of compliance prepared by the enforcement staff after the inspection should note whether deficiencies found are minor or serious according the account's written policy. As provided under current law, in cases where it is determined the tank release is due to an owner/operator's reckless and willful action or intentional act or omission, claims for reimbursement from the account would continue to be completely denied.

Finally, the proposed change in noncompliance penalties is more equitable to applicants. As one account staffer noted in a response to the committee's survey, under the current proximate cause provision, a responsible party who is substantially in compliance could have all or most of a claim rejected for a relatively small regulatory oversight while another party who has ignored most requirements but by luck did not have a release when out of compliance could be fully reimbursed.

Community responsibility policy. A number of sites that come before the board involve multiple sources and types of pollution as well as commingled contamination. Claims regarding such sites can require significant time and effort to prepare and review. Applicants are often required to spend considerable time and money investigating a commingled site to pinpoint the extent and causes of contamination, even though it may not be possible to identify a single party with primary responsibility for the damages from a tank release. In addition to requiring

complicated and expensive field studies, such cases can get bogged down in legal issues related to fixing responsible party status.

This occurs despite the fact account staff, as well as environmental consultants and attorneys interviewed by program review committee staff, all acknowledge what occurred at a site with multiple types and sources of pollution, particularly one with a long history of uses and owners, can rarely be determined with certainty. By trying to precisely fix responsibility, clean-up efforts can be delayed and significant expense added to the application process for sites with commingled contamination.

As an alternative, the program review committee recommends the review board establish a policy promoting community responsibility for cases involving multiple sites and commingled contamination. Under this policy, parties involved in commingled sites could develop an agreement to work cooperatively on clean-up activities, including how to share investigation and remediation costs. The allocation of responsibility worked out by the parties would be accepted by the board in reviewing claims for reimbursement. If parties are unable to reach an agreement within a time specified by the board, the department would be directed by the review board to undertake the investigation and remediation work required, using account funds, and the parties would be subject to cost recovery actions and any related penalties.

The program review committee believes adopting a community responsibility policy will speed up corrective action at commingled sites. It will also simplify claims review for the account staff and board and should help contain costs to prepare applications. The policy may also help avoid legal actions in some cases, although if parties wanted, they could pursue their own interests through litigation after the board has acted on the claim.

Recently the board directed one of its staff to work with the parties involved in four sites located on the corners of an intersection in Brookfield. The case entails complicated hydrogeology, groundwater contamination, and apparent commingled contamination, as well as two responsible parties, a third party, legal actions between the various parties and the town, and DEP enforcement actions. According to a November 1998 status report, with the help of the account staff, the legal gridlock impeding clean-up efforts at sites has been overcome. The parties are working cooperatively on a comprehensive remediation solution, clean-ups are progressing at each site and a plan to address the overall water supply problem for affected wells in the area is being finalized. The program review committee believes the Brookfield "Four Corners" situation is an example of what needs to be done by the account in cases of commingled contamination and should be used as a model for future efforts.

Third party claims. As noted earlier, one main purpose of the financial responsibility requirements for underground storage tank owners and operators is to ensure third parties can be compensated for property damages and bodily harm caused by petroleum releases. For the most part, federal law leaves the extent and method of third party coverage to be determined by each state. *The program review committee finds state underground storage tank programs handle third party claims in a variety of ways, with some strictly limiting third party status and others, like Connecticut, interpreting eligibility broadly.*

Under the account's enabling legislation as interpreted by the review board, third party applicants include "traditional" third parties -- innocent landowners who have suffered damages from leaking tanks on neighboring sites -- as well as parties owning properties that contain underground tanks of which they were totally unaware at the time of purchase or, in some cases, that they knew existed but they had never operated.

As of October 1998, most of the 104 third party claims filed with the account (64 percent) were from owners of sites containing leaking tanks while only 37 were "traditional" third parties. Third party applicants have included:

- homeowners damaged by gasoline that leaked from an off-site tank;
- municipalities and nonprofit organizations that acquired property not knowing it contained underground tanks;
- estate trustees and banks holding foreclosed properties with leaking tanks; and
- local petroleum distribution businesses as well as major oil companies that have taken over or leased a gas station site but never owned or operated the on-site tanks when a release occurred.

At present, third parties account for about 16 percent of all applications to the fund but may be a growing proportion of new claims. About 30 percent of initial claims filed since July 1998 have come from third parties. There is a strong incentive to establish status as a third party because:

- third parties are not subject to the account program's \$10,000 deductible;
- certain application costs and legal fees ineligible in other claims may be reimbursable for third parties; and
- determination of regulatory compliance (and, therefore, award reductions for noncompliance) is not an issue for third party applications.

With third party status often dependent upon legal distinctions of property ownership and contractual provisions, considerable time can be spent by the account staff and board determining an applicant's eligibility. Third party issues were discussed, sometimes at length, at all eight board meetings observed by program review staff during the committee study and have been the basis of several appeals filed to date. Proving eligibility as a third party also can involve substantial legal and environmental fees, which may later be submitted for reimbursement from the account.

The committee believes eligibility for third party status needs to be more clearly defined to:

- reduce debate at board meetings;
- simplify application processing;
- reduce application preparation costs, and
- possibly avoid expensive and time-consuming litigation.

Clarifying third party eligibility should also promote consistent treatment of applications.

Therefore, the program review committee recommends the statutes be amended to establish two categories of third party status: 1) innocent property owners, specifically those parties who have been damaged by a release from eligible underground tanks not located on their site; and 2) property owners with leaking tanks located on their site who never operated them *and* will not be operating tanks in the future.

Further, a graduated deductible amount related to the applicant's status should be established under which:

- the first category of third parties is exempt from any deductible amount (as current law provides for any third party);
- the second category of third parties is responsible for clean-up costs up to \$5,000; and
- all other applicants are subject to the present deductible of \$10,000.

Under the recommendation, third party status and its benefits (no deductible and reimbursable claims preparation costs and related legal fees) is reserved for individuals who have had no control over the leaking tank. Such parties clearly have no responsibility for the release, and, therefore, have no financial obligation for resulting damages. All other applicants are considered responsible parties subject to some financial obligation for damages from leaking tanks located on their property. The lower, \$5,000 deductible amount outlined in the recommendation recognizes that property owners who were not and are not tank operators should not pay at the same level as those in the petroleum industry, where matters related to tanks are a cost of doing business.

Some applicants now eligible as third parties, including municipalities and nonprofit organizations as well as individuals and businesses who knowingly or unknowingly acquired land containing underground tanks, would be included in the new \$5,000 deductible category. While this may present a hardship for some claimants, the committee believes a simpler, quicker, less contentious application process will benefit everyone involved in the account program. In addition, there are any number of environmental or other problems an owner may unwittingly encounter after purchasing a property that are not covered by a public financial assistance program. The committee does not believe owners of properties with leaking tanks should receive full reimbursement of related clean-up costs, especially if it turns out the property owner failed to fully investigate land conditions prior to purchase.

An additional area in need of clarification is whether a third party can bring a claim to the account before any legal action they have against a responsible party is resolved. Interviews with account staff, board members, as well as attorneys familiar with the account program revealed some confusion over this matter.

In the opinion of the program review committee, and according to attorney general's office representatives and several authors of the program's enabling legislation, it is not the law's intent to prevent a third party from applying to the account while a suit is pending. Third parties are only expected to attempt to contact the responsible party. If the responsible party denies the

request for compensation of damages, or is unknown or unreachable, a third party can make an independent claim to the account. Current statutory language does require that any payments responsible parties make to third parties be finally adjudicated (and prior-approved by the board) before the costs are submitted for reimbursement from the account.

The program review committee recommends the statutes be amended to make clear that a third party may independently apply to the account for payment of damages from an eligible tank release after making reasonable attempts to contact the responsible party for compensation. Further, any legal action a third party may bring against the responsible party does not have to be finally adjudicated before an application is made to the account. Finally, the account's rights to reimbursement of its expenditures for third party claims, as well as other claims that may be awarded a financial settlement through private means, should also be clarified in statute. Claimants shall be required, as part of the application process, to sign a document stating that amounts reimbursed from the Clean-up Account will be repaid if they later receive financial settlements through other means.

Some states require third parties to make claims to their tank program through a responsible party and several of the account staff and board members, according to survey responses, believe this should be the policy in Connecticut. The program review committee believes this approach is unfair, especially to third parties with limited resources. Individuals with no responsibility for a damaging tank release would be required to bring legal action, which can be costly and take years to resolve, while parties responsible for leaking tanks have access to the account. In addition, if a responsible party is unknown or without resources, the third party essentially has no recourse for damages from a tank release.

While the Clean-up Account should not be considered a payer of last resort for site remediation, neither should claimants of any status enjoy a "windfall" if they are successful in obtaining compensation from a legal action or other source for costs and damages already paid by the account. The committee believes clarifying the account's rights to reimbursement in statute and formalizing the account's legal standing through a document signed by claimant will ensure this does not happen.

Another legal issue related to third party claims has to do with the definition of "property damage." What constitutes property damage, and to what extent the fund should compensate third party claims for property damages, has been repeatedly discussed by the review board and applicant attorneys. The matter is particularly complex when an applicant claims diminution of property value due to contamination from a tank release.

Under federal and state law, it is clear the account is to provide for reimbursement of property damage and bodily injury due to releases from underground storage tanks. Property damage is not defined in federal law; instead, EPA guidelines state property damage shall have the meaning given by state law (40 CFR 280.92). There is no definition of property damage in Connecticut statutes or regulations but there is some relevant case law. For example, a state Supreme Court case decided in 1982 (*Verdon v Transamerica Insurance Company*) found the phrase "property damage" encompasses economic harm.

To guide its decision making on this issue, the review board requested an opinion on what constitutes property damage in third party claims from the attorney general's office in 1996. An opinion was drafted, but never issued. The program review committee considered several possible statutory definitions but found property damage cases appear to involve too many variables to make a single definition workable. **Therefore, it is recommended the board continue to determine property damage in third party claims on a case-by-case basis.**

The decision index and the legal counsel position proposed below should address many of the problems the board now faces in making consistent, legally supportable decisions about property damages. The board also has the option, under its present statutes, to hire outside experts to help review and decide on claims and could do so to resolve complex property damage issues. Several of the state fund programs contacted during the committee review routinely use private attorneys to advise them on property damage and bodily injury claims.

Case closure. Since the account program began operating in 1991, the review board has acted on more than 650 initial claims. At present, all of the cases handled by the board are considered active; none have been designated "cleaned-up" and officially closed. There is no time limit or site closure standard specific to Clean-up Account cases. Theoretically, claims for reimbursement can be submitted for each case until the \$1 million (or in certain cases, \$3 million) statutory cap is reached. As of October 1998, 30 account cases had exceeded \$500,000 in awards and three were at or very near their \$1 million maximum.

In practice, what the account pays out for cases is limited by more than just the cap since only reasonable and necessary costs are reimbursed. What is reasonable is an after-the-fact determination carried out by the account's fiscal staff. What is necessary clean-up is assessed during the technical staff review process. However, when remediation efforts are considered sufficient at a leaking underground storage tank site, and who determines that, depends on several factors, including whether:

- the site is subject to the state's remediation standard regulations (RSRs) that were adopted January 1, 1996;
- remediation at the site is based on a corrective action plan developed by the property owner's consultant, and whether that plan was reviewed and approved by DEP; or
- remediation at the site was funded or overseen by the state's LUST program or Oil and Chemical Spills Response Division.

The state's remediation standards provide guidance on what remedial action is necessary to protect human health and the environment. They contain numeric standards for remediation of soil and groundwater and also take into account the groundwater quality and land use of a site as well as proximity to sensitive receptors of contamination such as drinking water wells or the basement of a residence. However, there is no obligation for the owner of a polluted property to clean up contamination on the site to the levels set by the RSRs unless ordered to do so by the department under an enforcement action or to meet the requirements of the state property transfer act or voluntary remediation program.

Most underground storage tank sites do not fall under the property transfer act, few if any UST owner/operators have opted to participate in the voluntary remediation program, and only a handful of cases that have come to the account involve any DEP enforcement activities. However, the account staff have begun using the state remediation standards to guide their evaluation of what are necessary clean-up costs and the UST enforcement program requires clean-up at sites it regulates to be conducted to bring the levels of contaminants below the levels set by the RSRs.

Prior to adoption of the state standards, clean-up requirements for a site subject to DEP review were established on a case-by-case basis. Since most account cases predate the RSRs, they would be subject to individualized remediation standards, or if under the purview of the department's LUST or OCSR staff, the clean-up requirements set by those programs. As discussed in Chapter Four, the LUST program, for federal reporting purposes, considers clean-up completed when the leaking underground storage tank site poses no threat to human health or the environment. Clean-up completed does not mean the site is free of contamination or that state remediation standards have been met. The oil and chemical spills staff employ a similar standard for closing out tank sites for which they have primary responsibility.

The program review committee believes there should be a consistent standard for what degree of remediation will be financed by the state Clean-up Account. At present, there are a wide range of clean-up requirements that are applied more on the basis of a site's status under a statutory definition than its risk to human health and the environment. There is no prioritizing of Clean-up Account expenditures and little incentive for efficient management of corrective action plans. In fact, environmental consultants who plan and oversee remediation actually have an incentive to continue investigating, sampling, monitoring, or otherwise conducting clean-up at a site.

To maximize the benefits of the account, the committee believes payments should be limited to those measures needed to protect human health and the environment. **Therefore, it is recommended that a site closure standard based on a risk-based corrective action (RBCA) process be established for Clean-up Account cases. The statutes should be amended to require a RBCA analysis be conducted for each clean-up account case that has been active for three years or been awarded a total of \$200,000. The purpose of the analysis is to determine whether further remediation is necessary to control risk to human health and the environment, and if not, to close the case to any further claims for clean-up cost reimbursement. Claims for third party compensation would not be affected.**

RBCA is a decision-making process recommended by the EPA underground storage tanks office. It takes into account the relative risks posed by UST releases and is intended to make site clean-ups faster, less expensive, and more effective. About 14 states are recognized by the federal Environmental Protection Agency as having fully adopted risk-based corrective action for their underground storage tank programs. Connecticut, like most northeastern states, is not one of EPA's approved RBCA states. The department's remediation standards, however, are recognized to contain elements of risk-based decision making. The committee believes the department's RSR process could be adapted to meet the objective of this recommendation.

Other state funds have adopted RBCA procedures and found them beneficial. The South Dakota program, for example, which is considered a leader in applying risk-based corrective action to tank cases, has seen significant increases in the numbers of sites cleaned up and closed since it adopted a RBCA policy. Average clean-up costs spent per site have also dropped, from about \$54,000 before RBCA was instituted to an estimated \$35,000 three years after its adoption.

Connecticut already applies a RBCA-type standard to tank cases covered by the LUST program to ensure its limited resources are applied to activities that have the highest priority in terms of protecting public health and the environment. In the committee's opinion, the Clean-up Account, which like LUST, funds clean-ups with tax dollars, should set risk-based limits on what is spent to remediate an eligible site and ensure public monies are used as efficiently as possible.

Requiring Clean-up Account cases to be reassessed after a reasonable period has passed or a substantial amount of money has been expended will ensure the impact of remediation efforts are periodically evaluated by the account staff and board. It will also put applicants and their consultants on notice that reimbursement from the account will depend on the effectiveness of remediation efforts as well as cost eligibility.

Review Board

By law, the Clean-up Account review board's role is to receive, review, and make final decisions on applications for reimbursement or payment from the account. The board does not, as the statutes are written, actually administer the account. Instead, the commissioner of environmental protection is responsible for making payments and adopting regulations, after consultation with the board, concerning the claims and reimbursement process. The environmental protection department receives an annual allocation set by statute from the fund for its administrative costs. Thus, DEP carries out the day-to-day operations of the account program and the board decides policy matters related to claims, including whether to accept, modify, or reject the account staff recommendations on applications for cost reimbursement.

Negotiations at the time the account's enabling legislation was passed resulted in this compromise of an independent claims review board with DEP responsible for providing technical and administrative support. If the account were a new program being established today, the program review committee would not recommend this structure. Having the Clean-up Account, which is essentially a substitute for private environmental insurance, administered by the agency charged with regulating and enforcing environmental protection programs sometimes confuses roles and can create conflicts.

For example, the account staff are paid with account money but employed by DEP and covered by department personnel rules. They are not directly accountable to the board although they carry out the board's claims process. Roles can also blur during the appeals process. If a board decision is appealed, account staff are responsible for defending the board decision and may seek assistance from the DEP legal counsel as well as the attorney general's office. The party bringing the appeal, however, may be the DEP commissioner, who may also be using department legal staff and attorney general personnel.

The program review committee considered restructuring the account program by making the board an independent agency with its own staff. Clean-up funds are organized as separate entities in at least seven states and about a dozen state funds use outside contractors to administer their claims processes. Based on interviews conducted with officials from funds with third party-administrators, it appears that structure is not necessarily less costly but does permit a more flexible deployment of resources.

The program review committee concluded, however, it would be too disruptive to overhaul the account structure, which at this point has been in place for 10 years. Further:

- changes to the administrative structure would require statutory amendments regarding the fee now allocated to DEP and authority for promulgating regulations;
- contracting out the claims administration process would not save personnel costs since account employees' contracts prohibit layoffs due to privatization; and
- administrative improvements instituted over the past year have reduced the claims backlog and the process is operating more efficiently.

In addition, DEP now absorbs a portion of the board's administrative expenses. The department provides without cost, the board's meeting place, as well as many business office functions like payment processing and purchasing, and adjudications services. The current structure also permits access to technical advice from agency environmental experts and has the potential for facilitated coordination of remediation activities.

Through survey responses and interviews, it was found most board members support the current structure and, not unexpectedly, the account staff are much opposed to any change in the account board's organization. Representatives of the petroleum industry also told committee staff they believe the account can and should be made to work within DEP.

Given the many practical obstacles to an effective restructuring, the program review committee believes the current Clean-up Account structure should be retained. However, several modifications, discussed in detail below, are needed to improve the review board's ability to carry out its functions.

Legal counsel. Most importantly, the board should have its own legal counsel to provide advice on eligibility issues as well as proper procedures for acting on applications. The board is a policy-making body and the majority of issues it decides require an understanding of Clean-up Account statutes as well as legal concepts like intent, responsible party, and property damage.

At present, an assistant attorney general with other responsibilities provides legal services to the board, although that individual is not even able to attend all board meetings. While one of the account technical staff also has a law background, it is not within the current duties of any of the employees to provide legal advice on Clean-up Account cases. As a result, the board's needs for legal services are often unmet or addressed incidentally. For example, at several

meetings observed by committee staff, the board has called upon one of its members who happens to be a practicing attorney to assist with questions of a legal nature. That individual is, at the chairman's request and with the other members' approval, leading a formal hearing process for an appeal the board recently decided to hear on its own.

Nearly all of the board members interviewed as part of the committee study were dissatisfied with the current level of legal services they received. The board's ability to decide on claims in a fair, complete, and consistent manner is impeded by the lack of access to qualified, readily available legal advice. **Therefore, the Program Review and Investigations Committee recommends a position of legal counsel to the Clean-up Account review board be established by July 1, 1999. The counsel will be an employee of the board with the position's expenses to be paid from account revenues. The board should adopt, in writing, a job description and the procedures to be followed in hiring its legal counsel.**

With its own legal advisor, the board will be better able to address the complex eligibility matters that seem to be coming up with increasing frequency in the cases it reviews. As noted later in the discussion on appeals, the legal counsel position will be available full time to advise the board on litigation, and subject to the approval of the Office of Attorney General, could even represent the board during appeals.

The board counsel would be responsible for preparing the decision index recommended later in this chapter, developing a standard format for board documents such as the summary of claims prepared by account staff, and carrying out other projects and research as directed by the board. In addition to providing better service to the board, the legal counsel position should also free up time account staff now spend on legal matters, letting them focus on processing applications, thus reducing demands on the attorney general's office resources.

The committee believes the compensation schedule for the board counsel should be modeled on that of the chief law clerk of the Workers' Compensation Review Division, a position with comparable duties and qualifications. Based on the mid-range salary for that position plus fringe benefit costs, program review estimates the legal counsel position would cost about \$95,000 annually.

Expanded membership. Board membership, which was designed to ensure input from the many and varied groups with an interest in the state Clean-up Account program, does not currently include a representative of environmental professionals. Under present application process requirements, an environmental professional must be involved in nearly every case reviewed by the board.

Having an environmental consultant on the board would provide a source of technical expertise in addition to that provided by the DEP representative, and another informed point of view on matters of reasonable and necessary clean-up costs. **The program review committee recommends the statutes be amended to expand the review board membership to 13, with the new position representing environmental professionals involved in investigating and remediating underground storage tank sites, to be appointed by the Senate President Pro Tempore.**

Member orientation. New members appointed to the board receive virtually no orientation to the purpose or process of the Clean-up Account program. As discussed earlier, little guidance material is currently available for the applicants, the staff, or the board, and nothing has been compiled to educate new members. The account program is complex and member turnover is relatively frequent. **The program review committee recommends orientation materials be developed and provided to all new members upon their appointment to the board.** Many of the items that should be included in an orientation packet -- board rules and regulations, staff guidance policies, and a decision index – are, or will be, readily available. Responsibility for developing and providing new member orientation should be another duty of the board's legal counsel.

Consent agenda. Under current procedures, the review board takes a formal vote on every claim presented during a meeting. The board allows discussion and acts on each application individually even though in the majority of cases the applicant is in agreement with staff's recommendation to board.

When there is disagreement over a staff recommendation, no documentation of the applicant's position is presented to the board. Applicants are allowed to make comments to the board following the staff presentation of a claim and account staff generally note applicant concerns in discussions with the board. However, it is not always clear from the information presented at the board meeting what issues are subject to dispute. In addition, it appears applicants may not always have a chance to review revisions staff may have made to a draft summary of claim before the final version is provided to the board for action at the next meeting.

Over the past year, as part of efforts to reduce the application backlog, the account staff and board made changes to the summary of claim process. A 30-day notice procedure, which sets a time limit on the review and revision process for draft summaries of claims, was instituted. The program review committee believes further modifications are needed to speed up claims processing, as well as make better use of the board's time during meetings and to clarify the applicant's opportunity for input.

The program review committee recommends the account staff send out summaries of claims for the 30-day review, and require applicants to respond at least seven days prior to the board meeting date as to whether they agree or not with the staff's recommended action. If an applicant is in agreement with the staff, the claim is placed on a consent agenda; if not, the claim goes on a discussion agenda. All items on the consent agenda can be acted upon through one vote by the board. Claims can be moved from the consent agenda to the discussion agenda at the request of any board member.

Establishing a consent agenda would make better use of board members' time at meetings. Items can be easily removed from the consent agenda if a member has questions or concerns regarding a particular application. Requiring the applicant to respond to the staff recommendation further standardizes the claims process, again promoting consistent treatment of applications. It also ensures applicants have had an opportunity to review a proposed action

before it is discussed at a board meeting and to independently present their position to the board members.

Decision index. Other than the minutes from board meetings, there is no documentation of decisions made on claims. Board members and staff must rely primarily on their memories of prior cases when questions arise about previous actions taken in regard to specific issues. In addition to adding discussion time to meetings, the lack of a written compilation of board decisions increases the chances similar claims will be treated differently.

The program review committee recommends an index of Clean-up Account review board decisions be developed by January 1, 2000. In interviews with program review staff, most board members supported the idea of some type of written documentation of prior policy decisions. Since actions the board takes at its meeting are not formal findings, the decisions are not establishing precedence in a legal sense. The index recommended by the committee would be a reference document to aid board discussions and promote consistent actions on claims.

The committee recognizes the account program lacks the staff resources needed to compile a decision index at present. While account personnel could assist in this project, the committee believes the new legal counsel position recommended earlier should have primary responsibility for this task.

Appeals. The program review committee believes there are a number of problems with the current appeals process for review board decisions. First, there are no statutory or regulatory time frames that must be met for hearing appeals, other than a broad one set forth in the U..A.P.A. That provision states: "each agency shall proceed with *reasonable dispatch* to conclude any matter pending before it, and in all contested cases shall render a decision within 90 days following the close of evidence . . ." (C.G.S. Section 4-180(a)). The DEP's own rules of practice -- which the board has adopted in draft form for its use -- do not set forth any time frames for proceedings to occur. Appeals of decisions from the Clean-up Account board, in program review committee's opinion, are slow and cumbersome.

Once the board receives notice that its decision is being appealed, the board asks the account staff to request DEP to appoint a hearing officer to hear the case. The program review committee found it can take months for the account staff to follow through with the board's request for a DEP hearing officer to be assigned. In fact, the board sent its own letter in October 1998 requesting hearing officers for five appeals. It took that action because account staff had not yet sent a request in any of the cases, even though the appeals had been filed with the board as far back as January 1998.

Even after a hearing officer has been named, the appeal process moves slowly. For example, in a case involving Shell Oil, which was formally heard on October 29, 1998, had originally been filed by the appellant in October 1997. The committee believes an administrative appeal should not take a year to be heard. According to the Adjudications Division staff, delays are not the result of a shortage of hearing officers. Instead, it appears slowdowns occur because only one Clean-up Account staff person handles appeals. Requests to the Adjudications Division to hear cases are delayed until the schedule of the assigned staffer allows time for case

preparation. Complications and delays also occur because that individual lacks formal legal training, and little legal assistance is provided by department counsel.

As a result, routine legal steps like developing and issuing discovery requests and subpoenas take much longer than they should if proper resources were available. Because such requests are not always well-constructed, relevant, or properly defined, they invite legal objection.²¹ Further, if the appellant objects to a legal procedure, the Clean-up Account staff then asks for assistance from the attorney general's office. Proceedings must then be delayed until staff from the attorney general's office are assigned, and familiarize themselves with the case. In addition, the DEP hearing officer must then consider their schedules when setting future dates on the case.

The committee believes there are also inherent conflicts in DEP staff working on appeals for the board where the DEP is the appealing party. Questions of allegiances also arise when a DEP staff recommendation, which is not adopted by the board, is appealed; specifically, is the staff working to defend its own overturned decision, or the board's action?

In addition, the committee believes the board is not well-informed of appeals as they progress – e.g., how long they are taking, reasons for delay, or even what the final outcomes are. For example, the board was only alerted to the fact that the account staff had not yet requested hearing officers for appeals because an appellant's attorney wrote to the board questioning the time frame in that case.²²

The program review committee believes several modifications to the process for appealing Clean-up Account decisions should be made. A timely process is imperative. There are no guidelines in the U.A.P.A. or in DEP rules of practice, and imposing time frames there have implications for appeals procedures far beyond Clean-up Account cases, and the scope of this study. Instead, the Clean-up Account statutes should establish guidelines.

Therefore, the program review committee recommends C.G.S. Section 22a-449f(c) be modified to require that a hearing be held within 90 days after an appeal has been filed, and that a decision be issued 60 days after the close of hearings and or dates of filing final legal documents related to the proceedings.

Other state agencies have statutory deadlines for the holding of hearings and issuance of decisions. The Department of Education must hold hearings within 45 days of decisions regarding special education placements. Under the Department of Social Services (DSS) fair hearing statutes, DSS is required to hold a hearing 30 days following an appeal request and issue a decision not later than 60 days after the hearing. The degree of urgency with appeals on clean-

²¹ In the Shell Oil case, Shell objected to the account staff's discovery request as being too broad, and impossible to comply with. According to rulings written by the hearing officer in the case, DEP staff agreed to modify its requests but later filed a motion for an extension of time to conduct additional discovery, and to obtain counsel. The hearing officer did not grant the extension request for discovery, but counsel from the attorney general's office was assigned.

²² September 14, 1998 letter to the Clean-up Account board from Martha Dean, Esq.

up award decisions is certainly not as great as receiving welfare benefits or special education services, but the committee has considered that in recommending longer time frames.

The appeals process could be aided substantially if the person handling appeals had legal training, and was a neutral board employee rather than staff to the party (i.e., DEP). Therefore, **the committee recommends that board's legal counsel, proposed in a previous recommendation, be assigned to handle all preparatory staff work on appeals from board decisions.**

Statutorily, only the attorney general may officially represent the board in any legal proceedings, although that authority could either be delegated to the board counsel if a memorandum of agreement were sought with the attorney general or delegated to the board's counsel on a case-by-case basis as the attorney general decides.

The committee also believes the board should be kept better informed of appeals as they move through the process, and that if delays occur they might take actions to spur the process along. Therefore, **it is recommended that an appeal status update be placed on the agenda for Clean-up Account board meetings.**

Appendices

Appendix A

Agency Response:
Department of Environmental Protection



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

79 ELM STREET HARTFORD, CONNECTICUT 06106

PHONE: (860) 424-3001



Arthur J. Rocque, Jr.
Commissioner

January 28, 1999

Mr. Michael L. Nauer, Director
Legislative Program Review
and Investigations Committee
State Capitol - Room 506
Hartford, CT 06106-1591

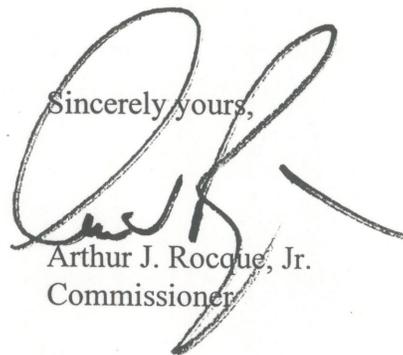
Dear Mr. Nauer:

Thank you for providing the Department of Environmental Protection the opportunity to comment on the Staff Findings and Recommendations relating to the Regulation of Underground Storage Tanks (December 17, 1998) prepared for the Legislative Program Review and Investigations Committee of the Connecticut General Assembly. The Department appreciates your extensive research and analysis of this important environmental program. As you know we have begun to address some of the recommendations which have been made; some we can undertake immediately; and others, while interesting, require additional analysis to see how they conform to existing statutory requirements and how they would impact the program as a whole. The comments which follow generally reflect our concerns in the latter category. Further, in general, the Department is concerned about the resource implications of some of the recommendations.

The Program Review Report included recommendations relating to the Underground Storage Tank Enforcement Program, Residential Underground Storage Tanks, the Leaking Underground Storage Tank Program, the Underground Storage Tank Cleanup Account, and the Underground Storage Tank Cleanup Review Board. The Department's responses in each of these areas is attached.

Thank you again for your interest in this program. I look forward to working with the Committee to develop any appropriate legislation.

Sincerely yours,



Arthur J. Rocque, Jr.
Commissioner

AJR/md

Enclosure

**Department of Environmental Protection Responses
to the
Staff Findings & Recommendations Relating to the Regulation of
Underground Storage Tanks (December 17, 1998)
Legislative Program Review and Investigations Committee of the Connecticut
General Assembly**

Underground Storage Tank Enforcement Program

Although the Department supports the concept of adding staff to the Underground Storage Tank Enforcement Program so that more inspections can be undertaken, it is doubtful that three additional staff would be adequate to allow the inspection of each of the 11,000 plus commercial UST sites even once every five years. The funding mechanism proposed for the additional staff also needs to be reviewed because the current complement of enforcement staff could not complete enough inspections to accumulate sufficient funds for the new positions. With respect to the red-tag program for violative USTs, a statutory change would be needed that expressly gives the Department red-tag authority.

The Department is concerned about the suggestion that letters of compliance be issued which would be valid for a period of five years. Such letters generally reflect status at the time of inspection. Failure to perform requisite inventory control and/or other leak detection requirements any time after the inspection could create a threat to the environment, and a presumption of compliance could forestall appropriate enforcement response. Additionally, the letter of compliance and the five-year schedule of inspections may also encourage lax compliance efforts during the five-year interim between inspections.

Residential USTs

As many residential UST's reach or surpass their average life expectancy these tanks are an increasing problem in Connecticut. Therefore, the department concurs with the recommendations regarding residential underground storage tanks. However, it must be clearly understood that to take on these resource intensive tasks without additional staff resources would mean that the Department would have to reduce its activities in other areas of the underground storage tank program. We do not currently know the total universe of residential tanks in the State, and it is not possible at this time to determine what the overall impact of the implementation of these recommendations would be on the existing UST programs. Therefore, before implementing this new program, the actuarial study of the Clean-up Account, recommended on page 21 of the report, should be conducted and should include a study of the impact on the Clean-up Account of both payments and administrative costs of implementing this recommendation. Thereafter it might be appropriate to authorize the Department to require registration of residential underground tanks.

Leaking Underground Storage Tank Program

The Department recognized the inadequacies of the existing database for leaking underground storage tanks and in 1997, successfully sought EPA grant funds to correct the deficiencies. This improvement project is ongoing and will continue in 1999. Additionally, the Department is committed to coordination of the various programs within the Department, such as the Oil & Chemical Spill Response Division and the Bureau of Water Management, that receive information on leaking tanks.

UST Clean-up Account

The Program Review report recommends a new legislative purpose statement relating to environmental cleanups. If such an approach is undertaken, it is important that the new language neither supersede nor conflict with existing statutory criteria that allows the Account to meet Federal requirements for financial assurance for UST owners and operators.

Although there is always the possibility that staff may approach claims slightly differently, the Department guards against variations in staff reviews of claims by providing ongoing training and supervisory oversight. The Department has found that most variation in result is less due to lack of training or understanding by the staff, but rather reflects the complexity of the individual applications, the differences in facts and the disparity in the amount and quality of information provided by applicants to the Fund.

The Department recognizes that there has been a significant backlog of cases in recent years and has already implemented procedures to track program and staff workload, processing times and claims outcome. For the past fifteen months, staff has worked under productivity guidelines. Under those guidelines, staff has presented 2.1 new cases per person per month to the Board for decision, and the backlog has decreased from a January 1998 level of 211 pending claims to a January 1999 level of 16 claims pending review. Thus the interval from application submittal to Review Board presentation has been reduced from over two years to the required ninety days. Therefore, restrictions on the expansion of administrative expenses for the Clean-up Account are not needed or appropriate. In fact, increases in the account may be necessary if the complexity of new cases increases and if a residential UST program is implemented (because it is anticipated that homeowners are likely to require more staff assistance in preparing their claims than commercial applicants who generally hire professionals to prepare their applications). Administrative costs also rise over time due to contractual obligations such as negotiated increases in staff salary or benefits, cost of leasing vehicles from the Department of Administrative Services, and so forth.

With respect to the detection of fraud, as part of its standard review of cases, staff currently utilizes the database and other sources to gather information to inform the Board of potentially ineligible costs. To date, staff have found redundancies in the submittal of invoices, errors in arithmetic establishing total costs, and ineligible expenses which have been deleted from recommendations made to the Board for action.

Although the Department would ideally like to be able to conduct at least one field inspection of the site of each application filed with the Account, this is not practical because without substantially more staff resources it would decrease the overall number of claim applications which could be reviewed. Currently sites are inspected on an as needed basis. In the Department's experience the added value of inspecting all sites is not worth the resource expenditure.

The Department generally supports the idea of statutorily authorizing and simplifying reductions in expense reimbursement for noncompliance with established criteria because it could expedite the review process. We recommend, however, that the Board be given the authority to do this initially through the development of guidelines. This will enable a determination to be made regarding the benefit realized prior to undertaking the lengthy regulatory development process. Such a change should not, in any case, be applied retroactively.

With respect to third party status, the Department recognizes the difficulty of distinguishing between various third party claimants, but believes that before any statutory changes are proposed, this problem requires further study. The Department supports the continuation of the concept of the Review Board determining property damage in third party claims on a case-by-case basis.

The Department recognizes the need to establish a standard for adequate site closure. Any such standard needs to be tied to Connecticut's Remediation Standard Regulations that are currently utilized by environmental consultants and state licensed environmental professionals operating within the state. To use different clean-up standards on isolated sites would add expense and confusion, and result in non-uniform statewide site clean-ups.

Review Board

The Department supports the development of an index of Board decisions which would allow for increased consistency of Board actions, but also realizes that the development and maintenance of such an index will require significant staff resources.

With respect to time frames for hearings and appeals of Board decisions, the Department recommends that the time frames established by the Uniform Administrative Procedures Act be followed. This statute governs all such official proceedings and provides adequate time for discovery and filings.

Appendix B

Agency Response:
Connecticut Underground Storage Tank
Petroleum Clean-Up Account Review Board



STATE OF CONNECTICUT

CONNECTICUT UNDERGROUND STORAGE TANK PETROLEUM CLEAN-UP FUND REVIEW BOARD

January 22, 1999

State of Connecticut
Legislative Program Review and
Investigation Committee
State Capitol, Room 506
Hartford, Connecticut 06106

Re: Legislative Program Review and Investigations Committee's December 17, 1998 Staff Findings and Recommendation Report

Dear: Senator Fred H. Lovegrove, Jr.
State Representative Michael J. Jarjura

The Underground Storage Tank Petroleum Clean-up Account Review Board ("Review Board") has the following comments on your December 17, 1998 staff findings and recommendation report. Throughout the report, staff resources are an overriding issue in addressing the findings and recommendations contained therein. The report appears to assume that we can implement the report's recommendations with the current staff resources without affecting productivity regarding the review and processing of claim applications. That assumption is not correct and may result from the staff creating the report not being completely familiar with the range of complexity of the various cases that come before the Review Board and the quality and quantity of the information provided for our review. Of course, it is difficult to do more activities with the same amount of resources as suggested in the recommendation to inspect every claim application site.

Obviously, if existing staff are in the field inspecting each application site, there will be a decrease in the time available to review claim applications. In consideration of this and other recommended administrative initiatives, the Review Board does not support this recommendation. In addition, the Board discussed and recommends that the concept of a position of a full time Executive Director of the Clean-up Account be researched and implemented. The Board also expressed concern that the implementation of many of the Findings and Recommendations may only be possible if additional funds are made available not only for an Executive Director but additional Clean-up Account staff if they are required and believes that the report's recommendation of limiting the DEP's administrative expenses for the Clean-up Account is overly restrictive.

The Review Board is extremely supportive of the development of a residential tank reimbursement account and suggests certain modifications to the report's recommendation. The deductible for reimbursable residential tank release costs should be reduced to \$1,000 and the clean-up account should also be expanded to include reimbursement of nonresidential petroleum

underground storage tanks that are not currently eligible. The proposed actuarial study should consider the impacts of the recommendations on the administrative expenses, funding ceiling and solvency of the clean-up account. In addition, the study should be completed much sooner than July 1, 2000 so that its findings may be considered in the implementation of the proposals. The study should also determine the advantages and disadvantages of establishing the residential tank reimbursement account as a separate account.

The Review Board concurs with the recommendations to simplify the application process and amend the existing statutes to include a statement of purpose, specified noncompliance reductions and third party determination criteria. However, as noted above, the staff creating the report may not recognize the variety and complexity of issues and information that the Account staff has to review due to these and other existing statutory requirements. Statutory amendments that are properly constructed for administration will assist the staff in its review of applications and allow the application process to be expedited and simplified. The Review Board should also be allowed a trial period for the proposed amendment that establishes additional criteria regarding third party application status so that it can determine the most appropriate statutory language for adoption. In addition, the Review Board disagrees with the report's characterization of the staff as being adversarial and unhelpful to the board members and public.

The Review Board does not feel that a full time Board legal staff is necessary. A more cost effective alternative would be to have the Office of the Attorney General ensure the provision of additional legal counsel to the Board to assist in the development of a decision index, Board member orientation package, legal interpretations and other necessary work. In addition, the Review Board would request that the Attorney General's Office assign this additional legal counsel from outside of its Environmental Division so that the person would be neutral in providing legal counsel to the Board and in providing preparatory assistance in administrative hearings. This would eliminate any potential conflicts that may arise in having the DEP staff solely involved in the administrative hearing process and provide the board with sufficient legal counsel.

In regard to the other report recommendations such as the usage of the database to deter fraud and encouraging applicant cooperation and responsibility for commingled contamination it is the Review Board's feeling that this is already being done. It is also unclear as to the need for the statutory amendments regarding the administrative hearing process in that the board is already bound by the Uniform Administrative Procedure Act for such hearings.

In summary the Review Board has the following comments on the legislative report:

1. The Review Board agrees that residential tank owners have access to the Underground Storage Petroleum Clean-up Account but believes that the applicant should be responsible for the first \$1,000.00 rather than \$2,500.00;
2. The Review Board recommends that non-residential petroleum UST which are not currently eligible be allowed access to the clean-up Account;

3. The Review Board agrees that the statement of purpose in the Findings and Recommendations be incorporated into the applicable statute;
4. The Review Board agrees that the Clean-up Account be continued, that no sunset date be applied and that an actuarial study be conducted. The Review Board believes that it is important that this actuarial study be completed as soon as possible, hopefully sooner than July 1, 2000;
5. The Review Board agrees that the Review Board should review quarterly reports on the financial state of the Clean-up Account from the staff and that the Review Board should issue an annual report containing the information set forth in the Findings and Recommendations;
6. The Review Board agrees that whatever information is available, including an updated database if necessary, be utilized in tracking the use of the Clean-up Account;
7. The Review Board agrees that the Clean-up Account application process be simplified and separate Applications forms be devised for responsible parties and third-parties, including guidance materials and plain language where appropriate;
8. The Review Board agrees that proximate cause should be removed from that statutes and that specific percentage reductions be added as well as written guidelines concerning the issue of non-compliance reduction;
9. The Review Board agrees that two categories of third party applicants be established as well as a graduated deductible;
10. The Review Board agrees with the recommendation concerning clarification of the rights of a third party applicant and the Review Board's rights to reimbursement;
11. The Review Board suggests it contract with outside counsel or that its counsel be assigned apart from the DEP;
12. The Review Board agrees that its membership be expanded as set forth in the Findings and Recommendations;
13. The Review Board agrees that a consent agenda be implemented at its monthly meetings;
14. The Review Board agrees that orientation materials be developed and provided to new Review Board members;
15. The Review Board agrees that an index of Review Board decision be implemented as soon as possible; and
16. The Review Board agrees that the status of appeals be included as part of its monthly agenda.

The Review Board discussed other portions of the Findings and Recommendations and has no comment because either there was no consensus of the Review Board members or the Review Board has no information upon which to comment.

The Review Board thanks the committee for this opportunity to comment on its December 17, 1998 report and looks forward to working with you and the DEP in regard to the proposed recommendations. The Review Board also requests that it be kept informed of the progress or the review of the Clean-up Account, including any legislative proposals and hearings.

Sincerely,

A handwritten signature in cursive script that reads "John J. Mitchell". The signature is written in dark ink and is positioned above the printed name.

John J. Mitchell
Chairman

Underground Storage Tank Petroleum Clean-up
Review Board

Appendix C

Survey Forms

As part of the Legislative Program Review and Investigations Committee study of underground storage tanks, four surveys were developed and administered to: Clean-Up Account Board members; Clean-Up Account program staff; UST Facility Owner/Operators; and third party applicants to the account. A copy of each survey form is included in this appendix.

Survey of Underground Storage Tank Clean-Up Account Board Members

1. Why do you think the Clean-up Account was established in Connecticut?

2. What do you see as the **major purpose** of the Clean-up Account?

3. On a scale of 1= Excellent to 4=Poor, how would rate the Clean-up Account in achieving the major purpose (as you see it)? (circle the number).

Excellent 1-----2-----3-----4 Poor

4. Are there obstacles that you think prevent the Clean-Up Account from achieving its major purpose? (please specify. If you think there are none, write "none")

5. What do you think is the **major role** of the Clean-up Account Board (as you see it)?

6. On a scale of 1=Excellent to 4=Poor, how would you rate the Board in fulfilling its major role (as you see it)?

Excellent 1-----2-----3-----4 Poor

7. Are there obstacles that stand in the way of the Board in serving its role? (please specify. If you think there are none, write "none")

8. Do you think the Board membership as specified in statute is the best it could be to serve its role? yes No

8a. If no, what changes would you make to the Board membership to improve its ability to serve its role?

9. On a scale of 1=Excellent to 4=Poor, how would you rate the following. (put the number that best reflects your rating on each of the lines after A) through K)

- A) _____ DEP technical staff to the Board
- B) _____ DEP financial staff to the Board
- C) _____ Written materials sent to the Board prior to meeting
- D) _____ Recommendations staff makes to the Board
- E) _____ Supporting reasons for Staff recommendations
- F) _____ Legal Counsel to the Board
- G) _____ Administrative (minutes, expenses for members, meeting locations, etc.
- H) _____ Working relationship between the Board and the Account staff
- I) _____ Consistency of Board decisions
- J) _____ Fairness of Board decisions to all categories of applicants
- K) _____ other

10. Are there changes you would make to the orientation new board members receive regarding the purpose, role, and functioning of the Board?

11. Are there any clarifications or modifications you would make to the statutes governing the Clean-up Account or the Board that would help with the application process or in making eligibility decisions for payment from the account?

12. Are there clarifications or modifications you would make to the regulations concerning the Clean-up Account that would help with the application process or in making eligibility decisions for payment for the account?

13. On a scale of 1=Excellent to 4= Poor how would you rate the information the board receives on the overall status of the Clean-Up account -- e.g. total revenues in acct., total claims paid, total amount for claims pending, etc. (circle the number)

Excellent 1-----2-----3-----4 Poor

13a. Are there recommendations you would make for improvements in this area?

14. On a scale of 1=Strongly Agree to 4=Strongly Disagree, do you think only applicants in full compliance with the regulations regarding operation of the tanks should receive full reimbursement for eligible costs? (circle the number)

Strongly Agree 1-----2-----3-----4Strongly Disagree

15. On a scale of 1=Strongly Agree to 4=Strongly Disagree, do you think reductions for non-compliance are appropriate? (circle the number)

Strongly Agree 1-----2-----3-----4 Strongly Disagree

16. On a scale of 1=Excellent to 4=Poor, how would you rate the general compliance of applicants with the UST regulations? (circle the number)

Excellent 1-----2-----3-----4 Poor

17. Do you think the application process **should be** simple enough so that applicants to the account should be able to complete the process without legal counsel?

_____yes _____no

17a. Do you think the current application process **is** simple enough for applicants to complete the process without legal counsel? _____yes _____no

18. On a scale of 1=Too Much to 4= Not Enough, how would you rate the amount of information required of applicants to evaluate **the standards for eligibility** to the account? (circle the number)

Too Much 1-----2-----3-----4 Not Enough

19. On a scale of 1=Too Much to 4= Not Enough, how would you rate the amount of information required of applicants to evaluate **their compliance** in order to obtain funds from the account? (circle the number)

Too Much 1-----2-----3-----4 Not Enough

20. On a scale of 1=Strongly Agree to 4=Strongly Disagree, do you think the organizational location of the board gives it sufficient independence from DEP and DEP staff? (circle the number)

Strongly Agree 1-----2-----3-----4 Strongly Disagree

21. Are there any recommendations you would make to improve application review process of claims before the board? (Please explain. If you have no recommendations, write "none".) _____

Please add any comments you would like to make regarding the Board, the Clean-up Account, or the study being conducted by the Legislative Program Review Committee. Thanks for taking the time to complete the survey.

LEGISLATIVE PROGRAM REVIEW & INVESTIGATIONS COMMITTEE

SURVEY OF CLEAN-UP ACCOUNT PROGRAM STAFF

1. What is the primary purpose of the Clean-up Account Program as you see it?

2. How well do you believe the account program is achieving this purpose? Circle the number on the scale below that represents your opinion.

Very well 4 3 2 1 Not at all well

3. What would you like to change about the following areas to improve how well the account program achieves its purpose? (If you wouldn't like changes in an area, write "none").

a) Application process _____

b) Board's review of staff recommendations _____

c) Program statutes or regulations _____

d) Program informal policies _____

e) Assigned workload _____

f) Staff training _____

g) Review of your work by other staff members _____

h) Composition of the review board _____

4. Describe changes in any other areas you would suggest to improve the program (if you need more space, use the back of this survey or attach your additional comments)

5. How important are the following as objectives for the Clean-Up Account in your view?

	Very Important			Not At All Important
a) Achieve remediation of contaminated sites	1	2	3	4
b) Promote compliance with UST requirements	1	2	3	4
c) Promote compliance with other environmental regulations	1	2	3	4
d) Lessen the financial burden of remediation on leaking tank owners/operators	1	2	3	4
e) Compensate third parties for damages due to leaking tanks	1	2	3	4
f) Allow UST owners/operators to meet federal financial responsibility requirements	1	2	3	4

6. In your opinion, how long should it take, on average, to process an initial application (from time first submitted to the board's final action): _____ months

7. Do you agree or disagree with the following statements?

	Strongly Agree.....			Strongly Disagree
a) Board members and the staff have a good working relationship.	1	2	3	4
b) The Board makes decisions that are fair to all parties.	1	2	3	4
c) Only applicants in full or nearly full compliance should be eligible for reimbursement from the Clean-Up Account.	1	2	3	4
d) Board decisions are consistent.	1	2	3	4
e) Most applicants are doing their best to comply with UST requirements.	1	2	3	4

8. Would you favor or oppose having the account program an independent organization outside of DEP with its own staff and director? ___ Favor ___ Oppose

a) Why _____

9. What is the primary role of the Clean-up Account staff in your view? _____

10. How often are following situations a problem for you in processing applications in a thorough and timely manner?

	Almost Always.....			Rarely
a) The applicant fails to respond to staff requests for information	1	2	3	4
b) The applicant (and/or consultant) does not understand the criteria and standards for eligibility	1	2	3	4
c) The evidence needed to identify with certainty the cause for release is not available	1	2	3	4
d) The applicant (and/or consultant) is unreasonable about negotiating noncompliance issues and questionable costs	1	2	3	4

12. What would be the impact on the remediation of leaking underground storage tank sites if the Clean-Up Account did not exist? _____

*Thank you for completing this survey.
Please return it by July 3, 1998 in the envelope provided.*

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
SURVEY OF UST FACILITY OWNERS/OPERATORS

1. According to records of the Department of Environmental Protection, an underground storage tank you own or operate experienced a release of a petroleum product sometime over the past 10 years or so. What is current status of the site of this release?

- a. No clean up activities were required at the site (*Stop here and return survey*)
- b. Clean up at the site has been completed
- c. Clean up at the site is underway
- d. Clean up at the site has not been initiated
- e. Other _____

2. *If clean up has not yet been initiated at the site*, what is the primary reason ?

- a. Site is still being assessed and investigated
- b. Financial resources to undertake clean up efforts are lacking
- c. Responsibility for contamination is in dispute
- d. Other _____

3. What is the estimated total cost for clean up at this site? \$ _____

4. *If clean up at the site is underway or completed*, approximately how much has been spent on clean up efforts to date. (Please do not include tank replacement or other costs incurred to comply with UST standards and regulations) \$ _____

5. Are you aware of the state Underground Storage Tank Petroleum Clean-Up Account?

- No (*Stop here and return survey*)
- Yes

5A. *If YES*, how did you first become aware of the Clean-Up Account?

- a. Received written notice about account from DEP
- b. Told about account by DEP Staff
- c. Through word of mouth/friends
- d. Through business association (a meeting, publication, etc.)
- e. Other _____

6. Did you apply to the Clean-Up Account for reimbursement of any of the clean up costs related to the release at this site? Yes No

6A. *If NO*, why not? _____
(*If you did not apply to the Clean-Up Account, stop here and return your survey*)

7. Did you use an environmental consultant to help in the preparation and processing of your application to the Clean-Up Account? Yes No

7A. *IF YES*, how satisfied are you with the services you received from the consultant you hired? (Circle the number that represents your opinion)

Very Satisfied 1 2 3 4 Very Dissatisfied

8. Did you use an attorney to help in the preparation and processing of your application to the Clean-Up Account? Yes No

8A. *IF YES*, how satisfied are you with the services you received from the attorney you hired? (Circle the number that represents your opinion)

Very Satisfied 1 2 3 4 Very Dissatisfied

9. About how much money have you expended to date for the preparation and presentation of your application to the Clean-Up Account? \$ _____

9A. How reasonable is this amount in your opinion?

Very Reasonable 1 2 3 4 Very Unreasonable

10. How satisfied are you with the following aspects of the Clean-Up Account program? Please add any comments about why you are satisfied or dissatisfied in the space marked "Comments."

	Very Satisfied.....			Very Dissatisfied	Comments (Attach a separate page if you need more space)
a) ease of completing the application form	1	2	3	4	
b) timeliness of the process to review and decide on your application	1	2	3	4	
c) knowledge of account's technical staff	1	2	3	4	
d) helpfulness of account's technical staff	1	2	3	4	
e) knowledge of account's financial staff	1	2	3	4	
g) amount of evidence required to prove your claim (e.g., to demonstrate your compliance, proximate cause, etc.)	1	2	3	4	
h) guidance on what costs are eligible for reimbursement	1	2	3	4	
i) fairness of the staff review and recommendations on your application	1	2	3	4	
j) fairness of the board's decision on your application	1	2	3	4	
k) the dollar amount you were awarded by the board	1	2	3	4	

11. What if any impact did applying to the Clean-Up Account have on your effort to clean up the contamination at the site of your underground storage tank facility? (Check all that apply.)

- a. Began remediation sooner because of the possibility of reimbursement
- b. Undertook more extensive clean up efforts because of the possibility of reimbursement
- c. Delayed some or all clean up efforts until your claim was determined eligible
- d. No impact on remediation activities
- e. Proving eligibility and level of compliance added to time and cost of process
- f. Other _____

12. If you have any additional comments or suggestions about the Clean-Up Account program or the committee's study, please include them here or attach a separate page to this survey.

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
SURVEY OF THIRD PARTY APPLICANTS TO THE CLEAN-UP ACCOUNT

1. How did you first become aware of the Clean-Up Account?
 a. Told about account by DEP Staff
 b. Told about by your attorney or environmental consultant
 c. Other _____
2. What are the circumstances surrounding your application as a third party (*check one*):
 a. Your property was damaged by a tank release from another site and there are no tank facilities on your property
 b. Your property was damaged by an on-site tank release but you were never the owner or operator of the failed tank facility
 c. Your property contains tank facilities but the damage was the result of a tank release at another site
 d. Other _____
3. What is the approximate total amount you requested from the account in your application?
Check one: under \$10,000 \$10,000 to \$100,000 Over \$100,000
4. In your application, do you claim the value of your property has been diminished because of damage from the tank release? No Yes
5. Does your claim involve contamination of your drinking water by the tank release? No Yes
6. Is the identity of the responsible party in your case known? No (*skip to Question 7*) Yes
- 6A. Did you attempt to contact the responsible party concerning the damage to your property?
 No Why not? _____
 Yes ... What was the responsible party's response when contacted:
 Denied there was a tank release
 Denied your property was damaged
 Other _____
- 6B. Did you attempt to bring a legal action against the responsible party?
 No ... Why not? _____
 Yes ... What was the outcome of your legal action against the responsible party?
 Legal action is pending
 Settled with responsible party
 Dropped legal action because too expensive to pursue
 Other _____
7. Did you use an environmental consultant to help in the preparation and processing of your application to the Clean-Up Account? No Yes
7A. *IF YES*, how satisfied are you with the services you received from the consultant you hired? (Circle the number that represents your opinion.)

Very Satisfied 1 2 3 4 Very Dissatisfied

8. Did you use an attorney to help in the preparation and processing of your application to the Clean-Up Account? No Yes

8A. IF YES, how satisfied are you with the services you received from the attorney you hired? (Circle the number that represents your opinion.)

Very Satisfied 1 2 3 4 Very Dissatisfied

9. About how much money have you expended to date for the preparation and presentation of your application to the Clean-Up Account? \$ _____

9A. How reasonable is this amount in your opinion?

Very Reasonable Reasonable Unreasonable Very Unreasonable

10. How satisfied are you with the following aspects of the Clean-Up Account program? Please add any comments about why you are satisfied or dissatisfied in the space marked "Comments."

	Very Satisfied.....		Very Dissatisfied	Comments (Attach a separate page if you need more space)
a) ease of completing the application form	1	2	3 4	
b) timeliness of the process to review and decide on your application	1	2	3 4	
c) knowledge of account's technical staff	1	2	3 4	
d) helpfulness of account's technical staff	1	2	3 4	
e) knowledge of account's financial staff	1	2	3 4	
f) helpfulness of account's financial staff	1	2	3 4	
g) amount of evidence required to prove your eligibility as a third party	1	2	3 4	
h) guidance on what costs are eligible for reimbursement	1	2	3 4	
i) fairness of the staff review and recommendations on your application	1	2	3 4	
j) fairness of the board's decision on your application	1	2	3 4	
k) the dollar amount you were awarded by the board	1	2	3 4	

11. If the clean-up account was not available to reimburse you for property damages, what would have been the impact on your site? (Check all that apply.)

- Clean-up of contamination and other corrective action would be less extensive
- Clean-up of contamination and other corrective action would have been delayed while legal action against the responsible party was pursued
- No impact on the clean-up and other corrective action at your site
- Reimbursement for damages would have taken longer while legal action against the responsible party was pursued
- Other _____

12. If you have any additional comments or suggestions about the Clean-Up Account program or the committee's study, please include them here or attach a separate page to this survey.

APPENDIX D

Survey Analysis

As part of the methods used to gather information regarding the Underground Storage Tank program, Legislative Program Review and Investigations Committee staff developed and administered four mail surveys -- one for Clean-Up Account Board members, one for Clean-Up Account staff, the third for owner/operators of all sites in Connecticut that had a petroleum leak from an underground storage tank, and the fourth for third party applicants to the account. Appendix C contains copies of each survey instrument. Staff analysis of the responses to each survey is summarized below.

CLEAN-UP ACCOUNT BOARD MEMBER SURVEY

Surveys were sent to 11 board members-- at the time there was one vacancy -- in June 1998 and nine completed surveys were returned. The survey questions were designed to elicit board member opinions on the purpose and role of the board, the Clean-Up Account, and how well those are being achieved. Board members were also asked about the Clean-Up Account application process and decisionmaking regarding eligibility and compliance for reimbursement from the account. In addition, members were asked to rate the support services the board receives.

Clean-Up Account purpose. Regarding why the account was established, and the purpose of the account, there was a consensus among two options, or a combination of the two. Five of the nine board members responded that the account was created in response to the federal mandate to show financial responsibility. Two members said it was created to clean up the environment, and another two members indicated it was a combination of financial responsibility mandates and cleaning up the environment.

Eight of the nine members who responded indicated the major purpose of the Clean-Up Account is to clean up the environment. Six of the nine board members gave positive ratings ("1" or "2" rating) regarding how well the account is achieving its objectives.

Board role and membership. Most of the respondents (7) believed the major role of the Board is to make decisions on claims to the Account, and six members gave the board positive ratings in meeting this purpose. However, five board members indicated that the board composition should be changed in order to improve its ability to carry out its role. The changes in composition suggested were:

- eliminate private sector membership on board;
- shrink the membership;
- require at least one member who is technically familiar with environmental data;
- require at least one member to have a legal background (current board membership includes an attorney but is not a requirement); and
- eliminate the DEP membership requirement.

When asked about the board's organizational structure, eight of the nine respondents responded they believed the current location of the board gives it sufficient independence from DEP.

Rating of support services. The table below summarizes the ratings board members gave to the various support services it receives. As the table indicates, the majority gave positive ratings for most of the services they receive. The financial staff were rated highest most frequently, with all nine respondents assigning a positive numerical rank. Technical staff also received positive ratings from the board. Board members gave negative ratings to its own consistency in making decisions, with four of the nine respondents rating it only fair or poor. Also rated negatively by three board members was legal counsel, the recommendations made by staff, and the supporting reasons for staff recommendations.

Board Member Ratings of Support Services (N=9)				
<i>Type of Service</i>	<i>Excellent</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>
DEP Technical Staff	4	4	0	0
DEP Financial Staff	6	3	0	0
Written Materials	3	4	2	0
Recommendations By Staff	3*	3	3	0
Supporting Reasons by Staff	3*	3	3	0
Legal Counsel to Board	4	2	2	1
Administrative Support	5	2	1	1
Working relationship Between Staff and Board	5	3	1	0
Consistency of Board Decisions	2	3	3	1
Fairness of Board to All Applicant Categories	4	3	1	1

* Where a respondent gave a numerical rating between two options, included as the higher rating

Application Process. The vast majority of board members believe the application process for reimbursement to the clean-up account *should be* simple enough to complete without an attorney. One member noted it should be simple except in case of third party claims, multiple responsible parties, or where other complex issues exist. However, only two members believe the current application process *is* simple enough to complete without an attorney.

When asked to rate the amount of information necessary to evaluate standards of eligibility (with 1=too much to 4=not enough), seven members gave a rating of "1" or "2", while one member rated it "2.5" and another rated it a "3". Similar ratings were given to the amount of information needed to determine compliance. Six members rated it "1" or "2", while one rated it "2.5" and one member rated it "3".

ACCOUNT STAFF SURVEY

Each of the 12 professional Clean-Up Account staff employed as of June 1998 was sent a survey. Responses were received from 11 staff members. The survey asked for opinions regarding the purpose and performance of the Clean-Up Account, suggestions for changes to

improve the program, ratings of board operations, and an assessment of possible problems in the application process.

Clean-Up Account purpose. The staff members responding to the survey varied in their views of the primary purpose of the Clean-Up Account. Four stated remediation of UST sites was the account's primary purpose while three others thought providing financial assistance for UST site remediation was the primary purpose. The account's role as a financial responsibility mechanism for tank owner/operators, in accordance with federal requirements, was cited as its primary purpose by another four staff members. All 11 respondents gave the account program a positive rating in terms of achieving its primary purpose and three thought it was achieving its primary purpose very well.

In rating the importance of the account's various objectives, all six objectives listed (i.e., achieving remediation, promoting UST compliance, promoting general environmental compliance, lessening the financial burden of remediation, compensating third parties, and allowing owner/operators to meet federal financial responsibility requirements) were considered important or very important by at least eight of the 11 respondents. All but one staff member thought achieving site remediation was a very important objective. Providing a financial responsibility mechanism was seen as a less important objective by three staff members, while lessening the financial burden of remediation on owner/operators and promoting general environmental compliance were viewed as less important objectives by two and one of the account staff, respectively.

Processing times. Five of the responding staff thought the time it should take to process an application couldn't be estimated or depending on the specific case. Five others thought on average it should take under six months to process and initial claim.

Board operations. All 11 respondents agreed that the board members and staff have a good working relationship. The majority (nine) also agreed most applicants are doing their best to comply with UST requirements; three staff members, however, disagreed with this statement. Most of the staff (eight) agreed the board makes fair decisions while three disagreed. Staff members were split about evenly on whether board decisions are consistent (six agree; five disagree) and whether eligibility for reimbursement from the account should be limited to applicants in full or nearly full compliance (five agree; six disagree).

Organizational location and staff role. Making the account program an independent organization outside of DEP with its own staff and director was opposed by all 11 staff members. Account staff were in less agreement about their primary role. Five stated the primary role of the account staff is to review applications ("in accordance with law," or "objectively," or "fairly and expeditiously") and make recommendations to the board while one other staff members said the primary staff role is to provide the board with administrative services outlined in regulation. The primary staff role according to the three other respondents to the question is, respectively: to determine whether applications satisfy all requirements; to correct applicant noncompliance; and to insure only costs intended by the legislature to be reimbursed are paid by the account.

Application processing problems. According to their survey responses, account staff seem to have different perceptions of what situations present problems in terms of processing applications in a thorough and timely manner. The applicant's failure to respond to requests for information was viewed as a frequent problem by eight staff members but three stated it was seldom or rarely a problem. The applicant's (and/or consultant's) lack of understanding of eligibility standards and criteria also was seen a frequent problem by the majority (seven) of account staff while four saw this an infrequent problem. Three of the account staff believe the fact that evidence needed to identify the cause of a release is unavailable is almost always a problem in processing applications while six others see it as a frequent problem and two viewed it to be a problem infrequently. Most staff members thought an applicant (and/or consultant) being unreasonable about negotiating noncompliance issues and questionable costs was rarely or infrequently a problem but four viewed this as a more frequent problem.

Impact of account. When asked about the impact on UST site remediation if the Clean-Up Account did not exist, all 11 respondents thought there would be less remediation and more site abandonment. Several staff members believed the impact would be a dramatic decrease in clean-up activities and one stated the impact would be catastrophic.

SITE OWNER/OPERATOR SURVEY

In August 1998, surveys were sent to owners/operators of sites included in the database of reported underground storage tank releases maintained by the DEP Leaking Underground Storage Tank program. Questions included in the survey were intended to gather information on: the status of clean-up activities at sites of reported releases; clean-up costs; owner/operator awareness of the Clean-Up Account program; and, if an application was made to account, satisfaction with the claims process and outcome.

A total of 1,042 survey forms were mailed after duplicate and incomplete addresses as well as cases clearly ineligible for participation in the Clean-Up Account program (e.g., tank releases involving home heating oil) were removed from the LUST list of leaking tanks. Almost one-third (309) of the surveys mailed were returned as undeliverable. Completed surveys were received from 226 site owner/operators, representing 22 percent of the total sent and 31 percent of all surveys delivered.

Status of the site. The survey responses raised questions about the accuracy of the LUST database as an inventory of leaking tank sites. Just over one-third (78) of the owners/operators who returned surveys noted that no clean-up activities were required at the site, sometimes adding that there had never been a release at the site to their knowledge or that their tanks had been removed but there was no evidence of a release. According to DEP staff, at one time reports of tank pulls were not distinguished from reported releases in the database so the LUST list could contain a number of sites where no release occurred.

The majority of respondents noted clean-up had been completed or was underway at their sites (102 and 30, respectively). Only 11 owner/operators had not initiated clean-up

activities while another 5 were either monitoring the site for closure or were unsure of their site's status.

Clean-up costs. Seventy-seven respondents provided information on the estimated total clean-up cost for their sites. The reported clean-up costs ranged from \$1,000 to \$1,500,000, with a median expense of \$50,000. Overall, one-third of the respondents reported estimated total clean-up costs of \$100,000 or more, including four cited as \$1 million or more.

Awareness of the account program. Owners/operators of sites requiring clean-up were asked if they were aware of the Clean-Up Account and over half (55 percent) of the 143 respondents to the question were, while the remainder (45 percent) were not. The 79 respondents aware of the account had found out about it in the following ways: 36 percent had received notice or been told about the account by DEP; 35 percent were made aware of the account through a business association; 23 percent learned about the account from their environmental consultant, attorney, or clean-up contractors; and 6 percent first heard about the account from friends or word-of-mouth.

Application to the account. The majority (58 percent) of survey respondents who were aware of the account applied for reimbursement of site clean-up costs while a significant portion (42 percent) did not. The most common reasons owners/operators cited for not applying to the account were related to eligibility (e.g., costs were below the deductible, release occurred prior to program start date, etc.) -- 57 percent of the 30 respondents to the survey question on why they didn't apply cited ineligibility. A wide range of other reasons were cited, including the process was too involved or expensive, other parties had cleaned up the site, the owner didn't know how to apply, or it wasn't worth the effort.

Nearly all (96 percent) of the 47 survey respondents who stated they applied to the account used an environmental consultant to help in the preparation and processing of their application and about one-third also used an attorney. Forty-two of the respondents provided information on their costs to apply to the account. Amounts expended on the account application process ranged from about \$1,200 to \$100,000. The median cost was \$6,100 and in most cases, (80 percent), application expenses to date (i.e., at the time they completed the committee survey) were \$10,000 or less.

Account program ratings. Site owners/operators who applied to the Clean-up Account were asked to rate various aspects of the program. Responses to each of the survey questions on satisfaction with the application and review process, the staff, the review board, and the claim outcome are summarized in the following table.

Overall, most were positive about their account experiences except in two areas: ease of completing the application, with 62 percent dissatisfied; and timeliness of the process, also with 62 percent dissatisfied. From just over 60 percent to almost 90 percent of respondents were satisfied with all other program aspects rated. The areas with the highest satisfaction ratings concerned the fairness of the review board) and the knowledge and helpfulness of the account staff.

Site Owner/Operator Survey Respondents: Ratings of Clean-Up Account Program				
Program Aspects Rated (N=number respondents per question)	Very Satisfied.....Very Dissatisfied			
	1	2	3	4
Ease of completing the application form (N=42)	12%	26%	55%	7%
Timeliness of the process to review and decide on your application (N=40)	2%	35%	37%	25%
Knowledge of account's technical staff (N=37)	13%	68%	16%	3
Helpfulness of account's technical staff (N=38)	21%	63%	10%	5%
Knowledge of account's financial staff (N=36)	8%	78%	8%	6%
Amount of evidence required to prove eligibility as a third party (N=38)	5%	55%	21%	18%
Guidance on what costs are eligible for reimbursement (N=39)	5%	64%	20%	10%
Fairness of staff review and recommendations on your application (N=37)	11%	62%	16%	11%
Fairness of the board's decision on your application (N=32)	16%	72%	6%	6%
The dollar amount you were awarded by the board (N=32)	16%	59%	19%	6%

Other comments. Survey respondents were asked about the impact, if any, applying to the account had on their efforts to clean up contamination at their sites. Five reported they began remediation sooner and 11 said they undertook more extensive clean-up efforts because of the possibility of reimbursement from the account while 21 responded the account had no impact on their remediation activities. Six stated they delayed some or all clean-up until their claims were found eligible and 18 reported that proving their eligibility and regulatory compliance added to the time and cost of the claims review process.

The survey form also invited site owners/operators to add any comments or suggestions about the Clean-up Account program and about two dozen respondents did. A few had specific complaints about the handling of their claims (e.g., felt the staff review was unfair, disagreed about costs denied as ineligible, etc.) but most comments were general and almost evenly split between positive and negative remarks.

Several owners/operators reported good experiences with the process, finding it professional and thorough even if lengthy, and three respondents stressed the program's value in stimulating remediation of contaminated sites. Timeliness was cited as a problem by a number of respondents, with some noting the complexity and length to the application process added to their costs and delayed clean-up. Among the suggested improvements were: guidance documents, particularly regarding eligible and ineligible costs; separate procedures for "innocent" third parties and responsible parties; and better communication between program managers and claims reviewers. The problem of determining responsibility for historic contamination and the lack of financial assistance for cleaning up releases other than motor fuel were also raised as issues by several site owners/operators who completed surveys.

THIRD PARTY APPLICANTS

In October 1998, surveys were sent to the 104 applicants who had applied to the Clean-Up Account as third parties. The survey asked how the applicant became aware of the account,

what circumstances surrounded the third party claim, what costs were involved for site clean-up and the application process, and for opinions on various aspects of the program. Completed surveys were received from 45 third party applicants, representing a response rate of 43 percent.

Although it was not possible to identify with certainty the status of each respondent, it appears most were individual property owners and many were homeowners. Third parties who completed surveys also included businesses, two major oil companies, and about a half-dozen municipalities and nonprofit organizations. Most of the 44 third party applicants who answered the question on how they became aware of the account learned about it from their environmental consultant or attorney (30), while eight were informed by DEP staff and six were told about the program by friends, relatives, or business associates.

Circumstances of the claim. All types of third parties are represented by the survey respondents. Of the 41 respondents who provided complete information on the circumstances surrounding their applications, 13 were "innocent" landowners (damaged by a release from an off-site tank and no tanks on their property), 2 had on-site tanks but had been damaged by a release from an off-site tank, and the majority (26) had been damaged by on on-site tank release but had never owned nor operated the failed facility.

Forty-four respondents provided information on the total dollars they had requested from the account in their applications. The claim amount requested was between \$10,000 and \$100,000 for just over half (23) of the third party applicants. A significant number (17) had requested over \$100,000 while six third parties had submitted claims for relatively minor amounts (under \$10,000). Diminished property values were an issue for almost 40 percent of the respondents and nearly one-third of the third-party claims involved contaminated drinking water.

In most cases (77 percent), the identify of the responsible party was known. When known, most applicants (78 percent) tried to contact the responsible party about the damage to their property. Results, however, were generally disappointing; when contacted, the responsible parties either denied there was a release, denied the third party's property was damaged, or denied any responsibility for the release or damage.

Fourteen of the third parties answered they had taken legal action against the identified responsible party, with the following outcomes: three had reached a settlement; three noted their cases were still pending; five stated they had dropped the action due to the expense involved; and three did not report a status. Eighteen respondents reported they did not take legal action against the identified responsible party, most commonly because the responsible party was dead or without financial resources. The expense of pursuing a lawsuit ,and the existence of the account for reimbursement of damages, were also cited as reasons for not pursuing litigation against the responsible party.

Application process. All but six of the 45 survey respondents used an environmental consultant to help in the preparation and processing of their applications to the Clean-Up Account. Most (77 percent) also used an attorney to help prepare and process their applications. Costs to prepare and present their applications were reported on by 39 respondents and ranged from \$150 to \$100,000, with a median value of around \$8,000.

Account program ratings. Third party applicants were asked to rate their satisfaction with key aspects of the Clean-Up Account Program and results are summarized in the following table. As the table indicates, except in the area of timeliness, the majority of third party applicants (from 58 to 86 percent) were satisfied with the listed areas while the portion of applicants dissatisfied regarding each aspect ranged from 14 to 56 percent. Overall, timeliness of the application process and the amount of evidence required to prove eligibility received the least positive ratings. Ratings were most positive concerning the knowledge and helpfulness of the staff, particularly the account's fiscal personnel.

Third Party Applicant Survey Respondents: Ratings of Clean-Up Account Program				
<i>Program Aspects Rated (N=number respondents per question)</i>	<i>Very Satisfied.....</i>		<i>Very Dissatisfied</i>	
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
Ease of completing the application form (N=37)	16%	54%	19%	11%
Timeliness of the process to review and decide on your application (N=43)	14%	30%	35%	21%
Knowledge of account's technical staff (N=40)	32%	45%	17%	5%
Helpfulness of account's technical staff (N=40)	27%	50%	17%	5%
Knowledge of account's financial staff (N=36)	22%	58%	17%	3%
Helpfulness of account's financial staff (N=35)	26%	60%	11%	3%
Amount of evidence required to prove eligibility as a third party (N=40)	15%	42%	32%	10%
Guidance on what costs are eligible for reimbursement (N=39)	23%	51%	21%	5%
Fairness of staff review and recommendations on your application (N=37)	27%	40%	27%	5%
Fairness of the board's decision on your application (N=39)	36%	31%	28%	5%
The dollar amount you were awarded by the board (N=40)	35%	35%	25%	5%

Other comments. The survey asked applicants for their views on what if any impact there would have been on their sites if the Clean-Up Account was not available to reimburse third parties for property damages. The survey also solicited any general comments or suggestions about the account program. Regarding impact of the account: five respondents reported the program had no impact on the clean-up activities at their sites; five believed clean-up would have been less extensive; 13 thought reimbursement would have been delayed while legal action against the responsible party was pursued; and 17 thought clean-up and other corrective actions would have taken longer while legal action was pursued.

A number of survey respondents added comments about negative financial and environmental consequences if the Clean-Up Account program were not available. Five applicants noted they would have experienced serious financial burdens such as bankruptcy or foreclosure if not for the account program and a community organization stated cut-backs in its services would have been necessary if it hadn't been reimbursed through the account for its tank clean-up costs. According to five respondents, serious delays in addressing contamination or superficial clean-up efforts would have resulted at their sites and another third party would have abandoned the property if assistance were not available from the Clean-Up Account.

Among the general comments made about the account program were complaints from several third parties about the complexity and length of the claims process. One respondent stated significant costs were added to the claim because of the extensive documentation required to file an application. Several third parties also expressed gratitude for the account, noting the substantial costs involved in cleaning up leaking tank sites and the absence of other options for financial aid when responsible parties are unknown or uncooperative.

APPENDIX E

Education and Experience Requirements for Selected DEP Positions

POSITION	MINIMUM QUALIFICATIONS
Super. Env. Analyst	8 yrs experience, with at least 1 yr at advanced/lead level, in environmental analyses, interpretation, and evaluations OR Environmental-related Bachelor's + 4 yrs /Master's + 3 yrs
Env. Analyst 3	7 yrs. experience in practices of environmental analysis OR 1 yr as Env. Analyst 2 + 6 years/2 yrs Env. Analyst 1 + 5 OR Environmental-related Bachelor's + 3 yrs/Master's + 2 yrs.
Env. Analyst 2	6 yrs. experience in practices of environmental analysis OR 1 Env. Analyst 1 + 2 yrs OR Environmental-related Bachelor's + 2yrs/Master's +1yr
Env. Analyst 1	5 yrs. experience in practices of environmental analysis OR 1 yr Field Insp.2 OR Bachelor's +1/Master's
Env. Intern (training position limited to 2 years)	Bachelor's/ Master's in environmental field
San. Engineer 2	6 yrs exp. in engineering (design, construction, operation, inspection, regulation, investigation of waste treatment, water pollution problems) OR Engineering Bachelor's + 2 yrs/Master's +1 yr
Engin. Intern (training position limited to 2 years)	Bachelor's in industrial technology/construction or engineering
Field Inspector 2	6 yrs experience field inspection (sampling, investigation techniques, interpreting data, etc.) OR Bachelor's (science-related)
Fiscal Admin. Officer	6 yrs experience in fiscal/admin functions (accounting, budget management, personnel, purchasing, etc.), with at least 1 yr in accounting or budgeting function and with at least 1. 2 yrs in position requiring indep. judgment OR Bachelor's + 2 yrs Master's in Public/Business Admin + 1 yr
Fiscal Admin. Asst.	4 yrs experience in complex clerical work (financial record keeping or examining, payroll preparation, etc.) OR 2 yrs college + 2 yrs exp 1 yr as pre-professional trainee + 3 yrs
<p>* Environmental Analyst positions include following disciplines: biological sciences (biology, zoology, env. science, biochemistry, botany, ecology, etc.); earth sciences (geology, hydrology, soils science, etc.) ; economics (env.); environmental planning; and physical sciences (chemistry, physics, engineering).</p>	

APPENDIX F

Comparison Of State Tank Clean-up Funds

For the past several years the Vermont Department of Environmental Conservation (DEC) has conducted an annual survey of states regarding their leaking underground storage tank state financial assurance funds. Most of the information for this appendix came from the 1998 survey, but recent EPA sources were used as well. The results of the survey total 28 pages, but some of the most important information is summarized below. Forty-seven states responded to the survey; Hawaii, Oregon, and New Jersey did not.

According to a 1997 EPA report, 42 states have submitted plans for approval of their Clean-up Funds but only 34 funds have been approved by EPA. Another six states operate funds that haven't been submitted for EPA approval. States may operate a fund without EPA approval but their tank owners cannot use the state fund to demonstrate compliance with federal financial responsibility requirements. Thus, it appears that 48 states operate a fund, but only 34 states have EPA approval. New Jersey does not have a fund, and New York, Maryland, and Alaska each have funds that do not meet federal financial responsibility requirements.

Twenty of the states that responded to the Vermont DEC survey indicated they cover above ground as well as underground tanks; most states, like Connecticut, do not. Twenty-four states, including Connecticut, cover abandoned tanks as well as those with clear ownership.

All 47 states that responded to the survey indicated they covered payments for corrective action to clean-up a site. Forty-one states indicate some coverage for third parties, but a great many provide only partial coverage, or only to third parties who work through a responsible party.

Forty-two states, including Connecticut, indicate that regulatory compliance is examined as a condition of eligibility. No survey details are provided on what parties must demonstrate in order to be eligible. All but nine states limit coverage depending on the date of the release.

Twenty-four states have limits on the fund balance; 20, including Connecticut, have both a ceiling and a floor, while four states restrict either the top or the bottom but not both. The ceiling limits range from \$5 million in Kansas to \$150 million in Florida. The bottom limits vary from \$500,000 in Nevada to \$100 million in Florida.

Connecticut is one only one of 10 states where a deductible is applied before reimbursement is made. They range from \$5,000 to \$200,000 – Connecticut's is \$10,000. Two of the 10 states have different deductibles for third parties.

Organizationally, Connecticut is one of 28 states where the environmental protection agency administers the account. An additional six states have independent Clean-up Account Boards that administer the funds. In four other states, the labor, commerce, corporations, or revenue departments administer their funds, and two states have their insurance departments operate the funds. Twenty-two states where fund are operated from a state agency also use a board to help oversee fund activities.

Thirteen states employ a third party administrator to staff the accounts, while the vast majority of states staff their accounts with agency personnel. Almost all states have both technical and financial review staff. The total number of staff assigned to both functions range from two in North Dakota and Delaware to 130 in New York. Seventeen states have between 10 to 20 staff persons, which is similar to Connecticut, with 16 employees.

The number of claims filed and the amounts paid from the funds of course vary by the size and location of the state, as well as the type of fund and its requirements. Claims filed range from fewer than 50 in Indiana to 22,000 in Florida. The sites covered by these claims ranged from only 38 in Rhode Island to 13,000 in California. The average claim payment also varied according to the survey respondents. Several states (Alabama, Kansas, Missouri, Montana, North Dakota, and New Mexico) paid less than \$10,000 for an average claim. Idaho and Indiana paid more than \$100,000 for an average claim. Connecticut indicated that the average claim payment has been \$87,311, the third highest of the responding states. It should be noted the methods of reporting on awards vary from state to state, so caution should be taken in making state-to-state comparison of awards.

Twenty states are imposing sunset requirements on the dates of eligible releases, and 12 states are going to end their programs altogether. One of the 12 states, Michigan, has already passed its sunset date of June 1995, and Iowa will be the last state with a projected sunset date to end its program, in 2009.