



Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

Official Audit Report – Issued February 23, 2012

---

## Department of Revenue's Underground Storage Tank Program

For the period July 1, 2010 through December 31, 2010



---

**TABLE OF CONTENTS/EXECUTIVE SUMMARY**

---

**INTRODUCTION****1**

The Department of Revenue's Underground Storage Tank Program oversees the operations of the Massachusetts Underground Storage Tank Petroleum Product Cleanup Fund Program established in 1991 by Chapter 21J of the Massachusetts General Laws and the Cities and Towns Municipal Grants Program established in 1991 pursuant to Chapter 21J and Chapter 148, Section 37A, of the General Laws. Chapter 21J primarily prevents the need for environmental cleanup, but also expedites 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 systems. The Cities and Towns Municipal Grants Program provides local jurisdictions with up to 50% of the costs they incur for removing or replacing USTs. The UST Program, which receives an annual appropriation from the Legislature, collects fees for the Cities and Towns Municipal Grants Program.

Chapter 26, Section 135, of the Acts of 2003 repealed Chapter 29, Section 2S, of the General Laws, which governs the use of the UST Program. With this repeal, the UST Program status was altered from a dedicated fund to a general fund. Consequently, as of fiscal year 2004, all revenues received by UST were directly deposited into the Commonwealth's General Fund.

During our audit period July 1, 2010 through December 31, 2010, the UST Program collected \$37,321,657 in delivery (load) fees, \$146,169 in annual tank fees, and \$162,645 in other revenues (generally recoupments), for total revenues of \$37,630,471.

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor conducted an audit of the UST Program to determine whether it is being administered efficiently and effectively. Our audit examined the internal controls over the collection and accounting of UST fees and whether required fees were properly deposited and used for their intended purposes. In addition, as part of our review of the fee collection process, our audit determined whether (1) there was a master list (database) of owners and operators of UST systems and whether the list is updated annually; (2) the UST Program is managing its accounts receivables efficiently and effectively, as well as complying with established procedures for collecting past-due fees and dealing with receivable write-offs; and (3) penalties are being assessed in accordance with Chapter 21J, Section 12, of the General Laws for delinquent annual tank fees. Also, our audit determined whether there was a backlog of reimbursement claims and, accordingly, eligible costs, expenses, and other obligations due owners and operators as a result of releases of petroleum products from their UST systems.

Based on our review we have determined that, except as reported in the Audit Results section of this report, for the period July 1, 2010 through December 31, 2010, the UST Program maintained adequate internal controls and complied with applicable laws, rules, and regulations related to the UST Program.

---

**AUDIT RESULTS** **5**


---

**1. CERTAIN UST PROGRAM INTERNAL CONTROLS NEED IMPROVEMENT** **5**


---

Our audit of the UST Program disclosed that certain areas of internal control need to be reexamined and strengthened to ensure that necessary checks and balances are in place for a strong internal control system. Specifically, our audit disclosed deficiencies in the areas of (a) segregation of duties within the Accounts Receivable Unit, (b) documentation of management’s performance of oversight and monitoring activities, and (c) the review and payment processes for claimant reimbursements, as discussed below.

**a. Inadequate Segregation of Duties within the Accounts Receivable Unit** **5**


---

Due to limited staffing in the UST Program, many critical duties have been combined and given to the available employees. Presently, the Accounts Receivable Unit supervisor’s responsibilities include all aspects of accounts receivable, such as generating bills, increasing and decreasing receivables, adding new UST owners, changing addresses, and processing cash receipts, including the collection and reconciliation of bank accounts. Without adequate segregation of duties, there is a risk that errors could be concealed or not detected in a timely manner or that assets could be misappropriated.

**b. Insufficient Documentation of Management’s Oversight and Monitoring Activities** **6**


---

During our audit, we determined that evidence of the Executive Director’s oversight and monitoring of various activities was not documented and preserved to substantiate whether supervision of activities was actually executed. The Executive Director’s supervision becomes especially important in light of the staff limitations and lack of segregation of duties noted earlier. Without evidence of supervision, there is little assurance that employee work is being properly reviewed and approved at critical points for accuracy, completeness, and reasonableness.

**c. Improvements Needed in the Review and Payment Processes for Claimant Reimbursements** **7**


---

We noted that during the four-month period September 2010 to December 2010, monthly revenue reports disclosed \$162,645 in “other reimbursements.” A closer examination showed that six separate Expenditure Refunds (ER) totaling \$156,045 had been executed to recover claimant reimbursement payments made in error. Also, we determined that, contrary to the Office of the State Comptroller’s (OSC) ER policy, documentation of a review of the ER transactions detailing the reasons behind the need to process an ER and whether a potential weakness existed in the UST Program’s internal controls for payment processing was not prepared by management and available for inspection. The above-mentioned OSC policy also cautions departments that if they are experiencing a high volume of ER transactions, it may indicate an internal control weakness.

---

**2. CLAIMS REIMBURSEMENT BACKLOG IN EXCESS OF 1,400 CASES** **9**

Our review found that due to limited UST Program funds and resources, the UST Program has amassed a backlog of 1,409 claim reimbursement applications as of May 2011 that needed to be reviewed and processed. As a result, assuming that the remaining \$2.3 million balance currently available for claimant reimbursements is expended, an estimated \$23.1 million in fiscal year 2011 claimant reimbursements will go unpaid until legislative funding is provided in fiscal year 2012 and beyond. Moreover, processing delays mean that the UST Program claims application backlog will continue to grow and that claimants that rely on these funds will continue to endure cash-flow shortfalls. Ultimately, such shortfalls could deter cleanup efforts and potentially have environmental repercussions that may add to claimant and UST Program costs.

**a. Limited Staffing for Third-Party Evaluations** **10**

Up until August 2010, the UST Program contracted the services of an approved statewide contractor, Sedgwick Claims Management Services Inc., (SCMS) to perform third-party evaluations of claim reimbursement applications. These evaluations are highly technical reviews and, to address the volume of annual claims applications, SCMS assigned nine analysts and one supervisor to perform the evaluations and forward the completed applications to the UST Program. A shortage of funds to support the services provided by SCMS caused the service to be on hold since August 2010. Presently, all third-party evaluations are performed by a senior claims analyst (a contract employee and former employee of SCMS) who began service with the UST Program in January 2011 and whose contract was due to expire on June 30, 2011 unless funded by the fiscal year 2012 maintenance appropriation. Subsequent to our fieldwork, the Executive Director informed us that the contract for the senior claims analyst was extended through September 2011. The UST Program should seek additional funding for third-party evaluations to prevent the continued growth of the existing backlog of cases.

**b. UST Program Not Adequately Funded** **10**

All revenues received by the UST Program are directly deposited into the Commonwealth's General Fund. Support for the UST Program is dependent upon legislative funding and, for fiscal year 2011, the UST Program's appropriations were not sufficient to meet the needs of the program. As previously stated, even if the UST Program makes use of the \$2.3 million currently remaining in its claims appropriation, projected outstanding claims totaling \$23.1 million will remain unaddressed. Furthermore, funding shortfalls have affected the timeliness of reimbursement payments made to claimants. In light of current staffing levels, the current backlog of 1,409 cases will take over four years to process. UST Program management acknowledged that adequate funding has historically been an issue for the UST Program. In addition, management noted that an increase in funding has been appropriated by the Legislature for both its claims reimbursement and administrative accounts. This information showed that fiscal year 2012 funding for the UST Program claims reimbursement and administrative accounts increased by \$14,000,546 and \$685,113, respectively.

## INTRODUCTION

### *Background*

The Department of Revenue's Underground Storage Tank Program oversees the operations of the Massachusetts Underground Storage Tank Petroleum Product Cleanup Fund Program established in 1991 by Chapter 21J of the Massachusetts General Laws and the Cities and Towns Municipal Grants Program, also established in 1991 pursuant to Chapter 21J and Chapter 148, Section 37A, of the General Laws.

Chapter 21J primarily prevents the need for, but also expedites, 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 systems. The Cities and Towns Municipal Grants Program provides local jurisdictions with up to 50% of the costs they incur for removing or replacing USTs. The UST Program, which receives an annual appropriation from the Legislature, collects fees for the grants program.

Dispensing facilities are eligible to receive reimbursement for work performed after April 1, 1991, and marinas are eligible for work performed after June 30, 1992. Reimbursement is subject to a deductible and correlates with the number of UST systems owned by the claimant. Chapter 21J provides for the UST Program to be financed by an annual tank registration fee and a per-gallon fee imposed on the delivery of petroleum products to USTs; currently, these fees are set at \$250 and 2.5 cents, respectively.

Pursuant to Chapter 21J, Section 8, of the General Laws, the Underground Storage Tank Petroleum Cleanup Fund Administrative Review Board was established to oversee the UST Program. The board's primary tasks are to administer the UST Program, rule on eligibility and payment of reimbursement claims, and develop and oversee the program's regulations and fee structure.

Under 503 Code of Massachusetts Regulations (CMR) 2.00, the board established criteria by which an owner or operator of a UST system can seek reimbursement. These criteria include ensuring that the UST system was in full compliance with all applicable laws at the time of the release; the facility was operating after April 2, 1991; reimbursement is sought on behalf of an eligible claimant; the owner or operator has paid all fees; and the release is deemed an eligible release.

On April 1, 2003, when the Commonwealth was in the midst of a fiscal crisis spurred by economic recession, the load fee assessed to gasoline distributors, unclassified importers, and special fuel

suppliers was increased 400% from a half-cent per gallon to 2.5 cents, and the annual tank registration fee was increased from \$200 to \$250. Shortly thereafter, on June 30, 2003, Chapter 26, Section 135, of the Acts of 2003 repealed Chapter 29, Section 2S, of the General Laws (Underground Storage Tank Petroleum Product Cleanup Fund). With this repeal, all revenues received by the UST Program as of fiscal year 2004 are no longer exclusively dedicated to the UST Program but are directly deposited into the Commonwealth's General Fund, which is used to support all government activities.

The UST Program consists of four units administered by the Executive Director: Accounts Receivable, Administrative Support, Compliance, and Engineering. The Executive Director reports directly to the Department of Revenue's (DOR) Senior Policy Counsel, who also functions as the Chairman of the UST Administrative Review Board, which convenes monthly to review and vote on claims for reimbursements, budgetary concerns, and other financial/legal issues of the UST Program. The UST Program is also assisted by DOR's Financial Services Bureau, which provides the UST Program with all support services, including payroll, purchasing, contracting, and accounts payable.

During the audit period July 1, 2010 through December 31, 2010, the UST Program collected \$37,321,657 in delivery (load) fees, \$146,169 in annual tank fees, and \$162,645 in other collections (generally recoupments), for total revenues of \$37,630,471. UST Program revenues collected during the entire fiscal year 2010 totaled \$74,452,585 for delivery fees and \$1,825,487 for annual tank fees, for a total of \$76,278,072. The UST Program revenues collected during fiscal year 2011 totaled \$75,007,694.

The UST Program operates under a maintenance appropriation and a claims reimbursement appropriation. During the period July 1, 2010 to December 31, 2010, claims reimbursement and administrative expenses totaled \$17,345,840 and \$732,358, respectively, for a cumulative total of \$18,078,198. Accordingly, total administrative expenses represented 4.05% of total UST Program expenses.

### ***Audit Scope, Objectives, and Methodology***

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor conducted an audit of the UST Program<sup>1</sup> for the period July 1, 2010 through December 31, 2010.

---

<sup>1</sup> Our audit did not include the UST Program Municipal Grant Program because funding for fiscal year 2011 was not available.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our objectives were to determine whether the UST Program is being administered efficiently and effectively. Our audit examined the controls over the collection and accounting of UST fees and whether required fees were properly deposited and used for their intended purposes. In addition, as part of our review of the fee collection process, our audit determined whether (1) there was a master list (database) of owners and operators of UST systems and whether the list is updated annually; (2) the UST Program is managing its accounts receivables efficiently and effectively, as well as complying with established procedures for collecting past due fees and dealing with receivable write-offs; and (3) penalties are being assessed in accordance with Chapter 21J, Section 12, of the General Laws for delinquent annual tank fees. Also, our audit determined whether there was a backlog of reimbursement claims and, accordingly, eligible costs, expenses, and other obligations due owners and operators as a result of releases of petroleum products from their UST systems.

To accomplish our objectives, we:

- Reviewed applicable laws, regulations, policies and procedures, and other pertinent information related to the UST Program.
- Assessed the internal controls in place at the UST Program during the review period.
- Examined, on a test basis, evidence of the UST Program's compliance with applicable requirements and performed other procedures as we considered necessary.
- Conducted interviews and meetings with key personnel at the UST Program, the Department of Revenue's Financial Services Bureau, and the Administrative Review Board.
- Performed walkthroughs<sup>2</sup> of the UST Program's Accounts Receivable Unit, Accounts Payable Unit, Compliance Unit, and Engineering Unit and observed the UST Program procedures for certificates of compliance and applications for eligibility, as well as the processing of claimant applications for reimbursement, accounts receivable, and revenues.

---

<sup>2</sup> In an audit, a walkthrough is the act of reviewing a process or activity in scope. The purpose is to confirm whether a documented process is in use and accurately reflects current workflow. The walkthrough may also be used to test the accuracy of current or previously used control activities.

Based on our review we have determined that, for the period July 1, 2010 through December 31, 2010, the UST Program maintained adequate internal controls and complied with applicable laws, rules, and regulations related to the UST Program.



---

## AUDIT RESULTS

### 1. CERTAIN UST PROGRAM INTERNAL CONTROLS NEED IMPROVEMENT

Our audit disclosed that internal controls relative to the Underground Storage Tank (UST) Program need to be reexamined and strengthened to ensure that necessary checks and balances are in place for a strong internal control system. Specifically, our audit disclosed deficiencies in the areas of (a) segregation of duties within the Accounts Receivable Unit, (b) documentation of management's performance of oversight and monitoring activities, and (c) the review and payment processes for claimant reimbursements, as discussed below.

#### a. Inadequate Segregation of Duties within the Accounts Receivable Unit

Due to limited staffing in the UST Program, many critical duties have been combined and given to the available employees. For example, the Accounts Receivable Unit has two employees, and presently the supervisor's responsibilities include all aspects of accounts receivable, such as generating bills, increasing and decreasing receivables, adding new UST owners, changing addresses, and processing cash receipts, including the collection and reconciliation of bank accounts.

The Office of the State Comptroller's (OSC) Internal Control Guide (revised September 13, 2007) states, in part:

*Segregation of duties is a primary principle in any internal control plan in order to provide adequate checks and balances. The basic goal of segregation of duties is that no one person should have excessive control over one or more critical processes. It also defines authority and responsibility over activity and use of the Commonwealth's resources.*

*The fundamental premise of segregated duties is that an individual or small group of individuals should not be in a position to initiate, approve, undertake, and review the same action. These are called incompatible duties when performed by the same individual.*

The Accounts Receivable Unit supervisor is both managing operations of an activity and performing recordkeeping of the same activity. Such duties are considered incompatible and, therefore, should be performed by different employees to ensure strong internal control. Without adequate segregation of duties, there is a risk that errors could be concealed or not detected in a timely manner or that assets could be misappropriated.

The OSC's Internal Control Guide recognizes that maintaining adequate segregation of duties in agencies that have a small number of employees can be a challenging task. Nevertheless, management of such agencies must still consider this principle when designing and defining job responsibilities and must implement the necessary control procedures to ensure proper segregation of duties. In those situations with limited personnel and resources, management needs to exercise greater supervision and become more involved in the day-to-day operations.

**b. Insufficient Documentation of Management's Oversight and Monitoring Activities**

During our audit, we determined that evidence of the Executive Director's oversight and monitoring of various activities was not documented and preserved to substantiate whether supervision of activities was actually executed. The Executive Director's supervision becomes especially important in light of the staff limitations and lack of segregation of duties noted earlier. Without evidence of supervision, there is little assurance that employee work is being properly reviewed and approved at critical points for accuracy, completeness, and reasonableness.

The OSC's Internal Control Guide states, in part:

*Qualified and continuous supervision must be provided to ensure that internal control objectives are achieved. Supervision is the ongoing oversight, management and guidance of an activity by designated employees to help ensure that the results of the activity achieve the established objectives. The duties of the supervisor in carrying out this responsibility should include:*

- *Clearly communicating the duties, responsibilities and accountability assigned to each staff member.*
- *Systematically reviewing each employee's work to the extent necessary.*
- *Approving work at critical points to ensure that work flows as intended.*

Additionally, the OCS has established an Expenditure Refunds policy, which states, in part:

*Expenditure Refunds (ER) may be representative of an error in the original payment process. Department administrators responsible for reviewing payment activity should also review ER activity to determine if there is a potential weakness in the process for handling vendor payments that is responsible for the vendor refund.*

Our review found that although monthly bank reconciliations, revenue reports, and supporting documentation are routinely submitted by the Accounts Receivable supervisor to the Executive Director, there was no evidence that this information was reviewed. Similarly, in the case of reported “other reimbursements” (Expenditure Refunds), documentation was not prepared and retained to substantiate the need to recoup funds or to determine whether an underlying weakness existed in the UST Program’s payment-processing internal controls (See Audit Result No. 1c). Nonetheless, the Executive Director indicated that he periodically discussed the results of monthly bank reconciliations and revenue reports with the unit Accounts Receivable Supervisor and that, in those cases where discrepancies had been identified and reported, the Executive Director investigated and worked with unit staff to resolve the matter. With respect to expenditure refunds, the Executive Director stated that he conferred with the unit Accounts Payable Manager to determine the reasons for the return of funds.

When we brought this matter to the Executive Director’s attention, the Executive Director promptly began initiating corrective action by establishing and implementing a bank reconciliation form that requires written signatures and dates from both the employee performing the bank reconciliation and the Executive Director.

**c. Improvements Needed in the Review and Payment Processes for Claimant Reimbursements**

During our examination of the UST Program’s revenues, we noted that during the four-month period September 2010 to December 2010, monthly revenue reports disclosed \$162,645 in “other reimbursements.” Given that the UST Program revenues are derived primarily from delivery and tank fees, as well as late penalties assessed on tank fees, we assessed the need for this added revenue category. Our examination found that six separate Expenditure Refunds<sup>3</sup> (ER) totaling \$156,045 had been executed to recover claimant reimbursement payments made in error. Also, we determined that, contrary to the OSC’s ER policy, documentation of a review of the ER transactions detailing the reasons behind the need to process an ER and whether a potential weakness existed in the UST Program’s internal controls for payment processing was not prepared by management and available for inspection. As noted, the OSC’s ER policy

---

<sup>3</sup> An Expenditure Refund represents a return of funds originally paid to a vendor and is an accounting adjustment for the reversal of a payment.

cautions departments that if they are encountering a high volume of ER transactions it may be an indication of an internal control weakness.

The UST Program Accounts Payable Unit is responsible for preparing the payment request document for all approved claimant reimbursements. Because the Department of Revenue's Financial Services Bureau provides operational support services to the UST Program, including the processing of accounts payable, a secondary review is also performed by the Bureau of Claimant Reimbursements before the payment request is authorized for release. This dual review is intended to minimize payment processing errors. However, our review showed that erroneous claimant reimbursement payments occurred for a variety of reasons. For example, one reimbursement check was mistakenly issued as an assignment<sup>4</sup> (\$69,001.28) even though the claimant's debt to the assigned party had already been paid in full. Another reimbursement check (\$60,060.59) was issued to the wrong UST owner due to an incorrect vendor code. Further, in one instance requiring an ER, the UST Program Accounts Payable Unit was alerted by an outside party, rather than through effective internal controls.

As a result of our audit, the Executive Director indicated that various corrective action options were being explored.

### ***Recommendation***

The UST Program should:

- a. Undertake improvements to strengthen internal controls to ensure that incompatible duties are properly segregated. If segregation of responsibilities to the extent desirable continues to be hampered by staffing limitations, management must exercise greater supervision and become more involved in its operations and evaluate whether it has implemented controls that adequately address the operation risk associated when incompatible duties are performed by the same individual.
- b. Continue to assess other opportunities to clearly document and preserve evidence of management's supervision and oversight activities. Because management needs to exercise greater supervision in situations of limited personnel to address risks associated with inadequate segregation of duties, the documentation and preservation of supervisory evidence, such as signing and dating documents reviewed, become especially important.

---

<sup>4</sup> Assignments are notations that the claimant owes a debt to another party or entity. The reimbursement check is made payable to both the claimant and the creditor.

- c. Take appropriate steps to ensure that ER transactions related to mistakes or errors are properly documented and available for inspection. The UST Program should maintain a complete file that contains all documentation of its review of ER transactions. This documentation should include the reason behind the need to process an ER, a determination of whether potential internal control weaknesses exists in the process for handling vendor payments, and the corrective action taken to ensure that shortcomings are not repeated. In addition, all relevant supporting documentation regarding a claimant's reimbursement should be carefully and thoroughly reviewed by the UST Accounts Payable Unit and made available to the Financial Services Bureau for its consideration before the payment request is authorized and released. An effective review process likely would have detected the payment request errors noted above.

### ***Auditee's Response***

In response to the audit report, the UST Program provided the following comments:

- a. *We agree with the audit finding and are currently evaluating appropriate corrective action.*
- b. *We agree with the audit finding and are looking into other areas to enhance documentation of management's oversight and monitoring activities.*
- c. *UST staff has evaluated and added an additional quality assurance step in its procedures to detect these mistakes prior to payments being issued. This additional step involves using an electronic data-checking procedure prior to the payment list being forwarded to the Financial Services Bureau for final review. In the event that a payment error does occur, the UST Program has also created a form to document the payment error and Expenditure Refund, including identifying the cause of the error and the corrective action required.*

## **2. CLAIMS REIMBURSEMENT BACKLOG IN EXCESS OF 1,400 CASES**

Our review found that, due to limited UST Program funds and resources, the UST Program has amassed a backlog of 1,409 claim reimbursement applications as of May 2011 that need to be reviewed and processed. As a result, assuming that the remaining \$2.3 million balance currently available as of May 6, 2011 for claimant reimbursements is expended, an estimated \$23.1 million in fiscal year 2011 claimant reimbursements will go unpaid until legislative funding is provided in fiscal year 2012 and beyond. Moreover, processing delays mean that the UST Program claims application backlog will continue to grow and that claimants that rely on these funds will continue to endure cash flow shortfalls. Ultimately, such shortfalls could deter cleanup efforts and potentially have environmental repercussions that may add to claimant and UST Program costs. The backlog of claimant reimbursements can be attributed to: (a) limited staffing for the review of claimant applications, commonly known as third-party evaluations and (b) a lack of available funding to compensate for claimant reimbursement payments.

**a. Limited Staffing for Third-Party Evaluations**

Up until August 2010, the UST Program contracted the services of an approved statewide contractor, Sedgwick Claims Management Services Inc., (SCMS) to perform third-party evaluations of claim reimbursement applications. These evaluations, conducted to ensure that claimants have met all conditions of compliance set forth in 503 Code of Massachusetts Regulations (CMR) 2.00, are highly technical reviews. To handle the volume of annual claims applications, SCMS assigned nine analysts and one supervisor to perform the evaluations and to forward the completed applications to the UST Program. However, because of insufficient administrative funds to support the SCMS contract, the SCMS contracted services have been on hold since August 2010.<sup>5</sup>

Presently, all third-party evaluations are performed by a senior claims analyst (a contract employee and former employee of SCMS) who began service with the UST Program in January 2011 and whose contract was due to expire on June 30, 2011 unless funded by the fiscal year 2012 maintenance appropriation. Subsequent to our fieldwork, the Executive Director informed us that the contract for the senior claims analyst was extended through September 2011.

This senior claims analyst also receives assistance on a part-time basis from two employees from the UST Program engineering unit. With this added assistance, the equivalent of 1.25 full-time employees is allotted to the claims processing function that previously was executed by 10 SCMS full-time employees. Further, with the current staff level, the UST Program can process an average of 25 claims per month, or 300 annually. Given that the UST Program receives an average of 1,700 claims yearly, the existing backlog will continue to grow in the absence of additional funding for third-party evaluations.

**b. UST Program Not Adequately Funded**

On April 1, 2003, when the Commonwealth was in the midst of a fiscal crisis spurred by economic recession, the load fee assessed to gasoline distributors, unclassified importers, and special fuel suppliers was increased 400% from a half-cent per gallon to 2.5 cents, and the annual tank registration fee was increased from \$200 to \$250. Shortly thereafter, on June 30, 2003,

---

<sup>5</sup> SCMS services for July and August 2010 (fiscal year 2011) totaled \$350,025. These contracted services alone represented nearly 48% (\$350,025/\$732,358) of all expenditures charged to the UST Program maintenance appropriation during the period July 1, 2010 to December 31, 2010. The UST Program fiscal year 2011 maintenance appropriation totaled \$1,348,186.

Chapter 26, Section 135, of the Acts of 2003 repealed Chapter 29, Section 2S, of the General Laws (Underground Storage Tank Petroleum Product Cleanup Fund). With this repeal, all revenues received by the UST Program as of fiscal year 2004 are no longer exclusively dedicated to the UST Program but are directly deposited into the Commonwealth's General Fund, which is used to support all government activities. The following chart details the amount of UST Program revenues and funding received for fiscal years 2003 through 2011.

<u>Fiscal Year</u>	<u>Total UST Program Revenues</u>	<u>Total UST Program Funding Received</u>	<u>Difference</u>
2003	\$27,079,218	\$27,079,218	-
2004	\$75,363,148	\$30,710,165	\$44,652,983
2005	\$80,733,585	\$24,815,681	\$55,917,704
2006	\$76,273,058	\$32,229,989	\$44,043,069
2007	\$80,535,424	\$25,078,470	\$55,456,954
2008	\$78,211,077	\$28,689,295	\$49,521,782
2009	\$74,026,038	\$24,063,786	\$49,962,252
2010	\$76,278,072	\$14,430,359	\$61,847,713
2011	\$75,007,694	\$25,330,359	\$49,677,335

The UST Program is supported by two appropriations: a claims reimbursement appropriation and a maintenance appropriation, both of which can be subject to supplemental claims and changes. For fiscal year 2011, the claims reimbursement appropriation was funded at its fiscal year 2010 amount, or \$13,099,454. Supplemental allotments totaling \$10,900,000 brought the final fiscal year 2011 claims reimbursement appropriation to \$23,999,454. Similarly, the maintenance appropriation was also funded at its fiscal year 2010 amount, or \$1,100,000; with supplemental allotments, the final fiscal year 2011 maintenance appropriation totaled \$1,348,186, bringing the total state funding received by the agency for that year to \$25,330,359, as shown above. However, these appropriations are not sufficient to meet the needs of the UST Program. As stated earlier, even if the UST Program makes use of the \$2.3 million currently remaining in its claims appropriation, projected outstanding claims totaling \$23.1 million will remain unaddressed. Moreover, UST management has estimated that the UST Program could utilize at least \$1.5 million in support costs.

Additionally, the funding shortfalls have affected the timeliness of reimbursement payments made to claimants. Depending on the complexity of a claim and the priority of the claim payment approved by the Advisory Board, the average time to process a claim can take between three and six months when funds are available. In view of the current staffing level evaluating claimant applications and the roughly 300 claims processed yearly, the current 1,409 backlog will take over four years (1,409/300) to process.

As a result of the claims backlog, claimants have incurred expenses for UST cleanups, but have not been reimbursed for these expenditures in a timely manner. Furthermore, claimants, especially smaller claimants that rely on reimbursements to fund ongoing cleanup efforts, are experiencing cash flow shortages that are significantly impacting their day-to-day operations. Such problems have heightened the risk that tank owners or operators of UST systems may elect to put off performing necessary cleanups that potentially could have environmental repercussions, such as the pollution of air and drinking water. These cleanup setbacks can lead to added cleanup costs to both the claimant and the UST Program.

Without adequate funding, the above issues will continue to impact the UST Program. Given the sizeable disparity between the UST Program's generated revenues and operating appropriations, a greater portion of revenues allocated to the UST Program in an effort to reduce the existing claims backlog and to improve the timeliness of reimbursement payments is necessary. For example, even though the UST Program reported fiscal year 2010 revenues totaling \$76.3 million, the UST Program received only \$14.4 million in appropriations; approximately 19% of the revenues. Likewise, although UST Program revenues totaled \$75,007,694 for fiscal year 2011, the UST Program appropriations totaled just \$25.3 million, or approximately 34% of the revenues.

***Recommendation***

The UST Program should seek additional funding to help resolve the claims backlog and funding shortfalls noted above. Such funding should help the UST Program to eliminate the current claims backlog, enhance third-party evaluations, and improve the timeliness of claimant reimbursements.



***Auditee's Response***

In response to the audit report, the following statement was provided:

*We agree with the finding that adequate funding has historically been an issue for the UST Program and note that within the past few months, an increase in funding for both the claims reimbursement and administrative accounts has been appropriated by the Legislature.*

***Auditor's Reply***

Subsequent information provided by the Executive Director disclosed that fiscal year 2012 funding for the UST Program claims reimbursement and administrative accounts increased by \$14,000,546 and \$685,113, respectively.