

Leaking Underground Tank Cleanup Pilot Program

*Statement of the Legislative Analyst's Office
to the Senate Toxics and Public Safety
Management Committee*

Legislative Analyst's Office
May 21, 1987

Mr. Chairman and Members:

You have asked me to comment on the administration's recent proposal to set aside \$15 million in bond funds for the purpose of funding a local two-year pilot program to clean up leaking underground tanks (UGTs). Briefly, the administration proposes to use the \$15 million to fund approximately six local agencies to (1) oversee responsible-party cleanup efforts related to UGTs and (2) characterize and clean up "orphan" UGT sites. The \$15 million represents approximately 20 percent of all bond funds projected to remain at the beginning of 1987-88. The administration submitted the proposal to you on April 30. Unless both you and the Assembly Environmental Safety and Toxic Materials Committee raise objections to the proposal by May 30, the administration may proceed to implement its proposed local UGT cleanup program starting in the current fiscal year.

In a supplemental analysis to the *Analysis of the 1987-88 Budget Bill*, we raised specific questions and concerns regarding the administration's proposal to earmark \$15 million for local oversight and UGT cleanup. I would like to take this opportunity to summarize briefly the major concerns that we have identified.

The Administration Proposes to Use the UGT Funds to Underwrite the Direct Costs of Cleanups But Has Not Provided a Rationale for Doing So. Under the bond program, funds may be used for (1) the state match on sites being cleaned up under the federal Superfund program, (2) state oversight of site cleanup efforts by responsible parties, and (3) underwriting the actual expense of cleaning up orphan sites. Cleanup funding is available for orphan sites only after the site is listed in an update to the bond expenditure plan. Due to limits on the resources available for site cleanup, the Department of Health Services' Toxic Substances Control Divi-

sion (TSCD) makes funding available to orphan sites based on the relative health and safety risk posed by the individual site.

The administration has not provided sufficient information to you concerning its rationale for setting aside an unknown portion of the \$15 million for cleanup. For instance, the Legislature does not know:

- What share of the \$15 million will go to actual cleanup of orphan sites.
- What purpose is served by earmarking funds specifically for orphan UGT sites if these sites must be listed and ranked relative to *all* orphan hazardous waste sites.
- Whether UGTs will be cleaned up “out of order” relative to other hazardous waste sites representing a greater health and environmental safety risk.

The Legislature needs answers to these questions to determine the extent to which the administration’s proposal represents a reasonable balance among (1) the need for oversight of responsible-party cleanups, (2) the need for cleanup of orphan UGT sites, and (3) the need for cleanup and oversight of non-UGT toxic waste sites in the state.

Criteria for Choosing Contract Agencies and Allocating Funds Have Not Been Established. The administration proposes to contract with approximately 6 local agencies out of approximately 100 local agencies that could apply under the proposal. The administration has not determined what criteria it will use in deciding which agencies receive contracts and funding.

The Legislature Lacks Information It Needs to Know What the \$15 Million Will Buy and to Evaluate the Program’s Performance Later. At the end of the two-year pilot program, the Legislature will need to determine whether the program should be continued and, if so, at what level. However, the TSCD and the State Water Resources Control Board (SWRCB), which would operate the program, have not provided sufficient information concerning the specific goals the program hopes to accomplish.

For example, the Legislature does not know:

- The number of sites that local governments will oversee or clean up.
- The timeline for cleaning up sites.
- The extent to which participating local agencies could recover bond expenditures under the program.

This information is needed so that the Legislature knows what the funding will buy and can evaluate the program's performance.

In addition, the Department of Health Services and the State Water Resources Control Board have not provided sufficient information concerning how they will maintain fiscal and program control over local governments' underground tank activities to ensure that they take consistent actions at similar sites and use state funds in a cost-effective manner.

The cost of the proposed pilot program seems high relative to past estimates of the cost of a local UGT cleanup program. In the past, we have estimated that a *statewide* program of oversight for UGT cleanups would have an average cost of approximately \$8.4 million annually. Based on this estimate, we conclude that the proposed \$15 million program could fund many more than six local agencies if the administration used the entire amount to fund oversight activities exclusively.

The Administration Has Not Clarified the Division of Responsibilities Between State and Local Governments Under This Program. Local governments may not have the necessary expertise to oversee or clean up sites with contaminated groundwater or nonfuel leaks and may refer these sites to the TSCD or the SWRCB. The administration's proposal does not address criteria for determining which cleanups will be referred to state agencies or which state agency (TSCD or SWRCB) will be responsible for these sites.

Because the administration's proposal would provide funds to address sites only in six counties or cities, we do not know the extent to which sites in other areas of the state will be cleaned up. To the extent that these sites are not addressed, they will continue to present a potential threat to public health.

The Administration's Proposed Method for Funding the Pilot Program is Inconsistent With Past Practice. It has been the practice of the Legislature and the administration to appropriate in the annual Budget Act those bond funds used for administration and cleanup oversight. For example, to provide sufficient funding for the Department of Health Services to administer and oversee non-UGT cleanups in 1987-88, the 1987 Budget Bill proposes to (1) revert \$13.7 million from the bond cleanup funds and (2) appropriate these funds to support state staff involved in program administration and cleanup oversight. The administration's UGT proposal would transfer funds currently set aside for the direct costs of site cleanups to support local administrative and oversight costs associated with cleaning up UGTs. Yet, these UGT funds are not proposed for reversion and appropriation in the 1987 Budget Bill. It is unclear why the funding for this proposal should be treated any differently for budgetary purposes than funds for other oversight and administrative costs.

Conclusion. We conclude that there are enough questions about the administration's proposal that it should be rejected by the policy committees of both houses, without prejudice to the merits of the proposal, at this time. We recommend that the program be implemented through the Budget Bill in order to allow the Legislature to (1) tailor the proposal to address legislative priorities and (2) enact fiscal controls that enhance legislative oversight of the program.

In our supplemental analysis, we made specific recommendations regarding the reversion and subsequent appropriation of bond funds. Specifically, we recommend that the Legislature:

- Revert \$7.5 million in bond funds—enough to fund the program for one year—and reappropriate these funds to a new item specifically created for the UGT program.
- Adopt budget control language which specifies that these funds may be used only for oversight activities. Cleanup would be funded through the regular bond program. Any funds from the \$7.5 million that are not needed for oversight would be available through regular bond program procedures for cleanups.

- Adopt reporting language requiring the Department of Health Services and the SWRCB to track and report basic information concerning UGT program performance.

These recommendations do not address some issues that the policy committees may wish to consider. These issues include:

- ***The Level of Funding in Each of the Pilot Years.*** The policy committees may wish to recommend to the fiscal committees that they either (1) reduce the proposed level of funding for the program below \$7.5 million to reflect funding of a pilot oversight program or (2) expand the coverage of the program from a six-agency pilot program to statewide coverage for *oversight* activities.
- ***Specific Program Controls That Should be Placed Upon the Pilot Program.*** The reporting language that we recommend in our supplemental analysis would provide the Legislature with the minimum level of information necessary to evaluate the UGT program. The policy committees may wish to place more specific controls on program operations or identify specific performance measures—either through separate legislation or through recommendations to the fiscal committees for inclusion in the Budget Bill. ♦