

MOTOR FUELS UNDERGROUND
STORAGE TANK TRUST FUND

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF LOUISIANA



FINANCIAL STATEMENT AUDIT
FOR THE YEAR ENDED JUNE 30, 2019
ISSUED FEBRUARY 17, 2020

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

February 12, 2020

Independent Auditor's Report

**MOTOR FUELS UNDERGROUND STORAGE
TANK TRUST FUND
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF LOUISIANA**
Baton Rouge, Louisiana

Report on the Financial Statement

We have audited the accompanying statement of cash basis assets and fund balance and cash receipts, disbursements, and changes in cash basis fund balance of the Motor Fuels Underground Storage Tank Trust Fund (Fund) within the Department of Environmental Quality (DEQ) as of and for the year ended June 30, 2019, and the related notes to the financial statement as listed in the table of contents.

Management's Responsibility for the Financial Statement

Management is responsible for the preparation and fair presentation of this financial statement in accordance with the cash basis of accounting described in note 1. This includes determining that the cash basis of accounting is an acceptable basis for the preparation of the financial statement in the circumstances. Management is also responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of a financial statement that is free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on this financial statement based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statement. The procedures selected depend on the auditor's

judgment, including the assessment of the risks of material misstatement of the financial statement, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statement in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statement.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statement referred to above presents fairly, in all material respects, the cash basis financial position of the trust fund as of June 30, 2019, and the changes in cash basis financial position thereof for the year then ended in conformity with the basis of accounting described in note 1.

Basis of Accounting

We draw attention to note 1 of the financial statement, which describes the basis of accounting. The financial statement is prepared on the cash basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

Emphasis of Matter

As described in note 1, the accompanying financial statement presents only the Fund and does not purport to, and does not, present fairly the financial position of DEQ as of June 30, 2019, and the changes in its financial position for the year then ended in conformity with accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

As described in note 4, DEQ contracted with an actuarial firm to perform a study and issue a report on the Fund. According to the report, the estimated liability on current sites participating in the Fund is \$153,333,498. This liability is not reflected in the Fund's financial statement because it is prepared on the cash basis of accounting. Our opinion is not modified with respect to this matter.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued a report dated February 12, 2020, on our consideration of the Fund's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, and contracts and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Fund's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Fund's internal control over financial reporting and compliance.

Respectfully submitted,

A handwritten signature in blue ink that reads "Daryl G. Purpera". The signature is written in a cursive style.

Daryl G. Purpera, CPA, CFE
Legislative Auditor

MK:CST:BQD:EFS:ch

MFUSTTF 2019

**MOTOR FUELS UNDERGROUND STORAGE
TANK TRUST FUND
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF LOUISIANA**

**Statement of Cash Basis Assets and Fund Balances and
Cash Receipts, Disbursements, and Changes in Cash
Basis Fund Balance
As of and for the Year Ended June 30, 2019**

RECEIPTS

Bulk distribution fees	\$23,048,134
Annual assessment fees	17,673
Interest earnings	2,562,714
Settlement proceeds (note 8)	1,850,000
Other receipts	5,518
Total receipts	<u>27,484,039</u>

DISBURSEMENTS

Claims for reimbursement	13,920,545
Other disbursements	125,465
Total disbursements	<u>14,046,010</u>

EXCESS OF RECEIPTS OVER DISBURSEMENTS 13,438,029

OTHER FINANCING SOURCES (USES)

Transfer to Environmental Trust Fund (note 5)	(5,297,485)
Transfer into Fund due to Cash Sweep Payback (note 9)	1,500,000
Total other financing uses	<u>(3,797,485)</u>

**EXCESS OF RECEIPTS OVER DISBURSEMENTS
AND OTHER FINANCING USES** 9,640,544

CASH BASIS FUND BALANCE - BEGINNING OF YEAR 114,410,302

CASH BASIS FUND BALANCE - END OF YEAR \$124,050,846

CASH BASIS ASSETS - END OF YEAR

Cash (note 2) \$124,050,846

CASH BASIS FUND BALANCE - END OF YEAR

Committed \$124,050,846

The accompanying notes are an integral part of this statement.

NOTES TO THE FINANCIAL STATEMENT

INTRODUCTION

The Motor Fuels Underground Storage Tank Trust Fund (Fund) was established by Louisiana Revised Statute (La. R.S.) 30:2195 in response to the 1984 Subtitle I amendments to the Resource Conservation and Recovery Act, which provided for the development and implementation of a comprehensive regulatory program for underground storage tanks containing motor fuels. The motor fuel underground storage tank reimbursement program is a section within the Louisiana Department of Environmental Quality (DEQ). All disbursements are handled by DEQ, although advice is provided by the Motor Fuels Underground Storage Tank Trust Fund Advisory Board (Board) that is composed of eight members, as follows: the secretary of the DEQ or his/her designee, two members appointed by the secretary of the DEQ to represent the Response Action Contractor Community, four members appointed by the president of the Louisiana Oil Marketers and Convenience Store Association, and one member appointed by the Mid-Continent Oil and Gas Association. The Board members serve without per diem. The monies in the Fund are used to reimburse all necessary and appropriate expenditures for investigation, assessment, and remediation of sites contaminated by a motor fuels release from an underground storage tank. Remediation consists of cleanup of soil, groundwater, and inland surface waters, using cost effective methods that are technologically feasible and reliable, while insuring adequate protection of the public health, safety, and welfare and minimizing environmental damage, in accordance with the site selection and cleanup criteria established by the DEQ. As of September 18, 2019, there were 10,390 tanks registered by the UST Division that are federally regulated and potentially could participate in the program. The Motor Fuel Trust Fund section administering the program is staffed by 10 employees.

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. BASIS OF PRESENTATION

The accompanying financial statement has been prepared on a cash basis of accounting, with collections recognized when received and disbursements reflected when paid. As such, the accompanying financial statement does not reflect the receivables and related payables associated with the activities of the fund.

B. REPORTING ENTITY

La. R.S. 30:2195.5 requires the Fund, administered by DEQ, to be audited annually. Accordingly, the accompanying financial statement reflects only the financial activity of the Fund. Amounts included in this financial statement are also included in the annual fiscal report for DEQ, Office of Management and Finance. Amounts included in the annual fiscal report for DEQ, Office of Management and Finance, are also included as part of the General Fund in the Comprehensive Annual Financial Report for the State of Louisiana, which is audited annually by the Louisiana Legislative Auditor.

C. RECEIPTS AND DISBURSEMENTS

Receipts

Bulk distribution fees, annual assessment fees, interest earnings, and other receipts are recorded when the receipts are deposited in the depository bank and classified by the State Treasurer's Office.

Disbursements

Disbursements for claims are made for (1) reimbursements for investigation, assessment, rehabilitation, and remediation of sites contaminated by a release from a motor fuel underground storage tank when the owner is an eligible participant and (2) payments to the third party who brings a claim against an owner because of damages sustained by a release into the groundwater or subsurface soils and who has obtained a final judgment and/or final settlement in said action against an owner. La. R.S. 30:2195.4 provides the procedures for these disbursements from the trust fund.

Other disbursements made directly from the Fund are made for (1) the annual independent audit of the Fund as per La. R.S. 30:2195.5, (2) court reporter services required for the Advisory Board meetings outlined in La. R.S. 30:2195.8(C), and (3) interest-only payments made to vendors performing work on sites declared inactive and abandoned pursuant to La. R.S. 30:2195 (F)(3).

During fiscal year 2019, DEQ entered into two contracts with certified tank pullers. DEQ worked with these vendors to pull tanks on several sites declared inactive and abandoned by the secretary. Liens will be placed on these sites once the work is complete, which will allow DEQ to recoup some or all of its costs when/if the property is sold.

D. FUND BALANCE

Committed fund balance represents the cumulative excess of receipts over disbursements and other financing sources/uses and is dedicated by the Louisiana Legislature, which is the government's highest level of decision-making authority. The fund balance is committed because it is dedicated to the specific purposes established by La. R.S. 30.2195. Changing (modifying or rescinding) fund balance commitments requires legislative approval.

2. CASH

At June 30, 2019, cash is composed of deposits with the State Treasury totaling \$124,050,846. Cash balances held and controlled by the State Treasurer are secured from risk by the State Treasurer through separate custodial agreements, and the risk disclosures required by accounting principles generally accepted in the United States of America are included within the state's basic financial statements.

3. BULK DISTRIBUTION AND ANNUAL ASSESSMENT FEES

The Motor Fuels Underground Storage Tank Trust Fund Program was established with Act No. 1014 of 1990, effective September 1, 1990. The bulk distribution fee was established in the same legislative act at a rate of \$13.50 per 9,000 gallons of fuel. This fee has increased throughout the history of the program with various legislative acts to maintain an appropriate level of funding for the program. The current bulk distribution fee is \$72.00 per 9,000 gallons, which was established with Act No. 336 of 1995. These fees are deposited monthly into the Fund, with allowable uses outlined in La. R.S. 30:2195. Late fees are assessed on fees that are not remitted timely, effective with Act No. 692 of 2004. These late fees are up to 15% of the fee that is not remitted for a particular month. Failure to pay this fee within 90 days of the due date results in enforcement actions against the company, which may include revocation or suspension of applicable permits, licenses, registrations, or variances.

Companies who own registered tanks pay an annual tank registration fee of \$60 for each tank, effective for the registration year beginning July 1, 2017, pursuant to Act No. 451 of 2016. Prior to this act, the registration fee was \$54 per tank, which represents an approximate increase of 10% for fiscal year 2018. These monies are directly deposited into the Environmental Trust Fund to be used to investigate, test, contain, control, and clean up the releases from underground storage tanks containing regulated substances. In addition, a fee not to exceed \$275 per year per eligible underground motor fuel storage tank storing new or used motor oil is assessed to all owners of such tanks in accordance with La. R.S. 30:2195.3(B).

The Board shall determine the minimum level of funding of the Fund by conducting an annual review of receipts from the Fund from the previous fiscal year along with the projected amounts expected to be expended in the following fiscal year for purposes of recommending changes to the fee. Prior to the end of each fiscal year, the Board shall meet to determine its recommendation on the setting of the fee for the next fiscal year and shall make such recommendation to the secretary.

During fiscal year 2019, the Board conducted its first annual review pursuant to La. R.S. 30:2195.8(A)(2) of the fund's receipts from the previous fiscal year and the projected amounts expected to be spent in the following fiscal year in order to determine if the bulk distribution fee needed to be adjusted. The Board recommended reducing the fee to \$0.004 per gallon. The Secretary reviewed the Board's recommendation and determined that, based on the actuarial study (discussed in note 4 below), it was in the best interest of the Fund to continue to collect \$0.008 per gallon for fiscal year 2020.

4. ACTUARIAL STUDY

To ensure the Board had accurate information in order to carry out its responsibility to make a recommendation to the Secretary, DEQ entered into a contract with an actuarial firm. Using historical data related to claims from the Fund, and in coordination with DEQ personnel, the firm performed a study and issued a report on April 15, 2019. According to the report, the estimated liability on current sites participating in the Fund is \$153,333,498.

5. TRANSFER FROM MOTOR FUELS UNDERGROUND STORAGE TANK TRUST FUND TO ENVIRONMENTAL TRUST FUND

The Fund transferred \$5,297,485 to the Environmental Trust Fund during the 2018-2019 fiscal year. La. R.S. 30:2195.4(C)(2) states that if the Secretary determines that funds deposited into the Environmental Trust Fund pursuant to La. R.S. 30:2195(B) are insufficient relative to the legislatively approved fiscal appropriation for the Underground Storage Tank activities during a given year, the secretary may order the Treasurer to transfer from the Fund to the Environmental Trust Fund only that amount necessary to reach the authorized ceiling. The transfer of \$5,297,485 is reported on Statement A.

6. LITIGATION AND CLAIMS

At June 30, 2019, one lawsuit is pending against the Fund. The attorney for DEQ has advised that it appears remote that the trust fund will be liable for the suit based on the fact that the plaintiff's case has been abandoned by operation of law.

7. RELATED PARTY TRANSACTIONS

As discussed in the introduction to the notes to the financial statements, all disbursements are handled by DEQ, although advice is provided by the Board. Two members of the Board have an ownership interest in companies that received disbursements from the Fund during the 2019 fiscal year. Steve Burnham has a 100% ownership interest in Engineering Associates, Inc., which received \$94,386 in payments from the fund. Roger Bright is a member of the Board and holds a key management position in a company that received disbursements from the Fund during fiscal year 2019. He is the Senior Environmental Specialist for Jones Environmental, LLC, which received \$3,669,710 in payments from the Fund. Disbursements made to Engineering Associates, Inc. and Jones Environmental, LLC were processed using controls that are consistent with disbursements to other contractors providing similar services.

8. SETTLEMENT PROCEEDS

Beginning in fiscal year 2013, DEQ initiated legal proceedings against several tank owners that had received reimbursement from the Fund as well as reimbursement from other means (typically private insurance) for releases from their underground storage tanks. The Fund was created by the legislature to provide for federally required financial assurance. In creating the Fund, the legislature intended that "taxpayers" funds should, to the extent possible, not be used for the payment of the cost of such remediation..." [La. R.S. 30:2195(A)]. Obtaining reimbursement from private insurance, while also claiming reimbursement from the Fund, is not allowed. To date, DEQ has settled five of these matters, with one matter pending. During fiscal year 2018-2019, DEQ settled two outstanding matters with recovery of \$1,850,000. The amount is presented in Statement A as Settlement Proceeds under Receipts.

9. TRANSFER FROM GENERAL FUND TO MOTOR FUELS UNDERGROUND STORAGE TANK TRUST FUND

During the 2016 Regular Legislative Session, Act No. 601 was signed by the governor. Section 10 of this measure provided for the transfer of \$7,028,196 from the Attorney General's Consumer Support Escrow Account to the State Treasurer. These funds were identified as settlement funds held in that escrow account on behalf of the Fund.

During the 2019 Regular Legislative Session, Act No. 362 was signed by the governor. It provides for the transfer, deposit, investment, and use, as specified, of certain treasury funds. The Revenue Estimating Conference recognized a surplus of approximately \$308 million during the April 10, 2019, meeting of nonrecurring revenue from fiscal year 2018. The Fund was allocated a one-time transfer of \$1,500,000 of this surplus.

OTHER REPORT REQUIRED BY
GOVERNMENT AUDITING STANDARDS

Exhibit A

The following pages contain a report on internal control over financial reporting and on compliance with laws and regulations and other matters required by *Government Auditing Standards*, issued by the Comptroller General of the United States. This report is based solely on the audit of the financial statement and includes, where appropriate, any significant deficiencies and/or material weaknesses in internal control or compliance and other matters that would be material to the presented financial statement.



LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

February 12, 2020

Report on Internal Control over Financial Reporting and on Compliance
and Other Matters Based on an Audit of Financial Statements
Performed in Accordance with *Government Auditing Standards*

Independent Auditor's Report

**MOTOR FUELS UNDERGROUND STORAGE
TANK TRUST FUND
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF LOUISIANA
Baton Rouge, Louisiana**

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the cash basis financial statement of the Motor Fuels Underground Storage Tank Trust Fund (Fund) within the Department of Environmental Quality, as of and for the year ended June 30, 2019, and the related notes to the financial statement, and have issued our report thereon dated February 12, 2020.

Internal Control over Financial Reporting

In planning and performing our audit of the financial statement, we considered the Fund's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statement, but not for the purpose of expressing an opinion on the effectiveness of the Fund's internal control. Accordingly, we do not express an opinion on the effectiveness of the Fund's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statement, will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a

combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Fund's financial statement is free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, and contracts, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose. Under Louisiana Revised Statute 24:513, this report is distributed by the Legislative Auditor as a public document.

Respectfully submitted,



Daryl G. Purpera, CPA, CFE

Legislative Auditor

MK:CST:BQD:EFS:ch

MFUSTTF 2019