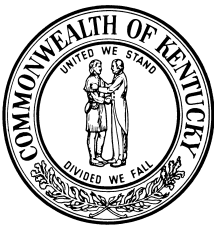


**PETROLEUM STORAGE TANK
ENVIRONMENTAL ASSURANCE FUND**

JANUARY 2000 – PERFORMANCE AUDIT



**EDWARD B. HATCHETT, JR.
AUDITOR OF PUBLIC ACCOUNTS**

The Auditor Of Public Accounts Ensures That Public Resources Are Protected, Accurately Valued, Properly Accounted For, And Effectively Employed To Raise The Quality Of Life Of Kentuckians.



**EDWARD B. HATCHETT, JR.
AUDITOR OF PUBLIC ACCOUNTS**

January 31, 2000

To the People of Kentucky

The Honorable Paul E. Patton, Governor
Ronald McCloud, Secretary, Public Protection and Regulation Cabinet
James Bickford, Secretary, Natural Resources and Environmental Protection Cabinet
Robert Nickel, Executive Director, Office of the Petroleum Storage Tank Environmental Assurance Fund
Robert Daniell, Director, Division of Waste Management

Re: Performance Audit of the Petroleum Storage Tank Environmental Assurance Fund

Ladies and Gentlemen:

We present our report on the Petroleum Storage Tank Environmental Assurance Fund. We are distributing this report in accordance with the mandates of Kentucky Revised Statute 43.090. In addition, we are distributing copies to members of the committees of the General Assembly with oversight authority for the Petroleum Storage Tank Environmental Assurance Fund, as well as other interested parties.

Kentucky Revised Statute 43.090 (1) requires agencies to which an Auditor's report pertains, to notify the Legislative Research Commission and the Auditor of the audit recommendations it has implemented and of the audit recommendations it has not implemented. This notification should be within 60 days of the completion of the final audit report. After an appropriate period, we will contact the respective Petroleum Storage Tank Environmental Assurance Fund Office officials to determine whether the report's recommendations are implemented and will advise the Legislative Research Commission regarding the status of that implementation. Once we are advised that the recommendations have been implemented, they will be considered closed.

Our Division of Performance Audit evaluates the effectiveness and efficiency of government programs as well as completes risk assessments and benchmarking of those operations. We will be happy to discuss with you at any time this audit or the services offered by our office. If you have any questions, please call Gerald W. Hoppmann, Director of our Division of Performance Audit, or me.

We appreciate the courtesies and cooperation offered to our staff during the audit.

Respectfully submitted,

Edward B. Hatchett, Jr.
Auditor of Public Accounts

144 CAPITOL ANNEX
SUITE 2
FRANKFORT, KY 40601-3448
TELEPHONE (502) 564-5841
0050
FACSIMILE (502) 564-2912
Hatchett@kyauditor.net

AN EQUAL OPPORTUNITY EMPLOYER M/F/D

2501 GEORGETOWN ROAD,
FRANKFORT, KY 40601-5535
TELEPHONE (502) 573-
FACSIMILE (502) 573-0067

Executive Summary

The Office of the Petroleum Storage Tank Environmental Assurance Fund (Office) is not effectively and efficiently reimbursing owners and operators for cleaning up contaminated underground storage tank (UST) sites because the current reimbursement process focuses on approval of individual expenses instead of total costs and results of corrective actions. Approximately 50% of the claims reimbursement files we reviewed included at least one claim with a deficiency. As a result, there is a significant delay in payments to owners and operators, which creates a backlog of pending claims. In addition, the current reimbursement process does not provide an incentive for the cost-effective cleanup of contaminated sites.

In Kentucky, the Office, within the Public Protection and Regulation Cabinet handles the reimbursement of expenses associated with UST removal and cleanup. The UST regulatory and environmental issues, on the other hand, are the responsibility of the Underground Storage Tank Branch (UST Branch) of the Natural Resources and Environmental Protection Cabinet.

There is an absence of coordination and planning between the Office and the UST Branch when cleaning up contaminated sites and reimbursing owner and operator claims. As a result, efforts to improve the current reimbursement process have not been completely implemented. For example, over \$1.2 million has been spent on a joint imaging and database system, which was scheduled for completion in 1997, but has not yet been completed. In addition, the Office and the UST Branch have not successfully coordinated efforts to begin using a *pay-for-performance* contracting method recommended by the United States Environmental Protection Agency (EPA).

The current reimbursement process requires detailed documentation of individual costs associated with the cleanup of contaminated sites. This often leads to deficient claims, which creates a backlog for the Office. However, other alternative methods such as *pay-for-performance* contracting or firm fixed pricing have been used by other entities to simplify the reimbursement process. Such alternative methods have not been fully implemented in Kentucky. We believe the lack of coordination and planning between the Office and the UST Branch is an obstacle in successfully implementing alternative methods for reimbursement.

The reimbursement process does not provide incentives for timely and cost-effective cleanup of contaminated sites. For example, contractors may bill the Petroleum Storage Tank Environmental Assurance Fund (Fund) for work until the amount reaches a statutory cap of \$1 million per site (KRS 224.60-140). Furthermore, the UST Branch does not consider the costs associated with corrective action plans. As a result, long-term cleanup activities may erode the solvency of the Fund. Office officials have identified more than 500 potential long-term sites that may be problematic.

As of June 30, 1999, the Office has processed 8,911 claims for reimbursement and has paid out over \$119 million in cleanup costs. However, the Fund has generated approximately \$269 million since its inception in 1990. As of October 1999, the Fund's balance was approximately \$138 million. However, after accounting for obligations that are pending reimbursement, the Fund's balance is approximately \$31 million.

The audit findings and recommendations are discussed in detail at the end of Chapters 2 and 3 of this performance audit.

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Abbreviations

Commission	Petroleum Storage Tank Environmental Assurance Fund Commission
DCA	Division of Contracting and Administration
DCI	Data Collection Instrument
EPA	Environmental Protection Agency
FRA	Financial Responsibility Account
Fund	Petroleum Storage Tank Environmental Assurance Fund
KAR	Kentucky Administrative Regulation
KRS	Kentucky Revised Statute
MOU	Memorandum of Understanding
Natural Resources Office	Natural Resources and Environmental Protection Cabinet Office of the Petroleum Storage Tank Environmental Assurance Fund
PSTA	Petroleum Storage Tank Account
Public Protection	Public Protection and Regulation Cabinet
SOTRA	Small Owner’s Tank Removal Account
UST Branch	Underground Storage Tank Branch
USTs	Underground Storage Tanks

Kentucky's General Assembly Created a State Assurance Fund to Reimburse for the Cleanup of Underground Storage Tank Contamination

On December 22, 1988, the federal Environmental Protection Agency (EPA) established requirements that owners and operators of underground storage tanks (USTs) obtain insurance coverage for each UST facility.¹ The purpose of this requirement is to ensure available resources to clean up contamination caused by leaks from USTs. Since insurance coverage was difficult and expensive to obtain, the EPA provided the states the option of establishing EPA-approved assurance funds. Such funds help owners and operators meet their financial responsibility requirements to ensure the cleanup of any contamination.

In 1990, the Kentucky General Assembly created the Petroleum Storage Tank Environmental Assurance Fund (Fund). The Fund was created to help tank owners and operators who found it difficult to obtain private insurance to meet the federal requirements. The Fund:

- Provides a mechanism for owners and operators to meet federally mandated financial responsibility requirements;
- Reimburses owners and operators for cleaning up contaminated soil and groundwater caused by UST's on their property;
- Was placed in the Natural Resources and Environmental Protection Cabinet (Natural Resources);
- Was administered by the Petroleum Storage Tank Environmental Assurance Fund Commission (Commission), which consisted of independent representatives that approved applications and reimbursements; and
- Receives a fee placed on gasoline retailers, which is currently 1.4 cents per gallon (the maximum allowed per KRS 224.60-145(4)). This fee is collected by Kentucky's Revenue Cabinet. This fee provided approximately \$50 million in annual revenues and interest to the Fund in FY 1999.

In April 1996, Governor Paul Patton issued two executive orders that reorganized the administration of the Fund. Executive Order 96-485:

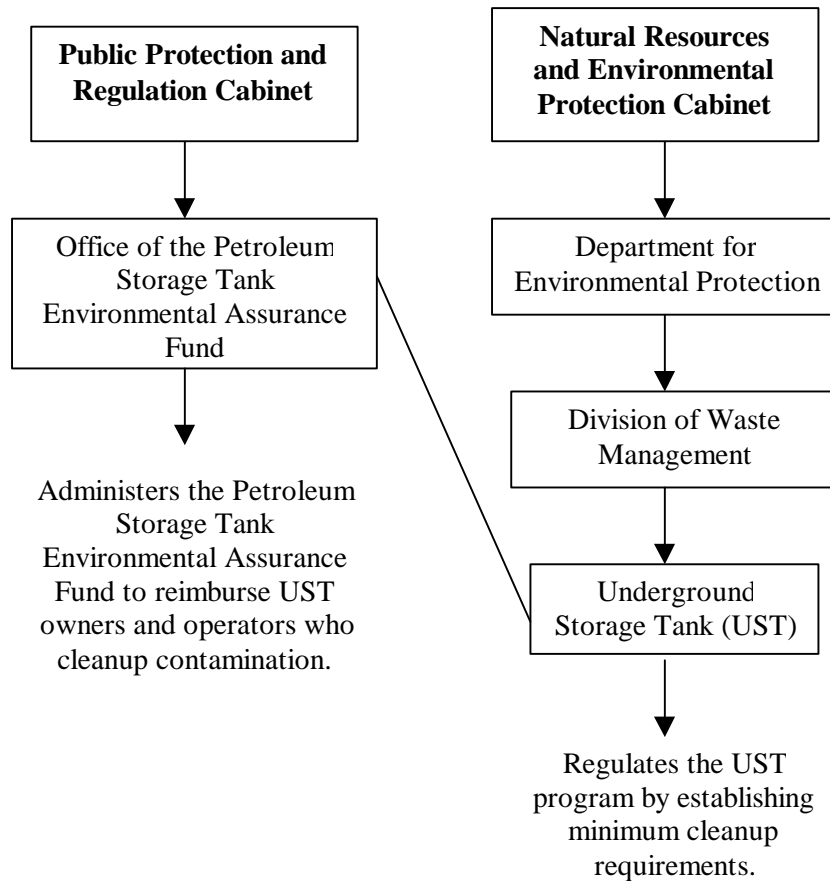
- Abolished the Commission;
- Created the Underground Storage Tank Facilities within the Public Protection and Regulation Cabinet (Public Protection);
- Moved the Fund from Natural Resources to Public Protection; and
- Placed the Fund in Underground Storage Tank Facilities.

Executive Order 96-591 then renamed the Underground Storage Tank Facilities the Office of the Petroleum Storage Tank Environmental Assurance Fund (Office).

¹ Owners and operators that handle less than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year are required to obtain \$500,000 of insurance coverage. Owners and operators that handle more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year and own up to 100 petroleum underground storage tanks are required to obtain \$1 million of insurance coverage. Owners and operators that own more than 100 tanks, regardless of their annual throughput, must obtain \$2 million of insurance coverage.

The reorganization created by the executive orders resulted in two significant changes. First, unlike the Commission, the Office does not consist of independent members that meet regularly to approve applications and claims. Appointed officials and staff within the Office recommend applications and claims for approval. These approvals are given on an individual basis, not through scheduled meetings. Also, the Fund was separated from Natural Resources, which maintained responsibility for the UST regulatory program. Therefore, the reorganization separated the reimbursement function and the regulatory function into separate cabinets. See Figure 1 for additional information.

Figure 1: Organizational Placement of Office and UST Branch Functions



Source: Auditor of Public Accounts.

Office of Petroleum Storage Tank Environmental Assurance Fund

According to KRS 224.60-130, the Office is required to establish, by administrative regulation, the policy, guidelines, criteria, and procedures to administer the Fund. 415 KAR Chapter 1 contains the administrative regulations developed for this purpose. Specifically, 415 KAR 1:080 contains the Office’s claim procedures, which include the requirement that a claim request shall be reviewed by the Office within 90 days of receipt of the claim. When reviewing claims for reimbursement, the Office has the regulatory authority to determine if submitted costs for cleanup are reasonable, necessary, and consistent with the requirements established for UST systems by Natural Resources.

**Chapter 1
Introduction**

Table 1 contains a summary of the Office’s expenditures for FY 1999 and its revised budget for FY 2000, while Table 2 shows the number of full-time positions for those same years. An overview of the Office’s organizational structure and staff is provided in Appendix II.

Table 1: Office Expenditures for FY 1999 and Revised Budget for FY 2000

	Actual FY 1999	Revised Budget FY 2000
Expenditure Category		
Personnel Costs		
Salaries, Fringes, Workers Comp., and Other Personnel Costs	\$1,518,907	\$2,994,300
Legal Services	\$117,389	\$200,000
Auditing Services	\$0	\$100,000
Other Professional Services Contracts	\$37,162	\$289,000
Other	\$8,571	\$9,400
Operating Expenses		
Claims Reimbursements	\$29,076,403	\$35,800,000
All Operating Expenses	\$866,349	\$937,800
Grants, Loans, Benefits	\$0	\$0
Capital Outlay	\$0	\$0
Construction	\$0	\$500,000
Total Expenditures	\$31,624,781	\$40,830,500

Source: Auditor of Public Accounts, from information provided by the Office of the Petroleum Storage Tank Environmental Assurance Fund.

Table 2: Full Time Positions at the Office

	Actual FY 1998	Actual FY 1999	Budgeted FY 2000
Full-Time Positions			
Number of Positions			
Full-Time Filled Positions	24	52	61
Full-Time Vacant Positions	0	0	7
Total Full-Time Positions	24	52	68
Personnel Cost	\$1,220,000	\$1,482,900	*\$2,939,800

*The large increase in personnel costs is not reflected until FY 00 because the majority of the new employees were hired in April 1999. These new employees are primarily field auditors and claim reviewers.

Source: Auditor of Public Accounts, from information provided by the Office of the Petroleum Storage Tank Environmental Assurance Fund.

**Underground Storage
Tank Branch**

KRS 224.60-105 gives Natural Resources the responsibility to regulate USTs. The UST Branch is the designated agency for this authority. The UST Branch requires minimum standards in various areas that include leak detection, reporting releases, corrective actions, and closures. These requirements protect the public health and environment and implement federal UST regulations.

The UST Branch is comprised of four sections: Administration, Compliance, Closure, and Corrective Action.

- The Administration Section is responsible for the registration of USTs and the imaging and database system procedures.
- The Compliance Section is responsible for ensuring that owner and operators of operational USTs take proper measures for compliance activities (does not include cleanup activities).
- The Closure Section reviews and approves all closure assessment reports and supporting documentation.
- The Corrective Action Section reviews and accepts all site investigations, corrective action plans, and monitors all long-term cleanup of leaking tanks.

The UST Branch, which has inspectors in ten regional offices, cross-trains the reviewers in the Closure and Corrective Action sections and the reviewers in the Administrative and Compliance sections. UST Branch officials reported that this process allows internal mobility and has lessened the amount of staff turnover. The organizational chart in Appendix III provides an overview of the UST Branch's staff.

Table 3 is a summary of expenditures from the UST Administrative Fund. These expenditures represent the state match and additional state funds in the UST Administrative and the Leaking UST federal grants as well as some direct costs specifically associated with the UST Program. Natural Resources was unable to provide APA with a budget specific to the UST Branch.

Table 3: UST Expenditures Charged to the UST Administrative Fund for FY 1998 and FY 1999

	FY 1998	FY 1999
Expenditure Category		
Personnel Costs		
Salaries, Fringes, and Other Personnel Costs	\$898,052	\$890,423
Temporary Manpower Services	\$0	\$136,880
Professional Computer Services	\$35,727	\$21,185
Miscellaneous Services	\$78,546	\$0
Operating Expenses		
All Operating Expenses	\$212,383	\$344,509
Grants, Loans, Benefits	\$24,326	\$0
Capital Outlay	\$61,596	(\$855)
Total Expenditures	\$1,310,627	\$1,392,142

Source: Auditor of Public Accounts, from information provided by the Natural Resources and Environmental Protection Cabinet.

**The Office's
Reimbursement
Activities**

As of June 30, 1999, the Office had received 3,320 applications from owners and operators requesting assistance since the Fund was created in 1990. Of that cumulative total, 853 (26%) applications have been closed. Closed applications include those applications that have been approved and reimbursed in full, denied, withdrawn, or deobligated.² The remaining files are active and include 1,663 (50%) applications that have been approved, but are pending reimbursement and 804 (24%) applications that have not been approved.

Also, as of June 30, 1999, the Office had received 15,267 claims for reimbursement associated with the 3,320 applications mentioned above. Of the 15,267 claims, the Office has processed 8,911 (58%) and paid out over \$119 million in reimbursements. Processed claims include those claims that have been paid, denied, or withdrawn. The majority of the remaining claims are under review, waiting to be obligated, or deficient and pending responses. According to Office officials, the majority of pending claims are associated primarily with one contractor.

The Fund has generated approximately \$269 million since its inception in 1990. As of October 1999, the Fund's overall balance was approximately \$138 million. However, after accounting for obligations that are pending reimbursement, the Fund's balance is approximately \$31 million, according to documentation from the Office.

Money from the Fund is used to reimburse owners and operators for UST cleanup costs and other costs associated with administering the Fund, including personnel costs. Office officials stated that monies in the Fund are invested in bonds and are earning interest per KRS 224.60-140. They also said that investments have generated over \$23 million since the Fund's inception in FY 1990. The following table breaks out the previous information for each year since the Fund was created.

² An application for which the Office obligated funds and then the money was released back into the Financial Responsibility Account.

Table 4: Fiscal Year Breakdown of the Office's Reimbursement Statistics

Fiscal Year	Number of Applications Received	Number of Claims Received	Number of Claims Processed	Percentage of Claims Processed	Amount Requested	Amount Reimbursed	Percentage of Amount Reimbursed
1990-91	11	1	0	0%	\$ 226,610	\$ 0	0%
1991-92	152	82	51	62%	5,786,775	3,350,319	58%
1992-93	254	191	144	75%	9,338,386	3,555,543	38%
1993-94	190	342	286	84%	15,531,854	8,007,834	52%
1994-95	248	679	476	70%	20,332,429	10,802,240	53%
1995-96	321	1,113	786	71%	28,967,307	16,976,791	59%
1996-97	561	2,322	1,427	61%	45,208,791	23,378,889	52%
1997-98	771	4,331	2,357	54%	55,778,498	26,802,270	48%
1998-99	812	6,206	3,384	55%	66,047,315	26,623,069	40%
Total	3,320	15,267	8,911	58%	\$247,217,965	\$119,496,955*	48%

* According to the Office, it processed \$166 million of the total amount requested, of which \$119 million was actually reimbursed. It stated the \$47 million difference includes amounts that were determined to be ineligible for reimbursement.

Note: This table contains information pertaining to the Financial Responsibility Account (FRA) and the Petroleum Storage Tank Account (PSTA). All percentages were rounded to the nearest whole number.

Source: Auditor of Public Accounts, from information provided by the Petroleum Storage Tank Environmental Assurance Fund Quarterly Information Session July 21, 1999.

Audit Objective

The Auditor of Public Accounts determined that a performance audit should be conducted to determine if the Office is reimbursing owners and operators effectively and efficiently. This audit addresses the following question:

Is the Office of the Petroleum Storage Tank Environmental Assurance Fund effectively and efficiently reimbursing owners and operators of underground storage tanks?

In April 1999, a large cleanup contracting firm declared bankruptcy and alleged that the Fund owed it \$40 million. Subcontractors hired by this company said they had not been paid. In some cases, those subcontractors placed liens on the property of UST owners or operators for the work they had done. Legislators and others expressed concerns that the Office takes too long to reimburse owners and operators. Office officials respond that they are required by law to protect the solvency of the Fund and ensure that all claims submitted by contractors are reasonable and necessary.

Currently, the Office is involved in disputes surrounding the bankruptcy of this particular contracting firm. As a result, we did not conduct work to verify whether these allegations are true or not.

In addressing our audit question, we reviewed state and federal statutes and regulations. We interviewed staff at the Office and at the UST Branch as well as from the EPA. We surveyed a sample of owners, operators, and contractors. We also reviewed a sample of files related to contaminated UST facilities. Finally, we reviewed other states' UST programs and contacted officials concerning other states' fund programs. In conducting this audit, we followed generally accepted government auditing standards.

Chapter 1
Introduction

We concluded that the current reimbursement process focuses on the approval of individual expenses instead of focusing primarily on the total costs and results of corrective actions. It does not allow the Office of the Petroleum Storage Tank Environmental Assurance Fund (Office) to effectively and efficiently reimburse owners and operators for cleaning up contaminated underground storage tank (UST) sites.

Is the Office of the Petroleum Storage Tank Environmental Assurance Fund Operating Effectively and Efficiently?

Summary

The Office of the Petroleum Storage Tank Environmental Assurance Fund (Office) is not effectively and efficiently reimbursing owners and operators for cleaning up contaminated underground storage tank (UST) sites because the current reimbursement process focuses on approval of individual expenses instead of total costs and results of corrective actions. Approximately 50% of the claims reimbursement files we reviewed included at least one claim with a deficiency. As a result, there is a significant delay in payments to owners and operators, which creates a backlog of pending claims. In addition, the current reimbursement process does not provide an incentive for the cost-effective cleanup of contaminated sites.

Other alternative methods such as *pay-for-performance* contracting or firm fixed pricing have been used by other entities to simplify the reimbursement process. Such alternative methods have not been fully implemented in Kentucky. We believe the lack of coordination and planning between the Office and the UST Branch is an obstacle in successfully implementing alternative methods for reimbursement.

We surveyed contractors and found that many were very dissatisfied with the Office's reimbursement process. Furthermore, Office officials stated that many contractors and UST owners complain that detailed reviews, coupled with the requirement for supporting financial documentation, lead to a backlog.

We found that the Office and the UST Branch do not conduct strategic planning to develop compatible missions, goals, and objectives. Because of the lack of interaction and planning between the Office and the UST Branch, efforts to improve the current reimbursement process have not been completely implemented. For example, over \$1.2 million has been spent on a joint imaging and database system, which was scheduled for completion in 1997, but has not yet been completed. In addition, the Office and the UST Branch have not successfully coordinated efforts to begin using the *pay-for-performance* contracting method recommended by the EPA. Both initiatives have the potential to solve problems associated with the reimbursement of future claims, if the Office and the UST Branch agree to work together more closely and improve planning.

The Office and the UST Branch do not work together to promote cost effectiveness. As long as minimum cleanup standards are met, the UST Branch accepts the corrective action plans submitted by the contractors. The Office, on the other hand, is required to determine if costs are reasonable and necessary, yet it is not involved in the acceptance of corrective action plans. This situation sets the stage for the Office to reimburse for work that may not be necessary.

Consequently, the reimbursement process does not provide incentives for timely and cost-effective cleanup of contaminated sites. For example, contractors may bill the Fund for work until the amount reaches a statutory cap of \$1 million per site (KRS 224.60-140). As a result, long-term cleanup activities may erode the solvency of the Fund. Office officials have identified more than 500 potential long-term sites that may be problematic.

When compared to cost-effective alternative methods requiring less documentation, the Office’s reimbursement process is questionable. For example, within Kentucky, another agency does not use such a complicated process for the removal of USTs and related cleanup procedures on state property. The Division of Contracting and Administration’s Department of Facilities Management, within the Finance and Administration Cabinet, uses a bid process for the cleanup and removal of USTs from state property. The use of the bid process has proven to be cost effective since it allows for only two add-ons to the original bid. The first add-on is for the cleanup of contaminated soil and the second is for the removal of contaminated groundwater. Both add-ons are based on fixed prices, which prevents the contractor from increasing costs.

Finally, unlike other states, Kentucky’s General Assembly did not establish a sunset date for the Fund. This does not provide an environment with incentives for timely and cost effective cleanup of contaminated UST sites.

Survey of Stakeholders

To gain a better understanding of the perceptions others have about the Office, we conducted a survey of UST contractors and UST owners and operators. The two groups of individuals were asked to provide their opinion on various issues, including claims reimbursement and the communication between the Office and the UST Branch.

Contractors Very Dissatisfied With the Claims Reimbursement Process

Contractors responding to our survey were very dissatisfied with the claims reimbursement process. They do not think the Office and the UST Branch communicate effectively. A majority of the contractors think it takes too long to receive a reimbursement. They feel the claims reimbursement process is burdensome and requires too much information. Also, contractors commented that the Office is taking on responsibilities of the UST Branch. See Appendix IV for complete survey results and additional comments by contractors.

Table 5 illustrates contractor dissatisfaction. We surveyed 112 contractors and received 45 responses. Thirty-five (78%) contractors indicated they were either very dissatisfied or somewhat dissatisfied with the timeliness of the claims reimbursement process. Contractors stated that while they must pay their subcontractors within 30 days of receipt of an invoice, it sometimes takes 120 to 150 days to receive payment from the Office.

Thirty-two (71%) contractors were either very dissatisfied or somewhat dissatisfied with the ease of the claims reimbursement process. Contractors also added that too much time is spent on minute details. Finally, 22 (49%) contractors responded that the Office requires too much information in the claims reimbursement process.

Table 5: Contractor Survey Responses Concerning Claims Reimbursement

Issue	Very Dissatisfied	Somewhat Dissatisfied	Somewhat Satisfied	Very Satisfied	No Opinion
Timeliness of the Claims Reimbursement	28 (62%)	7 (16%)	5 (11%)	2 (4%)	3 (7%)
Ease of the Claims Reimbursement Process	22 (49%)	10 (22%)	8 (18%)	1 (2%)	4 (9%)

Source: Auditor of Public Accounts’ Survey of Underground Storage Tank Contractors.

Chapter 2**Is the Office of the Petroleum Storage Tank Environmental Assurance Fund Operating Effectively and Efficiently?**

Thirty (67%) contractors disagreed with the statement “communication between the OPSTEAF and the UST Branch is good.” Specific comments included concerns that there were duplicate reviews by the two entities and that the Office was taking on regulatory responsibilities of the UST Branch.

Owners and Operators Have Little Direct Contact With the Office

Forty percent of the owners and operators surveyed indicated they had given a Limited Power of Attorney to their contractors. A Limited Power of Attorney gives the contractor the authority to handle all correspondence with the UST Branch and the Office for the owners and operators. As a result, the owners and operators have very little direct contact with these two entities.

Of the 274 surveys mailed to UST owners and operators, 100 were returned for a response rate of 36 percent. Of the 100 returned, 40 owners and operators indicated they had signed a Limited Power of Attorney. In addition, 16 surveys were returned blank and 12 were either incomplete or the owner and operator had not requested assistance from the Fund. As illustrated in Table 6, owners and operators who did respond showed some dissatisfaction with the timeliness and ease of the reimbursement process. In addition, some owners and operators indicated they had no opinion about their experience with the Office. See Appendix V for complete survey results and additional comments from owners and operators.

Table 6: Owner and Operator Survey Responses Concerning Claims Reimbursement

Issue	Very Dissatisfied	Somewhat Dissatisfied	Somewhat Satisfied	Very Satisfied	No Opinion
Timeliness of the Claims Reimbursement	10 (31%)	7 (22%)	4 (13%)	5 (16%)	6 (19%)
Ease of the Claims Reimbursement Process	8 (25%)	6 (19%)	6 (19%)	5 (16%)	7 (22%)

Note: All percentages were rounded to the nearest whole number.

Source: Auditor of Public Accounts' Survey of Underground Storage Tank Owners and Operators.

The Office and the UST Branch Are Not Working Together to Promote Cost Effectiveness

Poor coordination and lack of planning between the Office and the UST Branch is preventing the implementation of cost-effective procedures. For example, the two entities are not jointly reviewing corrective action plans to ensure cost-effective cleanup of contaminated UST sites. Also, efforts to improve the current reimbursement process have not been completely implemented. For example, efforts by the Office and the UST Branch to coordinate information sharing through the joint development of an imaging and database system and the development of a *pay-for-performance* contracting method have not been fully implemented. Both initiatives have the potential to solve problems associated with the reimbursement of future claims if the Office and the UST Branch agree to work together more closely and improve planning. Recently, at the urging of the Governor's office, staff from the Office and UST Branch met to discuss various topics that included communication and coordination but no definitive procedures have been developed.

UST Branch Does Not Consider Cost of a Corrective Action Plan

As stated previously, the Office is required to consider cleanup costs prior to the reimbursement of claims, yet it is not involved in the acceptance of corrective action plans. Although the Office has been given the regulatory authority in 415 KAR 1:080 to determine whether cleanup expenditures are reasonable and necessary, it cannot fully exercise this authority without involvement in the acceptance of corrective action plans. This situation sets the stage for the Office to reimburse for work that may not be necessary.

As long as the minimum cleanup standards are met, the UST Branch accepts the corrective action plans submitted by contractors to clean up contaminated sites. Cost is not considered. Rather, the UST Branch is responsible for ensuring that the environment is cleaned up to the minimum standards prescribed in 401 KAR 42:060. According to UST Branch officials, they do not reject or disallow cleanup methods that exceed the minimum standards required. They also stated that cost-effective procedures are the responsibility of the Office and not the UST Branch.

On November 22, 1999, staff from the Office and UST Branch met and determined that a joint approval process for corrective action plans would be beneficial. They discussed requiring the contractor to submit three corrective action plans for a joint review. The UST Branch will review cleanup procedures for effectiveness and the Office will review the cost of those procedures. However, no definitive proposal has been developed.

The Office and the UST Branch Do Not Participate in Strategic Planning

The Office and the UST Branch have not conducted joint strategic planning in the past. According to Office officials, the Governor's office recently urged the Office and the UST Branch (at the Cabinet Secretary level of both cabinets) to jointly discuss the development of a plan of action to address problems between the two entities. In the November meeting referred to above, the Office and the UST Branch also discussed communication, coordination, and the roles of each agency. An MOU outlining the two entities' responsibilities has been proposed but no definite agreements have been achieved.

However, the two entities have never jointly developed a strategic plan or mission statement. Both entities continue to develop their own missions and goals with no definite plans to ensure that they are compatible with each other. Without formal joint planning, the lack of communication will continue to be a problem with these entities.

Past efforts to work together have not been that successful. For example, the Office asked the UST Branch to question contractors about the technical merits or necessity of cleanup procedures. According to an Office official, when asked, a UST Branch employee stated:

- He could not draw attention to unnecessary work during a review because it might result in the contractor having difficulty getting reimbursement from the Fund.
- It is the Office's responsibility to identify unnecessary costs during the review of the claim, not the UST Branch's responsibility to identify them during their technical review.
- If the Office did determine costs to be unnecessary, then the UST Branch would support the Office if the questions were determined to have technical merit.

When UST Branch officials were made aware of these comments, they responded that reviewers do point out unnecessary work or an incorrect interpretation of the regulations if it is found.

In an effort to address the fact that the UST Branch does not consider the cost-effectiveness of a cleanup plan, the Office established additional regulations in 1999. These regulations require pre-approval for costs over \$15,000 for work necessary prior to cleanup. Pre-approval is also required for cleanup costs over \$35,000. These requirements obligate the contractor to provide a budget and justify to the Office the cost of the cleanup plan. An Office official said this was necessary to ensure the solvency of the Fund.

Developing a joint strategic plan could alleviate some of the frustrations and concerns between the two entities. They both work with the same group of owners, operators, and contractors, and often review the same documents. Therefore, there is a strong basis and need to develop a joint strategic plan.

The problems that exist between the Office and the UST Branch are long-standing problems. For instance, the 1997 Ernst and Young Claims Management Report (required by KRS 224.60-130) discussed problems with lack of coordination. One recommendation made in the report suggests that members of the Office and the UST Branch jointly review a contractor's corrective action plan and associated costs. The Office and the UST Branch are currently working together to discuss joint reviews of corrective action plans.

Poor Coordination and Lack of Planning Between the UST Branch and the Office Has Hampered the Implementation of Two Projects

There are two projects that have not been fully implemented because of poor coordination and lack of planning between the two entities. A shared imaging and database system that would allow each entity to view the other's documents has been delayed, contributing to some of the communication problems we observed. Also, a project to implement a *pay-for-performance* contracting method has been hindered by the lack of interaction between the two entities. As a result, efforts to improve the current reimbursement process have been delayed.

Shared Imaging and Database System Has Experienced Setbacks

After three years and over \$1.2 million, the shared imaging and database system has not been completed. In 1996 the UST Branch and the Office entered into an MOU to develop an imaging and database system that would allow the two entities to share information. The project manager, who works for the Natural Resources Cabinet, determined that it was necessary for the database and the imaging software to interface with each other. Such a system would cut down on the paper transfer of data between the Office and the UST Branch and would eliminate the need for duplicate submission of information by contractors. The initial goal was to have the system in place by July 1997. However, the UST Branch's portion of the system was not fully functional until January 1999 and the Office's half of the system has yet to be completed.

Several reasons for the delay exist. First, as previously discussed, the Commission (in Natural Resources) was abolished and the Office (in Public Protection) was created. Second, Natural Resources experienced numerous problems with vendors. Third, communication problems between the Office and the UST Branch have led to misunderstandings and frustrations. All three of these reasons have slowed the project down.

For example, we found that the MOU is not a definitive document and has resulted in disagreements between the entities and their expectations for the project. The entities disagree on whether there should be a single system shared by the agencies or two different systems with the ability to interface. They also disagree on what role Natural Resources should play as overall project manager. Natural Resources felt they were responsible for seeing the project to fruition. The Office felt this responsibility included assisting in the development and implementation of the Office's portion of the system. However, this type of assistance has never materialized.

Another setback for the project is that both entities have not reached an agreement on the costs that each should pay for the project. The MOU states that the USF Branch is responsible for 60 percent of the cost of the project and the Office is responsible for the remaining 40 percent. While Natural Resources and the Office agree on project expenses totaling \$1,098,665, approximately \$210,000 is in dispute as of the date of this report.

Thus far, Natural Resources has contracted with four different vendors to produce a shared imaging and database system. The following table outlines the significant events and problems with each contract. As a result, the project has experienced setbacks and was not completed in July of 1997 as originally envisioned.

Table 7: Summary of the Imaging and Database Project

VENDORS	DATE	SIGNIFICANT EVENTS	COST
Digital Equipment Corporation	April 1996	Entered into a contract to design, program, and implement a document imaging & database system.	\$399,804
	June 1996	First design document is rejected.	
	August 1996	Second design document is accepted; contract is terminated.	
Commonwealth Data Systems	December 1996	Entered into a contract to write the program outlined in the design document, to interface imaging capabilities with database and workflows, and to implement this program.	\$481,442
	March 1997	Work begins.	
	March 1998	Branch begins to successfully test data collection, workflows, and imaging functions.	
	April 1998	Branch begins to scan documents into the Byte imaging software; work begins on writing programs for the Office's portion of the project. Problems arise with Byte imaging software, documents are lost; contract is terminated.	
Staffware (a subcontractor in the Commonwealth Data Systems contract)	May 1998	Entered into contract to finish the Office's workflows and screens and to convert each entity's database	\$51,000
	July 1998	Contract is completed; full implementation by the Branch; Office workflows, screens, and testing complete and ready for implementation; continuing problems with Byte imaging software.	
Unisys	September 1998	Branch contracts alone to remove the Byte imaging software from the system, preserve the images already scanned, and install InfoImage software in its place.	\$328,322
	January 1999	Contract is completed; UST Branch has new, stronger imaging software that interfaces with workflows, screens, and database, along with Intranet access capabilities. No change in status of Office's portion of project, however, Office now has access to Branch database and images via Intranet.	
Total Cost			\$1,260,568

Source: Auditor of Public Accounts, from information provided by the Natural Resources and Environmental Protection Cabinet, Office of Information Services.

According to an Office official, the Office does have access to UST Branch information through the shared imaging and database system. This information includes images of correspondence, documents and reports that are filed with the UST Branch, as well as access to other database records that provide facility, tank, and owner information. However, Office personnel also stated they have been left to "their own devices" to discover available information, and could better use the system if training were provided. Although UST Branch officials stated that training has been provided to the Office, they are unclear as to the results of this training.

The imaging and database system is fully implemented for the UST Branch. However, it has had to receive Excel spreadsheets of information downloaded from the Office's database listing all facilities that have applied for assistance in cleaning up contaminated sites. This information was requested to determine if owners and operators meet the financial requirement for third party coverage, as

mandated by state and federal regulations. Once received, the information had to be reentered into the UST Branch database, according to a UST Branch official. Therefore, the UST Branch could certainly benefit by being able to access the Office's information in a similar manner.

Because the Office is satisfied with its access to UST Branch information, it may not expend the additional funds needed to complete the imaging and databases project. The Office has estimated this cost to be \$250,000. The original goal of sharing information, which could promote current and future interaction between the two entities, has been delayed.

UST Branch Has Raised Concerns About the Implementation of a *Pay-for-Performance* Contracting Method

Although the Office has attempted a transition to a *pay-for-performance* contracting method of reimbursement, the UST Branch has not met the project with full approval. Legislation enacted during the 1998 General Assembly gave the Office the authority to implement *pay-for-performance* contracts to reimburse owners and operators for cleanup expenditures. However, the UST Branch responded by saying it does not see a need to pursue regulatory changes regarding cost-effectiveness because the Office has implemented such changes in its regulations. A successful transition to *pay-for-performance* will require total involvement by both the UST Branch and the Office.

Pay-for-performance is an aid in limiting the cost of UST cleanups. This method was created as an alternative to the current reimbursement method, which pays contractors for time and materials used to clean up contaminated sites. *Pay-for-performance* cleanup contracts achieve the following:

- Establishes a fixed price for the cleanup of a UST release and uses cleanup levels set by UST Branch regulations.
- Ensure the contractor is paid as the contamination at a site declines to specified levels. If the contractor does not meet the goal, it does not receive full payment.

In February 1999, the EPA provided training on *pay-for-performance* to staff from the Office and the UST Branch. This training stressed the need for joint action to ensure the success of a *pay-for-performance* project. Office officials stated that the EPA is willing to provide assistance with its implementation.

At the time of the training, the UST Branch could identify a potential necessity for *pay-for-performance* but also identified several areas of concern that needed to be addressed prior to entering into an agreement. The UST Branch expressed concerns about litigation if *pay-for-performance* is not successful and claimed that *pay-for-performance* would require additional work to ensure cleanup goals are met.

According to the Office, it began seeking pilot projects for *pay-for-performance*. If implemented, the Office would negotiate, up-front, the cost of the project and would require the contractor to bear some of the risk.

Currently, three contracting companies have shown interest in participating in a pilot *pay-for-performance* project. In October 1999, one of these three companies submitted the first *pay-for-performance* package. The UST Branch reviewed the document according to the agreed upon procedures. The UST Branch found three

deficiencies with the package and sent a written response to the contractor and the Office. As a result, the progress on this project has been delayed.

Without a collective effort from the Office and the UST Branch, innovative ideas such as *pay-for-performance* will not work. Until both agencies acknowledge they have similar goals and accept joint responsibility for cost-effective cleanup efforts, there is little chance that cooperation can be complete or the goal of controlling costs can be met. According to other states that separate the regulatory and reimbursement entities, the program cannot be successful unless the two entities operate under an MOU that clearly identifies the duties and responsibilities of each agency. See Chapter 3 for additional information on our survey and research of other states.

The Office's Reimbursement Process Focuses on the Approval of Individual Expenses

The current reimbursement process focuses on the approval of individual expenses instead of focusing primarily on the total costs and results of corrective actions. It requires detailed documentation of costs associated with the cleanup of contaminated sites. This process often results in deficient reimbursement claims if the documentation does not support requested cleanup costs. The Office will not pay any portion of deficient claims, which contributes to the existing backlog. See Table 4 in Chapter 1 for additional information on the breakdown of the Office's reimbursement statistics.

Consequently, the reimbursement process does not provide incentives for timely and cost-effective cleanup of contaminated sites. For example, contractors may bill the Fund for work until the amount reaches a statutory cap of \$1 million per site (KRS 224.60-140). In other words, claims related to a contaminated site could continue to be submitted until the amount reimbursed reaches \$1 million.

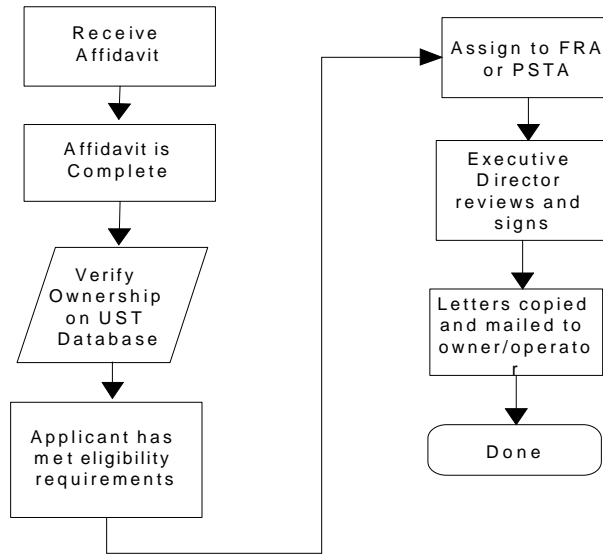
The Office commented that long-term cleanup activities might erode the solvency of the Fund. It has identified more than 500 potential long-term sites that may be problematic. These sites remain active with obligations for reimbursement existing prior to June of 1996. The Office is also concerned that adequate enforcement by the Division of Waste Management is not occurring. To address these issues, the Office and the UST Branch are discussing the possibility of conducting joint audits of selected sites to determine what work has been completed and whether monitoring is sufficient.

While the Office has been diligent to ensure that detailed documentation exists to support individual cleanup costs, we believe that the current reimbursement process prevents a broader examination of total cost and outcomes of cleanup projects. We found that other alternative methods such as *pay-for-performance* contracting or firm fixed pricing have been used by other entities to simplify the reimbursement process and provide incentives for contractors to more tightly control the costs of corrective action. Such alternative methods have not been fully implemented in Kentucky.

Background of the Reimbursement Process

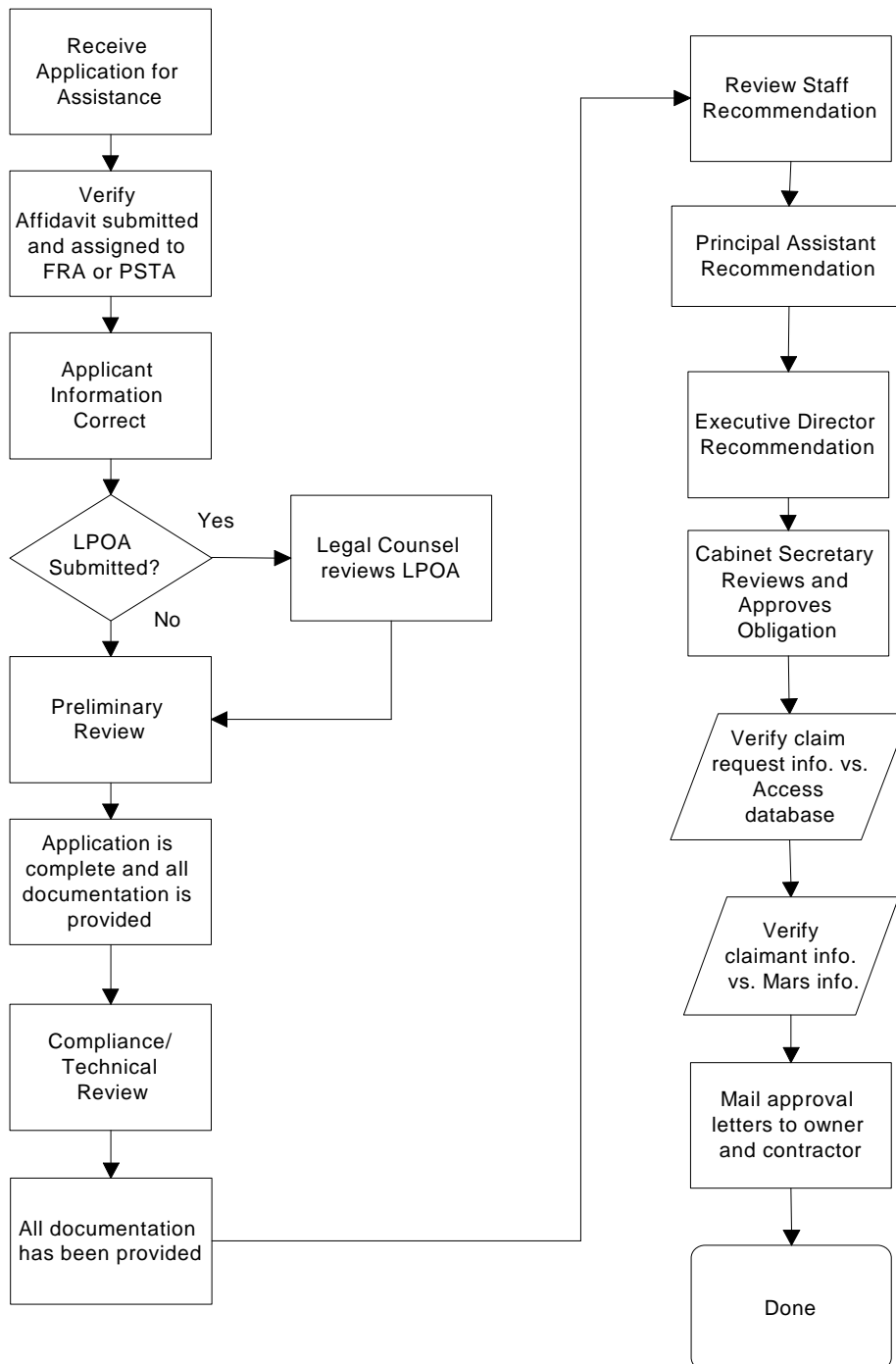
The reimbursement process has three primary phases (Affidavit, Application for Assistance, and Claims Reimbursement) which include various steps for approval. The reimbursement process is illustrated in Figures 2, 3, and 4.

Figure 2: Affidavit/Certificate of Eligibility Phase



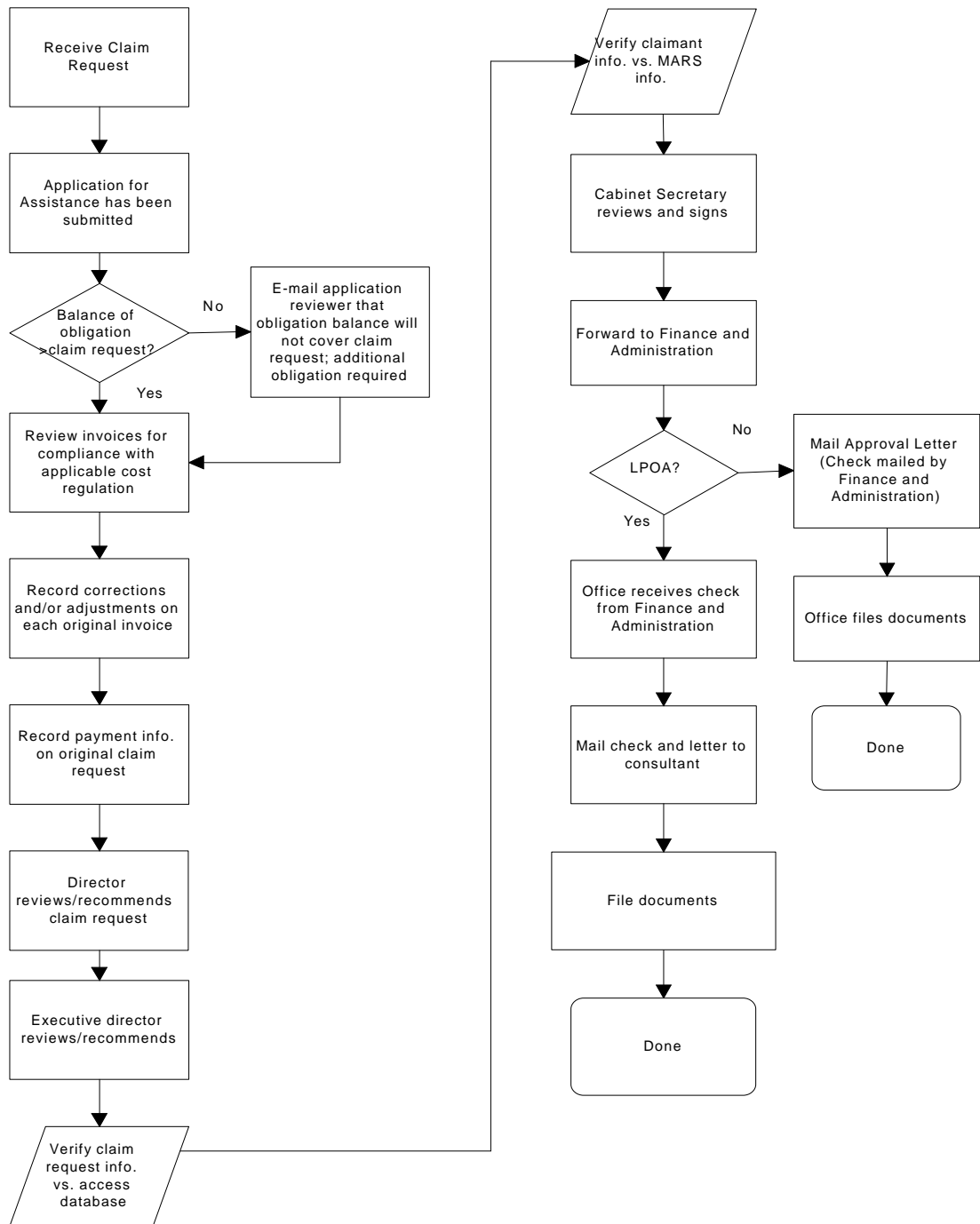
Source: Auditor of Public Accounts, from information provided by the Office of Petroleum Storage Tank Environmental Assurance Fund.

Figure 3: Application for Assistance Phase



Source: Auditor of Public Accounts, from information provided by the Office of the Petroleum Storage Tank Environmental Assurance Fund.

Figure 4: Claims Reimbursement Phase



Source: Auditor of Public Accounts, from information provided by the Office of the Petroleum Storage Tank Environmental Assurance Fund.

Deficient Claims Delay Reimbursement

Although the Office appears to be processing most initial claims within the 90 days set by regulation, reviewing a claim after a deficiency is found and corrected may take considerably longer. We found several deficient claims that were approved more than three months after the deficiency was corrected. As a result, owners and operators are not receiving reimbursements in a timely manner.

The detailed information needed to review a request for reimbursement can cause delays in the reimbursement process. Each cost associated with cleaning up a contaminated site must be supported in the request for reimbursement. The reviewer must then determine whether the documentation is adequate and complete. If the documentation does not support the expenditure, the Office will request additional documentation to correct the deficiencies. As a result, the claims reimbursement process has the potential to become an extremely prolonged process. Furthermore, Office officials stated that many contractors and UST owners complain that detailed reviews, coupled with the requirement for supporting financial documentation, lead to a backlog.

In our review of 50 reimbursement claims files, we found that one of every two files had at least one claim with a deficiency. If the documentation does not adequately support the request, the Office will not pay any portion of the claim until the deficiency is corrected. In other words, the Office does not reimburse even the costs with adequate supporting documentation, if a claim is deficient. We also identified 15 claims with deficiencies requiring additional information that were approved more than three months after the deficiency was corrected. As a result, claims with deficiencies appear to take longer to process, which creates a backlog of pending claims.

The Office stated that approximately 50% of all claims processed have deficiencies. Although the Office can calculate deficiency information on a case by case method using file records, it does not track historical trends in its database. Nor does the current database track claims with multiple deficiencies or the different types of deficiencies. The Office stated that there are no current plans for expanding the current database to include a history-tracking file. As a result, it is difficult for the Office to track and identify potential backlog problems in the future.

See Table 8 for the length of time that has passed since the Office received a response to the deficiency letter for 27 claims (as of 9/99).

Table 8: Claims Not Paid After a Response to a Deficiency was Received

No. of Claims	Length of time since response
11 (41%)	1 month or less
1 (4%)	Within 2-3 months
15 (56%)	More than three months

Note: All percentages were rounded to the nearest whole number.

Source: Auditor of Public Accounts, from information provided by the Office of Petroleum Storage Tank Environmental Assurance Fund

Statutory Framework Exists for Improvement

The General Assembly passed House Bill 282 in 1998, which amended KRS 224.60. According to Office officials, this is a significant piece of legislation, which was passed to assist the Fund in controlling abuses and improving operations. Various provisions of this legislation allow the Office to establish alternative methods of reimbursement, which are designed to provide incentives for contractors to more tightly control corrective action costs.

Some of the provisions relevant to this audit include the authority for the Office to establish alternative methods of reimbursement such as *pay-for-performance* and firm fixed pricing. Other provisions require the Office to promulgate administrative regulations specifying the circumstances under which prior approval of corrective action costs shall be required for those costs to be eligible for reimbursement from the fund. This legislation provides a statutory framework for the Office and the UST Branch to work together to improve the current reimbursement process.

According to Office officials, the Office has successfully implemented various components of this legislation related to entry levels (fees), laboratory certification, prior approval of costs related to the cleanup of contaminated sites, and hiring assurance fund auditors. The Office's progress related to this legislation shows a willingness to improve the current reimbursement process.

However, we believe the lack of coordination and planning between the Office and UST Branch is an obstacle in successfully implementing alternative methods for reimbursement. Although the Office has a pilot project for *pay-for-performance*, no projects have been completed using this method.

Kentucky Agency Bids Contracts for the Removal and Cleanup Associated With USTs on State Property

Within Kentucky, another agency does not use such a complicated process for the removal of USTs and related cleanup procedures on state property. The Division of Contracting and Administration's (DCA) Department of Facilities Management, within the Finance and Administration Cabinet, uses a bid process for the cleanup and removal of USTs from state property. However, it does not manage a reimbursement fund. It should also be noted that the Fund primarily reimburses for corrective action on private property.

According to DCA, it has been using the bid process very successfully for almost ten years now. Unlike the Office, DCA accepts a lump sum bid for tank removal. This bid includes the removal and disposal of tank(s), tank contents, and any soil and water inside the tank pit. This bid also includes the cost of filling in the pit and preparing a closure report for Natural Resources and the Division of Engineering.

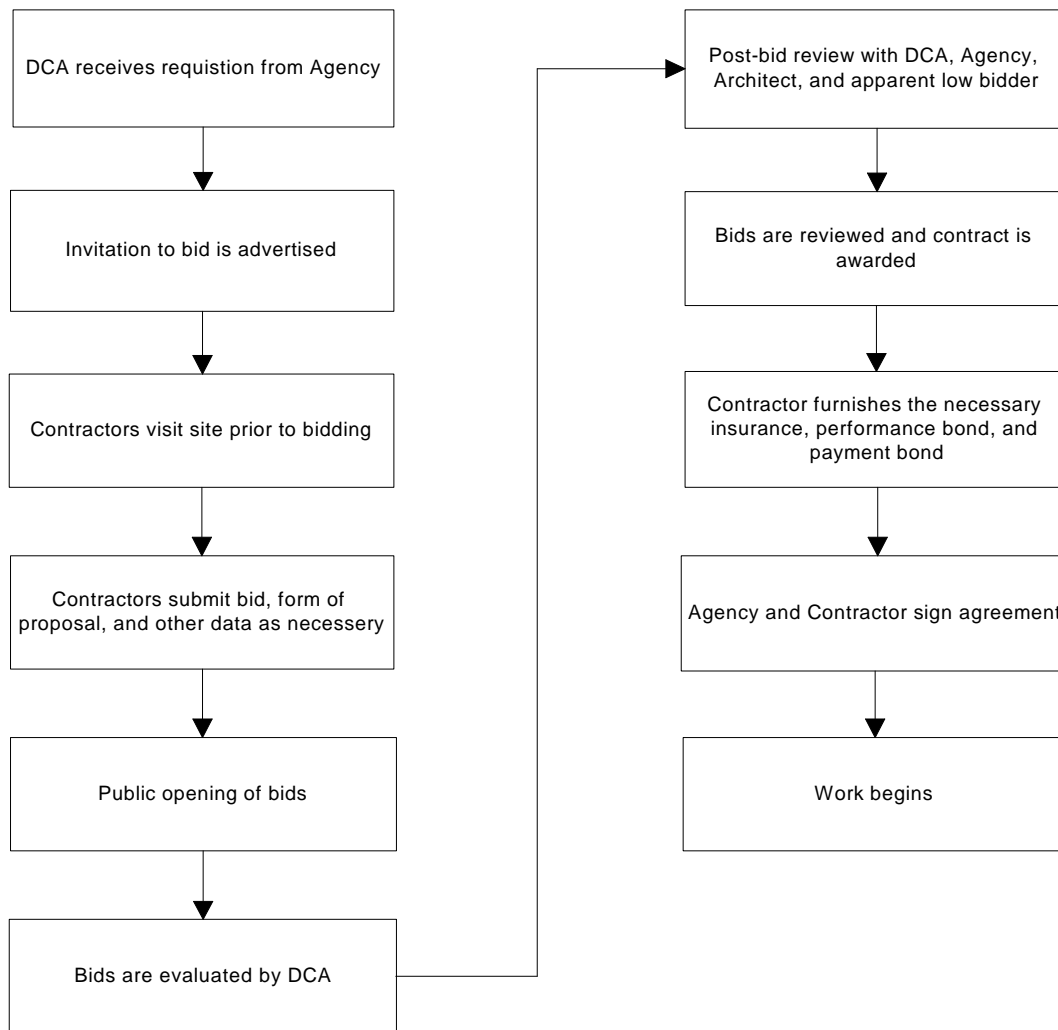
In addition, DCA allows only two add-ons to the bid price. The first add-on is the removal of contaminated soil at a rate of \$35 per cubic yard. The second possible add-on is the removal of contaminated natural (not runoff or rainwater) groundwater at the rate of 50 cents per gallon. Each add-on is price fixed so contractors cannot artificially inflate the amount of their original bid. The Office, on the other hand, does not distinguish between contaminated natural groundwater and contaminated runoff rainwater.

There are other differences between the UST removal processes used by the Office and DCA. DCA requires mandatory site visits, performance bonds, and payment bonds, as well as supervised sampling. Contractors must visit the project site prior to submission of their bid. A performance bond guarantees the contractor performs

the specified work in accordance with the contract. A payment bond ensures the protection of all persons performing labor or furnishing materials, equipment, or supplies for the contractor or his subcontractor for the work provided in the contract. Contractors must also contact DCA after excavation, but prior to the tank removal, because DCA officials supervise the tank removal and the subsequent sampling of the pit area. In the past, the UST Branch has allowed the contractors to sample and test soil and water. See Figures 5 and 6 on the following pages for complete details of the bidding and cleanup processes.

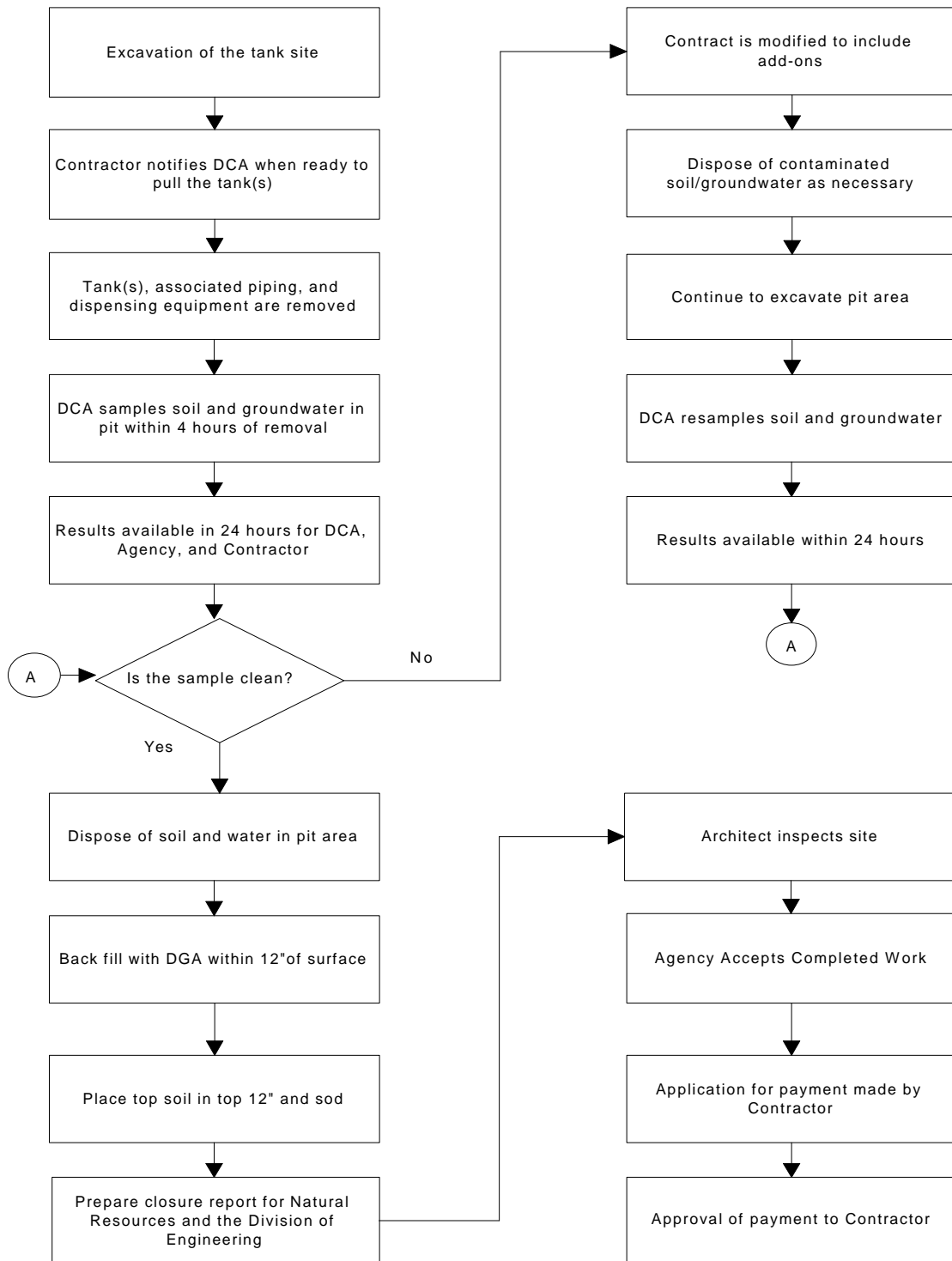
Although we did not conduct a performance audit of DCA’s bid process, it appears to be effective and efficient, offering an attractive alternative to the process used by the Office. By bidding out the work needed to remove USTs and using fixed-cost pricing techniques for the removal of contaminated soil and water, DCA has established an accountability framework. It is interesting to note that two different processes have been used concurrently by the state for the removal of USTs and the related cleanups.

Figure 5: Division of Contracting and Administration’s Bidding Process



Source: Auditor of Public Accounts, from information provided by the Division of Contracting and Administration, Finance and Administration Cabinet.

Figure 6: Division of Contracting and Administration’s Cleanup Process



Source: Auditor of Public Accounts, from information provided by the Division of Contracting and Administration, Finance and Administration Cabinet.

Kentucky's General Assembly Did Not Set a Sunset Date for the Fund

Kentucky's General Assembly did not set a sunset date for the Petroleum Storage Tank Assurance Fund or the per gallon gas fee when it was passed in 1990. This does not provide an environment with incentives for timely and cost effective cleanup of contaminated UST sites.

As stated previously, the money to make reimbursements comes from a 1.4-cent fee to be paid by dealers on each gallon of gasoline and special fuels received in Kentucky. This fee provided approximately \$50 million in annual revenues and interest to the Fund in FY 1999.

Other states have found alternative methods for maintaining their cleanup funds and some have established sunset dates for the program or the fee. According to a survey conducted by the Vermont Department of Environmental Quality, 22 states have issued sunset dates for their funds. The sunset dates have been set to end eligibility, the fee collected, and/or the entire program. See Table 9 for a complete list of those states.

Table 9: Sunset Dates of Other States' Assurance Fund Programs

State	Release Eligibility Sunset Date	Fee Sunset Date	Program Sunset Date
Alaska	06-30-94	None	None
California	01-01-05	01-01-05	01-01-05
Delaware	07-16-89	2001	Unknown
Florida	12-31-98	None	None
Illinois	None	None	Funds will be diminished 01-1-03
Iowa	10-26-90	None	07-01-09
Kansas	06-04	06-04	06-04
Maine	12-31-05	12-31-05	12-31-05
Michigan	6-29-95	~2010	~2010
Minnesota	06-30-05	06-30-05	06-30-05
Missouri	None	Triggered by fund balance	12-31-03
North Dakota	None	06-30-99	06-30-99
Nebraska	06-30-01	None	None
New Hampshire	None	01-01-05	None
New Jersey	01-01-99	None	08-05
Oklahoma	12-31-09	12-31-09	12-31-09
South Carolina	12-31-26	12-31-26	01-31-27
Texas	12-23-98	09-01-01	09-01-01
Utah	None	Registered UST's Only	2008
Vermont	07-01-04	04-01-06	When money runs out
Washington	None	None	6-30-01
Wisconsin	12-22-01	None	None

Source: Auditor of Public Accounts, from Vermont's Department of Environmental Quality Survey dated 5/99.

Recommendations

Agency Recommendations

1. The Office and the UST Branch should work together to improve the current reimbursement process for claims already submitted, and develop an alternative process that is more effective and efficient for future claims. Under the current reimbursement process, the Office could consider partial payment for claims where all charges not in dispute would be paid after initial review. Payment of the remaining or disallowed charges could be made upon later submittal of documentation by the applicant. More importantly, the two entities could develop a *pay-for-performance* process that stresses contractor responsibility to meet certain goals and objectives. In addition, they could develop a bid process for the removal of USTs with provisions for limited fixed price add-ons. Any *pay-for-performance* or bid process adopted by the Office and the UST Branch should include the following:
 - A mechanism for a joint committee comprised of Office, UST Branch, and industry officials to grant preapproval of corrective action plans and related cost estimates
 - A fee schedule which establishes set fees for allowable and agreed upon tasks
 - A standard set of forms and procedures for contractors to follow
 - Fixed prices for soil and groundwater cleanup
2. The Office and the UST Branch should work with the Department for Facilities Management within the Finance and Administration Cabinet's Division of Contracting & Administration, to gain an understanding of how its bid process for UST removal and cleanup works. Once the two entities have learned about the bid process used by the Department for Facilities Management, they should incorporate positive aspects of the process such as fixed cost pricing into the current reimbursement process.
3. The Office and the UST Branch should jointly develop a formal strategic plan, which includes mutual missions, goals, and objectives. Planning should focus on ways to increase the cost effectiveness and efficiency of the cleanup and reimbursement process. For example, planning efforts could concentrate on how the UST Branch could become more involved with identification of cost saving techniques and how the Office could become more involved with the preapproval process related to corrective action plans.
4. The Office and the UST Branch should develop a formal memorandum of understanding (MOU) to make clear the roles of each entity. MOUs are used in various other states successfully. Those states operating under an MOU say the document clearly outlines each entity's responsibilities (See Chapter 3 for additional information on other states' information).
5. The Office and the UST Branch should conduct periodic joint audits of sites that remain active with obligations for reimbursement made prior to 1996. Since long-term cleanup activities may erode the solvency of the Fund, it would be beneficial for the Office and the UST Branch to conduct joint audits to determine the status of work completed, necessary monitoring, amount spent, and whether other problems exist. Such audits should be continued under an agreed upon timeframe such as three years.

6. The Office and the UST Branch should work together to discuss the status of the proposed shared imaging and database system. Kentucky taxpayers have already spent over \$1 million on this project. The two entities should assess the feasibility of the project and determine what resources are needed to complete the project. According to an EPA official, the completion of this project would increase the communication between the Office and the UST Branch.
7. The Office should develop a history-tracking file to identify historical trends in the claims reimbursement process. Such a history could be beneficial to strategic planning and help the Office identify problem areas. For example, the Office could develop a system to track the number and types of deficiencies noted for various types of reimbursement claims. As the Office develops a history-tracking file, it should work with the UST Branch to consider incorporating it into the shared imaging and database system.

Matters For Legislative Consideration

1. The General Assembly should consider the organizational placement of the Office and UST Branch to determine whether the current placements within separate cabinets are appropriate. This consideration should occur after the results of strategic planning are communicated to the General Assembly. Strategic planning by the Office and the UST Branch is discussed in Agency Recommendation #3.
2. The General Assembly should consider setting a sunset date for the Fund and the related fee. This will provide an incentive for owners and operators to clean up UST contamination. This should ensure that contractors finish their projects in a timely and cost effective manner. A sunset date will be a benefit to the environment, may ultimately save the Commonwealth money, and prevent the fee from continuing to be placed on petroleum dealers indefinitely. This consideration should occur after the results of strategic planning are communicated to the General Assembly.

Information From Other States

Summary

Kentucky is not alone dealing with the challenges of removing USTs and the related cleanup of contaminated soil and groundwater. Although there appear to be organizational differences among the states related to the placement of the regulatory and reimbursement functions, the common themes we found in our research include positive communication and planning to overcome the challenges of removing USTs in a cost effective and efficient manner.

We found that other states whose reimbursement and regulatory functions are in separate entities use Memoranda of Understanding to outline each entity's responsibilities and activities for enhanced coordination. In one state, the two entities have a mutual objective "to reduce costs while still providing proper assessments and remediations to protect the environment and public health." However, in Kentucky, positive communication and planning between the Office and the UST Branch has not occurred on a consistent and regular basis. As a result, efforts to improve the current reimbursement process have not been completely implemented.

We also found that other states use cost-effective alternative methods. States we researched use a variety of methods including joint review of cleanup plans, *pay-for-performance* contracts, submission of cost estimates from contractors before work begins, schedules of allowable tasks and related costs, and standard scopes of work. However, as a result of continued strain between the Office and the UST Branch, similar alternative methods have not been implemented.

A Majority of States Operate UST Regulatory and Reimbursement Functions Under the Same Administration

We conducted a survey of all 50 states to determine the number of states operating their UST regulatory program and their UST reimbursement fund under the same governmental entity. In addition, we gathered information from selected states to document information about various alternative methods of reimbursement.

Twenty-three out of 33 states operate their UST regulatory and reimbursement functions under the same governmental entity. Those who operate under the same entity say they have better communication and cost-effective cleanup. Some of those who operate under separate entities do so through an MOU. The MOUs outline each entity's responsibilities. The following table shows, of those states responding, which operate under the same governmental entity and which operate under separate governmental entities. For a complete table, including comments, see Appendix VI.

Table 10: Other States' UST Administrations

State	Same Administration	Different Administration	Neither
Alabama	X		
Alaska	X		
Colorado	X		
Delaware	X		
Florida	X		
Georgia	X		
Illinois	X		
Indiana	X		
Iowa	X		
Kansas	X		
Louisiana		X	
Maryland	X		
Massachusetts		X	
Minnesota		X	
Missouri		X	
Montana	X		
Nebraska	X		
New Hampshire	X		
New Jersey	X		
New Mexico	X		
New York		X	
North Carolina	X		
Pennsylvania		X	
Rhode Island		X	
South Carolina	X		
South Dakota		X	
Utah	X		
Vermont	X		
Virginia	X		
Washington*			X
West Virginia	X		
Wisconsin		X	
Wyoming	X		
TOTAL	23	9	1

Source: Auditor of Public Accounts' Survey of Other States.

* Washington does not have a reimbursement function but offers private insurance to tank owners.

While the majority of states operate under the same governmental entity, some operate in different divisions or departments. Respondents did not mention problem about checks and balances. However, respondents explained they have better communication under one governmental entity, with an increased awareness of the cost of cleanup.

Other states whose functions are in separate entities use MOUs to make the roles of each function more clear. South Dakota's document outlines each entity's responsibilities and activities, requiring significant coordination between their

Petroleum Release Compensation Fund and the Department of Commerce and Regulation. In addition, the two have a mutual objective “to reduce costs while still providing proper assessments and remediations to protect the environment and public health.” This objective includes obtaining prior approval of costs from the fund and joint reviews of plans submitted by contractors.

The Missouri MOU outlines significant coordination activities between the Missouri Department of Natural Resources and the Storage Tank Insurance Fund. The MOU establishes a point of contact from each agency to coordinate all policy and legislative issues, and requires them to jointly evaluate ways to integrate their respective activities in order to reduce duplication and improve services. Additionally, it requires the two to work together to explore ways to streamline tank information procedures and eliminate unnecessary paperwork.

Alternative Methods to Control Costs

Through interviews of other states, we discovered the use of cost-effective alternative methods. The following paragraphs describe some of these states and their methods.

Ohio, South Carolina, and Louisiana have different, yet effective, methods to control costs. Ohio, whose regulatory and reimbursement functions are separate, has a board made up of members of the two entities. The board jointly reviews their cleanup plans. South Carolina uses *pay-for-performance* and they have standardized requirements for tank closures and certain types of assessments. Louisiana requires the contractor to submit a cost estimate and to use a cost-effective method of cleanup. In addition, they have a document that outlines all allowable costs and the state’s reimbursement rate. As a result, these three states stand a better chance of saving taxpayers’ money than states like Kentucky that do not use alternative methods.

Ohio Separates Regulatory and Reimbursement Functions

Ohio’s fund is separate from its regulatory administration. However, it has a Compensation Board, which reviews remedial action plans, similar to Kentucky’s corrective action plan, for technical feasibility and cost-effectiveness. According to an official at the Compensation Board, since the Board’s inception the Bureau of UST Regulations (the bureau responsible for ensuring the environment is cleaned up) is more cognizant of the cost associated with cleanup.

Ohio is an example of a state that did not establish a gasoline fee to pay for UST cleanup. Kentucky is very similar to Ohio in the type and number of tanks covered by the Fund. Each state is responsible for approximately 27,000 petroleum, used oil, and farm tanks. The big difference is that Kentucky’s assessed fee provided approximately \$50 million in annual revenues and interest to the Fund in FY 1999, while Ohio’s annual revenues are \$9.5 million. Ohio’s revenues are generated through a \$250-\$400 annual tank fee charged to tank owners and operators.

South Carolina Uses Standard Scopes of Work

South Carolina has developed Standard Scopes of Work that list the requirements for tank closure, initial groundwater assessment, and standard limited assessment, as well as fixed costs for each. See Appendix VII for additional information on the costs related to each assessment type. Using Standard Scopes of Work reduced the amount of paperwork submitted by the contractor from 18 to 25 pages to just four pages. In addition, all costs must be in compliance with the Allowable Cost document. This document lists what work is reimbursable and at what cost per unit.

South Carolina has successfully used *pay-for-performance* to reduce clean-up expenditures. Their average cost of cleanup in 1995 was \$300,000. Since the implementation of risk-based corrective action and *pay-for-performance*, the average cost of cleanup has dropped to \$150,000. In the initial groundwater assessment alone, they realized savings of \$2,500 per site, a savings of 83-percent. With the money generated from the savings, South Carolina can conduct 900 additional groundwater assessments every year.

As part of implementing *pay-for-performance*, South Carolina has a streamlined process for reviewing invoices from owners and contractors who have receive prior cost approval. In order to streamline their reimbursement process, South Carolina established a cut-off date for all outstanding claims (claims not submitted for completed work). Claims received prior to the cut-off date wer reviewed under the old process. Claims submitted after the cut-off date were reviewed under *pay-for-performance*, which required pre-approval of costs associated with cleanup.

Louisiana Requires a Cost Estimate

The Louisiana Department of Environmental Quality (Department) requires a cost estimate to be submitted with all work plans. When submitting a corrective action plan, contractors are required to use cost-effective methods that are technologically feasible and reliable. The Department must approve all work plans and cost estimates before assessment work can begin.

If the Department determines that contamination and corrective action is needed, the owner or operator must obtain at least two proposals outlining the cleanup method. Then, the owner or operator will jointly review the proposals with the Department and decide the most appropriate and cost-effective method of cleanup.

The Department also developed a Cost Control Guidance Document in order to contain costs. This document outlines allowable costs and the rate of reimbursement. Once a claim is submitted for reimbursement, the Louisiana fund staff reviews the claim to ensure it complies with the requirements of the cost control document and that the work performed was in accordance with the Department's directives. In addition, all claims for reimbursement must be submitted within two years of the date the work was performed and all invoices for a quarter must be submitted at the same time.

In 1995, the Louisiana legislature adopted a bill that requires the Department to pay the contractor directly for work performed. Previously, the Department made checks payable to the owner or operator, who then paid the contractor. Kentucky presently makes checks payable to the owners and operators, not the contractors, unless the owner or operator designates a third party.

Recommendation

Agency Recommendation:

1. The Office and the UST Branch should consider the use of some of the cost effective techniques described above as they conduct strategic planning.

Scope

The Auditor of Public Accounts determined that a performance audit should be conducted to determine if the Office is reimbursing owners and operators effectively and efficiently. This audit addresses the following question:

Is the Office of the Petroleum Storage Tank Environmental Assurance Fund effectively and efficiently reimbursing owners and operators of underground storage tanks?

In April 1999, a large cleanup contracting firm declared bankruptcy and alleged that the Fund owed it \$40 million. Subcontractors hired by this company said they had not been paid. In some cases, those subcontractors placed liens on the property of UST owners or operators for the work they had done. Legislators and others expressed concerns that the Office takes too long to reimburse owners and operators. Office officials respond that they are required by law to protect the solvency of the Fund and ensure that all claims submitted by contractors are reasonable and necessary.

Currently, the Office is involved in disputes surrounding the bankruptcy of this particular contracting firm. As a result, we did not conduct work to verify whether these allegations are true or not.

Methodology

In addressing our audit question, we reviewed state and federal statutes and regulations. We interviewed staff at the Office and at the Underground Storage Tank Branch (UST Branch) within the Division of Waste Management located in the Natural Resources and Environmental Protection Cabinet, and reviewed a sample of contaminated site files. To get feedback from the federal government, we interviewed staff from the EPA. We surveyed a sample of owners and operators, and contractors. Finally, we reviewed other states' UST programs, contacted officials concerning other states' fund programs, and surveyed all 50 states to obtain information on the placement of their regulatory and reimbursement functions. In addition, we reviewed audits that other states had performed relating to their underground storage tank programs. In conducting this audit, we followed generally accepted government auditing standards.

Review of Claims Files at the Office

Our fieldwork consisted of reviewing 50 claims files from the Office's Financial Responsibility Account (FRA) and the Petroleum Storage Tank Account (PSTA). We selected this sample from 3,334 files where an application for assistance had been submitted. The selected sample represents sites in various geographical regions of the commonwealth and from different periods from the inception of the program to the present. To aid in that review, we developed a data collection instrument (DCI) which helped us summarize the information contained in the claims files. We received feedback from two Office staff who reviewed the tool for accuracy and effectiveness. The DCI was then used to develop summary reimbursement statistics from the results of our file review.

Our file review did not include the Small Owner's Tank Removal Account (SOTRA). This account, established by the legislature, was created to operate for a period of five years with maximum expenditures of \$3 million per year. Presently in its third year, this account operates differently from the FRA and the PSTA because it pays for the removal of USTs. The account was set up to help owners who wanted to remove but not replace their tank. Because SOTRA does

not pay for corrective action associated with USTs, claims submitted to this account are reimbursed more efficiently. According to Office officials, owners have not complained about the timeliness of reimbursement.

Survey of Contractors, Owners, and Operators

To gain a better understanding of the perceptions others have about the Office, we conducted a survey of UST contractors, owners, and operators. The two groups of individuals were asked to provide their opinion on various issues, including claims reimbursement and the communication between the Office and the UST Branch.

Of the 112 surveys mailed to contractors, 45 were returned with usable information. The results showed that contractors were very dissatisfied with the timeliness and ease of the reimbursement process. We used the Office's Access database to generate a list of certified contractors. We used this list to select a sample of certified contractors to receive our survey. Surveys were mailed on August 13, 1999, and were to be returned by August 24, 1999.

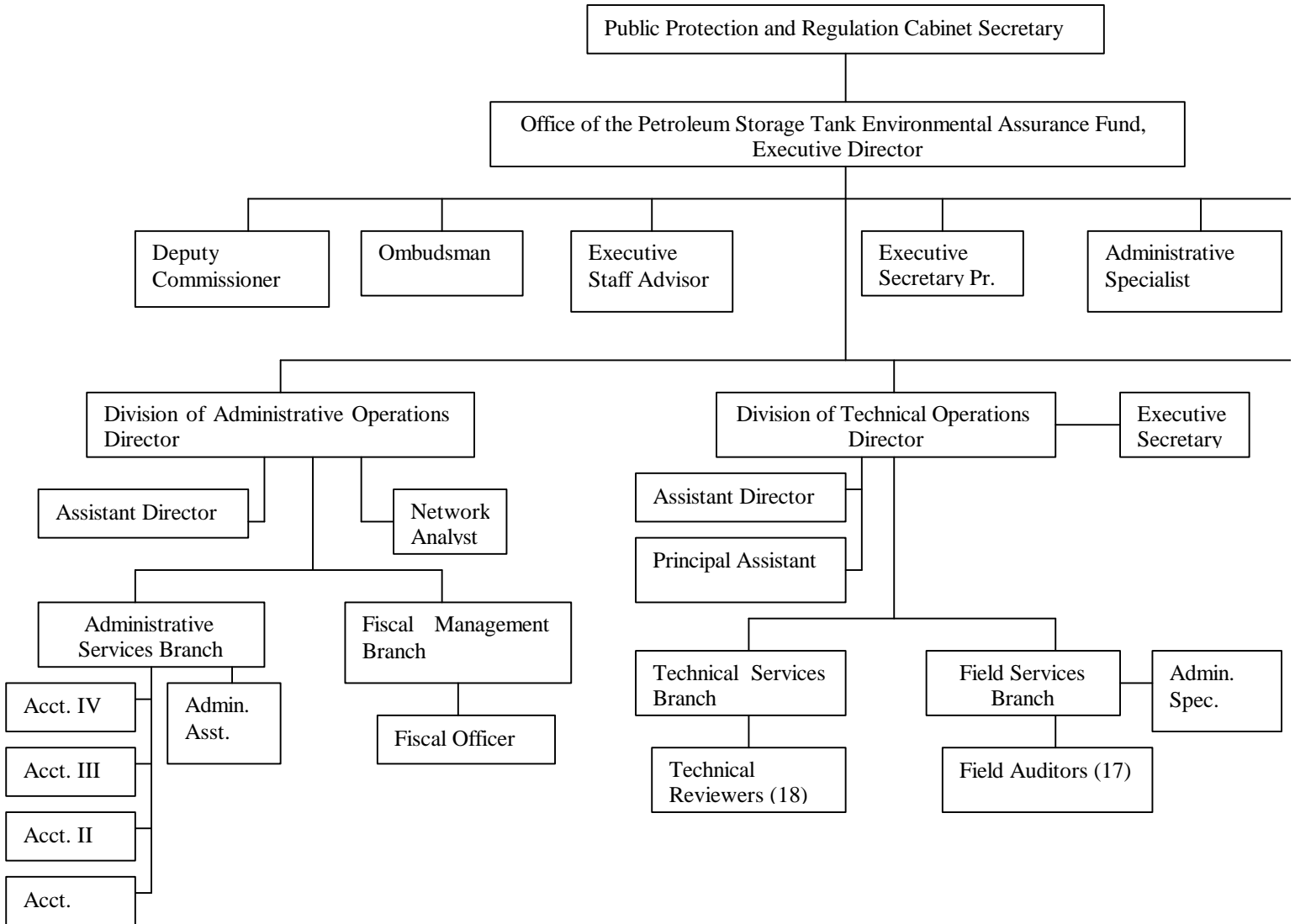
Of the 274 surveys mailed to UST owners and operators, 100 were returned for a response rate of 36 percent. Of the 100 owners and operators responding, 40 indicated they had signed a Limited Power of Attorney. In addition, 16 were returned blank and 12 were returned incomplete or the owner or operator did not request assistance from the Fund. Of the remaining 32 surveys, the results showed some dissatisfaction with the timeliness and ease of the reimbursement process. We used a copy of the Office's Access database of new owners to select a sample of owners and operators. Surveys were mailed on August 13, 1999, and the deadline for return was August 24, 1999.

Survey of Other States

We conducted a survey of all 50 states to determine the number of states who operate their UST regulatory program and their UST reimbursement fund under the same governmental entity. Of the 50 surveys mailed to other states on July 26, 1999, 33 were returned with usable information. As a result of this survey, several states were contacted to obtain detailed information on their UST programs. We also obtained the results of a survey conducted by the Vermont Department of Environmental Conservation regarding information about each state and its UST program and fund.

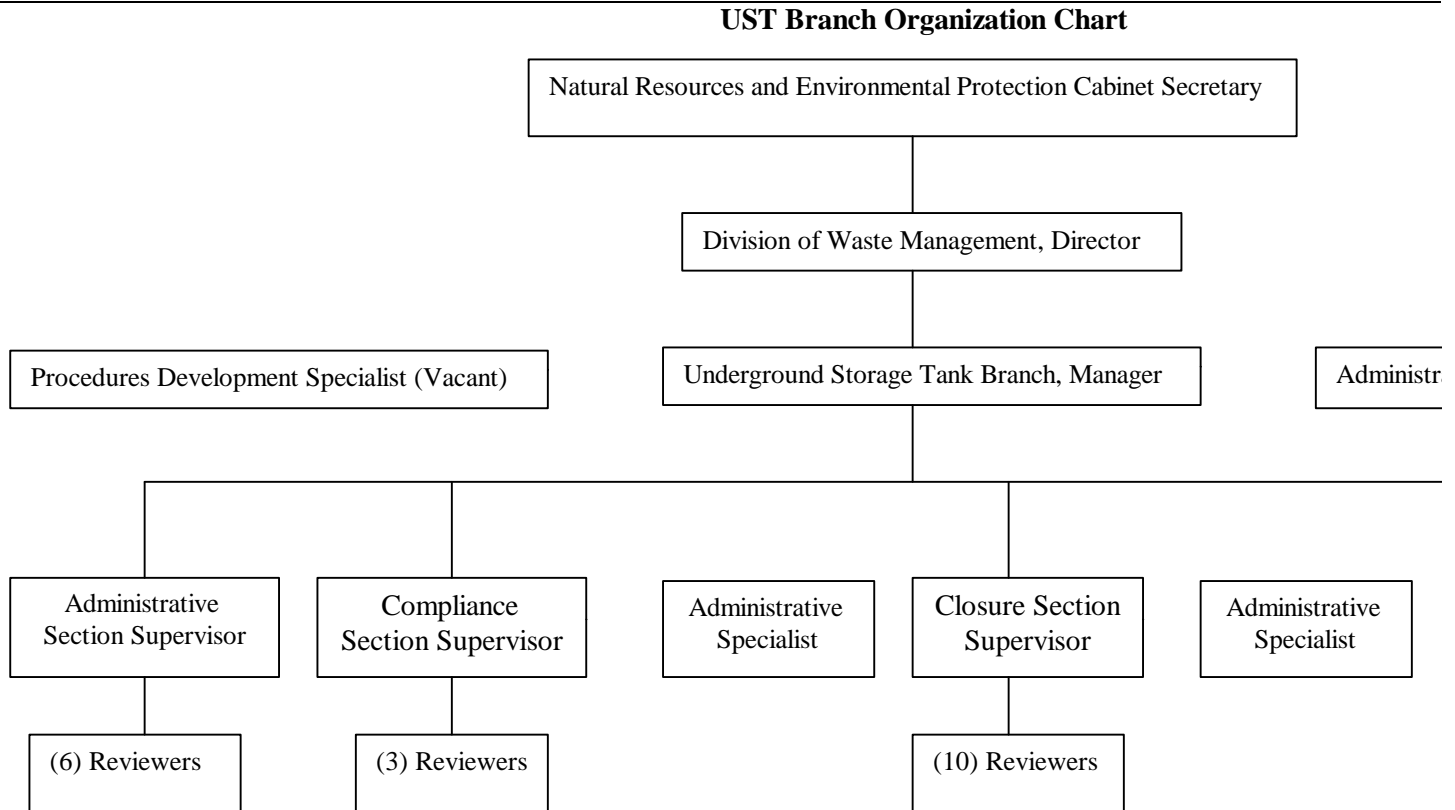
Office Organizational Chart

Office of Petroleum Storage Tank Environmental Assurance Fund Organizational Chart



Source: Auditor of Public Accounts, from information provided by the Office of the Petroleum Storage Tank Environmental Assurance Fund.

UST Branch Organizational Chart



Source: Auditor of Public Accounts, from information provided by the Underground Storage Tank Branch.

**Auditor of Public Accounts
Survey of Underground Petroleum Storage Tank Contractors**

Please answer the following questions as accurately and completely as possible. Return the completed survey in the envelope provided by August 24, 1999.

Background Information

1. How many owners/operators have you contracted since 1990 with to perform work on underground storage tanks?
Average number of owners/operators contracted = 119
2. How many of these owners have requested clean up assistance from the Environmental Assurance Fund?
Average number of owners who requested cleanup = 74
3. Do you offer your clients (owners/operators) the option of signing a Limited Power of Attorney?

22 Yes 22 No
4. Which accounts have the owners you have contracted with participated in? (Check All That Apply)

36 Financial Responsibility Account (FRA)
42 Petroleum Storage Tank Account (PSTA)
29 Small Owners Tank Removal Account (SOTRA)

Application for Assistance

A. Timeliness of Approval

15	8	17	3	2
Very Dissatisfied	Somewhat Dissatisfied	Somewhat Satisfied	Very Satisfied	No Opinion

B. Ease of the Application for Assistance Process

5	12	22	4	2
Very Dissatisfied	Somewhat Dissatisfied	Some what Satisfied	Very Satisfied	No Opinion

Claims Reimbursement

A. Timeliness of Reimbursement

28	7	5	2	3
Very Dissatisfied	Somewhat Dissatisfied	Somewhat Satisfied	Very Satisfied	No Opinion

B. Ease of the Claims Reimbursement Process

22	10	8	1	4
Very Dissatisfied	Somewhat Dissatisfied	Somewhat Satisfied	Very Satisfied	No Opinion

Survey Results of UST Contractors

C. Ability to Get Questions Answered by OPSTEAF Staff About Your Claim				
6	8	17	11	3
Very Dissatisfied	Somewhat Dissatisfied	Some what Satisfied	Very Satisfied	No Opinion
D. Amount of Information Required in the Claims Reimbursement Process				
22	20	0	3	
Too Much	About Right	Too Little	No Opinion	
E. Amount of Reimbursement				
0	26	16	3	
Too Much	About Right	Too Little	No Opinion	

<i>Please check the appropriate response</i>	<u>Agree</u>	<u>Disagree</u>	<u>No Opinion</u>
1. I know whether to contact staff from the <u>UST Branch</u> or the <u>OPSTEAF</u> with my specific question(s).	40	3	2
2. I know whom to contact within the <u>UST Branch</u> with my specific questions.	38	4	3
3. The <u>UST Branch</u> provides guidance on performing site investigations	30	12	3
4. The <u>UST Branch</u> provides guidance about the appropriate corrective action approach to take.	18	23	4
5. Assistance provided by staff of the <u>UST Branch</u> is adequate.	33	7	5
6. I know whom to contact within the <u>OPSTEAF</u> with my specific questions.	31	12	2
7. Assistance provided by staff of the <u>OPSTEAF</u> is adequate.	26	14	5
8. Communication between the UST Branch and the OPSTEAF is good.	4	30	11
9. Please list those steps you take to ensure the clean-up costs for your sites are reasonable: _____ _____ _____			

Please provide any additional comments about your experience with the Office of the Petroleum Storage Tank Environmental Assurance Fund in the space provided below.

Thanks for your assistance. Please return the survey in the envelope provided to the Auditor of Public Accounts. If you have any questions, please call Lisa Daniel or Ellyn Sipp at 502-573-0050.

Survey of Underground Petroleum Storage Tank Contractors Comments Provided by Contractors

<ul style="list-style-type: none"> • “Please expedite the process to allow for payments to be received in a more timely fashion. Also better communication between the Fund office and the UST Branch is needed to assist with getting a site completed, closed, and funds reimbursed more quickly.”
<ul style="list-style-type: none"> • “It takes 150 days from claim submittal to claim approval assuming no deficiencies are found. We would prefer to invoice for work done, be paid in 30 days, and be subject to annual audits, similar to Transportation Cabinet jobs.”
<ul style="list-style-type: none"> • “Too much time spent on minute details. Invoicing and fee structure of typical consulting engineering services and even construction services is not compatible with OPSTEAF documentation structure.”
<ul style="list-style-type: none"> • “1. Additional documentation from subcontractors has gone to the extreme, i.e., timesheets, résumé’s before invoice is considered for payment. 2. Reimbursement regulations regarding the Push Probe Drilling equipment is not followed. Disallowances appear to be made on the “mood of the day or the time available for the day” as opposed to the 1st set of reimbursement regulations. 3. Personnel who reviews the “questionable” invoices for the Push Probe Device does not have enough time to perform this duty, and has taken over 1 year to review. 3. Reconsiderations has taken over a year on occasions, if reviewed at all. Constant tracking and resubmitting is essential for reconsiderations. 4. Deficiency letters reflect information submitted in the Closure Assessment Report, therefore duplication copies are sent. This also enables the 90 day review process to be delayed. There is not a set time frame for deficiency responses to be reviewed. Once the 90 day review has not been met, the deficiency responses go into a separate pile and is reviewed when the reviewer has time. Our clients are told up front, payment from OPSTEAF usually takes up to 1+ years.”
<ul style="list-style-type: none"> • “The problem with the Fund, is that no one there has any business experience, and has no idea how businesses are run. The goal of the Fund appears to be eliminating any profit whatsoever with tank contracting.”
<ul style="list-style-type: none"> • “The use of field auditors has not sped up the claims reimbursement process. It seems to take longer now. Requests for capital equipment purchases are taking too long for review (i.e. the new forms have not helped with the process). Right now the clients end up waiting on OPSTEAF to implement their CAP. Requests for additional obligations for yearly OMM costs have taken 6 mo. or greater-with no indication from the Office as to why they are not acceptable. Since it has been taking so long for these additional obligations, unpaid back claims begin to add up. Most of the deficiencies/questions listed for reimbursement claims are unnecessary and a waste of our time to reply. Overall, the whole claim review process takes too long (inefficient). Reimbursement rates on certain items are unreasonable which makes it difficult to find people to do the work.”
<ul style="list-style-type: none"> • “I feel that the OPSTEAF does not respond to responsible parties and contractors in a timely manner and responses are not consistent. There needs to be a resolution of who is regulating petroleum UST corrective action activities. The UST Branch is <u>supposed</u> to be the regulating agency not the OPSTEAF. This causes a lot of problems.”
<ul style="list-style-type: none"> • “Since the current administration took over, we have seen a progressive slow down in application claim turnaround. The process is made increasingly cumbersome. We work in several other states with trust funds. Kentucky is by far the most difficult to work with and the most inefficient in claim processing. If the Fund mgmt would concentrate on the cash aspect and leave the technical oversight to UST the program would certainly have to improve. You would think with the addition of so many people at taxpayer expense that we would see improvement instead of decline.”
<ul style="list-style-type: none"> • “The idea that UST corrective action is regulated by the UST Branch is no longer valid. The work is regulated by the money. And the money is regulated by the Fund. Clearly there is a built-in conflict in the system.”
<ul style="list-style-type: none"> • “I feel the OPSTEAF manages and directs the program in a very competent and professional manner. The staff is always willing to listen and assist when requested. I don’t believe most people realize the amount of effort necessary to process the numerous claims they receive. Furthermore, it is difficult to determine what is going on with a site when the claims reviewer was not there. The field auditor program was long overdue and [REDACTED] and his field staff have been very friendly and helpful. I would like to see the claims review process completed in 90 days instead of it being started in 90 days and typically completed in 120.”
<ul style="list-style-type: none"> • “The staff is very helpful in answering specific questions and resolving issues. OPSTEAF has undergone numerous regulatory changes, and it would be helpful if they would send contractors the new regulations as they change. This

<p>would reduce number of questions received by OPSTEAF and help avoid mistakes in the claim process.”</p>
<ul style="list-style-type: none"> • “- The Fund requests documents on a weekly basis which have been previously submitted via certified mail. <ul style="list-style-type: none"> - The Fund states <u>opinion</u> on tasks conducted which should fall within the UST Branch. - Continual overturn of staff personnel. Some personnel lack training. Some believe they are still working for UST and take that approach. In some instances it is as we are satisfying 2 regulatory agencies. - Have gone from being very lax on documenting invoices to very very stringent within last 6 months. - Reconsideration of payments take too long. Many mistakes are made by reviewer and it takes months to process reconsideration.”
<ul style="list-style-type: none"> • “I have been working with the OPSTEAF since inception. In the past I have not had difficulty being paid within six months of bill submittal. Now it takes at least a year or longer to be paid. Most of what I consider the more competent personnel have become disgusted and quit the Fund. I understand that [REDACTED] has put reviewers in the field to speed up the payment process, which is great. The problem I have with being paid timely is not technical in nature but is beauracritic. It seems that the new reviewers at the Fund are more concerned with us holding their hands on claims reviews. I find that we send information they request they ask for the same information again. I do not understand why.”
<ul style="list-style-type: none"> • “- The concept of holding an application for assistance for 89 days before starting the review seems irrational. Better to try to hurt the cheaters another way, because holding applications for 89 days hurts everybody. <ul style="list-style-type: none"> - It seems that staff has designed all policies to make life hard for cheaters. It also makes life hard for honest owners and consultants.”
<ul style="list-style-type: none"> • “- Real problem with contractor costs in the 1999 cost regs. – We can’t get people to work for these low rates – especially when payment comes so slow. Holding up corrective action process! <ul style="list-style-type: none"> - Problem w/ OPSTEAF reviewers assigning multiple job titles for field personnel – thus changing allowable rates for people when performing portions of the same task (example, preparing for field, travel, etc.)”
<ul style="list-style-type: none"> • “OPSTEAF is duplicating roles provided by other state agencies which is confusing owners/operators and making process more time consuming and more expensive (i.e. contractor/co. certification – state board does PE/PG cert. and co. cert.) <ul style="list-style-type: none"> Lab certification – state lab has its own cert. program UST inspections – KDEP does them also, technical review – KDEP does also OPSTEAF is becoming an entity to itself – without accountability and resp. to other state agencies (very dangerous!)”
<ul style="list-style-type: none"> • “The way the current claims review process is structured there is little continuity from one review to the next. As a result, claim costs that are justified and paid through one review can be disallowed by another reviewer on subsequent work. This redundancy is far from cost effective. There also is a perceived “disconnect” between what OPSTEAF sees as reasonable and appropriate and what KDEP will request and require. As a result, the contractor is often asked to justify actions required by KDEP. Finally, with two teams of inspectors, two laboratory certification programs and two levels of review, the redundancy is unnecessary and costly from an environmental contracting perspective. Continuity between the technical and financial programs would go a long way toward making this program more cost effective. With the recent implementation of company certification coupled with the professional certification programs at OPSTEAF, there should be little need for the intensive level of review and scrutiny of project costs. The penalties for non-compliance are clearly identified and should serve as the level of control necessary to ensure honesty in reporting. A random audit of costs would seem to be an appropriate check on the adequacy of the approach.”
<ul style="list-style-type: none"> • “OPSTEAF has poor record keeping especially on status of current Certified Contractors. Payments on claims requiring additional info and reconsideration are <u>very</u> slow, sometimes more than a year! They have “lost” several claims that we must re-submit (we have certified receipts showing the Fund received claims and now can’t find the claim).”
<ul style="list-style-type: none"> • “1. Reconsiderations sometimes take over a <u>year</u>, just to look at the requests. That is unreasonable and unfair business practice. If the Fund were a bank, I’d personally sue them for recovery of financial damage/hardship caused by late payment. 2. The Fund remains unaware of the booming construction/contracting business in a strong economy. There are few, if any, reputable contractors that will turn down good-return construction projects for relatively small-scale and low-return Fund projects. Rates do not reflect market conditions.”

<ul style="list-style-type: none"> • “My experience w/ OPSTEAF has shown they have an information overload and paperwork gets misplaced frequently. Additionally, high turnover @ OPSTEAF makes the claim review process DIFFICULT. Payment terms are unreasonable 180 days from the date of the invoice and 1.5 years for reconsiderations is unacceptable.”
<ul style="list-style-type: none"> • “OPSTEAF personnel are always polite and helpful. A pleasure to work with. Payment process has caused many headaches.”
<ul style="list-style-type: none"> • “Recently we have seen a surge of activity in the Assurance Fund. This surge seems to come from the new additions and the field services group. The pay for performance idea that is currently being developed is the way of the future. We need to implement the process/program as soon as possible. The capital expenditure program needs more reviewers and to ensure rapid responses to equipment purchase requests. The people reviewing the Capital exp. Documentation should have some experience in equipment. I have not experienced this payment option but will be using it soon.”
<ul style="list-style-type: none"> • “I feel that claims are deliberately held for payment for some unknown reason. When one is asked the questions that are asked or to provide information that has been provided several times in the past this is the only conclusion I can come to. When employees of the OPSTEAF send out emails asking if “anyone has seen a file please call” This only delays the claims process. It is not fair to applicants, contractors or vendors that claim payments are slowed due to the inefficiency of the OPSTEAF. As far as the USTB is concerned they are a good group of people to work with.”
<ul style="list-style-type: none"> • “Excluding claim review and reimbursement time, our experiences with OPSTEAF have generally been very positive. However, they tend to nit pick smaller inconsequential charges which require a lot of administrative time to document. If you play it straight, claim form/fund related time is not reimbursable. Under the current system I have actually spent more time preparing a large claim than writing a site investigation report. I believe the claim process should be expedited/streamlined and that all firms should be subjected to a maximum of two thorough audits a year. If improprieties found/loose licenses.”
<ul style="list-style-type: none"> • “I would like to see a quicker turnaround time for the claim vouchers to receive a check.”
<ul style="list-style-type: none"> • “The Fund was robbed for several years by unscrupulous people wanting a piece of the environmental industry windfall. OPSTEAF tried to correct this with contractor certification but this title is easy to get and only glorifies people not otherwise qualified or honest. The new company certification compounds this problem. Certification of documents by professional engineers was a good step. OPSTEAF should require <u>direct supervision and certification of total projects</u> by engineers. Then educated, trained individuals whose license (livelihood) is regulated and controlled by the state would carry total responsibility for the work. Engineers cannot afford to violate the code of ethics and statutes for short term economic gain. If a certified contractor lost his license, any other Joe in his company can get one.”
<ul style="list-style-type: none"> • “Most of the problems confronting the Fund appear to be the result of a few contractors that fail to realize the importance of cost effective solutions. The Fund needs to gain more up-front control over the work being conducted. The procedure of paying for work based on the unit prices established in the Regulations does little to control the overall job cost if there is no control over the units completed by the contractor. In the past year, the Fund has taken several steps in the right direction by eliminating reimbursement for tank closure costs hiring field inspectors, and requiring pre-approval for some large projects. As an additional improvement, I would suggest requiring pre-approval for all site investigation and remediation activities. This would allow the Fund to gain control over the amount of work conducted and hopefully expedite the reimbursement process.”
<ul style="list-style-type: none"> • “OPSTEAF has hired a large percentage of their staff that has no clue to the environmental industry or corresponding claim reimbursement. Example of questions asked by their untrained reviewers: 1. Why was a backhoe on site during a tank removal? 2. Explain why a groundwater pump was used for during a groundwater pump test?”
<ul style="list-style-type: none"> • “The attitude of the OPSTEAF staff is that <u>everyone</u> is a <u>cheater</u>. Our company finds this attitude repulsive. Yes, several firms have cheated the Fund. They should be banned instead of treating the companies like ours like criminals. The long delays in reimbursement do not eliminate cheating instead make it more prevalent to cover operating costs. The thing needs fixing!!” • “They are abusing the power to require back up documentation since the ATI “Boondoggle,” and seem to delay determination of claims to keep \$ in the Fund rather than to ascertain validity.”

<ul style="list-style-type: none"> • “Could write a Book on the problems had with the Fund. Seems [REDACTED] and [REDACTED] have a chip on their shoulder. Think if they were replaced, Fund would have less problems.”
<ul style="list-style-type: none"> • “→Fund has improved significantly in the last 3 years →Turnover in UST Branch not very helpful, especially when reviewers are promoted or re-assigned mid-project →The new requirement for OPSTEAF staff oversight of Fund cleanup, w/ create problems, primarily due to the fact that the new staff would lack the experience to enhance the process.”
<ul style="list-style-type: none"> • “My general experience has been one of frustration. The claim/review/reimbursement process is very slow and burdensome. Many times we have to resubmit information which has already been submitted, thereby delaying the review process more. For those projects where we have agreed to wait on our money from the owner, this places a serious strain on our cash flow. This is further compounded by the Fund only allowing 8% markup on certain of the most expensive costs which many times will only cover the interest on our money. In essence, the contractor is financing the project at less interest rate (the 8% allowed by the Fund) than any bank would loan money. Items to improve on: 1. Review process – shorten time frame and improve the Fund’s tracking of incoming documents so they don’t request copies of information already sent. 2. Claim reimbursement – shorten time frame. 3. Increase allowed markups from 8% to at least 15% which is customary in this business. That will at least allow us to recoup our expense.”
<ul style="list-style-type: none"> • “I have been lied to, cheated, deceived and treated as if I were a thief. The upper management of the Fund is completely incompetent. If you were to listen to the conversations and read the claims you will find preferential treatment by the staff. We bill approximately \$250,000 a month and have for the last three years. Our average receivable is 287 days old. I have been paid less than \$30,000 since March 1999. This is *\$@&*#%. The Fund owes me \$4.5 million and I have had to lay off 20 people because I can’t get paid. How in the \$&*% can the Governor allow this to continue. I would love to see these people go to jail. I am attempting to do just that.”
<ul style="list-style-type: none"> • “The rules are always changing. This is hard on the regulators as well as the regulated. There will always be those who attempt to manipulate the system. Steps taken to control the actions of a few companies appear to be at the detriment of those remaining. Please streamline the process. Keep it simple! Design safeguards in advance which are severe enough to discourage undesirable activities instead of implementing “knee jerk” reactions.”
<ul style="list-style-type: none"> • “The Fund’s requests for additional information such as time sheets and other backup documentation is very time consuming. There is no allowance for reimbursement of the time it takes to complete these tasks.”
<ul style="list-style-type: none"> • “Our experience with the OPSTEAF is positive, although payment takes much too long. There appears to be little concern from Fund employees on when claims are reviewed or process.”
<ul style="list-style-type: none"> • “The OPSTEAF double reviews technical items. Who makes the determination of reasonable and necessary? Improve the costs allowed for trucking of backfill, soil disposal and contaminated water. Improve the costs on an air compressor to at least rental rates. The OPSTEAF doesn’t realize that because owners and operators cannot afford the cleanup of their sites and consultants/contractors have to wait sometimes a year or better for reimbursement the contaminated plume increases in size until equilibrium is reached and N/A takes over. This creates a larger cleanup and more cost.”
<ul style="list-style-type: none"> • “Any questions I have asked have been answered to me.”
<ul style="list-style-type: none"> • “I was involved with the OPSTEAF from 2/96 – 2/98 only.”
<ul style="list-style-type: none"> • “Personally, I think OPSTEAF is providing tank owners an excellent opportunity to recover normal business expenses for their industry. My experience with OPSTEAF has been not only smooth, but enjoyable. I am very fond of much of the staff. Besides some misuse by others, I think the program has run smoothly. Its one of the best in the country and should be commended. I have no major complaints. Simply give them what they want and things will go fine.”

Survey Results of UST Owners and Operators

Survey of Underground Petroleum Storage Tank Owners/Operators

Please answer the following questions as accurately and completely as possible. Return the completed survey in the envelope provided by August 24, 1999.

Limited Power of Attorney

I have signed a Limited Power of Attorney and the contractor I have hired handles all correspondence with the Underground Petroleum Storage Tank Branch (UST) and the Office of the Petroleum Storage Tank Environmental Storage Tank Fund (OPSTEAF).

40 Yes 43 No

If you answered YES to the above statement, STOP! Return the survey in the envelope provided to the Auditor of Public Accounts. If you answered NO, please continue.

Background Information

1. How many Underground Petroleum Storage Tank (UST) Facilities have you requested clean up assistance for from the Environmental Assurance Fund? 53

How many total tanks were/are in these UST Facilities? Average=2.25

2. Which account did you participate in: 7 Financial Responsibility Account (FRA)
 13 Petroleum Storage Tank Account (PSTA)
 6 Small Owners Tank Removal Account (SOTRA)

Application for Assistance

A. Timeliness of Approval

11	6	7	4	4
Very Dissatisfied	Somewhat Dissatisfied	Somewhat Satisfied	Very Satisfied	No Opinion

B. Ease of the Application for Assistance Process

8	9	4	7	4
Very Dissatisfied	Somewhat Dissatisfied	Somewhat Satisfied	Very Satisfied	No Opinion

Claims Reimbursement

A. Timeliness of Approval

10	7	4	5	6
Very Dissatisfied	Somewhat Dissatisfied	Somewhat Satisfied	Very Satisfied	No Opinion

B. Ease of the Claims Reimbursement Process

8	6	6	5	7
Very Dissatisfied	Somewhat Dissatisfied	Somewhat Satisfied	Very Satisfied	No Opinion

Survey Results of UST Owners and Operators

C. Ability to Get Questions Answered by OPSTEAF Staff About Your Claim

7	5	7	7	6
Very Dissatisfied	Somewhat Dissatisfied	Somewhat Satisfied	Very Satisfied	No Opinion

D. Amount of Information Required in the Claims Reimbursement Process

15	9	0	8
Too Much	About Right	Too Little	No Opinion

E. Amount of Reimbursement

0	7	10	15
Too Much	About Right	Too Little	No Opinion

Please check the appropriate response.	<u>Agree</u>	<u>Disagree</u>	<u>No opinion</u>
1. I know whether to contact staff from the UST Branch or the OPSTEAF with my specific question(s).	15	9	8
2. I know whom to contact within the UST Branch with my specific questions.	16	9	7
3. Assistance provided by staff of the UST Branch is adequate.	16	8	8
4. I know whom to contact within the OPSTEAF with my specific questions.	14	10	8
5. Assistance provided by staff of the OPSTEAF is adequate.	13	8	11
6. Communication between the UST Branch and the OPSTEAF is good.	10	11	11
7. I believe that the entry-level requirements for the account(s) in which I participate are reasonable.	16	4	12
8. I take steps to ensure the cost of cleaning up my contaminated sites is as low as possible.	14	1	17
If agree, please list those steps you take : _____ _____			

Please provide any additional comments about your experience with the Office of the Petroleum Storage Tank Environmental Assurance Fund in the space provided below.

Thanks for your assistance. If you have any questions, please call Lisa Daniel or Ellyn Sipp at the Auditor of Public Accounts, (502) 573-0050.

Survey of Underground Petroleum Storage Tank Owners/Operators Comments Provided by Owners/Operators

<ul style="list-style-type: none">• “Communication/speed of follow-up were greatest concern.”
<ul style="list-style-type: none">• “Took a long time to finish this process. They decided what was a reasonable amount for certain processes in this project; however, we were always charged much more. I’m sorry, but this has not been a pleasant experience for us.”
<ul style="list-style-type: none">• “Very satisfied”
<ul style="list-style-type: none">• “Need to provide forms on line – very helpful (UST Branch does this)”
<ul style="list-style-type: none">• “We received absolutely NO help or NO money from the state. We were Solely responsible for ALL the bills paid. We got NO money or help from the state – which was expected.”
<ul style="list-style-type: none">• “Our claim was not paid 100% since we removed our tanks and contaminated soil prior to 4/9/90. I don’t understand why that date matters. We cleaned up the site in a proper manner as promptly as practical. Amount of our claim not paid was approx. \$14,389.00 since work was done prior to 4/9/90. Don’t believe we were ever told to wait until after 4/9/90 to begin remediation work.”
<ul style="list-style-type: none">• “I have removed fuel tanks at 5 locations – the 1st one being at Nortonville KY (6 tanks) in Aug of 1996 and have not been paid for any of the removal and clean up cost. My only contact has been with [REDACTED] (Madisonville KY) and he tells me that they have not been paid. We did the work and we need to be paid – my opinion is the Fund has not worked well. I have not received payment on any of the 5 locations that I have cleaned up. When I talk to [REDACTED] he tells me they are reinvesting more information or something of that affect from him and normally it is something that we have already furnished to them (delay tactics). The first one I done was 3 years ago and the last one I did was approx 30 mos ago and I don’t intend to do any more.”
<ul style="list-style-type: none">• “We have to sell this property. It’s in the middle of a divorce proceeding. We can not get any straight answers at all! If we have to wait another 7-10 yrs our nerves will not take it. We have been working on this since 96.”
<ul style="list-style-type: none">• “We have received numerous requests to submit information already provided to the Fund. Each request delays a reimbursement.”
<ul style="list-style-type: none">• “What it cost the state for the clean up I feel it was on call for, the price the company charged.”
<ul style="list-style-type: none">• “Nightmare!! I have been dealing with STEAF for years. My legal bills have been huge.”
<ul style="list-style-type: none">• “Payment process too slow. Think payment should be within the 90 days.”
<ul style="list-style-type: none">• “Paid \$14,824.78 to Environmental Consultants to remove tanks – fill out reports and submit to Petroleum Storage Tank Environmental Assurance Fund for reimbursement! Nothing has been done – this clean up was Dec. 1994.”

Survey Results of Other States

Appendix VI

<i>State</i>	<i>Same Administration</i>	<i>Different Administration</i>	<i>Neither</i>	<i>Comments</i>
Alabama	X			This structure works very well. Our Compliance Staff assists the fund by determining which releases are eligible for the fund by checking the owner's compliance w/regs. The Corrective Action Unit staff reviews the scope of work and cost proposals for performing the work. Everything is pre-approved prior to the site work being conducted. This is our primary cost control mechanism.
Alaska	X			Fund specialists work closely with the project field managers on the state funded sites. Very efficient and easy to deliver services.
Colorado	X			
Delaware	X			Only 240 eligible sites and it is strictly a reimbursement program
Florida	X			
Georgia	X			
Illinois	X			
Indiana	X			
Iowa	X			
Kansas	X			Works well since information is easily shared by all programs
Louisiana		X		Became separate on July 1, 1999. Per conversation w/Jodi Miller the entire Dept of Environmental Quality underwent re-engineering and programs were redesigned as functions.
Maryland	X			
Massachusetts		X		
Minnesota		X		
Missouri		X		Dev. A Memo. Of Understanding. Works better than a single admin. Tried combining for 2 yr. And didn't work. Per conversation w/Carol Eighmey, the 2 didn't work as one unit b/c after a 95 legislative session expanded fund responsibilities poor mgmt decisions were made, service was slowed and clean-ups came to a standstill. People became so focused on money and cost savings, they didn't do a good job of ensuring the site was cleaned up. Tech reviewers were also expected to be fiscal managers
Montana	X			99 legislation eliminated the authority for the Petroleum Tank Release Compensation Board to hire its staff. Members of the board are political appointees. Meet every 6 wks. State has co-payment-for 1 st \$35,000, Owners/Operators gets reimbursed 1/2 the amt.
Nebraska	X			
New Hampshire	X			Seems to be preferable way. Lack of communication if they're separate and the reg admin doesn't care what the cost of clean-up might be.
New Jersey	X			
New Mexico	X			Fund operates very successfully under one administration
New York		X		Only has an assurance fund used to clean Leaking Underground Storage Tanks and other petroleum contaminated sites.

Survey Results of Other States

State	Same Administration	Different Administration	Neither	Comments
North Carolina	X			Have not identified any problems or drawbacks to having the total prog managed in-house; in fact just the opposite. There is better communication and consistent decision-making as a result of not having to work b/t different domains.
Pennsylvania		X		
Rhode Island		X		
South Carolina	X			Overall structure has worked well. Problem areas are explored objectively and the Chief of UST attempts to provide dir where resolution cannot be reached.
South Dakota		X		Fund and UST work together with Memo of Understanding that clearly outlines each prog role and responsibilities and provides an internal method for resolving disagreements. This agreement assures the State speaks with one voice. Per Dennis Rounds, "Memo. Of Understanding has worked out fantastic. Wouldn't work any other way."
Utah	X			Proj. Manager w/ assistance from the accounting section reviews and approves all claims for reimbursement from the fund. It is advantageous to owner/operator b/c they work with only one person for both technical and financial approvals.
Vermont	X			Per Linda Perventure- CAP must be approved before work can be done and before payment can be made. Otherwise the dept will only pay for what they deem necessary.
Virginia	X			
Washington			X	Fund is not a cleanup fund. Provide pollution liability insurance; protection for the future, not cleanup of past problems
West Virginia	X			
Wisconsin		X		
Wyoming	X			
TOTAL	23	9	1	

South Carolina Assessment Types

	Tank Closure	Initial Groundwater (IGWA)	Standard Limited (SLA)	Rapid Assessment (RA)
RBCA Tier			Tier 1	Tier 2
Scope	Fixed	Fixed	Fixed	Varies
Price	No State Fund Allowable	\$1,195 or \$1,395	\$9,800 or \$10,800	Varies \$5,000 to \$150,000+
Plan Required	No	No	No	Yes
Receptor Survey	Yes	Yes	Yes	Yes
Soil Samples #	Yes, Varies	One (1)	Seven (7)	Varies
Soil Borings #	None (0)	None (0)	Seven (7) *	Varies
GW Samples #	If encountered	One (1)	Three (3)	Yes
Monitoring Wells #	None (0)	One (1)	Three (3)	Varies
GW Flow Tests	No	No	Yes	Yes
GW Modeling	No	No	No	Yes
Soil Leaching	No	No	No	Yes
Free Product Tests	No	No	No	If encountered

NOTES:

GW-Groundwater

Price for IGWA and SLA. Lower price=Costal Area; Higher Price=Piedmont

IGWA one well up to 25 feet deep

SLA three wells up to 25 feet deep (75 feet of wells)

Add costs for additional well footage or sampling or adjacent receptors (well, stream, etc.)

*Plus a background boring (8th) boring

- No plan required for initial work
- Initial Assessment determines RBCA risk and funding priority
- Assessment tailored to site conditions and size of release
 - Free Product=Rapid Assessment; Receptors=SLA or Rapid Assessment
- Standardized format reduces review time for faster assessment
- Contractor incentive to work more effectively and efficiently on his own.

See Inserts for Agency Reponse

Office of Petroleum Storage
Tank Environmental
Assurance Fund

Despite comments made by the Office of Petroleum Storage Tank Environmental Assurance Fund (Office) that we did not include certain information in our performance audit, the information provided by the Office during our fieldwork is included in our report. Although we considered additional information provided later by the Office, we determined that there were no significant differences. Therefore, we portrayed the original information to show the number of applications and claims processed since 1990. We also break out information related to the number of processed claims that are closed or active. Finally, we presented the Office's Fund balance as \$31 million. This number accounts for applications that have been approved and are pending reimbursement. The deficit balance referred to in the Office's comments would only occur if all unapproved applications were paid in full without a review.

Our portrayal of the number of claims submitted and processed is accurate and provides the reader with valuable information. The number of claims processed increased, but there was also an increase in personnel (See Table 2 on page 3). Therefore, the increase in claims processed does not necessarily indicate efficiency. It indicates that the current reimbursement process focuses too much on claims related to individual costs, as opposed to total costs related to corrective actions. Also, statements made by the Office concerning its problems with contractors who submit a large number of claims are another indicator that problems exist with the current reimbursement process. If implemented, our recommendations will help improve the Office's effectiveness and efficiency.

Contributors To This Report

Edward B. Hatchett, Jr., Auditor of Public Accounts

Gerald W. Hoppmann, MPA, Director, Division of Performance Audit
Jettie Sparks, CPA, Performance Auditor
Lisa Daniel, MPA, Performance Auditor
Julie Lewis, MPA, Performance Auditor

Obtaining Audit Reports

Copies of this report or other previously issued reports can be obtained for a nominal fee by faxing the APA office at 502-564-2912. Alternatively, you may

order by mail: Report Request
 Auditor of Public Accounts
 144 Capitol Annex
 Frankfort, Kentucky 40601

visit : 8 AM to 4:30 PM weekdays

email: Hatchett@kyauditor.net

browse our web site: <http://www.kyauditor.net>

Services Offered By Our Office

The staff of the APA office performs a host of services for governmental entities across the commonwealth. Our primary concern is the protection of taxpayer funds and furtherance of good government by elected officials and their staffs. Our services include:

Performance Audits: The Division of Performance Audit conducts performance audits, performance measurement reviews, benchmarking studies, and risk assessments of government entities and programs at the state and local level in order to identify opportunities for increased efficiency and effectiveness.

Financial Audits: The Division of Financial Audit conducts financial statement and other financial-related engagements for both state and local government entities. Annually the division releases its opinion on the Commonwealth of Kentucky's financial statements and use of federal funds.

Investigations: Our fraud hotline, 1-800-KY-ALERT (592-5378), and referrals from various agencies and citizens produce numerous cases of suspected fraud and misuse of public funds. Staff conduct investigations in order to determine whether referral of a case to prosecutorial offices is warranted.

Training and Consultation: We annually conduct training sessions and offer consultation for government officials across the commonwealth. These events are designed to assist officials in the accounting and compliance aspects of their positions.

General Questions

General questions should be directed to Donna Dixon, Intergovernmental Liaison, at (502) 564-5841 or the address above.