



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

RECEIVED
OCT 31 2016
PETROLEUM RELEASE FUND

Ref: 8P-R

Mr. Alan Bakeberg
Director of Engineering
Petroleum Release Compensation Fund
South Dakota Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, South Dakota 57501

Re: Revisions to the Annual Soundness Review of the South Dakota Petroleum Release
Compensation Fund Fiscal Year (FY) 2015

Dear Mr. Bakeberg:

Enclosed is the U.S. Environmental Protection Agency's *revised* soundness review of the South Dakota Petroleum Release Compensation Fund (State Fund) for 2015.

These revisions include the deletion of two incorrect charts from the 2015 State Fund workbook and the corrected amount of funds transferred from the State Fund to the LUST Cost Recovery subfund. The correct amount is \$2,017,500 (EPA reported \$2,017,523.71).

If you would like to discuss these revisions, please contact Janice Pearson at (303) 312-6354 or Theresa Martella at (303) 312-6329 or at martella.theresa@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nancy R. Morlock".

Nancy R. Morlock, Director
Resource Conservation and Recovery Program

cc: Bill Markley
Ground Water Quality Program, SD DENR

Doug Miller
Storage Tanks Section, SD DENR

**South Dakota Petroleum Release Compensation Fund
Annual Soundness Review
Fiscal Year 2015**

Report revised October 4, 2016

The U. S. Environmental Protection Agency annually reviews and assesses the soundness of state cleanup funds established to fulfill the federal financial responsibility requirement for owners and/or operators of federally regulated underground storage tanks (USTs). The EPA's fiscal year (FY) 2015 annual review and assessment of the South Dakota Petroleum Release Compensation Fund (State Fund) follows below.

The State Fund Soundness Workbook Charts displaying the data the EPA has considered in this assessment are provided in Appendix 1 and are based on South Dakota's fiscal year July 1, 2014, through June 30, 2015. More detail about the operational setting of the South Dakota State Fund can be found in Appendix 2.

Are there major or pending changes to the State Fund?

While there were no major changes to the State Fund in state FY 2015, \$3.5 million was transferred out of the State Fund to South Dakota's General Fund on June 30, 2016.

Next Steps

South Dakota assured the EPA that a more accurate federally regulated fund-eligible (FRFE) count will be submitted in the FY 2016 workbook. South Dakota also agreed to submit a general breakdown of the status of the open FRFEs (for example, 30 percent of the open FRFE releases came in below the deductible, 15 percent of releases were incorrectly reported as FRFE, etc.). South Dakota can submit this information as a narrative to EPA Region 8 or in the FY 2016 Fund Soundness worksheet, *Refine Unpaid FRFE Estimate Fund Soundness*. With this additional information, the EPA will continue with annual reviews of the State Fund in FY 2016 to ensure soundness.

What share of the state's backlog does the State Fund cover?

In FY 2015, the South Dakota State Fund covered 97 percent of all federally regulated USTs. (See Appendix 1, Chart 1). The State Fund share of open releases continues to decline from a high of 476 in FY 2011 to 81 in FY 2015. A large portion of this decrease was due to the culling out of non-federally regulated releases.

Of the 81 open FRFE cleanups, 25 (31 percent) received a payment from the State Fund during FY 2015 (See Appendix 1, Chart 2).

How quickly is the State Fund addressing its open FRFE UST releases?

South Dakota continues to clean up releases quickly, with the average length of cleanup taking less than 41 months (3 ½ years) from the date the release is reported. Although the length of cleanup time increased by one year from 2014 to 2015, the 3 ½ year cleanup time remains steady (Appendix 1, Chart 5). Other evidence to support this includes FY 2015 data that demonstrates that the State Fund is making

progress cleaning up open releases, with 23 releases cleaned up in 2015. The net overall number of FRFE releases increased to 89 by the end of the year due to 31 new releases.

The number of open FRFE releases at the beginning of the fiscal year declined by 69 releases (46 percent) from FY 2013 to FY 2015. There were 23 cleanups completed and 31 new releases reported in FY 2015, with an overall net change of eight open FRFE releases.¹ South Dakota demonstrated a 54 percent reduction in open cleanups from FY 2013 to FY 2015. While the total number of cleanups completed decreased 77 percent in FY 2015, from 100 in FY 2014 to 23 in FY 2015, much of this decrease is due to the closure in FY 2014 of tank releases closed through the Abandoned Tank Program. (See Appendix 1, Chart 3). At the end of FY 2015, South Dakota had 89 open FRFE releases compared with 216 at the end of FY 2014. This trend demonstrates steady progress in cleaning up FRFE releases in South Dakota.

There were 11 cleanups completed in 2015 that were financed by the State Fund. This represents an 85.7 percent decrease from 2014 when 77 cleanups were completed. Many of the 2014 cleanups were completed through the Abandoned Tank Program and the remaining universe of open FRFE cleanups is now proportionally smaller.

There were 12 cleanups completed that never received payment from the State Fund. This may be because many of the open cleanups may not have met the \$10,000 deductible during the fiscal year. (See Appendix 1, Chart 4).

Has the State Fund had enough money to address its open FRFE release cleanups?

The State Fund carried forward an unspent balance and adjusted end-of-year balance of \$4,880,513 in FY 2015. This is an 18 percent increase from the adjusted end-of-year balance in 2014 when \$2,017,500 was transferred from the State Fund to the LUST Cost Recover subfund (Appendix 1, Chart 6).

Is the State Fund financed to further reduce its open FRFE release cleanups?

Income and spending levels from FY 2012 to FY 2015 demonstrate that the State Fund had sufficient financing available to reduce the number of open FRFE cleanups. According to the data provided by the South Dakota Department of Environment and Natural Resources (SD DENR), approximately \$658,566 was needed to work on all open FRFE releases in FY 2015 and only \$450,020 if the average cleanup takes five years. The State Fund had \$5,923,018 available for spending in 2015, which was more than enough to reduce its open FRFE releases (Appendix 1, Chart 7). The State Fund ended 2015 with \$4,880,513 unspent.

South Dakota reported to the EPA in August 2016 that the State Legislature transferred \$3.5 million from the State Fund to South Dakota's General Fund. This lowered the fund balance to \$2,054,582 at the end of FY 2016. The EPA will examine the amount available for spending and the impact of the \$3.5 million transfer during the FY 2016 review.

¹ Net change of open FRFE releases in FY 2015 = 81 open FRFE releases at beginning of FY- 23 FRFE cleanups completed + 31 new releases = 89 open releases at end of 2015. The overall net change in open FRFE releases = 8

The average cost of cleanup in South Dakota in FY 2015 is \$27,779, which is well below the national average of \$157,347.² Still, the average cost of cleanup did increase by approximately 50 percent in 2015, from \$18,199 in 2014 and \$18,375 in 2013. South Dakota uses risk-based closure for releases and this lowers the cost of the average cleanup. However, because of the large variance between the national average and the South Dakota average, the EPA will continue to closely monitor the cost of cleanup in FY 2016 and FY 2017 (Appendix 1, Chart 7a).

The SD DENR reported \$40,199 in unpaid cleanup claims at the end of FY 2015 (Appendix 1, Chart 8.)

On June 12, 2014, the EPA requested SD DENR to make a reasonable effort to recover LUST Trust Fund expenditures incurred under their past and present cooperative agreements from liable owners and operators. Since most tank owners within the state are covered under the State Fund, the State Fund approved the direct transfer of \$2,017,500 from the State Fund to the LUST Cost Recovery subfund. Of this amount, \$1,990,000 was transferred in FY 2014, and \$27,500 was transferred in FY 2015.

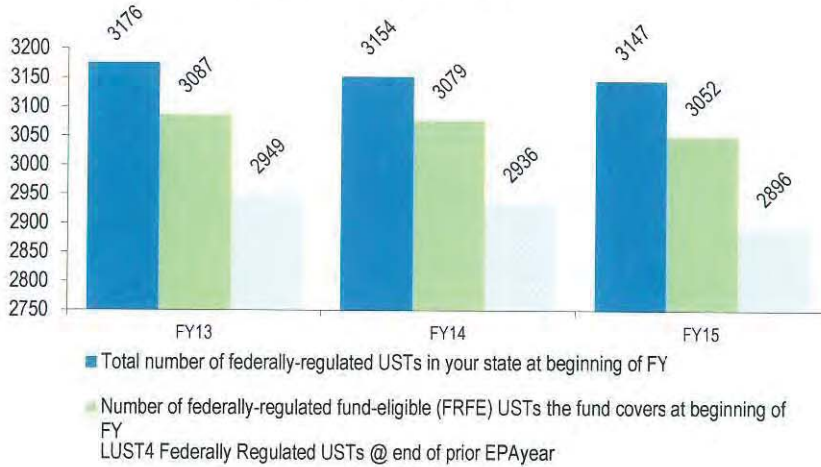
During EPA's 2015 end-of-year program evaluation of South Dakota's LUST Program, South Dakota and the EPA discussed the fact that the state has not spent any of the \$2,017,500 of cost recovered LUST Trust funds that were reimbursed from the State Fund in 2014 and 2015. The EPA expressed concern that the state has not spent or documented any spending of the recovered funds in accordance with 2 CFR § 200.305(b)(5) and 2 CFR § 1500.7 and 2 CFR § 200.307 and applicable requirements in the cooperative agreement. The EPA requested a plan and schedule for the state to spend the cost-recovered funds in accordance with the grant conditions so that it can be incorporated into the 2017 LUST cooperative agreement. The EPA also noted that if the state is unable to find appropriate uses for the cost-recovered funds, it could choose to return the funds to the U.S. Department of Treasury.

SD DENR submitted the 2017 spending plan for the \$2,017,500, and this plan will be incorporated into the workplan of the LUST grant and will be used to forecast and maneuver the outlay of recovered funds from year to year. To begin the accounting of recovered funds, South Dakota will be issued a new LUST grant for fiscal year 2017 with a federal funding level of \$100,000. This is intended to be a transitional level of funding to put the SD DENR Ground Water Program's recovery funds plan into action. South Dakota and the EPA will collectively develop a tracking mechanism for each LUST eligible expense of recovered funds and coordinate a way of tracking selected activities, which offers agreed upon accuracy, transparency, and the ability to compile historic charges towards recovered funds, starting in FY 2017.

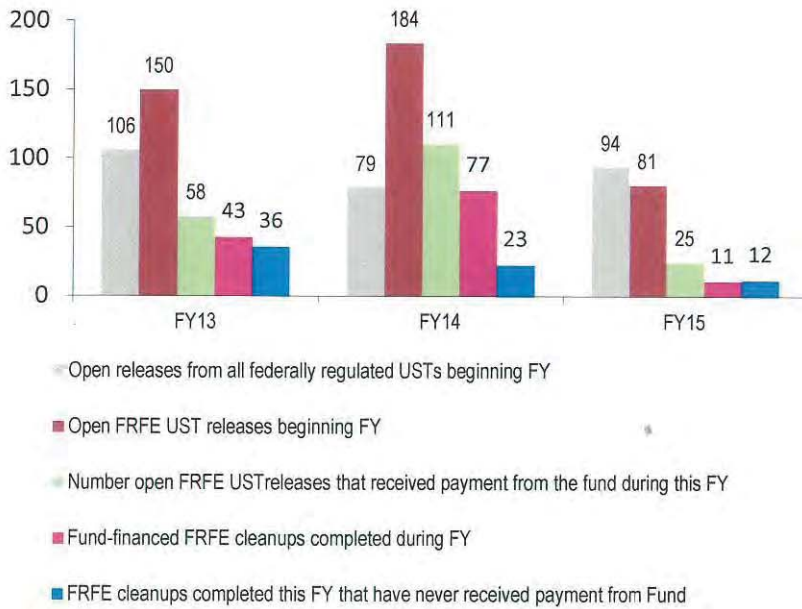
² Average cost of UST cleanup: \$157,347, ASTSWMO, "State Fund Survey Results 2015 Summary." http://astswmo.org/files/policies/Tanks/2015_State_Funds_Survey/CV.2015%20.summary.table.pdf

Appendix 1: Data and Charts from South Dakota State Fund FY 2015 Soundness Workbook

1. USTs Covered By The Fund

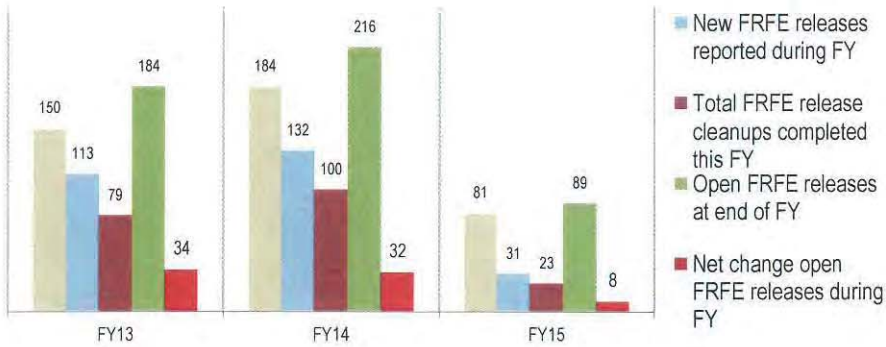


2. The Fund's Share Of Open UST Releases

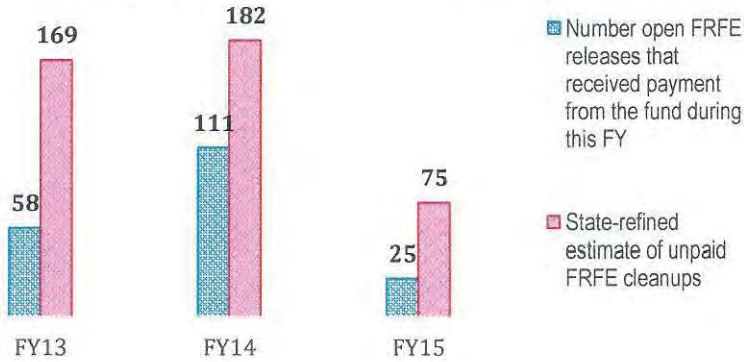


Cleanups Completed

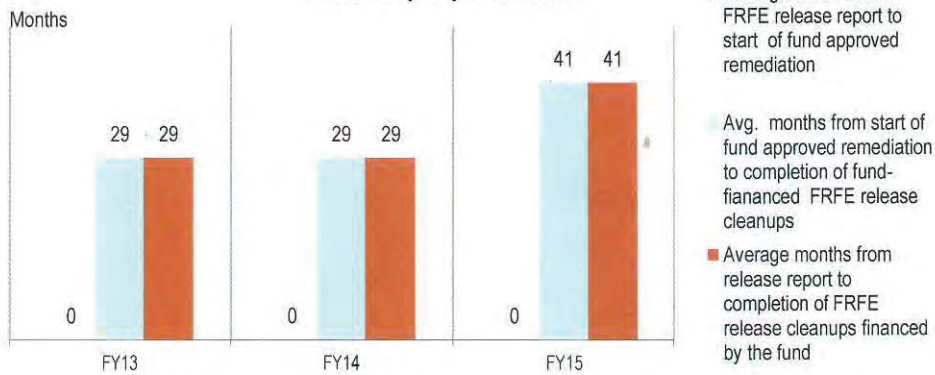
3. FRFE Cleanup Progress



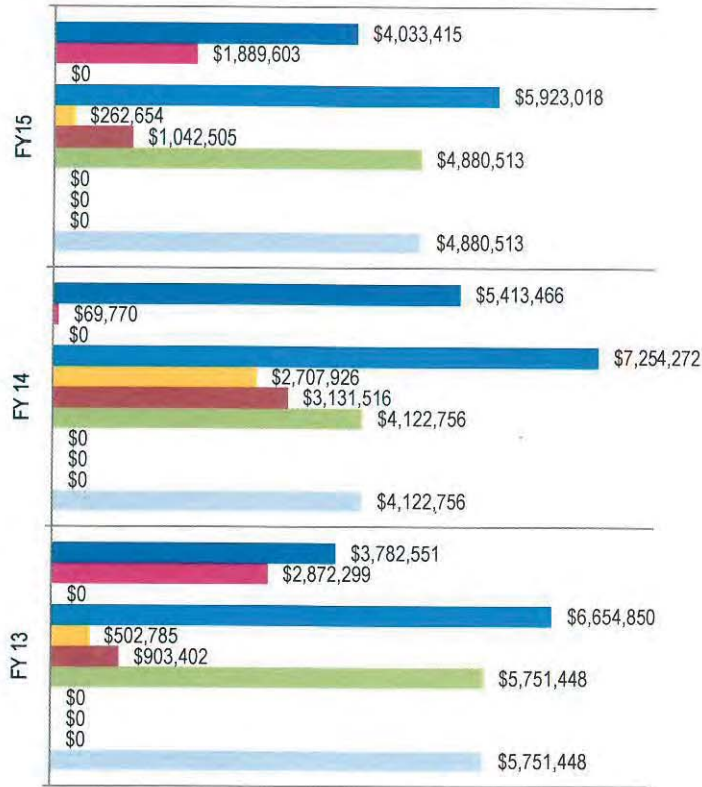
4. Paid & Estimated Unpaid FRFE Cleanups



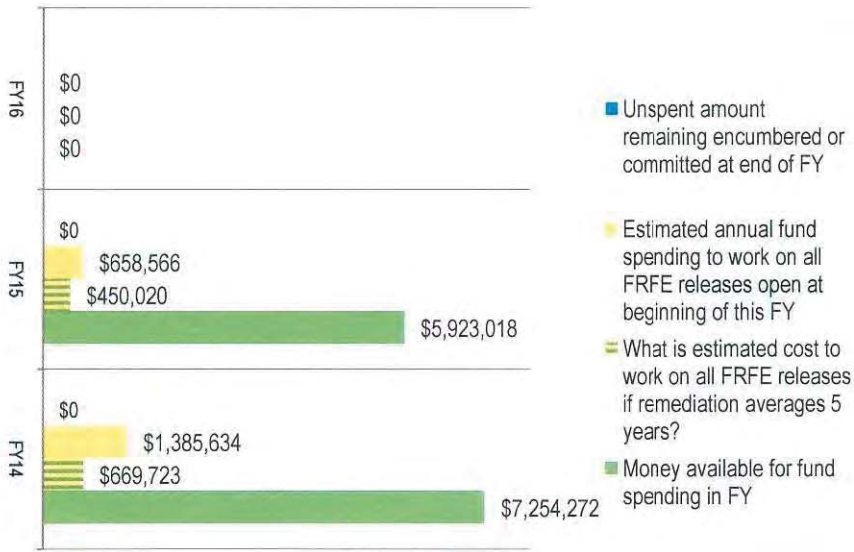
5. Cleanup Pipeline Time



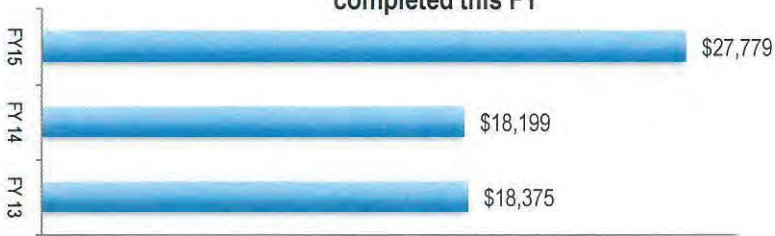
6. Balance, Income and Spending



7. Available Funding And Estimated Annual Funding To Address All Open FRFE Sites Concurrently



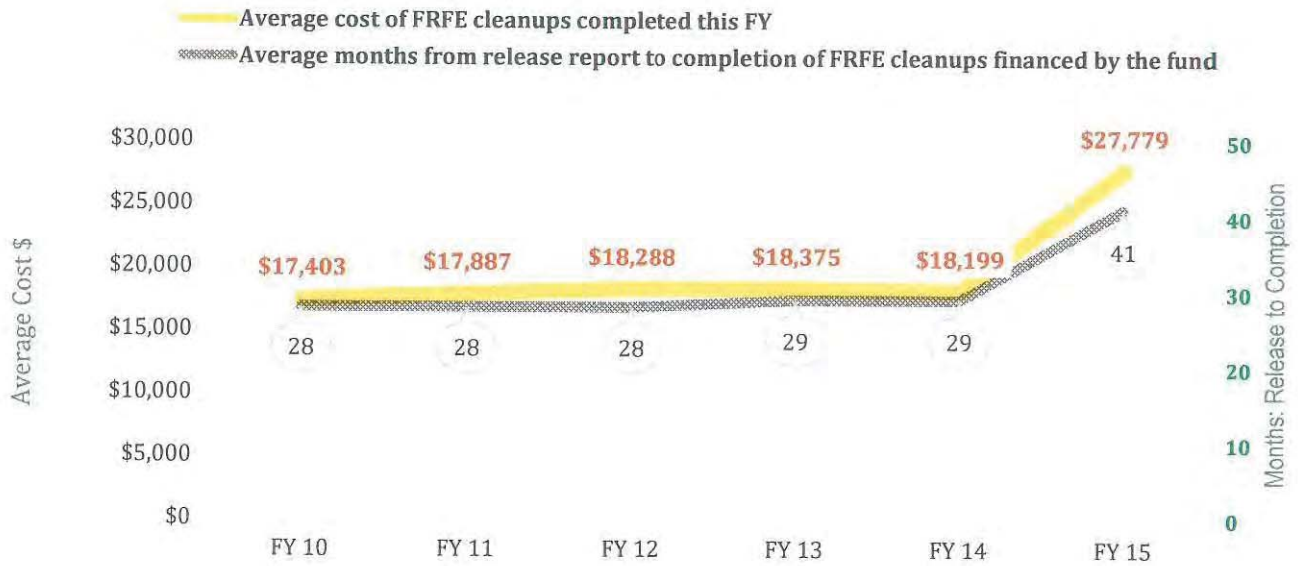
7a. Average cost of fund-financed FRFE release cleanups completed this FY



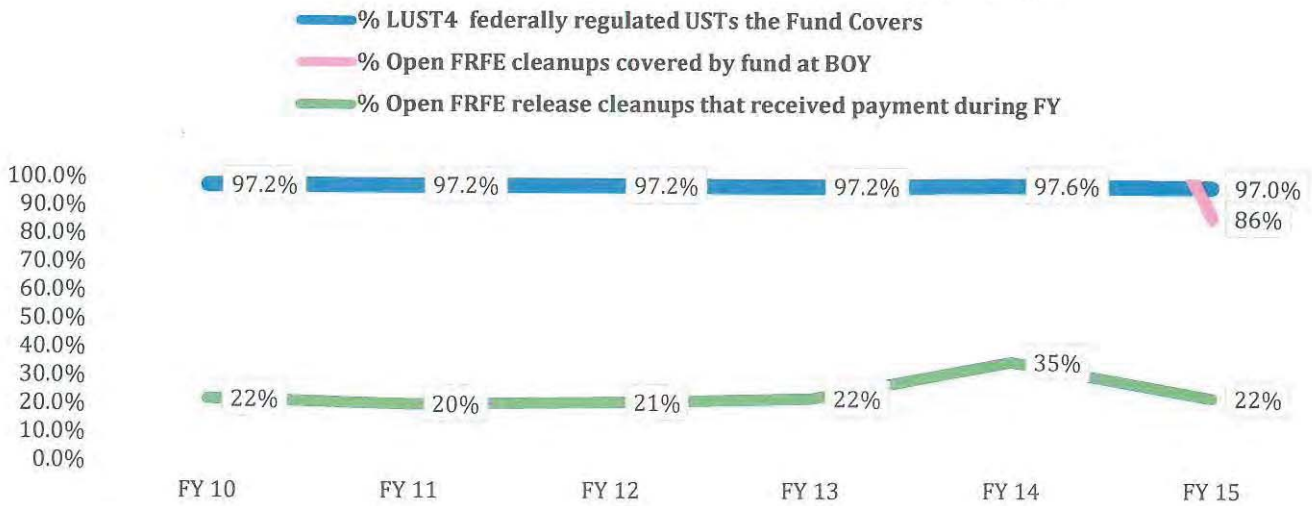
8. EOY Cash Balance And Unpaid Claims



Cleanup Cost and Time



Share of USTs and Releases the Fund Covers



Appendix 2: Background

What the State Fund covers.

The South Dakota Petroleum Release Compensation Fund covers USTs, used oil tanks, heating oil tanks, ASTs, abandoned tanks, and farm storage tanks. UST owners and operators are responsible for a deductible of \$10,000. The State Fund covers the following: labor, testing and use of machinery; materials and supplies; authorized professional services; compensation for third-party damage claims; costs incurred by order of a federal, state, or local government; and any other expense found to be reasonable and necessary for remediation.

Eligibility requirements and determination of eligibility.

An UST owner/operator must be in substantial compliance with all requirements to receive reimbursement from the State Fund.

Organizational setting and structure of the State Fund.

The SD DENR administers the State Fund. The State Fund was created to assist in the cleanup of certain petroleum releases, to investigate reported releases, to determine the amount of reimbursement due to responsible parties for corrective actions they have taken, to provide a financial assurance mechanism that will comply with the federal and state financial responsibility requirements for regulated petroleum tank owners, and to report to the Governor and Legislature. The reimbursement limit is \$1 million per occurrence and \$1.99 million annual aggregate per responsible party per fiscal year. Reimbursement for a single release site can never exceed \$990,000, unless it is determined that a new release has taken place and claims for all prior releases have been established or settled.

Sources and path of State Fund income.

The State Fund is financed with a 10.65 percent of a \$0.02 per gallon fee on petroleum products that is deposited into the State Fund. Additional sources of funding revenue include cost recovery and interest on the investment of money in the State Fund and money received as gifts to be used by the State Fund.

Payments are suspended on Abandoned Tank Program sites, except at high-risk sites, when the State Fund balance falls to \$2 million or less. The use of risk-based corrective action criteria determines which sites are considered "high-risk." In addition, if paying out claims would cause the cash balance in the State Fund to fall below \$100,000 for any week, all claims payable that week will be pro-rated (reduced by a percentage equal to the shortfall of \$100,000 in the State Fund).