

CHAPTER 64

**DISTRICT OF COLUMBIA UST TRUST FUND,
DISTRICT INITIATED CORRECTIVE ACTIONS
AND COST RECOVERY**

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6400 ESTABLISHMENT OF FUND

- 6400.1 The Director shall maintain a separate and distinct fund within the District of Columbia Treasury, for the District of Columbia Underground Storage Tank Trust Fund (District UST Trust Fund or Fund) mandated by the Act.
- 6400.2 The Director shall designate the Controller of the Department to maintain the District UST Trust Fund in compliance with the Act and the District of Columbia Fund Account Act of 1980, D.C. Code §47-371.

6401 FUND ACCOUNTING

- 6401.1 The Controller of the Department shall act as treasurer of the District UST Trust Fund and shall do the following:
 - (a) Ensure that all monies required to be deposited into the Fund under §6402 are in fact deposited into the Fund;
 - (b) Manage all disbursements from the Fund;
 - (c) Maintain records of all deposits into and disbursements from the Trust Fund;
 - (d) Prepare financial statements for the Trust Fund at least annually in accordance with the established District Financial Management System (FMS) and generally accepted accounting principles;
 - (e) Audit the UST Trust Fund at least once every two (2) years in accordance with 40 CFR §30.510(g); and
 - (f) Maintain the Fund in compliance with the District Financial Management System, the requirements of this chapter and any applicable federal regulations.
- 6401.2 Obligations shall not be incurred against the District UST Trust Fund for any purpose by any employee of the Department without prior approval of the Program Manager of the Underground Storage Tank Division and the Controller.
- 6401.3 Documentation for expenditures from the Fund shall meet the requirements of §6404.

6402 MONIES TO BE DEPOSITED IN UST TRUST FUND

- 6402.1 All monies collected or received in tank registration fees, inspection fees, licensure or certification fees, or other tank fees shall be deposited in the District UST Trust Fund.
- 6402.2 All civil penalties and costs recovered from responsible parties shall be deposited in the District UST Trust Fund.
- 6402.3 Costs recovered from responsible parties after the expenditure of federal grant dollars for the Leaking Underground Storage Tank Program (Federal LUST Trust Monies), shall be deposited into the Fund as program income, but shall be accounted for in compliance with applicable federal law.
- 6402.4 Any grants or contributions received, or monies received as reimbursement for expenditures related to the Leaking Underground Storage Tank Program, shall be deposited in the District UST Trust Fund, except as provided in §6402.5.
- 6402.5 Federal LUST Trust Monies (which are drawn down pursuant to a cooperative agreement with EPA and replace the expenditure of District appropriated monies) shall be maintained separate and apart from the District UST Trust Fund.
- 6402.6 Any interest earned on monies in the District UST Trust Fund shall be credited to the Fund.
- 6402.7 If, at any time, the monies in the Fund shall reach the sum of three million dollars (\$3,000,000), collection of the annual registration fee from tank owners pursuant to §5601, shall be suspended until the non-obligated balance in the Fund falls to two million seven hundred fifty thousand dollars (\$2,750,000), at which time the fee shall be reinstated.
- 6402.8 All other monies required to be deposited into the Fund pursuant to this section, shall continue to be deposited in the Fund without limitation, and funds in excess of three million dollars (\$3,000,000) at the end of the fiscal year shall remain in the Fund.

6403 PERMISSIBLE DISBURSEMENTS FROM THE FUND

- 6403.1 The term corrective action, as used in this chapter, shall encompass any and all actions described in §§6202 through 6214 of this Subtitle, including but not limited to, preliminary investigations, initial response actions, initial abatement, free product removal, site assessment, site assessment plans, development and implementation of corrective action plans, remediation, monitoring, and well closure.
- 6403.2 The Director may undertake corrective action where there is a release of a regulated substance into the environment, and may disburse UST Trust Fund monies for this purpose if the action is necessary to protect human health or the environment, and one or more of the following exist:

- (a) No person can be found within ninety (90) days or a shorter period, as may be necessary to protect human health or the environment, who is:
 - (1) An owner or operator;
 - (2) Subject to the corrective action rules in Chapter 62 of this Subtitle; and
 - (3) Capable of proper implementation of the required corrective action; or
- (b) A situation exists that requires immediate action by the Director to protect human health and the environment; or
- (c) Corrective action costs at a facility exceed the amount of coverage required by the Director pursuant to Chapter 67 of this Subtitle and expenditures from the Fund are necessary to ensure an effective corrective action; or
- (d) The responsible party has failed or refused to comply with an order issued by the Director, an Administrative Law Judge, or other representative of the Mayor, that requires compliance with the corrective action rules.

6403.3 The Director may deem an action necessary to protect human health or the environment if any of the following conditions exist, or if a field investigation or site assessment is necessary to determine whether any of the following conditions exist:

- (a) There is an accumulation of toxic, flammable or explosive vapors in dwellings, sewers, or in the surrounding area;
- (b) There is floating free product on surface or ground water;
- (c) There is soil, ground-water or surface water contamination above the maximum level permitted under District regulations;
- (d) There is a spill or release of a regulated substance to the environment;
- (e) There is a danger of migration of the release into the surface waters, ground waters, soils or air of the District of Columbia;
- (f) The release poses a danger to plants or animals in the vicinity; or
- (g) The release poses a danger to public health.

6403.4 Except as provided in §6403.5, disbursements may be made from the Fund to pay for the following:

- (a) Costs of persons or companies performing corrective actions as defined in §6403.1;

- (b) Housing and relocation assistance for persons forced to relocate due to contamination from a LUST site;
- (c) Costs related to cost recovery and enforcement proceedings;
- (d) Provision of alternative water supplies;
- (e) Exposure assessments;
- (f) Costs of restoring property after assessment or remediation performed at the direction of UST Branch; and
- (g) Administrative and operational costs incurred in the day-to-day administration of the UST Program including personnel costs, equipment, contract costs, supplies, training and travel. The costs shall not exceed two hundred fifty thousand dollars (\$250,000) per year during the first three years that tanks are registered, after which a new “cap” shall be established by the Director.

6403.5 Disbursements of costs recovered from responsible parties (based upon the expenditure of Federal LUST Trust Monies) which are deposited into the Fund may be made only for “cost eligible activities” permitted under federal law and regulations.

6403.6 Disbursements from the Fund for corrective actions shall be made in accordance with the priority system set forth in §6405.

6403.7 Disbursements may be made to undertake corrective action where there is a release of a regulated substance as set forth in §6403.2.

6404 DOCUMENTATION OF FUND EXPENDITURES

6404.1 Disbursements of monies from the Fund shall be documented in accordance with the requirements of this section.

6404.2 The Director shall maintain original records, as are kept in the ordinary course of business, for all Fund expenditures.

6404.3 The Director shall maintain documentation that tracks the cost of cleanup and enforcement actions on a site-specific basis.

6404.4 Documentation of direct costs shall identify costs by activity.

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6404.5 Any District agency contracting with or procuring services for the Director shall maintain and make available to the Director upon request, site-specific documentation of the following:

- (a) Time and attendance records including a description of employee activities, and fringe benefit calculations for all payroll expenses;

- (b) Copies of any advertisements, requests for proposals, proposals, contractor cost data, proposal evaluations, work change orders, reports on contractor work, audits of contractors, contracts, or other documents related to procurement of contractors to perform corrective actions;
- (c) Invoices, approval of invoices, and proof of payments for all contractor services;
- (d) Invoices, leases, proof of payment, receipts and, where feasible, hourly records of equipment use for any equipment leased or purchased;
- (e) Worksheets showing allocation of time to project and calculation of indirect costs;
- (f) Any authorizations, vouchers or receipts related to travel; and
- (g) Any other records kept in the normal course of accounting or required by federal regulation.

6404.6 Any contractor who performs corrective action work pursuant to a contract with the District, shall maintain records on a site-specific basis and shall bill the District for activities performed on a site-specific basis in accordance with District procurement regulations and policies.

6404.7 The Director shall maintain hard copies of all original cost documents for at least three(3) years from completion of the final expenditure report. If any litigation, audit or other action has been started before expiration of the three (3) year period, the records must be retained until completion of the action or resolution of all issues.

6405 SITE PRIORITIZATION FOR FUND EXPENDITURES

6405.1 The Director shall prioritize all eligible leaking underground storage tank (LUST) sites based on factors that include consideration of the following:

- (a) The danger of fire or explosion;
- (b) The danger of toxic vapors;
- (c) The environmental setting of the site including proximity to potable water supply, ground water or surface waters which may be impacted;
- (d) The present and future uses of the affected aquifer or surface waters;
- (e) The potential for migration off-site;
- (f) The type of contaminant;
- (g) The size of the release (number of gallons of regulated substance lost);

- (h) Whether the leak is continuing or has been contained;
- (i) Whether publicly owned lands are impacted;
- (j) The degree to which human health, safety, or welfare may be affected by exposure to the contamination;
- (k) The size of the population or area affected by the contamination; and
- (l) The time that has elapsed since the release was detected.

6405.2 The priority list of sites shall be based on an ordering of scored sites that the highest scored site(s) will be of highest priority for response action and the lowest scored site will be of lowest priority for response action.

6405.3 The Director may adjust the priority list as necessary based upon changing environmental conditions, public health needs, cost effectiveness, efficiency, and available resources.

6405.4 Regardless of the position of a site on the priority list, the Director may initiate emergency action for those sites that, in the judgment of the Director, present an imminent hazard to human health and safety or where failure to prevent migration of a regulated substance would cause irreversible damage to the environment. Site classification pursuant to § 6206 shall be completed to evaluate the need for additional assessment or development of a corrective action plan.

6406 RECOVERABLE COSTS

6406.1 Whenever District of Columbia UST Trust Fund monies or Federal LUST Trust Monies are expended, for undertaking corrective or enforcement action with respect to the release of a regulated substance from an underground storage tank, the responsible party or parties shall be jointly and severally liable to the District government for the costs.

6406.2 Recoverable costs shall include the following:

- (a) All costs related to identification and notification of owners, operators and other responsible parties, and enforcement actions against a responsible party;
- (b) All costs related to investigation, assessment, cleanup, and monitoring of sites;
- (c) Indirect costs incurred by the District based upon the formula negotiated annually with the appropriate federal agency;
- (d) All expenditures reasonably related to inducing a recalcitrant responsible party to comply and to recovering cleanup expenditures including salaries and other expenses associated with case development, negotiations and litigation;

- (e) Expenditures related to oversight of responsible party cleanups;
- (f) Legal costs associated with protracted negotiations, issuance of cleanup orders and litigation to compel reluctant responsible parties to clean up or pay clean-up costs; and
- (g) Interest at the rate of six percent (6%) per annum.

6407 COST RECOVERY PROCEDURES

6407.1 The Director shall issue a “demand letter” requesting payment in the amount of all costs incurred by the Director plus any applicable interest, after completion of corrective action and prior to bringing a judicial action for recovery of costs. In his or her discretion, the Director may also issue interim demand letters prior to completion of corrective action.

6407.2 The demand letter shall include the following information:

- (a) The total amount due;
- (b) An itemization of costs included in the total amount claimed;
- (c) A statement of the time within which payment must be made;
- (d) The interest rate;
- (e) Notice that if the responsible party fails to pay within the prescribed time period, court action will be instituted, the costs may be assessed as a tax against the property and that the responsible party will be liable for costs of legal action; and
- (f) Notice that where federal funds have been utilized, the responsible party is also liable to the federal government.

6407.3 The demand letter shall be mailed to the responsible party postage repaid at the last known address for the responsible party.

6407.4 Thirty-three (33) days after the demand letter has been postmarked, the Director may do the following:

- (a) Institute court action;
- (b) Refer the case to the Department of Finance and Revenue for imposition of a tax lien; or
- (c) Take any other collection measures deemed appropriate.

6407.5 Where there is more than one responsible party who may be held liable for corrective action costs, the Director may pursue one (1) or more responsible parties in his or her discretion, and in doing so, may consider the relative responsibility of the responsible parties for the contamination.

6407.6 The Director shall pursue in a timely manner and give high priority to cases where there is a solvent responsible party who refuses to comply with corrective action orders, or is otherwise recalcitrant, and cases in which the owner or operator fails to comply with the financial responsibility requirements.

6407.7 When a case is referred to the Department of Finance and Revenue pursuant to §6407.4(b) and §6(g) of the Act, the costs of correction of the condition and related expenses as set forth in §6406.2, shall be assessed as a tax against the property, and collected in the same manner as real estate taxes are collected. Notice to taxpayers, payment of taxes and sale of properties for payment of delinquent taxes, shall be in accordance with the applicable provisions of DCMR Title 9, Chapter 3, titled “Real Property Taxes.”