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COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Underground Storage Tank Program
100 Cambridge Street, Boston, MA 02114-9563
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February 28, 2025

The Honorable Michael J. Rodrigues
Chairman, Senate Committee on Ways and Means
State House
Room 212
Boston, MA 02133

Timothy Carroll, Clerk of the House of Representatives
Office of the Clerk of the House
24 Beacon Street – Room 145
State House
Boston, MA 02133

The Honorable Aaron Michlewitz
Chairman, House Committee on Ways and Means
State House
Room 243
Boston, MA 02133

Michael D. Hurley, Clerk of the Senate
24 Beacon Street – Room 335
State House
Boston, MA 02133

Dear Chairman Michlewitz and Chairman Rodrigues:

In accordance with the FY2025 budget language for appropriation account 1232-0200, please find enclosed a status report of the Massachusetts Underground Storage Tank Petroleum Product Cleanup Fund. This report is submitted on behalf of the Underground Storage Tank Petroleum Product Cleanup Fund Administrative Review Board. All financial and statistical data presented are as of February 3, 2025.

If you require further assistance pertaining to this matter, please contact me at (617) 626-3807, or Gordon Bullard, UST Program Executive Director, at (617) 626-2601.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joe Tierney", written over a horizontal line.

Joseph Tierney,
Chair, UST Petroleum Product Cleanup Fund Administrative Review Board

Enclosure

cc: distribution

ADMINISTRATION AND FINANCE

The Honorable Matthew Gorzkowicz
Secretary of Administration and Finance
Room 373, State House
Boston, MA 02133

FISCAL AFFAIRS DIVISION

Jennifer Sullivan, Assistant Secretary for
Budget
Executive Office for Administration and Finance
Room 373, State House
Boston, MA 02133

Dana Sullivan, Chief of Strategy and
Operations
Executive Office for Administration and Finance
Room 373, State House
Boston, MA 02133

Angela Liang, Fiscal Policy Analyst
Executive Office for Administration and Finance
Room 272, State House
Boston, MA 02133

HOUSE OF REPRESENTATIVES

The Honorable Ronald Mariano
Speaker of the House of Representatives
State House Room 356
Boston, MA 02133

Brian Donahue, House Budget Director
House Committee on Ways and Means
State House Room 243
Boston, MA 02133

Brendan McCarthy, Fiscal Policy Analyst
House Committee on Ways and Means
State House Room 251
Boston, MA 02133

SENATE

The Honorable Karen E. Spilka
President of the Senate
State House Room 332
Boston, MA 02133

Christopher Czepiel, Senate Budget
Director
Senate Committee on Ways and Means
State House Room 212
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MASSACHUSETTS GENERAL LAWS CHAPTER 21J

FY2025 STATUS REPORT – FEBRUARY 2025

This status report is submitted to the House and Senate Committees on Ways and Means in accordance with the FY2025 budget language for appropriation 1232-0200.

M.G.L. c. 21J OVERVIEW

On January 2, 1991, M.G.L. c. 21J, the enabling statute for the Massachusetts Underground Storage Tank Petroleum Product Cleanup Fund was signed into law. Coincident with the signing of this legislation, M.G.L. c. 29, § 2S was enacted to establish a dedicated Fund (the “UST Fund”) to serve as the funding vehicle for the Underground Storage Tank Petroleum (“UST”) Product Cleanup Fund (the “UST Program”). Pursuant to Chapter 26, Section 135 of the Acts of 2003, effective June 30, 2003, M.G.L. c. 29, § 2S was repealed and the dedicated UST Fund ceased to exist. The funding source for the UST Program hence became annual legislative appropriations from the General Fund. However, effective July 1, 2018, Section 27 of Chapter 154 of the Acts of 2018 re-established the dedicated UST Fund as the funding mechanism for paying both reimbursement claims and administrative program costs. Under this statutory change and commencing on July 1st of each year, UST Delivery Fee revenue is deposited into the new UST Fund. When the total deposits reach \$30 million, subsequent UST Delivery Fee revenue is deposited into the Commonwealth Transportation Fund (CTF). At the end of each fiscal year, the unobligated balance in the UST Fund reverts to the CTF.

The purposes of M.G.L. c. 21J are to prevent the need for environmental cleanup actions and to expedite environmental cleanup actions by providing partial reimbursement to owners or operators of Underground Storage Tank (UST) systems for costs, expenses and other obligations incurred as a result of releases of petroleum products from UST's.¹ The UST Program has been approved by the United States Environmental Protection Agency (USEPA) as a financial assurance mechanism for insuring against the risk of a release and ensuring rapid cleanups, as required by federal and state law. The provisions of c. 21J also provide for the reimbursement of claims for bodily injury, property damage, and damage to natural resources, which could be assessed against an owner or operator of a UST.

¹ *In order to be eligible for reimbursement, UST Owners must demonstrate that they are in compliance with all applicable regulations pertaining to the operation and maintenance of a UST system, including leak detection systems and reporting requirements. Maintaining compliance serves to minimize the chance of a release and ensure early detection should a release occur.*

The Underground Storage Tank Petroleum Product Cleanup Fund Administrative Review Board (the “Board”) was established pursuant to M.G.L. c. 21J, § 8. The Board is responsible for ruling on eligibility and payment of reimbursement claims and promulgating regulations to implement the statute. The Board, as provided by statute, is comprised of nine members: the Commissioner of the Department of Revenue (or his designee) who serves as Chairperson, the State Fire Marshal (or his designee), the Commissioner of the Department of Environmental Protection (or his designee), three representatives from the petroleum industry, one representative from the banking industry, one representative from the insurance industry, and one representative from a statewide environmental public interest organization.

Note that in the fall of 2020, one of the statutorily named Board seats [i.e., “*a representative of the Massachusetts Petroleum Council*” (MPC)] was vacated when the MPC dissolved. Since that time, the Board has operated with eight members. A bill, (SD.430, *An Act Relative to the Underground Storage Tank Petroleum Cleanup Fund Administrative Review Board*) has been filed by Senator Peter Durant to revise the statute to name the MPC’s parent organization, the American Petroleum Institute or its successor, as the replacement Board seat. To date, no final action has been taken by the Legislature.

The UST Program has been a part of the Department of Revenue (DOR) since 1998. The UST Program assesses fees for gasoline and diesel UST Dispensing Facilities qualified to do business in the Commonwealth under M.G.L. c. 64A, c. 64E and c. 64F. Owners and operators of these facilities pay an annual \$250 fee for each UST used to store and dispense fuel used for motor vehicles (e.g. gasoline and diesel fuel). This annual tank fee is deposited into the Commonwealth’s General Fund. In addition, a 3.3504 cent per gallon fee (adjusted annually based on changes to the Consumer Price Index) is assessed for every gallon of gasoline or diesel fuel delivered to a qualifying UST Dispensing facility. Federal, state, and local governmental entities are exempt from these fees. As noted above, the first \$30 million in UST Delivery Fees collected is deposited to the UST Fund and the remainder is deposited into the CTF.

On May 26, 1994, the UST Board adopted 503 CMR 2.00, i.e., the reimbursement regulations. The effective date on which the Board began accepting reimbursement claims was July 1, 1994. The UST Board established criteria by which an owner or operator of a UST System can seek reimbursement for environmental response actions. The criteria include demonstrating that the UST system was in full compliance with all applicable UST regulations at the time of the release, that reimbursement is sought on behalf of an eligible claimant, that the owner or operator has paid all fees, and that the release is deemed an eligible release.

The first step a UST owner or operator must take is to apply for a Certificate of Compliance (COC), which demonstrates that the owner's/operator's UST system is in full compliance with applicable UST regulations (310 CMR 80.00, et seq.). The UST owner or operator must submit an application for a COC for each dispensing facility it owns and/or operates and file it with the DOR UST Compliance Unit.

Once a COC has been issued and if a release should occur at the facility, the next step an owner or operator must take is to file an Application for Eligibility. To do so, however, one must be an eligible claimant. An eligible claimant is one who:

- a) Conducts environmental response actions in excess of deductible amounts; or
- b) Pays a final judgment resulting from civil court action by third parties for bodily injury, property damage or damage to natural resources; or
- c) Otherwise incurs costs, expenses or obligations as a result of an "eligible release."

An eligible release is a release of a qualifying "Petroleum Product" (commonly gasoline or diesel fuel) that has occurred at a facility in which an owner or operator has a COC in good standing, has paid all delivery and annual tank fees, has notified the Massachusetts Department of Environmental Protection (MassDEP), and has received a MassDEP release tracking number (RTN) for the subject release.

Once eligibility is approved, an Application for Reimbursement may be filed, and must be submitted within 365 days of incurring costs for cleanup activities. The owner or operator must provide claimant, facility, and consultant information as well as the grand total of the reimbursement amount claimed listing the detailed costs, expenses, and obligations incurred.

The regulations specify which items are eligible for reimbursement and which items are not. Generally, the costs must be reasonable and appropriate and must not have been reimbursed by another source of payment such as private insurance. Examples of allowable costs are those for:

- removal, treatment, transport, reuse, recycling and/or disposal of contaminated petroleum products;
- rental, lease, or purchase of remediation equipment as well as costs for installing and operating the equipment;

- sampling and analysis of released petroleum products, and impacted media (i.e. air, groundwater, surface water, tap water, sediment, and soil).

Examples of costs not directly related and not covered are those for:

- retrofitting, relining, or replacing UST systems;
- costs incurred prior to notification to MassDEP of the release and obtaining a MassDEP tracking number; and
- loss of revenue because of a shutdown due to a release.

Additionally, the regulations establish a reimbursement fee schedule, which is a payment guide of acceptable and reasonable costs for all phases of remedial work performed. This reimbursement fee schedule is periodically reviewed in an open public forum and updated as needed to reflect current industry practices and standards, as well as meeting environmental regulatory requirements. The most recent review was completed, and an amended fee schedule was issued on July 1, 2024. If a claimant performs work that is not covered in the reimbursement fee schedule, the claimant has an opportunity to solicit competitive bids for that work.

In an effort to control costs, the statute and regulations established reimbursement maximums for costs incurred as a result of conducting response actions. The maximums are as follows:

- In accordance with M.G.L., c. 21J, § 5, \$1,500,000 for an owner or operator of a Dispensing Facility from which petroleum product is sold or transferred to other Dispensing Facilities or to the public or the owner or operator of a Dispensing Facility that handles an average of more than 10,000 gallons of petroleum product per month based on annual throughput for the calendar year previous to filing an application for eligibility; or
- \$500,000 for an owner or operator dispensing less than 10,000 gallons of petroleum product per month; or
- \$500,000 for an owner or operator of a “Former Dispensing Facility².”

² Defined 503 CMR 2.02 to include “a facility known by its real property address in the Commonwealth of Massachusetts that was required to register a UST System, was operating on or after April 2, 1991, and at which the UST System was Closed and not replaced before July 1, 1994 and was properly registered; except an Underground Storage Tank that is 1,100 gallons or less capacity and is located on a farm or a residence and is used for storing Petroleum Product for non-commercial purposes; or is an Underground Storage Tank that is owned by the Federal government or the Commonwealth or any of its Political Subdivisions.

The regulations also provide for reimbursement of claims for bodily injury and property damage to third parties. Effective November 25, 2015, the Legislature created a separate reimbursement maximum for third-party damages in the amount of \$1,000,000. The owner or operator has 180 days from a court judgment to file the application for reimbursement. To be eligible, a final judgment must be against an eligible claimant, arising from an eligible release, in excess of the deductible limit and not reimbursed by any other source of payment. If the final judgment against an eligible claimant results from a full adversarial trial, the Board will regard the existence of the final judgment as establishing that the bodily injury, property damage, or damage to natural resources was proximately caused by an eligible release. Final judgments based on the following specific types of damages are eligible for reimbursement:

- temporary and/or permanent relocation costs;
- temporary and/or permanent provision for alternative sources of water supply;
- cost-effective method of assessment, clean-up and/or disposal of contaminated soils and debris necessary and consistent with 310 CMR 40.0000;
- response action necessary to mitigate the effects of property damage;
- medical expenses;
- loss of wages or business income;
- damages to natural resources not to exceed \$500,000, provided that there was a full trial.

Final judgments based on the following specific types of damages are not eligible for reimbursement:

- pain and suffering;
- loss of consortium;
- fear of future harm or disease;
- punitive damages, civil penalties, or criminal fines;
- emotional distress;
- diminution of property value.

Parties aggrieved by a decision of the Board with respect to a claim may, within 60 days of the decision, either file a Request for Reconsideration (i.e. an appeal) with the Board or file a civil court action pursuant to M.G.L. c. 249, § 4. Beginning in 2004, the Board introduced a new procedure under which a claimant aggrieved by the Board's decision on the reconsideration appeal could request a conference appeal hearing with a Three-Member Panel comprised of Board members. This informal appeal hearing process offers an opportunity for claimants to

present unusual or extenuating circumstances that could be considered by the Board pursuant to its final decision-making process. To date, the Board has held 1,292 conference hearings, including 20 in FY2025. There are 5 conference hearing requests pending. The conference process has been a very successful administrative process to resolve claim disputes and prevent the escalation of a dispute to a court action. Since the conference process began, no claimant has filed a civil lawsuit against the UST Board that was related to a claim decision.

CITIES AND TOWNS MUNICIPAL GRANTS PROGRAM

M.G.L. c. 21J also established a grant program for cities and towns to aid in the removal and replacement of technologically outdated and/or non-compliant USTs.³ This grant program has not been funded since 2009; however, during years that the grant program was funded by the Legislature, cities and towns received reimbursement of up to 50% of eligible costs. Grant applications must be filed within one year of completing work. A city or town may file only one grant application per year.

Grant applications are prioritized based upon the following factors:

- Removal of leaking USTs
- Removal of USTs that will not be replaced
- USTs used for public safety vehicles, hospitals, emergency generators and schools
- Type of construction of the UST
- Age of the UST
- Proximity to public water supply
- Type of petroleum stored in the UST

PROGRESS OF FUND TO DATE

The UST Program was transferred from the Department of Fire Services to DOR during FY1998. Since that time, a significant amount of progress has been made benefiting the regulated community.

Revenue/Fee Collection

The revenue collected in FY2024 totaled over \$85.3 million. As of February 1, 2025, the total fees collected in FY2025 amount to over \$55.5 million, with a projected total of over \$88 million for FY2025.

³ M.G.L. c. 21J and the regulations promulgated thereunder (503 CMR 3.00) preclude grant money from being used for costs associated with the cleanup of releases from municipal-owned USTs.

UST REIMBURSEMENT PROGRAM FOR DISPENSING FACILITIES

Since the Program's inception and the initiation of reimbursement claims in FY1994, 42,540 applications for reimbursement have been reviewed, resulting in over \$543 million in reimbursements paid out by the UST Program. These reimbursements were issued in response to cleanup activities for 2,834 releases at over 2,168 privately-operated facilities throughout the Commonwealth. Currently, the UST Program is actively funding cleanups at over 293 facilities throughout the Commonwealth.

The FY2025 appropriation for the payment of reimbursement claims was funded at \$8,490,000; however, the Governor reduced this amount by \$1,500,000 when signing the budget bill into law and the net funding amount for claims reimbursement is currently \$6,990,000.

As of February 3, 2025, the UST Administrative Review Board has approved and/or paid approximately \$2.99 million in reimbursements for FY2025. Based on current projections for claim receipts and claim processing, the UST Program anticipates processing an additional \$3.3 million in reimbursement payments during the remainder of FY2025, bringing the total estimated FY2025 reimbursements approved for payment to approximately \$6.3 million. Based on anticipated claim receipts, the UST Program projects that at the end of FY2025, it will have an inventory of approximately 30 unprocessed claims representing total liabilities of approximately \$0.3 million.

MUNICIPAL GRANTS

Since its inception, the UST Program has awarded over 750 municipal grants totaling over \$10 million. As noted above, the Cities and Towns UST Grant Program appropriation (No. 1232-0300) has not been funded since FY2009.

COMPLIANCE

Since the inception of the program, the DOR Compliance Unit has processed 20,062 COC applications. Of the 2,591 currently operating UST Dispensing Facilities, 2,203 facilities have been issued a COC, plus seven additional COC renewal applications that are currently under review. This means that approximately 85% of all UST Dispensing Facilities in the Commonwealth are using the M.G.L. c. 21J/UST Program to meet their financial assurance requirements mandated by the USEPA and MassDEP.

The FY2025 budget language also requires reporting on the number of USTs that are not in compliance with the provisions of M.G.L. c. 21J. Compliance with UST regulations is overseen and enforced by MassDEP. According to the UST Database Management System maintained by MassDEP, there are currently 6,520 Chapter 21J-eligible USTs registered at 2,591 UST

Dispensing Facilities. As noted above, of those, there are 5,700 USTs at 2,203 UST Dispensing facilities that are covered under M.G.L. c. 21J.

The UST Program works closely with MassDEP to identify UST Dispensing Facilities that are not in compliance in order to bring the UST facility back into compliance so that financial assurance coverage can continue.

In FY2025, The UST Program issued 19 notices of a pending COC revocation for reasons of non-compliance with the applicable UST regulations. To date:

- 15 facility owners corrected the noncompliance issues and no further action was taken;
- 2 facility owners failed to correct the noncompliance matters and the COC was revoked; and
- 1 facility owner is still within the period allowed for correction before the COC revocation is finalized.

OPERATIONAL ENHANCEMENTS

The UST Program maintains a website (<http://www.mass.gov/ust>) that provides information to assist the public in understanding and accessing the UST Program, including a description of the history and operations of the UST Program, periodic updates on the number of claims received and amounts reimbursed, tips on preparing claims and other submittals, links to applicable regulations, meeting schedules, notices for regulation changes, and downloadable forms for all required submittals.

The UST Program created an electronic claim filing and management system to allow the regulated community to file, track, and manage reimbursement claims and COC applications online. The online application, called “eUST”, has been very successful with 100% of claim applications currently being filed electronically. This has greatly reduced the costs of handling, processing, and managing paper applications for both the UST owners/operators and the UST Program. Since its rollout, several program enhancements have been added to eUST to provide tools and self-service features to the regulated community.

In FY2019 the UST Program created an automatic COC renewal process available to a facility owner or operator if the facility meets certain criteria, such as all fees being current, no outstanding UST compliance issues, etc. This automated process relieves eligible facility owners or operators from having to prepare and submit paper COC renewal applications, most of which were prepared by outside consultants. This option created a significant time and cost savings to the regulated

community, and reduced the administrative burden on the UST Program, and also, it encourages compliance with the UST regulations. Of the 410 COCs renewed in FY2025 to date, 286 (70%) were renewed via the automatic renewal process.

In FY2017, the UST Program also transitioned the UST Delivery Fee monthly filing and fee collection process from a manual to a fully electronic process. The filing and fee payment process was integrated into DOR's electronic tax filing system (i.e. MassTaxConnect/GeniSys). Customers can now easily and more efficiently electronically file the monthly returns as well as quickly file amended returns and abatement requests.

REGULATORY AND POLICY CHANGES

In the first quarter of FY2014, the Legislature passed the Commonwealth Transportation Finance Act. Under this legislation and effective July 1, 2014, the UST Delivery Fee revenue collected by the UST Program was deposited into the newly created Commonwealth Transportation Fund (CTF). The Acts of 2018 (Chapter 154), passed July 26, 2018, included language to re-establish the dedicated UST Fund, and to use the UST Fund as the funding mechanism for paying both reimbursement claims and administrative program costs. Under this statutory change, the UST Delivery Fee revenue is deposited into the new UST Fund on July 1st of each year. When the total deposits reach \$30 million, subsequent UST Delivery Fee revenue collected is deposited into the CTF. At the end of each fiscal year, the unobligated balance in the UST Fund reverts to the CTF. In FY2024 over \$83.6 million was collected in UST Delivery Fees of which over \$77 million was transferred to the CTF.

Also beginning in January 2015, the UST Delivery Fee became subject to adjustments for inflation (as reflected in changes in the Consumer Price Index). As a result, on January 1, 2025 the Delivery Fee was automatically increased from \$324.72 per 10,000-gallon delivery load to \$335.04 per 10,000-gallon delivery load (i.e. 3.3504 cents per gallon).

On January 3, 2025, a revision to 503 CMR 2.00 was published in the Massachusetts Register. Revisions to the regulation included updates to require electronic filing of all 21J program applications including COCs. Other revisions were made to simplify and clarify the reading of the program's regulatory requirements. Monthly public meetings were conducted throughout the review and revision process. Attendees include DOR UST Program staff members, members of the Board, UST owners, and technical consultants.