

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



FINANCIAL STATEMENT AUDIT
FOR THE YEAR ENDED JUNE 30, 2017
ISSUED FEBRUARY 21, 2018

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

February 15, 2018

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, 2017, 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, 2017, 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, 2017, 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.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued a report dated February 15, 2018, 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 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 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,



Daryl G. Purpera, CPA, CFE
Legislative Auditor

AB:ETM:BQD:EFS:aa

MFUSTTF 2017

**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, 2017**

RECEIPTS

Bulk distribution fees	\$22,128,546
Annual assessment fees	21,329
Settlement proceeds (note 8)	10,069,434
Interest earnings	523,255
Other receipts	600
Total receipts	<u>32,743,164</u>

DISBURSEMENTS

Claims for reimbursement	10,691,268
Settlement of third-party claims (note 5)	80,000
Other disbursements	23,928
Total disbursements	<u>10,795,196</u>

EXCESS OF RECEIPTS OVER DISBURSEMENTS 21,947,968

OTHER FINANCING USES

Transfer to Environmental Trust Fund (note 4)	<u>(4,980,871)</u>
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**EXCESS OF RECEIPTS OVER DISBURSEMENTS
AND OTHER FINANCING USES** 16,967,097

CASH BASIS FUND BALANCE - BEGINNING OF YEAR, Restated (note 7) 93,297,722

CASH BASIS FUND BALANCE - END OF YEAR \$110,264,819

CASH BASIS ASSETS - END OF YEAR

Cash (note 2)	<u><u>\$110,264,819</u></u>
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CASH BASIS FUND BALANCE - END OF YEAR

Committed	<u><u>\$110,264,819</u></u>
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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 (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 Underground Motor Fuels Storage Tank Advisory Board that is composed of eight members as follows: the secretary of DEQ or his/her designee, two members appointed by the secretary of 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 department. Approximately 11,000 tanks registered by the permit division participate in the underground storage reimbursement program. The Motor Fuel Trust 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

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 of 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 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 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 that 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 in said action against an owner who is in substantial compliance with the laws, rules, and regulations at the time the release occurred. R.S. 30:2195.4 provides the procedures for these disbursements from the trust fund.

Other disbursements are made for (1) the annual independent audit of the Fund as per R.S. 30:2195.5 and (2) court reporter services required for the Advisory Board meetings outlined in R.S. 30:2195.8(C).

D. FUND BALANCE

Committed fund balance represents the cumulative excess of receipts over disbursements and transfers to other funds 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 R.S. 30:2195. Changing (modifying or rescinding) fund balance commitments requires legislative approval.

2. CASH

At June 30, 2017, cash is composed of deposits with the State Treasury totaling \$110,264,819. 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

Act 1014 of 1990 amended R.S. 30:2195.3, effective September 1, 1990, and required the collection of a bulk distribution fee by the bulk fuel dealer based on a charge for each separate withdrawal of motor fuel at a rate of \$13.50 per 9,000 gallons. Act 176 of 1993, effective August 15, 1993, amended R.S. 30:2195.3 to increase the bulk distribution fee by the bulk fuel

dealer based on a charge for each separate withdrawal of motor fuel at a rate of \$27 per 9,000 gallons. Act 336 of 1995, effective June 15, 1995, amended R.S. 30:2195.3 to increase the bulk distribution fee by the bulk dealer based on a charge for each separate withdrawal of motor fuel at a rate of \$72 per 9,000 gallons. Fees not received in a timely manner are subject to a late penalty of an additional 5% per month of the calculated fee that is not remitted. 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 R.S. 30:2195.3(B). New or used motor oil fees not received within 15 days of the due date will be charged a late payment fee. Any late payment fee is calculated from the due date on the invoice. Payments not received by the department by the fifteenth day from the due date will be assessed a 5% late payment fee on the original assessed fee. Payments not received by the department by the thirtieth day from the due date will be assessed an additional 5% late payment fee on the original assessed fee. Payments not received by the department by the sixtieth day from the due date will be assessed an additional 5% late payment fee on the original assessed fee. Failure to pay the prescribed application fee or annual fee within 90 days after the due date shall constitute a violation and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

On July 6, 2004, Act 692 of 2004 became effective and amended R.S. 30:2194 - 2195.11 as follows:

1. R.S. 30:2195.3(7) - Late penalty charges shall not exceed 15% of the fee that is not remitted for a particular month. Failure to pay the fee in accordance with this provision within 90 days after the due date shall constitute a violation and shall subject the person to applicable enforcement actions under the Louisiana Environmental Quality Act, including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.
2. R.S. 30:2195.10 - Releases occurring after August 1, 2006, shall be subject to additional financial responsibility for noncompliance with regulations promulgated by the department when that noncompliance causes the release or contributes to the magnitude of the release. When a release is caused by noncompliance or the noncompliance contributed to the magnitude of the release, the financial responsibility will be \$10,000. When three or more noncompliance issues cause a release or contribute to the magnitude of a release, the release may be ineligible for participation in the Tank Trust Fund program.

On an annual basis, all owners of registered tanks are assessed a tank registration fee of \$60 for each tank. The revenue collected from the tank registration fee is deposited to the Environmental Trust Fund (ETF) as provided by R.S. 30:2195(B).

Collection of the motor fuel delivery fee and new or used motor oil fees cease when the unobligated balance in the trust fund equals or exceeds \$40,000,000. The fees are reinstated when the unobligated balance in the trust fund has fallen below \$10,000,000 as provided by R.S. 30:2195.3(A)(10).

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

The Fund transferred \$4,980,871 during fiscal year 2017 to the ETF. R.S. 30:2195.4(C)(2) states that if the secretary determines that funds deposited into the ETF pursuant to 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 Tank Trust Fund to the ETF only that amount necessary to reach the authorized ceiling. The transfer of \$4,980,871 is reported on Statement A.

5. LITIGATION AND CLAIMS

During the year, DEQ reached settlement on one case totaling \$80,000 that was settled and paid in the first quarter of fiscal year 2017. At June 30, 2017, two lawsuits were pending against the Fund. The attorney for DEQ has advised that it appears reasonably possible that the trust fund will be liable for both of the lawsuits. One lawsuit is in the discovery phase, and the liability to the fund cannot be determined at this time. In another lawsuit, DEQ's attorney has estimated a reasonably possible unfavorable outcome to the department of \$22,583.

6. RELATED PARTY TRANSACTIONS

As discussed in the introduction to the notes to the financial statement, all disbursements are handled by the department, although advice is provided by the Underground Motor Fuels Storage Tank Trust Advisory Board. Two members of the Motor Fuels Underground Storage Tank Trust Fund Advisory Board have ownership interests in companies that received disbursements from the Fund during the 2017 fiscal year. Steve Burnham has a 100% ownership interest in Engineering Associates, Inc., which received \$124,949 in payments from the fund. Roger Bright is a member of the Motor Fuels Underground Storage Tank Trust Fund Advisory Board and is the Senior Environmental Specialist for Jones Environmental, LLC, which received \$3,160,676 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.

7. RESTATEMENT OF BEGINNING CASH BASIS FUND BALANCE

Cash Basis Fund Balance at June 30, 2016	\$92,936,612
Correction of Error	<u>361,110</u>
Cash Basis Fund Balance at June 30, 2016, as restated	<u><u>\$93,297,722</u></u>

8. SETTLEMENT PROCEEDS

The Fund received \$10,069,434 in settlement proceeds during fiscal year 2017.

Beginning in fiscal year 2013, DEQ initiated legal proceedings against several tank trust owners that had previously received reimbursements from the Fund as well as reimbursements from other means (typically private insurance) for the releases from their underground storage tanks. In fiscal year 2017, DEQ settled with two of these entities, and others are pending.

Settlement proceeds totaling \$19,150,000 were placed in escrow by the Louisiana Attorney General's Office. In fiscal year 2016, \$2,052,370 was transferred to the Fund for reimbursement of expenditures previously incurred for legal representation; \$7,028,196 was transferred in fiscal year 2017 to the State General Fund in accordance with Act 601 of the 2016 Regular Legislative Session; and the remaining \$10,069,434 was transferred to the Fund in fiscal year 2017.

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 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 15, 2018

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, 2017, and the related notes to the financial statement, and have issued our report thereon dated February 15, 2018.

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

This 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

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MFUSTTF 2017