

THE NRG REPORT

MIXED NEWS WITH THE 21J UST FUND

Currently, the House and Senate have budget bills, which contain a line item allocating \$19.2 million to underground storage tank (UST) claims reimbursements. Unfortunately, these funds are a far cry from the necessary \$40 million needed to adequately fund UST claims.

The Massachusetts State Senate approved the Ways and Means Committee's 2004 fiscal year budget proposal on May 24, 2003. Although the House and Senate share a *similar objective of finding savings through consolidation and elimination of duplicative functions within the Executive Offices of Environmental Affairs*, a conference committee is now in place to review and resolve those difference currently present within the two budget bills.

Earlier this year, the petroleum industry backed a statewide two and a half cent per gallon increase in the UST fee, imposed to erase a \$20 million deficit in the fund and clear up a growing queue of claims. Currently though, instead of being earmarked for the UST fund, this increase in fee will go directly to the general fund. The proposed budget changes also call for a significant reduction in the number of dollars allocated to administrative tasks, specifically, claims processing.

Another growing problem for UST funds is the passing of a bill by the House calling for a \$300,000 plus reduction in the *administrative budget for Chapter 21J*, the UST product clean-up fund. In short, this could mean that even if the UST fund is allocated the \$19 million in necessary funds, there still will not be a staff in place to review any of

NEW DEVELOPMENTS IN THE MCP

On June 27th, 2003, The Massachusetts Contingency Plan's (MCP's) amendments were put into effect, which streamlined the approval process, established rules for electronic submittals and changed the fees required for report submittals. A new default tier classification, Tier 1D, was also added for sites where no other tier classification was submitted to the Department of Environmental Protection (DEP) by the established deadline.

Changes in the report submittal process:

- Deadlines for reports filed electronically via eDEP are established by 310 CMR 40.0008. Documents will be considered received on the day that the electronic copy is received, provided that a printed copy follows within fourteen days.
- Presumptive Approval Process for Release Abatement Measures (RAM) has been eliminated by changes to 310 CMR 40.0443. Measures outlined in the RAM Plan may now be carried out as soon as the plan is received by the DEP, unless otherwise specified by the DEP in writing.
- Approval Process for classifying sites and obtaining Tier 1 Permits has been streamlined and simplified by revisions to 310 CMR 40.0500 and 40.0700. New regulations establish a 45-day presumptive approval for all Tier 1 Permits, Major Modifications, Transfers, and Extensions.
- DEP approval for response actions at Tier 1A disposal sites is no longer required in all cases.

Tier 1D classification is defined by 310 CMR 40.0502. Disposal sites for which a Response Action Outcome (RAO) or Tier Classification have not been submitted by the applicable deadline, or are in non-compliance with requirements of the DEP will be classified as Tier 1D.

Changes in the MCP-related fees:

Annual Compliance Assurance Fees

- A flat fee of \$5,000.00 for Tier 1A disposal sites will replace the previous fees, which were based upon the actual oversight costs for the site.
- Class C compliance fees of \$800.00 will be charged to all sites with a class C RAO in effect, not just for active sites.
- A separate schedule of lower fees will apply to those individuals who meet the definition of "homeowner" in 310 CMR 4.02. For example, the Tier 1B annual compliance fee is \$4,000.00 for a non-homeowner and only \$1,000.00 for a homeowner. Qualifying homeowners must submit a certification on a DEP approved form (BWSC 120), in order to realize the reduction in fees.

Permit Application Fees

- Multiple Tier 1 permit applications for a major modification, transfer or extension submitted concurrently for the same disposal site will only require one permit application fee.
- The non-homeowner fee of \$3,550.00 is unchanged by these revisions, the new homeowner Tier 1A permit application fee is \$500.00.

For more information on changes to the MCP, the redline/strikeout version can be found on the state of Massachusetts' website at <http://www.state.ma.us/dep/bwsc/regs.htm>, or you may contact Norfolk Ram Group's Brian V. Moran, LSP at (508) 429-2368, extension 12.

Homeowner definition: *an owner occupant of a residential one to four family structure who has provided a written certification on a Department approved form and whose structure has been used exclusively as a one to four family residence throughout his or her ownership, where the owner's unit is the owner's principal residence for six or more months of the year and the owner is conducting response actions at the residence in response to a release of oil.*

UST (continued...)

the future claims which would be submitted. If you would like to know more about the UST fund, or Chapter 21 J, please contact Peter J. Garrett at (800) 894-1300, extension 121, or visit us online at www.norfolkram.com.

ANNOUNCEMENTS

Norfolk Ram Group, LLC's (Norfolk's) Associate Michael Clark, P.E. has recently been appointed to Scituate's Conservation Commission. Mr. Clark has over eighteen years of experience as a civil/geo-environmental consulting engineer and engineering management consultant. Mr. Clark has managed numerous environmental projects, including landfill assessments and designs, building demolitions and asbestos abatements, underground storage tank removals and cleanups, soil and groundwater remediations, stormwater collections and treatments, and on-site wastewater system designs and inspections. In addition, Mr. Clark has conducted and managed geotechnical investigations for building, roadway and other projects throughout the Northeast. Mr. Clark can be reached at (508) 747-7900, extension 193.

Norfolk Ram Group, LLC is a full-service environmental and civil engineering consulting firm specializing in environmental compliance, permitting, assessment, design/build remediation, and civil engineering.

The NRG Report is published by Norfolk Ram Group, LLC.
One Roberts Road
Plymouth, Massachusetts 02360
(508) 747-7900 phone
(508) 747-3658 fax

www.norfolkram.com

Editor:
Katie Egan
kegan@norfolkram.com

Editorial Review Board:
Mark S. Bartlett, P.E., President
Peter J. Garrett, Vice President
Brian V. Moran, P.E., LSP,
Principal
Joseph P. Salvetti, LSP, Senior
Associate

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BROWNFIELDS TAX CREDIT

In 1998, the state of Massachusetts created and instituted the Brownfields tax credit, in order to encourage the redevelopment of Brownfields sites throughout the region. In short, the tax credit can be of a value equal to as much as 50% of the net cost of the work required to remediate the site. One of the contingencies for being eligible for the credit is that the work for the site must have commenced on or before August 5, 2003.

The state of Massachusetts created the tax bill, in an effort to *provide certain taxpayers with the ability to obtain tax credits against their Massachusetts income tax liability as an incentive to cleanup Massachusetts Brownfields sites.* Other than having to have the work start on or before August 5, 2003, a Permanent Solution or Remedy Operation Status must be achieved and maintained for the site in compliance with the Massachusetts Contingency Plan (MCP). Under the MCP, a Permanent Solution is defined as the active cleanup of the site being complete, and a Remedy Operation Status is applied to those sites where a *remedial system, which relies upon active operations and maintenance is being operated for the purpose of achieving site closure.*

Other criteria which must be met in order to receive allowable reimbursements include:

- *The taxpayer must be an Eligible Person, as defined by Chapter 21E;*

- *The net response and removal costs must be incurred between August 1, 1998 and January 1, 2007;*
- *The relevant property must be owned or leased by the taxpayer for business purposes, and the property must be located within an economically distressed area;*
- *The net response and removal costs must be no less than 15% or the assessed value of the property prior to the remediation;*
- *The maximum amount of the credit allowed in any taxable year can not exceed 50% of the tax owed by the taxpayer;*
- *A taxpayer may carry over any unused portion of the credits from one tax year, for up to five taxable years; and*
- *The amount of any state funds received is deducted from the expense base for which the credit is available.*

As an environmental consulting and civil engineering firm, it has been the experience of Norfolk Ram Group, LLC (Norfolk) that many individuals either do not realize this tax credit, or are simply not taking advantage of its use. If you are unsure as to whether you are eligible to receive reimbursement under the Brownfields tax credit, please contact Norfolk's Joseph P. Salvetti, LSP at (508) 747-7900, extension 127, or via email at jsalvetti@norfolkram.com.



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