

Guide to Resolving Environmental and Legal Issues at Abandoned and Underutilized GAS STATION SITES



City of Los Angeles
Brownfields Program
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Guide to Resolving Environmental and Legal Issues at Abandoned and Underutilized GAS STATION SITES

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Forward

This guide was written to assist various agencies and stakeholders trying to redevelop abandoned gas stations. The City of Los Angeles Brownfields Program learned valuable lessons as we sought to resolve the complicated ownership and environmental issues at these sites. This document shares what we have learned.

The information found in this guide will be most useful to Los Angeles City staff. However, cities within Los Angeles County will find the majority of the information applicable and California cities should find the information mostly helpful as well. Readers in other states should regard all references to state or local programs with caution since they may not apply to your locality. The guide has been written so that the reader can pick and choose those portions that will be useful.

This guide may also be useful for private citizens concerned about former gas station sites or abandoned gas station sites in their community. Community members can help local government address such sites by making them aware of the problem and by helping to gather the information needed to address these sites as described in Chapter 1. Additionally, local government may not be aware of the funding sources described in Chapter 3. Finally, this guide may also be useful to owners of former gas station sites that want to remove tanks and bring their sites into compliance.

We are interested in your comments, especially if you discover any incorrect or outdated information. Please contact us via email: nuna.tersibashian@lacity.org.

Chapter 1

Guide to Redeveloping Former Gas Station Sites: Introduction

A few miles south of the Los Angeles Civic Center, within site of the glass skyscrapers, museums, concert halls, and government offices, are many neighborhoods built in the 1930s and 1940s. Many streets have large old trees that provide welcome shade in the summer. These neighborhoods are crisscrossed by a grid of once-thriving commercial corridors which over the past 50 years have increasingly included empty buildings, vacant lots, unkempt automotive repair shops, and junk storage areas. Fifty years ago, many of these properties were gas stations. Today, most of these gas stations are gone, but many of the petroleum underground storage tanks (USTs) remain. Underground tanks are used to store gasoline and used oil that is removed from automobiles during maintenance. Most USTs are steel, but older tanks were made from concrete or even wood. Now, some tanks are constructed from fiberglass. Newer tanks feature double walls and advanced leak detection systems. Based on research conducted by the City's Brownfields Program, most of the obsolete and illegal petroleum underground storage tanks are clustered in the least affluent portions of the City.

The City began investigating former gas stations because residents expressed concerns that contamination from such sites could be polluting their communities, and that the presence of this pollution was inhibiting redevelopment of the sites. When the City started its Gas Station Program, we expected to find a large number of former gas station sites that were vacant or abandoned by owners who could not afford to remove underground tanks or contamination. The reality was more complex. As it turned out, there were few vacant sites. There were a significant number of former gas station sites with old obsolete USTs still in the ground and no longer being used, but the sites were being used as auto repair businesses, tire sales, used car sales and storage. Often these sites present a poor appearance due to obsolete signage, buildings needing paint and otherwise in disrepair, weeds growing on-site, and automotive repair activities not screened from view.

When the City first reviewed these sites it found that most were occupied, however, as a first step the City's Program focused on redeveloping vacant sites and therefore this guide begins its focus there as well. Vacant sites are less complicated because they do not require the interruption or displacement of an ongoing business. Also, vacant sites produce a higher level of blight. Therefore, this guide will be most helpful for such sites but it also contains information that can be helpful in addressing any former gas station site.

The Problem

Until the mid-1980s, most USTs were made of bare steel, which is likely to corrode over time allowing the contents to leak. Faulty installation or inadequate operation and maintenance procedures also can cause USTs to release their contents into the soil or groundwater.¹

Unused USTs remain in the ground because of the high cost to remove them – anywhere from \$5,000 to \$10,000 per tank. If the tank has leaked, remediation may cost anywhere from under \$50,000 to over \$500,000 with most sites falling in the under \$200,000 range. However, such sites often cannot be sold unless the USTs are removed. In neighborhoods with high property values, the cost to remediate a site can come out of the purchase price or rental income.

However, in communities with lower real estate values, the cost to bring a site into compliance can exceed the value of the site. Some owners have not used the tanks for many years and are not even aware of the regulations. Others use or lease the site hoping no one will force the issue. In some cases, owners who cannot afford to remediate simply abandon the site.

Federal Requirements

In 1984, Congress added Subtitle 1 to the Resource Conservation and Recovery Act (RCRA), which required the U.S. Environmental Protection Agency (U.S. EPA) to develop a comprehensive program for regulating USTs used for storing petroleum and certain other hazardous substances. In 1986 the Superfund Amendments and Reauthorization Act (SARA) created the Leaking Underground Storage Tank Trust Fund and required owners of USTs to show they had the financial resources to clean up potential future contamination from USTs. Appendix B contains a summary of these federal regulations that is based on "Recycling America's Gas Stations" a report by the Northeast-Midwest Institute and the National Association of Local Government Environmental Professionals (NALGEP). See Appendix A, Information Resources, for a link to the complete report.

Administration in California

In California, the U.S. EPA has delegated the implementation of the Federal UST requirements to the California Water Resources Control Board, which has in turn delegated certain responsibilities to its regional boards and other local enforcement agencies. The following table gives a summary of each agency's area of jurisdiction. Details on each will be in various chapters of this guide.

¹ US EPA Office of Underground Storage Tanks web site (<http://www.epa.gov/oust/>).

Agency	Area of Responsibility
Local Agency (Fire Dept., Health Dept. or other)	Tracks registration of all USTs, assuring that notification and technical requirements are met, including that out of service USTs are removed.
Regional Water Quality Control Board	Steps in when groundwater contamination is discovered to assure it is remediated properly. Oversees groundwater and other related remediation at sites.
California Department of Toxic Substances Control	Oversees remediation of soil contamination that is beyond the scope or extent that can be handled by the local agency.
State Water Resources Control Board	Administers California programs to implement the LUST Trust Fund, cost recovery, and Financial Responsibility requirements described above.

The local agency may be a city or county agency--usually a fire department or environmental health department. If not, these agencies should be able to direct you to the proper agency in your area. As this guide describes, these agencies work together to implement UST programs. In addressing problem UST sites, it is important to understand how the agencies work, and to identify appropriate individuals within these agencies and cultivate a good working relationship with them.

Redevelopment Perspective

Redeveloping old gas station sites may be facilitated by cooperation between the agency tasked with enforcing UST regulations and the agency responsible for community development. The agency responsible for development may be able to contribute resources that the regulatory agency lacks. Such cooperation works best when each agency comes to the problem with the aim to achieve both compliance and redevelopment. However, redevelopers must remember that a regulatory agency's first responsibility is to protect public health and the environment by enforcing the law and they can only help to the extent that their goal is complimentary to the goal of site development. Finding that common ground is the key to success in addressing these sites.

Advice for UST Owners

Many regulatory agencies were not able to identify all cases of non-compliance immediately after January 1999, when all unused USTs and UST delivery systems were required to be upgraded or removed. Increasingly as the years go by, these agencies are catching up on the backlog of non-compliant sites. Some agencies are only now issuing orders to owners to remove tanks. In some jurisdictions, those owners with the least financial resources to take action are now being contacted because they are the only sites left. Prior to receiving an order to remove the tanks, many of these owners had no idea that removal was required. Many are at a loss as to how to fund removal.

To owners who find themselves the subject of such an order, we advise cooperation with the regulating agency whether you have the funds to remove the tank or not. Some sites may be eligible to receive funds from the State UST Fund. (See Chapter 5 –How to Pay for Site Assessment, UST Removal and Remediation.) Eligibility depends in part on whether the UST

owner/operator was cooperative or knowingly avoided compliance. Some regulating agencies are working with owners to help them identify loans or other resources which may be needed in order to comply. In some jurisdictions, non-cooperative owners are being referred to the District Attorney or City Attorney for legal action. Some jurisdictions are also applying for special state funding known as the Emergency Abandoned, Recalcitrant (EAR) Account of the California Petroleum UST Cleanup Fund, to remove USTs.

City of Los Angeles Brownfields Program

The City of Los Angeles Brownfields Program helps owners of sites that have or once had an underground storage tank to bring their site into compliance and redevelop their property. The program offers technical assistance over the phone on accessing the various programs discussed in this guide. Financial assistance may also be available to qualifying owners who lack the financial resources to remove USTs or otherwise bring their site into compliance. Owners of USTs with property located in the City of Los Angeles are urged to contact the City's Brownfields Program personnel for additional assistance. The contact number is listed in Appendix A of this document.

Chapter 2

Gathering Information about the Site

This chapter lists the information that should be gathered to determine the status of each property. This information is necessary to determine the appropriate remediation strategies and to identify funding sources for which the site may be eligible.

Property Identification

The first task is to thoroughly identify the property itself. Street addresses are a useful, but an inexact method to track properties. The Post Office may recognize a reasonable address given by the owner or tenant. In the City of Los Angeles, this address may or may not correspond to the address officially assigned by the City. A property may be composed of several parcels, each with a different address. A corner property may have a separate address for each street that it faces. Any of these addresses may be used by government agencies that have an interest in the property.

A more precise way to track properties is by the Assessor's Parcel Number (APN). The California State Board of Equalization publishes standards for County Tax Assessors to follow in mapping and numbering parcels. This standard recommends a three-part number consisting of the Map Book number, the page number in the book and the number assigned to that specific parcel on that page. In Los Angeles County, the APN is a ten-digit number in the following format: xxxx - xxx - xxx. Many other government agencies also use the APN number to track properties. Note, there may be more than one parcel per APN, or more than one APN per parcel. Be sure to identify all APNs that apply to the parcel.

Where to Obtain Addresses, APNs and Other Property Identification Information

The City of Los Angeles, provides property identification information to the public on properties located within the City through a Geographic Information System(GIS) -based system called "Navigate LA". Enhanced versions are available to City employees through the City's intranet. A user can enter the address or cross streets and the system will map the parcels and give the APN numbers and other information about the property. The user can then print the map showing the parcels surrounding the site to help identify the site in the field.

Readers not in the City of Los Angeles can investigate sources of this information that are available in their own city. Often, the Planning Department, Building and Safety Department, or Public Works Department will track this information.

APNs and addresses can also be obtained through the Los Angeles County Tax Assessor's website which has a Property Assessment Information Module. The viewer can enter the cross streets, address, or APN in order to access other data. This information as well as ownership information can also be obtained in person at the Los Angeles County Registrar-Recorder/County Clerk's office (See Appendix A for location). If the property is located outside of Los Angeles County and your city doesn't have this information, we recommend contacting your County Tax Collector and/or Tax Assessor.

Site Reconnaissance

We cannot overestimate the importance of visiting the site as soon as possible in the investigation process. It is important to identify whether the site is truly a former gas station site and whether there are USTs still in the ground. The presence of gas pumps or gas station canopies provide clues, but USTs may or may not be present. A better indication that USTs are still present is a round metal or concrete cover for the UST fill hole. When a UST is removed, the fill hole goes with it. There is normally one fill hole for each UST. Other features to note are the condition of the site, potential dangers to the community, surrounding uses, redevelopment prospects and many other issues beyond the scope of this document but of importance in prioritizing activities at the site.

Current and Past Owner's Name & Address

Los Angeles City staff can consult Navigate LA which may list the current owner's name and address. Current and past owners are also available through the Los Angeles City Clerk's Land Records Division. Before going to this office, obtain the Book and Map numbers of the property from the Building and Safety Department Construction Services Center. (See Appendix A for locations) Always verify the location of any City office as these offices may have moved since this Guide was written.

For properties in Los Angeles County, current and past property owners are available through a manual search at the Los Angeles County Registrar-Recorder/County Clerk in Norwalk. (See Appendix A for location.) There are also subscription-based internet access sources of property ownership information available, such LEXIS/NEXIS. An agency within your city, such as the City Attorney may already subscribe to such a service. If your city does not have this information, try the Tax Collector or Tax Assessor. Another way to locate the owner is to pay for a professional Title Search. A real estate professional can advise you on how this done. If a Phase 1 Assessment is going to be conducted, ask for historical ownership information to be included.

Researching Underground Storage Tank Permits for the Site

The type of environmental remediation that needs to be conducted at the site and what sources of funding may be available depend on whether or not the USTs are still in place, whether or not they were permitted, and if so, when and by whom, and other factors. Agency staff can gather this information themselves or pay for a Phase 1 Environmental Site Assessment to be conducted

by an environmental engineering or similar firm. Chapter 4 provides a general description of Phase I and Phase II Environmental Site Assessments. A properly documented Phase I will include copies of all relevant permits taken out on the property. These permits may show who owned the property at the time the permit was obtained. The information below describes how to gather some of this information yourself.

Permit Records From the Local Agency that Regulates USTs

In 1994, California passed a law authorizing local jurisdictions to unify the administration of six programs related to hazardous materials under one local agency, now known as the Certified Unified Program Agency, or CUPA. Regulation of underground storage tanks is one of these programs. In the City of Los Angeles, the Fire Department (LAFD) became the CUPA in 1998. LAFD has most historical UST permit records. LAFD files their records by street address, so bring all possible addresses for the site when visiting their office. Also, it may be helpful to talk to the inspector who oversees the geographic area where the site is located to determine if he/she has additional information or records on the site.

Other cities may have a similar history whereby the UST program was moved from one agency to another and records may be in more than one location. The fire department, building department, or city engineer should be able to direct you to the correct departments.

The important information to gather is: the dates permits were obtained to install or remove USTs, who was the owner at that time, did the owner pay UST registration fees to the local agency (LAFD in L.A.), and for what years were these fees paid. It is possible to obtain a permit to remove a tank but then not actually remove it, so try to determine if the UST was actually taken out. You may want to photocopy the diagrams that indicate where USTs were installed.

The local agency that regulates USTs also insures that all USTs have been either removed or upgraded as required by the Federal law. However, the regulating agency may know of locations where old USTs are still in place. As explained in Chapter 1, USTs may remain in place because the owner does not know they are required to be removed or lacks the funds to remove them.

Older UST Permits

Older UST permit records may be held by the local agency that grants building permits. Older City of Los Angeles building permits are available at the Building and Safety Department (B&S) records counter. Locations and hours are on the City's web site under the Building and Safety Department. (See Appendix A for address and phone number.) If this will be your first visit, you may want to attend a brief training session offered by B&S to help individuals access their files. Call or consult the B&S web site for training times and locations.

Prior to 1998, the City of Los Angeles Office of Finance collected the UST fees. You can visit the Office of Finance in City Hall, or its branch offices, or make a request by mail. They will run a search on an address and then print a list of their record of permits taken out on that property. A fee may be charged for copies of records. More information is available on their website at <http://finance.lacity.org/> and over the telephone by calling 213-473-5901.

Tax Delinquency

In Los Angeles County, the APN number can be used to determine whether a property is tax delinquent. This information is available on the Los Angeles County Tax Collector's website. If the property owner has been delinquent for five years, the property is subject to sale, with a minimum bid for the amount owed on back taxes, penalties, and fees. The significance of tax delinquency is covered in more detail in Chapter 3.

Identify Liens, Bankruptcies

Chapter 3 discusses the significance of liens and bankruptcies. The best way to identify liens or bankruptcies against a property is through a professional Title Report. We recommend obtaining a historical title report (which gives past owners) as well. If you hire a consultant to conduct a Phase I Site Assessment on the property, you can request that it include a historical title report although it is not normally part of a Phase I.

Bankruptcies can impose liens on a property even after the bankruptcy is no longer active in the conventional use of the term. One must consult the original bankruptcy settlement to determine if there are creditors who have an ownership interest in the property that can be exercised. See Chapters 3 and 6 for more information on bankruptcies.

Contact the Owner

When you have gathered as much of the above information as possible, contact the current site owner. Some owners think that because they have stopped paying taxes, they no longer own the property. However, in California, the ownership of tax delinquent properties does not change until the property is sold by the Tax Collector to a new owner. Question owners about the history of the site. Relevant information would include any bankruptcy, liens, or loans against the property, date the property was last used as a gas station, and how it has been used since. Ask if the USTs were registered and if there are orders from government agencies imposed on the property. Our experience has ranged from owners who were difficult to impossible to locate, to owners who were anxious to work cooperatively with us in seeking a solution.

Chapter 3

Resolving Site Status Issues

Former gas station sites usually pose a variety of issues that complicate redevelopment but may also present opportunities. This chapter describes several issues and how to evaluate the barriers and/or opportunities each may pose. The ultimate goal is to utilize a property's status to support its redevelopment.

Abandoned Sites

Many vacant former gas station sites appear to be abandoned. The term "abandoned" may be used to mean that no one is taking care of the site, the owner cannot be identified or located, or that the owner has stopped paying the mortgage and/or taxes on the site. In some cases, the owner may think that because he or she has stopped paying taxes that the property has reverted to government ownership. In California, this is not the case.

Tax Delinquent Properties

Distressed properties are often tax delinquent. Below is information on how tax delinquent properties are disposed of in California. Included are details of how Los Angeles County disposes of tax delinquent properties. Readers outside of Los Angeles County should verify procedures in their county.

State Law

Procedures for auction of tax-defaulted property are published by the California State Controller in a four-volume document titled "County Tax Sale Procedural Manual 2012" that can be downloaded from the State Controller's web site. (See Appendix A for the web address.)

The LA County Tax Collector's website states the following: "The default opens a 5 year waiting period for residential property and 3 years for non-residential commercial property during which the delinquent taxes, interest, and penalties accumulate until redeemed. At the end of the 5 years for residential property and 3 years for non-residential commercial property, if the tax remains unredeemed, the Treasurer and Tax Collector have the power to sell the property."

One exception to this rule is Revenue and Taxation Code Section 3691 (b)(1)(A) which states

"Three years or more after the property has become tax defaulted and a request has been made by a city, county, city and county, or nonprofit organization pursuant to Section 3692.4, or a request has been made by a person or entity that has recorded a nuisance abatement lien on that property, to offer that property at the next scheduled tax sale, the tax collector shall have the power to sell and may sell all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of parcels, as provided in this chapter at the next scheduled tax sale, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale."

See note on other sheet

Opportunity

Taxing agencies and revenue districts are eligible to acquire tax-defaulted property outside of the public bid/auction process if the property is needed for a "public use". Certain non-profit

agencies are also eligible to purchase residential or vacant tax delinquent property to expand availability of low-income housing. This may be done after three years of tax delinquency if the property is subject to a nuisance abatement lien. The Manual mentioned above explains the criteria and procedures for such purchases.

Auction of Tax Delinquent Properties in Los Angeles County

In Los Angeles County, tax delinquent properties are managed by the Treasurer and Tax Collector, a county agency that is separate from the Tax Assessor. Approximately once a year, the Tax Collector holds an auction of tax delinquent properties. A book listing the properties to be auctioned is published several weeks beforehand and can be purchased through the mail and can be viewed on the Tax Collector's website. Bidders must pre-register and make a cash deposit that is applied to a purchase or refunded if no property is purchased. Persons attending only to observe are not charged or required to register in advance. The minimum bid on each property is given in the book and represents taxes owed plus fees charged by the Tax Collector's Office. The new owner is liable for liens owed to other agencies, but private liens are extinguished.

Several factors can contribute to properties not being sold in the minimum time provided by law: The tax collector may choose to wait, or an ownership change or bankruptcy can delay the process.

The tax collector may auction contaminated properties as long as they are not Federal Superfund sites.² The Los Angeles County Tax Collector has no procedure in place to notify local agencies about properties that cannot be auctioned because of environmental uncertainty or known contamination. The Tax Collector makes available a list of contaminated properties, and it is available at the tax sale. However, purchasers are responsible for identifying all factors that may affect the value of the property and should not depend solely on this list.

Opportunity

If a former gas station is known to have USTs in place and no testing has been conducted to determine whether or not there is contamination, the property is unlikely to sell at auction. However, someone might purchase the property if the auction cost of the property together with the cost to remove the USTs and contamination (if there is any) is expected to be substantially less than the resale value of the property.

In some cases, it may be possible for a city to test the property and then work with the tax collector to provide the testing results to prospective purchasers, and thereby facilitate the sale of the property. Another option would be for a city to remediate the property so that it can be sold, or purchase the property from the tax collector, remove the tanks, remediate the property and then resell it.

Private Lien Holders

² Superfund sites fall within the jurisdiction of the U.S. Federal government and are remediated under its oversight.

Another way that owners abandon sites is by not paying on a mortgage. The owner may believe that by not paying the mortgage, he or she is giving up the property to the bank. Although the bank has the option to repossess property that provided collateral on a loan, if the property is contaminated, the bank may determine that the cost to remediate the property exceeds its value and therefore refuse to foreclose.

However, the right of a prior lien holder, such as a bank, must be considered in deciding how to approach redevelopment of such a property. The bank can exercise its lien at any time. For example, if a city were to purchase a tax delinquent property from the delinquent owner and remediate it, the bank could possibly reclaim the property as payment on their lien. In such a case, it would be advisable for the city to work out a settlement with the bank before taking ownership of the property. However, if the city obtains the property from the Tax collector, private liens are extinguished.

Bankruptcy

Many properties that are in tax default also have bankruptcy filings against them. Filing for bankruptcy is a way for property owners to obtain relief from debts that they cannot pay. Bankruptcy does not discharge taxes owed to the government. Bankruptcy may not discharge a lien held by a bank on property pledged as collateral for a loan. Bankruptcies can impose liens on a property even after the bankruptcy is no longer active in the conventional use of the term. One must consult the original bankruptcy settlement to determine if there are creditors who have an ownership interest in the property that can be exercised. For example, one of our sites had previously been mortgaged. The owner defaulted on the mortgage many years before the City began investigating the site but the bank still had certain property rights that had to be addressed before the City could take ownership of the property.

Opportunities

The LA County Tax Collector will not auction a property that has an active bankruptcy against it. However, you may be able to determine that the bankruptcy has been dismissed by the court or withdrawn by the petitioner. If so, you can inform the Tax collector about this and thereby free the property to be auctioned by the Tax Collector.

Liability of Current and Former Owners

This is too large and complex an issue to be dealt with here in any detail. For former gas station sites in the City of Los Angeles, if the current owner appears to have the ability to pay for removal of USTs, the City may take an enforcement approach. The Fire Department would issue an order to the owner to remove the tank. If the owner fails to do so, the case may be referred to the City Attorney who can file a civil or criminal complaint against the owner.

Chapter 4

Conducting an Environmental Site Investigation

This chapter is intended to provide a brief introduction to the steps often taken to evaluate and remediate a former gas station site. The actual work outlined here should be supervised by an engineer, geologist or other qualified environmental professional with experience in this area. See Appendix B for guidelines on selecting a contractor. Before undertaking a Phase I and/or Phase II Environmental Site Assessment, we recommend gathering preliminary information on the site as discussed in Chapter 2. If a professionally conducted Phase I Assessment is not affordable, much of the information normally included in a Phase I can be gathered without professional assistance. However, this chapter should not be relied upon as a legally adequate or complete guide or instructions on how to do that.

Step 1: Phase One Environmental Site Assessment (Phase I)

The first step in evaluating a potentially contaminated property is to conduct a Phase I Environmental Site Assessment. As used in this context, a Phase I Assessment is a search for historical records that document prior activities at the site in order to identify uses that may have caused contamination and may warrant further investigation. Normally, it is prepared by an engineering consulting firm or other firm experienced in conducting Phase I investigations. The firm will review all prior building permits, underground tank permits, Sanborn Fire Insurance maps, state and federal lists of contaminated properties, etc. A Phase I also normally includes a visual examination of the property to look for indications of potential contamination. The firm will also make recommendations regarding next steps.

Normally, a Phase I Assessment is part of an investigation preceding the purchase of a property or the granting of a loan on a property. If property was previously occupied by a gas station, then gasoline, motor oil, and other toxic substances would have been used at the site, which is in itself an indication of possible contamination and the need for further investigation. A Phase I Assessment of a former gas station site will often identify when USTs were installed, where they may be located, whether and when they were permitted and/or removed, whether the removal was conducted under a permit, and if there are previous indications of identified leaks from USTs or other contamination. We recommend having the Phase I also include obtaining the names of all owners from the time it was a gas station until the present because it will assist in determining eligibility for funding opportunities from the State of California.

It is important to review records not only from the current agency regulating USTs but also all agencies that had that responsibility in the past. It may be useful to identify all prior owners that may be responsible or able to pay for the removal of tanks and cleanup of contamination. Building department records will often include the names of prior owners who had permits to undertake construction on the property. Therefore, consider asking for a Historical Chain of

Title Report, including certificate of occupancy permits, to be included in the Phase I Assessment to identify prior owners.

Chapter 5

How to Pay for Site Assessment, UST Removal, and Remediation

Funding Sources for Remediation of Former Gas Station Sites

	California Petroleum UST Cleanup Fund	California Petroleum UST Fund – EAR Account	Calif. Orphan Site Cleanup Fund (OSCF)	US EPA Brownfields Grants	CDBG* Funds (US HUD)
Amount	\$1.5 million / site	\$1.5 million / site	\$1.5 million / site	\$200,000** / grant	Depends on population of the jurisdiction
Activities Covered	- Assessment ordered by Regulator - Remediation from leaking USTs - UST removal NOT covered	- Assessment - UST Removal - Remediation	- Assessment - UST Removals - Remediation	- Assessment - UST removal if needed for assessment - Remediation	- Assessment - UST Removal - Remediation
Key Eligibility Criteria***	- Contamination identified - Funding to UST owner or operator on reimbursed basis - Site is in compliance - Owner eligible for Fund	- Potential contamination indicated <u>Owner is either</u> - not found - lacks sufficient funds - recalcitrant	- Site in urban area - Site previously had economic activity, vacant for 12 months - Applicant not eligible for Cleanup Fund	Contamination indicated or suspected	Site must be in a CDBG eligible census tract. Municipality must allocate CDBG funds for this purpose.
Who is Eligible	Private parties, non-profits and government	Regional water boards and local agencies	Private parties, non-profits and government	Government and non-profits	Local Government
Time Schedule	Application to UST Fund by May is best.	Regional Boards submit nominated sites in first quarter of the year.	Check website. At this printing, applications are being accepted.	Grant NOFA usually issued in the Fall. Check US EPA web site.	Funds budgeted by local government annually.

* Community Development Block Grant

**Applicants can request a waiver to receive up to \$350,000 for assessment of certain contaminated sites including petroleum sites. Up to \$1,000,000 is available to establish a revolving loan fund.

*** This is not a complete list of eligibility criteria.

Federal Funding Sources

Community Development Block Grant (CDBG) Funds

Community Development Block Grant funds are provided by U.S. Department of Housing and Urban Development (HUD) to cities and counties to improve housing and economic development opportunities in low-income communities. The City of Los Angeles has at times chosen to fund a portion of its Brownfields Program through CDBG funds allocated each year for this purpose. Cities can choose to spend these funds for site assessment, remediation, agency oversight costs, legal support, and other expenses related to economic development of sites in qualifying census tracts. Consult with the agency in your city or county that handles CDBG funds for details.

U. S. Environmental Protection Agency Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants

US EPA offers grants to local governmental agencies for assessment and cleanup of Brownfields, including petroleum sites. Additional funds may be available to initiate a revolving loan program. Grants are available that will cover Phase I and Phase II Assessments, cleanup and reuse plans, cleanup costs, community involvement, purchase of environmental insurance, and removal of USTs if needed to complete an assessment. The grants are available to states, local governments, tribes, and non-profit organizations. Check the US EPA web site under “Grants and Funding” for details and deadlines. Also consult your local U.S. EPA Regional Office web site or call them about other programs that may be available.

California State Funding Sources

California Petroleum Underground Storage Tank Cleanup Fund (Fund)

This program, administered by the California State Water Resources Control Board (SWRCB), may be thought of as an insurance program that enables UST owners and operators to satisfy federal and state financial responsibility requirements and to assist with the costs of cleanup of contaminated soil and groundwater caused by leaking petroleum USTs. The Fund will reimburse up to \$1.5 million in eligible expenses per site and provides coverage for third-party liability due to releases, but does not pay for UST removal. Eligible recipients are grouped into categories that have different priorities for payment.

For a UST owner or operator to be eligible, the tanks must be in compliance with all regulations, i.e. removed or upgraded to local regulatory requirements by December of 1998. Sites with USTs still in place can only qualify for the Fund under a waiver provision. In California, UST removal contractors are familiar with the Fund and can advise on the eligibility of particular sites. The Fund provides some funding to pay a consultant to prepare the documentation for application to the Fund. Fund staff can provide the names of such consultants. Consult Appendix A for contact information. In some cases, the Fund also includes provisions for owners of USTs to pass their rights to the Fund to future owners. Municipalities that are considering

taking ownership of sites need to take great care to review all the regulations thoroughly to determine if they will be eligible to receive reimbursement from the Fund. It is worth noting that this is a reimbursement program. Owners or operators that qualify for the Fund may be able to find an environmental consultant that will wait for payment until the reimbursement payment is received. Otherwise, a loan may be needed.

This program can be of great benefit by providing funding for remediation of former gas station sites, but criteria for qualification are complex. There are limitations on the expenses that qualify. For example, the Cleanup Fund will not reimburse costs of removing USTs and Fund staff can only determine a site's eligibility after tanks have been removed and contamination has been identified and confirmed by the lead agency.

Emergency, Abandoned, Recalcitrant (EAR) Account

This is a specific pool of money allocated each year by the SWRCB for use at sites that present an emergency situation (Emergency), at sites whose owners have no resources or cannot be located (Abandoned), or at sites whose owners refuse to undertake cleanup (Recalcitrant). Local UST regulating agencies nominate sites with identified contamination to receive funds under the "abandoned" or "recalcitrant" categories. For the criteria for nominating sites, see the schedule for site nomination on the Regional Water Quality Control Board (RWQCB) website. Websites are listed in Appendix A.

California Water Resources Control Board Orphan Site Cleanup Fund (OSCF)

This program was established to provide financial assistance to eligible applicants for the cleanup of Brownfields sites contaminated by leaking petroleum underground storage tanks where there is no financially responsible party. To qualify, a site must be a Brownfield as defined by the program. To be eligible, an applicant must not have caused or contributed to the release, must have no affiliation with any person who caused or contributed to the release, and must not be-qualified to receive reimbursements from the Cleanup Fund. This is a reimbursement program but it will cover the costs to remove USTs. Application criteria, contacts and deadlines for this program are available on the website of the California Water Resources Control Board. See Appendix A for contact information.

Loans

In many cases, a bank will not accept a property with a non-compliant UST as collateral on a loan. This is because if contamination is found, the costs to remediate it may exceed the value of the property, and if the borrower defaults on the loan, it is difficult for the bank to recover its funds. If an owner has no other property to use as collateral, he or she is unlikely to obtain a conventional loan to pay for the removal of USTs.

However, there are some non-profit community development corporations that will provide a loan to remove USTs based on the owner's credit history and other factors. This is because the non-profit's goal is to support redevelopment in low-income neighborhoods. To obtain a referral to a community development corporation in your area, check with the California Community

Economic Development Association. Also, the California State Department of Community Services can provide the name of an economic development agency that can refer you to a non-profit organization that makes loans to small businesses. Contact information on these organizations can be found in Appendix A.

Insurance Policies

Sometimes it is possible to receive payment through a business liability insurance policy held by a former owner of the site. Prior to approximately 1972, most general liability insurance had no exclusions related to pollution. After that date, some policies had some exclusion. After 1986, most policies had total exclusions for pollution related claims. At the same time, pollution insurance began to develop as a separate product although few UST owners obtained it. In the 1990's federal law began to phase in a requirement that UST owners obtain pollution insurance. Since 1998, all UST have been required to have pollution insurance.

It is possible to hire the services of an insurance archeologist who searches for old insurance policies that can be used to cover the cost of contamination cleanup. The City's Brownfields Program has not yet tried this strategy but the cost to retain the expert could be cost effective on larger sites.

Responsible Parties

Sites with owners who have the ability to address contamination but refuse to do so can be dealt with through enforcement actions by the appropriate agency <http://www.environmentla.org/brownfields/index.htm>, ranging from the local UST regulator to the RWQCB, the Department of Toxic Substances Control (DTSC), or occasionally through the USEPA. For California cities that cannot undertake these actions, the EAR Account (see above) may be a beneficial resource.

Step 2: Phase Two Environmental Site Assessment (Phase II)

A Phase I Site Assessment that discovers potential environmental concerns will recommend that a Phase II Assessment be conducted. A workplan for the Phase II Assessment should be based on the findings of the Phase I, and should confirm the locations of any USTs and piping. A Phase II is an onsite investigation that may involve activities such as: sampling and testing soil on the surface and/or beneath the surface through borings, sampling and testing of soil gases from beneath the surface (soil gas survey), sampling and testing groundwater beneath the surface (if it is present at shallow depths), and using instrumentation to locate USTs. The exact plan for the Phase II depends on a number of site-specific variables, including depth to groundwater, location of the USTs, and piping.

When planning a Phase II Assessment, consider whether to do the Phase II testing first to see if there is contamination (usually from leaking USTs) or combine the tank removal with the soil testing. Conducting both activities at the same time allows the sampling of soil under where the tank was located which is less costly than soil borings from above. Deciding on which approach

to use depends on the circumstances. For example, if an agency identifies a former gas station site for which the owner cannot be located, the agency may want to test for contamination first to see if the site will qualify for EAR Account funding. Identifying a mechanism to allow legal access to the site should be considered. See Chapter 6 on obtaining access.

On the other hand, if the priority is on keeping costs down, performing the activities together may be the least expensive. If contamination is discovered, it is sometimes cheaper and less disruptive for the current occupant's business to remove contaminated soil when the hole is open. The California Petroleum Cleanup Fund will not pay to remove USTs but will reimburse the costs of some testing and cleanup of contamination to qualifying owners. We advise site owners to retain a consultant knowledgeable about this Fund prior to removing the USTs so that proper procedures can be followed to enhance the likelihood that cleanup can be conducted as tanks are removed and costs will be reimbursable by the Fund. If the site owner qualifies for Fund reimbursement, some consultant costs are covered. For more information on the California Petroleum UST Fund, see Appendix A for their contact information.

Site owners should obtain the appropriate UST removal permits and excavation permits (if needed). The UST regulating agency may be required to be onsite to observe the removal and order soil testing and possibly soil removal if indicated. Consultation with local Air Quality Control District personnel is also recommended as they may also require a permit.

Site Remediation

If contamination is discovered, the agency that regulates USTs will direct further action. Remediation could be confined to removing and properly disposing of contaminated soil under direction of the UST regulating agency. If contamination of groundwater is discovered, the site will usually be referred to the Regional Water Quality Control Board for further oversight. A site with significant soil contamination may get referred to the Department of Toxic Substances Control (DTSC). If contamination is extensive, one of these agencies will request that a workplan for site cleanup be submitted. The workplan would be prepared by an environmental consulting firm and submitted to the appropriate agency. When the workplan is approved, work can begin. Again, owners seeking UST Fund reimbursements should work closely with a consultant expert in the UST Fund to assure that correct procedures are followed to ensure reimbursement if the owner is otherwise eligible.

Each regulating agency sets its own procedures for site remediation so it would not be useful to discuss those in detail here. But some of the procedures that may be required would be removal of gasoline floating on groundwater, excavation of contaminated soil, removal of soil gases with a vapor extraction system, and/or removal and treatment of groundwater. In rare cases, the Water Board only requires testing be conducted to identify the location of contamination in the groundwater to verify that drinking water sources are not impacted, followed up by quarterly monitoring for a period of time. It may be possible to proceed with development of the site after surface contamination is removed and a cleanup or monitoring plan is approved.

Chapter 6

Gaining Site Access

When attempting to redevelop abandoned and contaminated properties, one of the most difficult challenges can be gaining legal access to the property. Without permission of the owner, a government agency cannot legally enter the site, conduct testing, or remove USTs. For example, here is a typical situation: A city identifies a former gas station site that appears to have USTs in place. It is vacant or occupied by someone who does not have permission to be there. The owner has not paid taxes in years but the county has not been able to sell the property. The owner of record cannot be located. If the site has contamination, it may be eligible for EAR Account Funding but in order to test for contamination, the city would need to get on the site. How does the city get access? Or if the site shows obvious signs of contamination and the city obtains EAR funding, how does the city get on the site to conduct testing and remediation activities.

By Permission of the Owner

If the owner can be found, he or she may choose to grant access rights. An attorney should draw up an agreement between the owner and the agency to grant the agency the right to enter the property to take specific actions. Owners should be encouraged to seek their own legal counsel if they are able to do so. If they are not able to obtain legal representation, the city should attempt to design an access agreement that protects the rights of the owner as well as the rights of the city.

California Land Environmental Restoration and Reuse Act of 2001 (CLERRA)

In 2001, the California Legislature passed SB 32 also known as the California Land Environmental Restoration and Reuse Act of 2001 which established a procedure through which municipal governments can gain access to properties. However, the powers granted by SB 32 can only be used on very small sites that are vacant. Each city or county must pass an ordinance implementing the legislation and designating an implementing agency and geographic areas that will be included. The notice and public participation aspects are also extensive but in certain circumstances, this law may be the best way to gain access to an abandoned property.

Bankruptcy Judgment

If the bankruptcy is active, creditors are trying to gain access to assets of the debtor. It may be possible for the bankruptcy judge to grant the city access to the site to conduct investigations and remediation that would enhance the value of the property so that it could be sold or transferred to pay off the debts of the debtor. An attorney would probably be needed to help sort out

bankruptcy issues for a particular property. Perhaps creditors could fund a search for an insurance policy that covered the site. See paragraph on Insurance in Chapter 5.

Court Order

Under certain circumstances it is possible for a governmental agency to get a court order to enter a site to correct a danger to public health. Most abandoned gas station sites do not present a hazard to public health sufficient to obtain such an order. This is a complex area of law, utilization of which will require assistance of an expert.

Eminent Domain

If the agency is planning to purchase property through an eminent domain process, it is possible to ask the court to approve access to the property to assess the level of contamination because this would be necessary to determine the value of the property. Determining the value of the property is a normal part of such a procedure. Redevelopment agencies, cities, counties and other agencies that acquire property for public use are familiar with this process. In the City of Los Angeles, this is handled by the General Services Department.

Appendix A

Information Resources

US ENVIRONMENTAL PROTECTION AGENCY

US EPA Region 9

Underground Storage Tank Program

75 Hawthorne Street, San Francisco, CA 94105

Phone: 415-972-3368

Website: <http://www.epa.gov/region09/waste/ust/index.html>

US EPA Underground Storage Tank Program

U.S. EPA/OSWER/OUST,

1200 Pennsylvania Avenue, N. W.

Mail Code: 5401P, Washington, DC 20460

Phone: 703-603-9900 Website: <http://www.epa.gov/oust/>

CALIFORNIA STATE FUNDING & INFORMATION SOURCES

California Underground Storage Tank Cleanup Fund

California Water Resources Control Board, Division of Clean Water Programs,

Underground Storage Tank Cleanup Fund

1001 I St. PO Box 944212, Sacramento, CA 94244

Website: <http://www.swrcb.ca.gov/ust/>

California Emergency, Abandoned, Recalcitrant (EAR) Account

Contact: Judy Reid, EAR Account Administrator

Phone: (916) 341-5760 Email: jreid@waterboards.ca.gov

Website: http://www.waterboards.ca.gov/water_issues/programs/ustcf/ear.shtml

California Orphan Site Cleanup Fund (OSCF):

Email: oscf@waterboards.ca.gov

Website: http://www.swrcb.ca.gov/water_issues/programs/ustcf/oscf.shtml

INFORMATION SOURCES FROM LOS ANGELES CITY

City of Los Angeles Brownfields Program

Bureau of Sanitation

1149 S. Broadway 10th Floor, Los Angeles, CA 90015

Contact: Program Manager: Nuna Tersibashian

Phone: (213) 485-3791 Email: nuna.tersibashian@lacity.org

Website: <http://www.environmentla.org/brownfields/index.htm>

LA City Building Permit Records

Los Angeles City Department of Building and Safety, Building Records Section

201 N. Figueroa St., 1st Floor Room 110, Los Angeles, CA 90025

Also:

Department of Building and Safety, Building Records Section
6262 Van Nuys Blvd., 2nd Floor, Room 251, Van Nuys

At this printing, the Metro and Van Nuys offices also provide training on how to conduct high-volume record searches. To schedule for training at the Metro office on Tuesday only, please call (213) 482-6899 or at the Van Nuys office on Wednesday only, please call (818) 374-4390.

(Confirm dates and times before visiting the office.)

Website: <http://ladbs.org/LADBSWeb/building-permit-records.jsf>

Underground Tank Permit Records for Properties within City of Los Angeles

Los Angeles City Fire Department

221 North Figueroa Street, Suite 1500, Los Angeles, CA

Phone: (213) 482-7115

Website: http://lafd.org/prevention/underground/underground_storage_tanks.html

For permits issued prior to 1998 also check

LA City Office of Finance

City Hall, 200 N. Main St., Room 101 Los Angeles CA 90012

Phone: (213) 475-5901

Email: Finance.CustomerService@lacity.org

Website: <http://finance.lacity.org/>

PROPERTY OWNERSHIP RECORDS

Los Angeles County Registrar-Recorder/County Clerk

12400 Imperial Highway, 2nd floor, Norwalk, CA 90650

Official records of deeds, change of ownership, liens, etc.

Website: http://www.lavote.net/Recorder/Real_Estate_etc.cfm

Los Angeles City Clerk Land Records Division

Public counter, Room 730, 201 North Figueroa Street, Los Angeles

Unofficial record of current ownership of properties within LA City boundaries.

Website: <http://cityclerk.lacity.org/landrec/pdf/landrecords.pdf>

PROPERTY TAX STATUS INFORMATION

Los Angeles County Tax Assessor

Website has a Property Assessment Information Module with addresses and APN for each property.

Website: <http://assessor.co.la.ca.us/>

http://ttc.lacounty.gov/Proptax/auction_generalInfo.htm

County Treasurer and Tax Collector

225 N. Hill St. Los Angeles

Website has module with tax delinquent properties and properties eligible for auction.

Toll-Free No.: (888) 807-2111
Email: info@ttc.lacounty.gov
Web site: <http://ttax.co.la.ca.us/main.htm>

California State Controller

County Tax Sale Procedural Manual 2012
Website: http://www.sco.ca.gov/ardtax_tcs_taxguide.html

INFORMATION ON LOANS AND ECONOMIC DEVELOPMENT ASSISTANCE

California Community Economic Development Association

244 S. San Pedro Street, Suite 412, Los Angeles, CA 90012
213-625-0105
<http://www.cceda.com> ralph@cceda.com

California Department of Community Services and Development

PO 1947, Sacramento, CA 95814
Main Phone: (916) 576-7109
Website: <http://www.csd.ca.gov/>

GENERAL INFORMATION on Gas Station Programs in Various States

Northeast Midwest Institute & National Association of Local Government Environmental Professionals (NALGEP), [Recycling America's Gas Stations: The Value and Promise of Revitalizing Petroleum Contaminated Properties](#), 2002
Website: <http://www.nemw.org>

Appendix B

Criteria for Selecting a UST Removal Contractor

1. Does the Contractor hold all appropriate licenses?

All UST contractors must be appropriately licensed with the State of California. Contractors must hold a General Contractor “A” license with hazardous materials certificate. The contractor should also have other licenses that are essential to performing the work, including:

- Cal-OSHA³ Permit (requires contractor to follow safety standards)
- SCAQMD⁴ Permit for Rule 1166 (requires contractor to follow air quality protection protocols)

Make sure the contractor has all appropriate licenses and that they have not expired.

2. Does the Contractor have a Registered Geologist or Professional Engineer for the project?

The Los Angeles Fire Department (LAFD) requires that a certified professional, either a Registered Geologist (RG) or Professional Engineer (PE), supervise the UST closure and sampling process. The RG or PE must also sign and stamp the final closure report for submittal to LAFD. Find out who the registered professional is. Get their certification number and make sure their certification is current.

The validity of a license can be checked through the Contractor’s State License Board. You can check online at: <http://www.cslb.ca.gov/contractors/index.html>, then look under the heading “License Status Check.” There you can check by company name, personnel name, or license number. Or, you can also call the automated service at 1-800-321-CSLB. Any complaints or lawsuits filed against the contractor are listed online and on the automated telephone service. If you need to speak with a representative you may call 916-255-3900.

3. How much experience does the Contractor have removing USTs in the City of Los Angeles and with Los Angeles Fire Department Underground Tank Enforcement Unit (LAFD)?

Find out how long the contractor has been in business. Ask for examples of projects and references for projects that the contractor has completed within the City of Los Angeles.

³California Occupational Health and Safety Administration.

⁴South Coast Air Quality Management District

4. Will the Contractor be responsible for obtaining all required permits?

A contractor's cost estimate should include all permitting for the UST closure. A UST closure permit is required from the LAFD and a grading permit is required from the Los Angeles Department of Building and Safety. However, a contractor's cost estimate will generally not cover tank registration fees or the SCAQMD 1166 permit

5. Does the Contractor's cost estimate cover the standard UST removal components?

A contractor's cost estimate should include all labor, materials and equipment for performing the UST closure in accordance with state and local regulations. Make sure that that the contractor's bid includes the following basic elements:

- Permits;
- Excavation equipment (backhoe, excavator, and/or crane) to dig, expose, and remove the UST(s), piping, and dispensing system;
- Pressure washer and vacuum truck for cleaning and pumping out UST contents (liquids, sludge, etc.);
- Degassing system to remove gasoline vapors (for gasoline USTs only);
- Equipment to backfill excavation, which may include backhoe, compaction wheel, etc. Clean import backfill may be needed to fill in the void created by the UST;
- Surface re-paving (asphalt or concrete);
- Closure report.

Atypical or unforeseen site conditions may cause the costs of UST closure to increase. Examples include:

- If the UST is deeply buried or is set on a concrete pad, more sophisticated construction equipment may be required;
- If the UST is immersed in or beneath a shallow groundwater table, dewatering and/or special backfill material may be required;
- If the UST is beneath a building structure or in an area of restricted access, demolition may be needed, or the UST may need to be abandoned in-place;
- If there are active utilities near the UST, utility relocation may be needed;
- If contaminated soil is encountered during excavation, the soil may need to be hauled to a treatment /disposal facility.

These cost items are usually not included in a Contractor's cost proposal. However, a good contractor will attempt to identify unusual conditions ahead of time so that contingency costs can be incorporated in the proposal.

6. How does the Contractor plan to address contaminated soil, if encountered?

If the soil excavated during the UST removal appears contaminated (based on odors or discoloration), the contractor should collect and analyze soil samples to “characterize” the soil (by comparing detected concentrations to disposal criteria).

Contaminated soil should be transported to an appropriately permitted disposal or treatment facility. Ask for the name and contact information for the disposal facility that the contractor proposes to use. You should contact the LAFD to check the credibility of the disposal facility.

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Appendix C

Criteria for Selecting a Remediation Contractor

1. Does the Contractor hold all appropriate licenses?

The Contractor should hold a valid California State Contractor's License and any licenses necessary to operate the remediation equipment.

2. How can I check if the Contractor's license is valid?

You can check on the validity of a license through the Contractor's State License Board. You can check online at: <http://www.cslb.ca.gov/consumers/>, then look under the heading "License Status Check." There you can check by company name, personnel name, or license number. Or, you can also call the automated service at 1-800-321-CSLB. Any complaints or lawsuits filed against the contractor are listed online and on the automated telephone service. If you need to speak with a representative you may call 916-255-3900.

3. How much experience does the Contractor have with remediation in the City of Los Angeles and with the Los Angeles Regional Water Quality Control Board (LA-RWQCB) ?

Find out how long the contractor has been in business. Ask for examples of projects that the contractor has completed within the City of Los Angeles. You may also wish to check with the LA-RWQCB regarding the contractor's reputation and its references.

4. What is included and not included in the Contractor's cost estimate?

A Contractor's cost estimate should include all labor, materials, equipment and laboratory analysis to complete remediation. Make sure the Contractor's bid includes the following basic elements:

- Permits;
- Excavation equipment to dig, hold soil, drill, etc.
- Soil sampling and laboratory analysis;
- Equipment to backfill excavation;
- Surface re-paving;
- Final report

5. How will the Contractor treat the waste?

What methods will the contractor use to remediate the problem? There are many methods of remediation, and the cost and time required can vary greatly depending on the method used. Make sure to research your options and determine which will be the most cost effective for your situation.

6. Will the Contractor obtain all necessary permits?

Make sure that the contractor's proposal includes his responsibility to obtain all necessary permits.

7. Does the Contractor have experience in obtaining money for the client from the UST reimbursement fund?

The UST reimbursement fund provides reimbursement for corrective action costs. The Contractor should be knowledgeable in the requirements for obtaining reimbursement from this fund and experience in obtaining access to the fund for the client.

8. How can I check the Contractor's experience record?

Ask for references and contact them.

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