



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

RECEIVED
JUN 05 2017

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: 2017 Annual Soundness Review of the South Dakota Petroleum Release Compensation Fund
Fiscal Year (FY) 2016

Dear Mr. Bakeberg:

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

On June 30, 2016, \$3.5 million was transferred out of the South Dakota State Fund to South Dakota's General Fund. The South Dakota State Fund ended 2016 with \$2,054,583 unspent, which is a significant decrease in dollars unspent when compared to funds unspent from 2010-2016. The \$3.5 million transfer out of the fund may have left the South Dakota State Fund more vulnerable and possibly underfunded if there is an expensive emergency release. Nevertheless, the data submitted by South Dakota indicates that as of June 30, 2016, the South Dakota State Fund has enough money to pay for existing open releases.

The EPA will continue to monitor the balance of the fund to ensure that there is enough money to cleanup existing releases and new releases coming on line. The EPA appreciates the positive working relationship and collaboration between your program and ours.

If you would like to discuss this with me I can be reached at (303) 312-6421. If you require more specific information, the most knowledgeable person on my staff is Theresa Martella, who can be reached at (303) 312-6329 or at martella.theresa@epa.gov.

Sincerely,

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

Nancy Morlock, Director
Resource Conservation and Recovery Program
Office of Partnerships and Regulatory Assistance

Enclosure

**South Dakota Petroleum Release Compensation Fund
Annual Soundness Review
Fiscal Year 2016**

May 23, 2017

The U. S. Environmental Protection Agency (EPA) annually reviews and assesses the soundness of state cleanup funds established to fulfill the federal financial responsibility requirements for owners and/or operators of federally-regulated underground storage tanks (USTs). The EPA's fiscal year (FY) 2016 annual review and assessment of the South Dakota Petroleum Release Compensation Fund (South Dakota State Fund) follows below.

The South Dakota 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, 2015, through June 30, 2016. More detail about the operational setting of the South Dakota State Fund can be found in Appendix 2.

Findings and Next Steps

On June 30, 2016, \$3.5 million was transferred out of the South Dakota State Fund to South Dakota's General Fund. The South Dakota State Fund ended 2016 with \$2,054,583 unspent, which is a significant decrease in dollars unspent when compared to funds unspent from 2010-2016. The \$3.5 million transfer out of the fund may have left the South Dakota State Fund more vulnerable and possibly underfunded if there is an expensive emergency release. Nevertheless, the data submitted by South Dakota indicates that as of June 30, 2016, the South Dakota State Fund has enough money to pay for existing open releases.

The \$3.5 million transfer was more than 50% of the end of year balance of 2015. The EPA will continue to monitor the balance of the fund to ensure that there is enough money to cleanup existing releases and new releases coming on line. The EPA encourages South Dakota to consider replenishing the balance to a reasonable amount in order to have funds on hand, not just for existing releases, but for emergencies and/or unexpected releases that may require a large amount of funds.

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

In FY 2016, the South Dakota State Fund covered 98 percent of all federally-regulated USTs. (See Appendix 1, Chart 1). The South Dakota State Fund share of open releases continues to decline from a high of 476 in FY 2011 to 58 in FY 2016. A large portion of this decrease was due to the culling out of non-federally-regulated releases. At the end of FY 2016, there were 82 open releases from all federally-regulated fund-eligible (FRFE) releases, with 24 of these releases not eligible for the South Dakota State Fund.

In FY 2016, there were 11 more new releases than in FY 2015, for a total of 42 new releases. Of the 58 open FRFE cleanups, 28 (52 percent) received a payment from the South Dakota State Fund during FY 2016 (See Appendix 1, Chart 2). According to South Dakota, the number of releases from regular sites (i.e. gas stations) remained about the same. But, there were 11 additional releases reported from regulated tanks removed under the Abandoned Tank Program.

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

South Dakota continues to clean up releases quickly, with the average length of cleanup taking 39 months, (3 ¼ years) from the date the release is reported. In addition, the length of cleanup time decreased by 2 months from 2015 to 2016 (Appendix 1, Chart 5). Other evidence to support this includes FY 2016 data that demonstrates the South Dakota State Fund is making progress cleaning up open releases, with 48 releases cleaned up in 2016. The net overall number of FRFE releases decreased to 52 by the end of the year.

The number of open FRFE releases at the beginning of the fiscal year declined by 126 releases (69%) from FY 2014 to FY 2016. There were 48 cleanups completed and 42 new releases reported in FY 2016, with an overall net change of six open FRFE releases. South Dakota demonstrated a 76% percent reduction in open FRFE releases from the end of FY 2014. In addition, the total number of cleanups completed more than doubled from FY 2015 to FY 2016, from 23 in FY 2015 to 48 in FY 2016 (See Appendix 1, Chart 3). At the end of FY 2016, South Dakota had 52 open FRFE releases compared with 89 at the end of FY 2015 and 216 at the end of FY 2014. This trend demonstrates steady progress in cleaning up FRFE releases in South Dakota.

There were 32 cleanups completed in 2016 that were financed by the South Dakota State Fund. This represents a tripling of cleanups completed using the South Dakota State Fund from 2015 when 11 cleanups were completed. The remaining universe of open FRFE cleanups (52) is now proportionally smaller than it was in FY 2014.

There were 16 cleanups completed that never received payment from the South Dakota 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 South Dakota State Fund had enough money to address its open FRFE release cleanups?

The South Dakota State Fund's adjusted end-of-year balance as of June 30, 2016, was \$2,054,583, which is a 49% decrease from what the fund had on June 30, 2015. This large decrease is due to the transfer on June 30, 2016, of \$3.5 million out of the South Dakota State Fund to South Dakota's General Fund (Appendix 1, Chart 6).

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

Income and spending levels from FY 2012 to FY 2015 demonstrate that the South Dakota State Fund had sufficient financing available to reduce the number of open FRFE cleanups. Based upon the data provided by the South Dakota Department of Environment and Natural Resources (SD DENR), EPA calculates that approximately \$512,613 was needed to work on all open FRFE releases in FY2016 and only \$333,198 if the average cleanup takes five years. The South Dakota State Fund had \$6,682,485 available for spending in 2016, which was more than enough to reduce its open FRFE releases (Appendix 1, Chart 7) even when considering the \$3.5 million was transferred out. Total spending in FY 2016 was \$4,627,902, which included the \$3,500,000 transfer out of the fund (Appendix 1, Chart 7).

The South Dakota State Fund ended 2016 with \$2,054,583 unspent, which is a significant decrease when compared to unspent funds from 2010-2016 (see revised Unspent Balance table.) The \$3.5 million transfer out of the fund may have left the South Dakota State Fund more vulnerable and possibly

underfunded if there is an expensive emergency release. Nevertheless, the data submitted by South Dakota indicates that as of June 30, 2016, the South Dakota State Fund has enough money to pay for existing open releases.

South Dakota State Fund Unspent Balances (FY 10-FY 16)						
FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
\$5,123,618	\$3,276,560	\$3,782,551	\$5,413,466	\$4,033,415	\$4,749,291	\$2,054,583

South Dakota reported to the EPA in August 2016 that the State Legislature transferred \$3.5 million from the South Dakota State Fund to South Dakota’s General Fund. This lowered the fund balance to \$2,054,583 at the end of FY 2016.

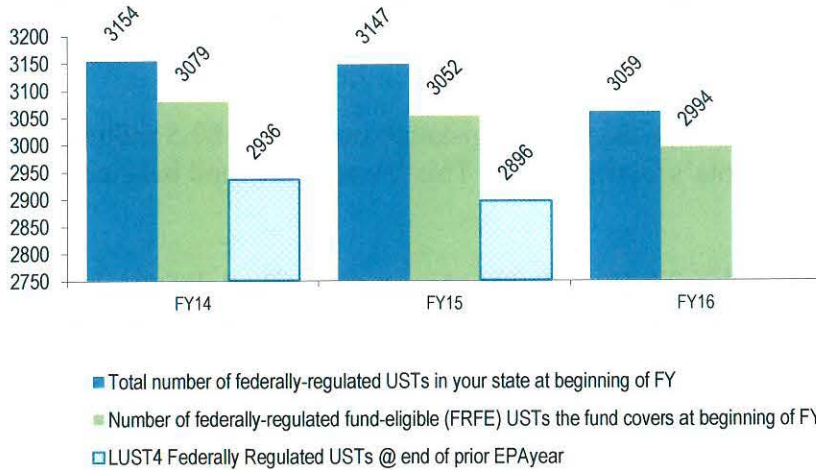
The average cost of cleanup in South Dakota in FY 2016 is \$28,724 (Appendix 1, Chart 7a) which, as reported in previous reports, is well below the national average of \$157,347.¹ South Dakota uses risk-based closure for releases and this lowers the cost of the average cleanup. However, because of the large variance between the national average and the South Dakota average, as well as the 3.5 million taken out of the South Dakota State Fund in 2016, the EPA will continue to closely monitor the cost of cleanup in FY 2017 and FY 2018.

¹ 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

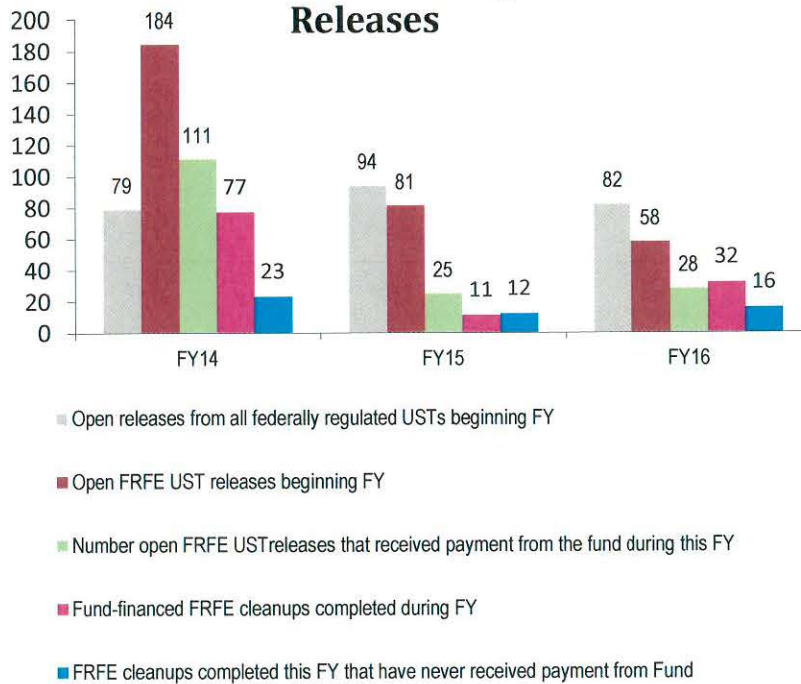
Appendix 1: Data and Charts from South Dakota State Fund

FY 2016 Soundness Workbook

1. USTs Covered By The Fund

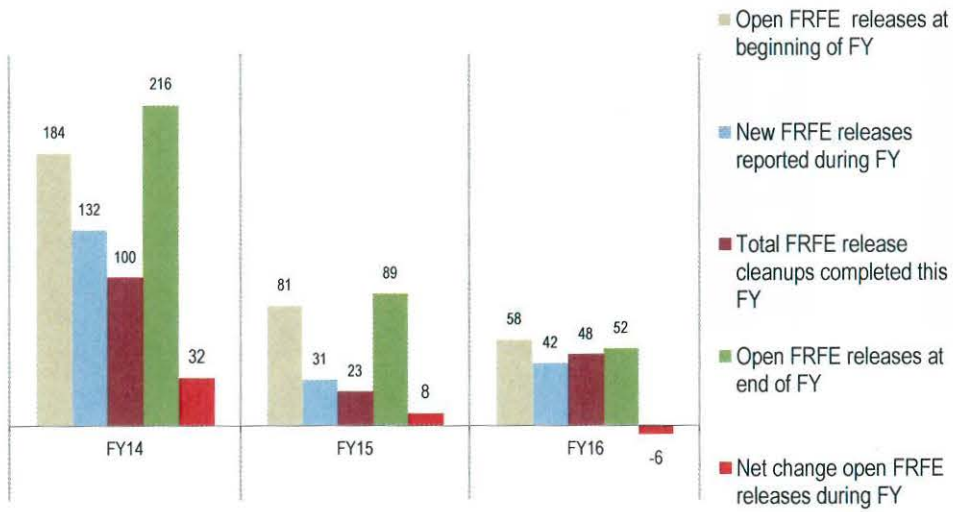


2. The Fund's Share Of Open UST Releases



Cleanups Completed

3.a FRFE Cleanup Progress



4. Paid & Estimated Unpaid FRFE Cleanups



5. Cleanup Pipeline Time

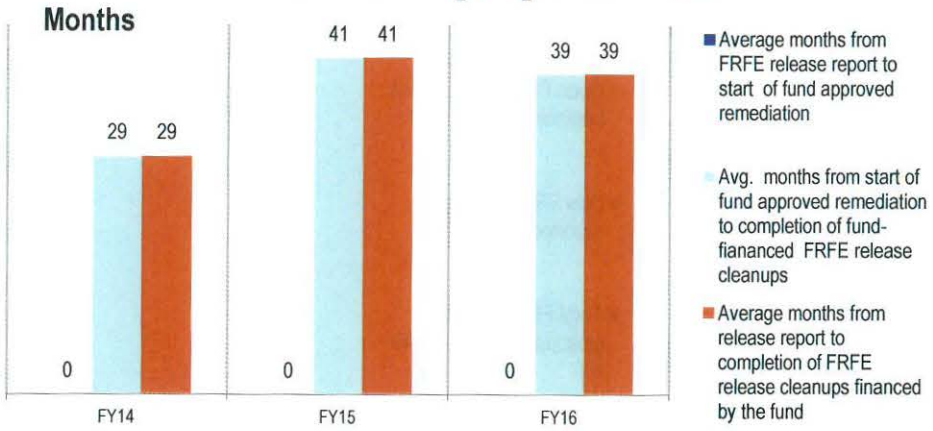
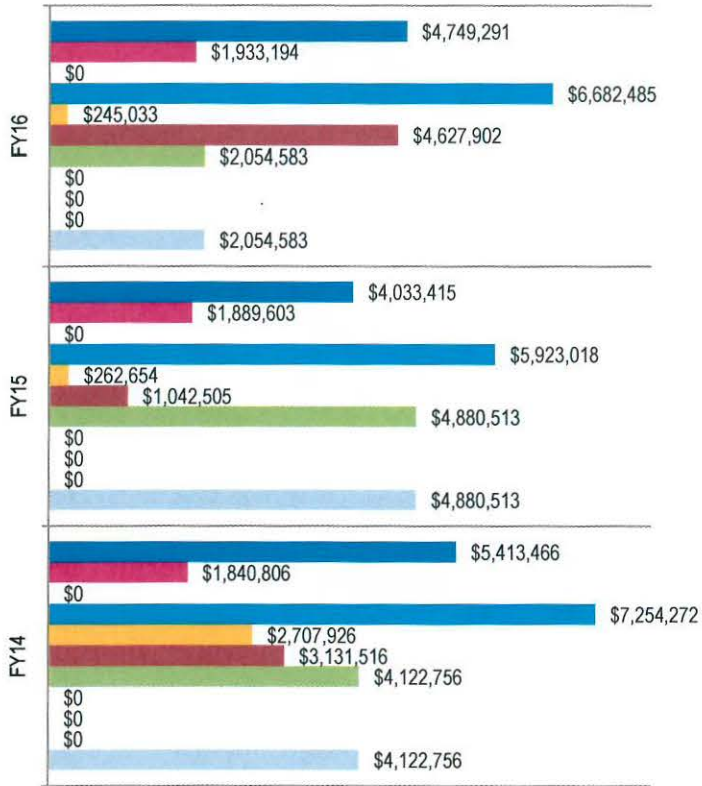
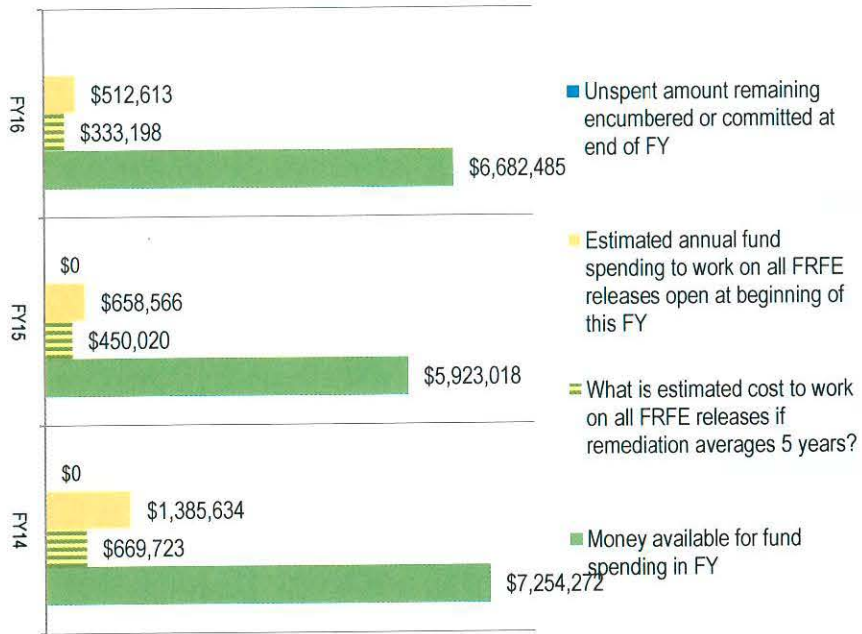


Chart 6. Balance, Income and



- Cash balance at beginning of year
- Total fund income
- Total dollar value of controls on fund spending during this FY
- Money available for fund spending in FY
- FRFE cleanup reimbursements and direct payments to FRFE cleanup contractors
- Total spending
- Unspent balance at end of year
- Unspent amount remaining encumbered or committed at end of FY
- Additions to end of year balance
- Reductions to end of year balance
- Adjusted end of year balance

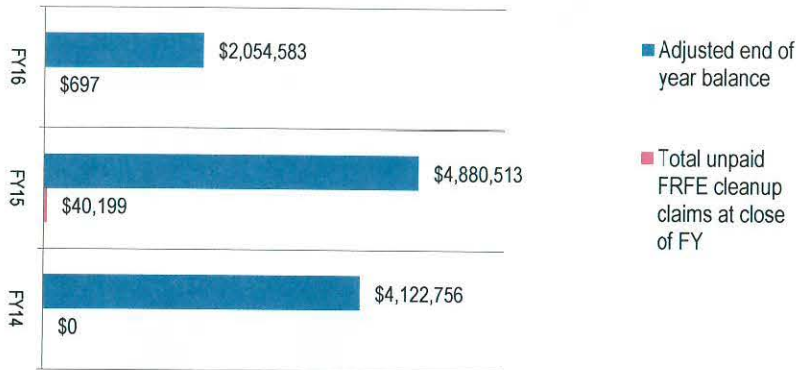
7. Available Funding And Estimated Annual Funding To Address All Open FRFE Sites Concurrently



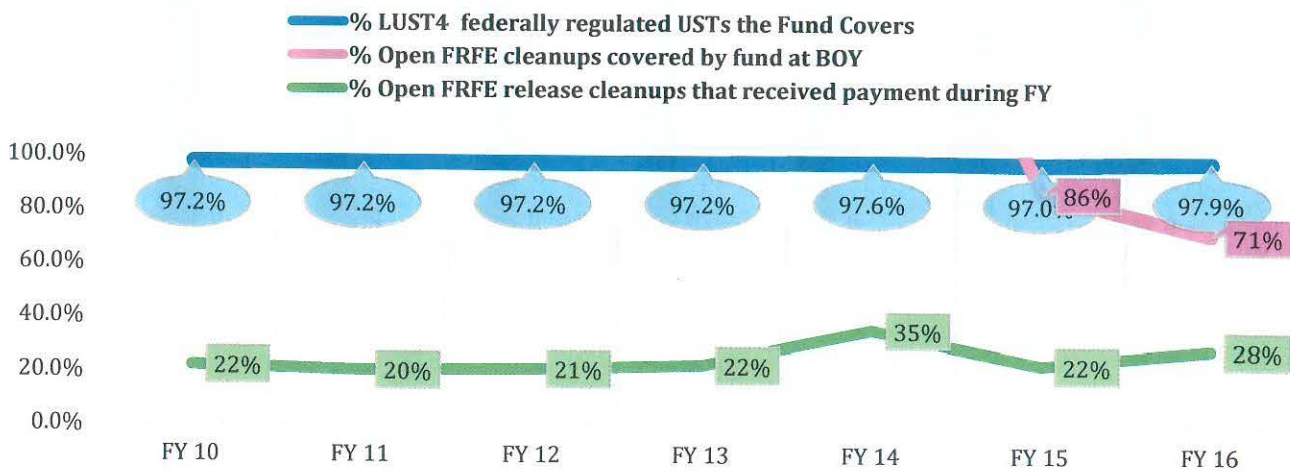
7a. Average cost of fund-financed FRFE release cleanups completed this FY



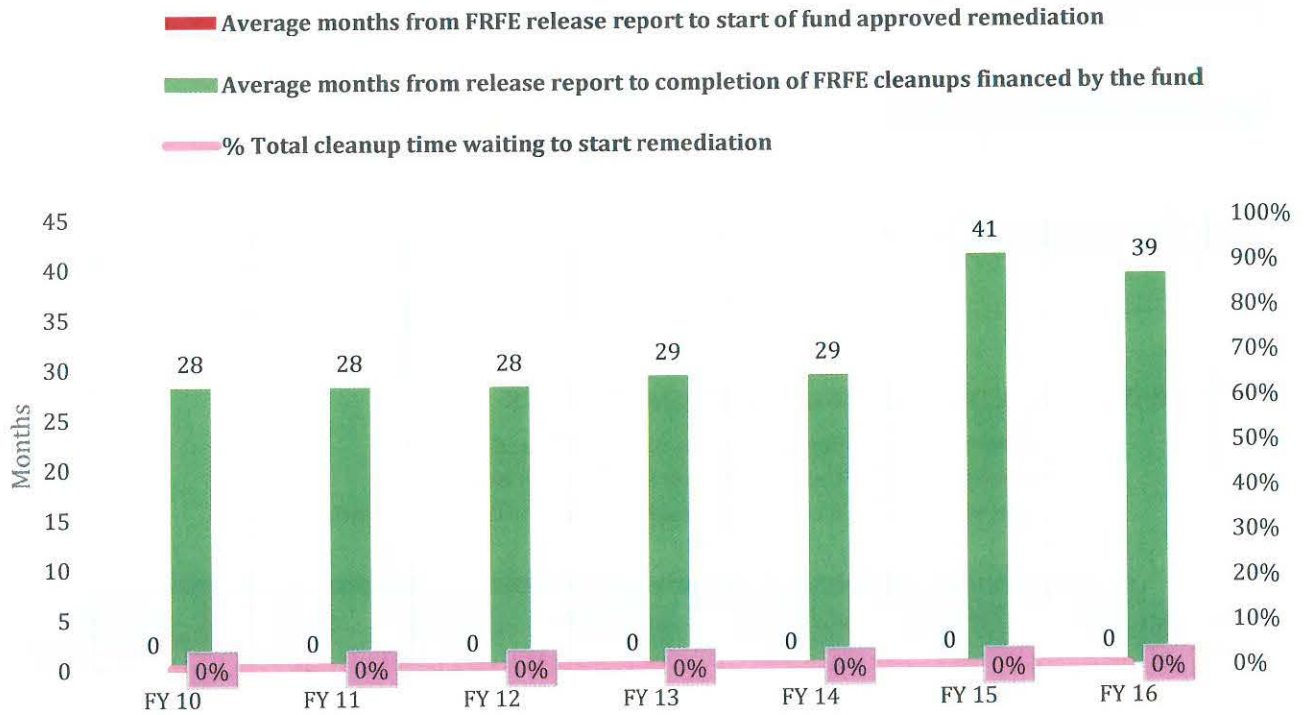
8. EOY Cash Balance And Unpaid Claims



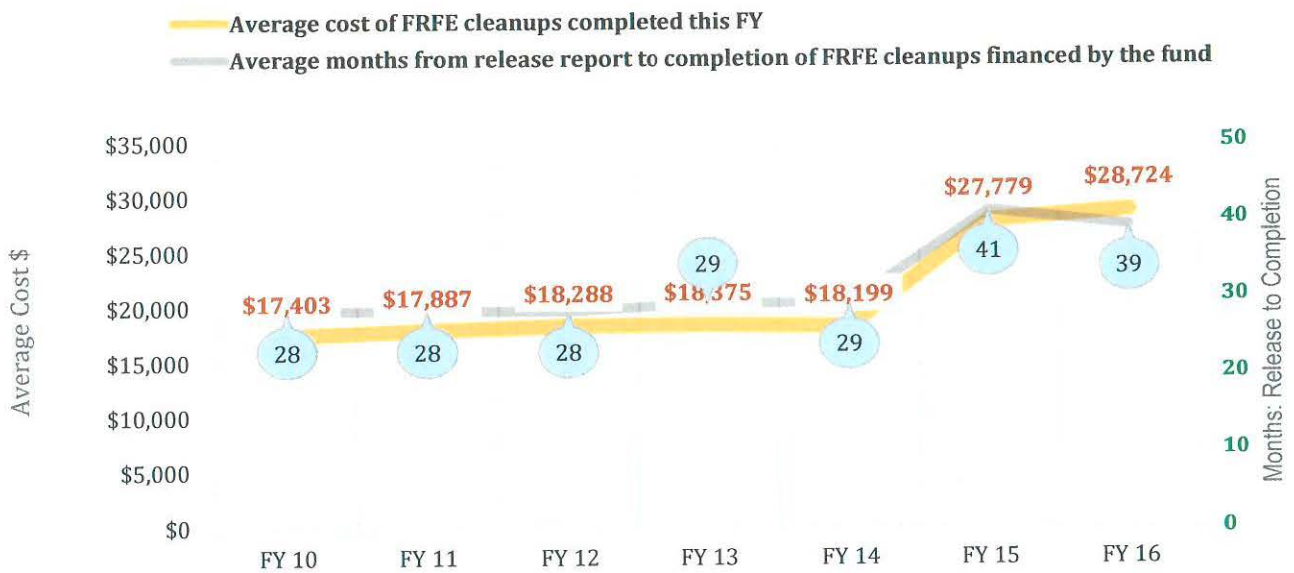
9. Share of USTs and Releases the Fund Covers



10. Backlog Reduction: Time to Start and Complete FRFE Cleanups



11. Cleanup Cost and Time



Appendix 2: Background

What the South Dakota State Fund covers.

The South Dakota Petroleum Release Compensation Fund covers USTs, used oil tanks, heating oil tanks, above ground storage tanks (ASTs), abandoned tanks, and farm storage tanks. UST owners and operators are responsible for a deductible of \$10,000. The South Dakota 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 South Dakota State Fund.

Organizational setting and structure of the South Dakota State Fund.

The SD DENR administers the South Dakota State Fund. The South Dakota 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 South Dakota State Fund income.

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

Payments are suspended on Abandoned Tank Program sites, except at high-risk sites, when the South Dakota 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 South Dakota 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 South Dakota State Fund).