

ASSEMBLY

CALIFORNIA LEGISLATURE

ASSEMBLY COMMITTEE ON

ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

BOB WIECKOWSKI, CHAIR

OVERSIGHT OF UNDERGROUND STORAGE TANK CLEAN-UP:

PROGRESS AND OPPORTUNITIES

Wednesday, Nov. 30, 2011

San Jose

Statement of CORE Environmental Foundation, Inc. and

CORE Environmental Reform, Inc.

Hon. Chairman Wieckowski, Hon. Vice Chair Jeff Miller, and Hon. Committee Members Nora Campos, Wesley Chesbro, Mike Davis, Mike Feuer, Bonnie Lowenthal, Mike Morrell, and David C. Valadao.

I am speaking today on behalf of CORE Environmental Foundation, Inc., a 501(c)(3) and CORE Environmental Reform, Inc., a 501(c)(5) nonprofit corporation. I am Jim Arnold, an attorney, and the treasurer and secretary of these two organizations. And, we thank the Committee for this opportunity to provide a written and shorter version of our remarks at this hearing.

The word “CORE” is who we are -- Consultants, Owners, Regulators, and Environmental vendors. We formed CORE Environmental after the crisis with the UST Cleanup Fund hit in 2009. Our president, Dwayne Ziegler, an environmental consultant, and I were selected by the State Board to participate in the Task Force authorized to work with the UST Cleanup Fund. We took our work seriously; Mr. Ziegler came to monthly meetings in Sacramento from southern California, and I came from San Francisco. We learned about the Fund. We saw what must be changed for it to move from being a “checkbook” agency to being an active participant in cost-effective and environmentally protective cleanups of new and old fuel spills. But, CORE also came to learn in 2010 that the reforms of the UST Cleanup Fund – and needed changes to the UST Cleanup Program – would not occur without an extension of the 6/10ths of a cent surcharge on the “pass-through fee” collected by operators of USTs to at least January 1, 2014.

We asked other organizations and people involved in this process whether they would sponsor an extension for two more years of the 6/10ths of a cent surcharge. After all, it was a simple question, should the surcharge be extended in order to continue the reforms of the Fund and the Program. But, no one thought it was possible to gain enough support in the Legislature this year to extend the 6/10ths of a cent surcharge. So, we asked you, Chairman Wieckowski, to sponsor AB291. CORE did this because we believe that Californians want a clean environment, they want their groundwater protected, and

they want their hard-earned dollars used effectively to benefit small businesses. You took the lead and we are grateful for what you have done.

CORE could take on this project of working to extend the surcharge, because CORE represents the breadth of interests of all those involved in this process. Our members are not major corporate entities; instead they are businesses such as small property owners, gas station operators, environmental consulting firms, testing laboratories, drilling companies, car wash operators, and others that are directly involved with cleaning up fuel spills.

We saw that the other stakeholders in this process needed constant reminding of some simple facts about the Fund. It had worked well for many years. Small businesses that operate gasoline service stations, carwashes, and other fueling facilities are required by federal law to have \$1 million in financial assurance. For twenty years, this financial assurance has come from the UST Cleanup Fund. Fixing the Fund and continuing this financial assurance is necessary for these businesses to survive. The Fund also prevents litigation – and the use of limited financial resources – over who must pay for a cleanup. As an example, the increase of the reimbursement limits to \$1.5 million several years ago halted the spread of the litigation that had begun when MTBE from gas stations contaminated the water supplies of some California cities.

The UST Cleanup Fund not only forestalls lawsuits among owners, operators, former owners, neighbors, government agencies – and even the massive fuel refiners and distributors – the Fund also makes possible and practical the buying, selling, and redeveloping of “small sites.” A viable Fund, unfettered by “suspension of C Class claims” (as occurred beginning in 2009 and continuing in part today) or long-delayed acceptance of applications for Letters of Commitment (i.e., entrance into the Fund), is necessary assurance for property and business transactions. A viable Fund also enables vendors to be able to advance credit for services and supplies for investigations and cleanups. And, the Fund also provides necessary financial support for many oversight agencies. Finally, and in a very practical way, commercial lenders to small businesses (including the SBA), and private sources of finance depend on the Fund’s existence and viability.

We suggest to you that the report of the UST Cleanup Fund Task Force – with the dissenting and supplementing opinions – is more important for the process of reform than the formal audit report to the State Water Resources Control Board. The task force included many of the stakeholders that are speaking to you today, and who are present in this hearing room here in San Jose. The monthly meetings of the Task Force – over a period of more than a year – provided business and scientific insight to the UST Cleanup Fund and the State Board.

A key concept that comes from the private stakeholders that participated in the Fund Task Force is that consistency of funding and cleanup goals should be mandatory. As an example, consider ordinary construction projects. Most people would not undertake a construction project without a schedule and a financial arrangement that permits efficient and effective use of available funds. Likewise, how can RPs be asked to undertake remediation and cleanup without such a schedule and a financial arrangement? The UST Cleanup Program and the UST Cleanup Fund are no different in this respect than

ordinary construction projects. The recipients of the money from the Fund depend on a long term commitment to funding, coupled with effective and efficient steps and methods – based on science and the facts, to reach a final resolution for the site of a spill or release.

For the future, we must pay attention to our “education.” We should apply what we have learned in order to wisely use the money that is available. In fact, it is not too early to plan. The 6/10ths of a cent surcharge in AB291 will run out in 25 months, on January 1, 2014. The Fund itself is presently set to expire on January 1, 2016. All those who depend on the Fund – including those who have not yet received any money from the Fund – are depending on the Fund continuing.

As we have seen, investigations and cleanups slow down and stop when funding is not available. At the same time, groundwater monitoring used as a “default remedy” -- instead of proceeding to investigation, cleanup, and closure -- is wasteful. Such endless monitoring, without more, wastes that which is finite and limited. What is wasted includes money, time, and the work of oversight agencies, property owners, tank operators, and environmental consultants and vendors.

What we experienced in 2009-2010 was what we should have expected when one State Board program, the Fund, operating as a “checkbook” agency – was coupled with the Board’s Cleanup Program which was only loosely coordinated with the 80+ oversight agencies throughout the State. We heard at the monthly meetings of the UST Fund Task Force from the stakeholders who were severely hurt by this wasteful process. They included UST owners, UST operators, testing labs, cleanup lenders, oil distributor and refiner trade groups, small and large environmental consulting firms and local regulatory agencies how this “lurch, spend, and stop” process destroyed businesses, livelihoods, and opportunities.

You have heard from the State Board today that it expects that as USTs are replaced with newer systems and better tanks, the number of claims should drop. That is a goal that we must keep in sight. But, we still need to continue to reform the UST Cleanup Fund and the UST Cleanup Program -- and their coordination with local agencies (the LOPs and the LIAs). The State Board needs to audit on a continuing basis the effectiveness of both the Fund and the Program. Sites should not have to wait to get into the Fund. There needs to be much closer coordination between the government and the responsible parties (the RPs), and the environmental consultants (who manage the cleanups and the claims to the Fund). We cannot have gas station operators, who have collected the 2 cents per gallon for the Fund, wait for two years to get into the Fund. There is no “financial assurance” in such a situation; and it does not protect the environment.

Finally, we should not lose sight of the very real fact that the Fund and the Program have worked well for over two decades. This is in stark contrast to many other programs with more elaborate statutory programs. In contrast to drycleaner sites, we have very little litigation about UST sites; major companies that divested themselves of these sites do not have to maintain reserves for possible cleanups; lenders can base financing on the general assurance that cleanups of fuel spills will be addressed. And, it is not too much to suggest that this success of the Cleanup Fund over the last 20 years – with the enormous effort that has been put into the reforms so far – could serve as a “classroom” for a much bigger problem – that of the spilled solvents at drycleaner sites.

Thank you again, Chairman Wieckowski, for sponsoring AB291. And, thank you for seeing it through the California legislature in a notable example of true bipartisanship, in a year such as 2011.

Respectfully submitted,

James R. Arnold

CORE Environmental Foundation, Inc.

CORE Environmental Reform, Inc.