Petroleum Release Compensation Fund and Tank Inspection Fee

Introduction

The state of South Dakota provides financial assistance to tank owners to prevent and clean up petroleum spills and leaks. Financial assistance is provided through the Petroleum Release Compensation Fund (PRCF), which receives funding from revenue generated by the tank inspection fee. The tank inspection fee and distribution of the revenue generated by the fee have been changed many times since the creation of the PRCF. Initially, the tank inspection fee supported the objectives of the PRCF; however, modifications to the distribution of revenue have directed money to other funds including the Ethanol Fuel Fund, State Highway Fund, and State Capital Construction Fund (SCCF).

Background

The statutes for petroleum inspection and release compensation are found in chapter 34A-13 of the South Dakota Codified Laws. Federal regulations require regulated tank owners to demonstrate financial responsibility for potential cleanup costs and third party claims. The PRCF was established in 1988 as a mechanism to help regulated tank owners meet financial requirements and has been approved by the U.S. Environmental Protection Agency as an acceptable assurance mechanism.

The tank inspection fee provides the funding for the PRCF, which was initially established at a rate of $10 per 1,000 gallons of petroleum products (one cent per gallon). The tank inspection fee is imposed on all petroleum products received in the state by licensed distributors. At the time the tank inspection fee was established, all the revenue was dedicated to the PRCF. In the early 1990s, claims for payment from the PRCF began to exceed revenues. The Department of Legislative Audit conducted a review of the PRCF in 1991 and projected that the PRCF would have a negative cash balance by the summer of 1993.

Summary of Statutory Changes

Table 1 provides a brief summary of the statutory changes made to the PRCF and the tank inspection fee since 1993. The following sections will further detail the changes outlined in Table 1.

Table 1 – Statutory changes to the PRCF and tank inspection fee since 1993.

Bill	Year	Fee	Distribution
HB 1353 (1993)	FY 1994	$20/1,000 gallons	60% - PRCF 40% - SCCF[1]
	FY 1995 - FY 1998	$20/1,000 gallons	58% - PRCF 42% - SCCF[2]
[1] 40% was deposited in the SCCF until a balance of $5.6 million was reached; additional revenue went to the PRCF. [2] 42% was deoposited in the SCCF until a balance of $5.9 million was reached; additional revenue went to the PRCF.			
HB 1229 (1998)	FY 1999	$20/1,000 gallons	58% - PRCF 42% - SCCF
	FY 2000 - Dec 31, 2002	$20/1,000 gallons	50% - PRCF 50% - SCCF
	Jan 1, 2003 - thereafter	$10/1,000 gallons[3]	21.3% - PRCF 78.7% - SCCF
[3] The reduction in the tank inspection fee was never implemented due to SB 133 enacted in 2002.			
SB 133 (2002)	Feb 28, 2002 - Dec 31, 2002	$20/1,000 gallons	29.1% - PRCF 50% - SCCF 20.9% - SHF
	Jan 1, 2003 - thereafter	$20/1,000 gallons	10.65% - PRCF 39.35% - SCCF 50% - EFF

1993 Statutory Changes

During the 1993 Legislative Session, HB 1353 increased the tank inspection fee to $20 per 1,000 gallons of petroleum products (two cents per gallon) from $10 per 1000 gallons. The revenue was no longer dedicated solely to the PRCF, and the newly created SCCF (SDCL chapter 5-27) became a recipient of a portion of the tank inspection fee.

HB 1353 also placed a limit on the balance of the SCCF. In FY 1994, if the SCCF reached a balance of $5.6 million, any additional tank inspection fee revenue was deposited in the PRCF. In FY 1995, tank inspection fee revenues were deposited in the SCCF until it reached a balance of $5.9 million, with any additional revenue going to the PRCF.

1998 Statutory Changes

The 1998 Legislature passed HB 1229, which again modified the allocation of the tank inspection fee. The distribution of the fee for FY 1999 remained unchanged from FY 1998; however, the provision limiting the SCCF to $5.9 million was repealed. Beginning January 1, 2003, the tank inspection fee was scheduled to decrease to $10 dollars per 1,000 gallons. However, this reduction was never implemented due to SB 133 being enacted in 2002, which is discussed in the next section.

2002 Statutory Changes

Before the tank inspection fee was scheduled to decrease, the 2002 Legislature passed SB 133, which repealed the statute that reduced the tank inspection fee to 1 cent per gallon beginning January 1, 2003. Therefore, the tank inspection fee remained at $20 per 1000 gallons. SB 133 again revised the distribution of revenue from the tank inspection fee. For the remainder of 2002, the tank inspection fee was divided among the PRCF, SCCF, and State Highway Fund. Beginning January 1, 2003, the fee was distributed among the PRCF, SCCF, and Ethanol Fuel Fund. The allocation of the tank inspection fee has not been modified since these statutory changes in 2002.

Figures 1 and 2 display the distribution of revenue as modified by SB 133. Figure 2 includes the distribution of tank inspection fees in FY 2014. It should be noted that Figure 2 only shows the distribution of revenue from tank inspection fees and does not account for other sources of revenue in the SCCF or Ethanol Fuel Fund.

Figure 1 – Distribution of the tank inspection fee from February 26, 2002 through December 31, 2002, as modified by SB 166.

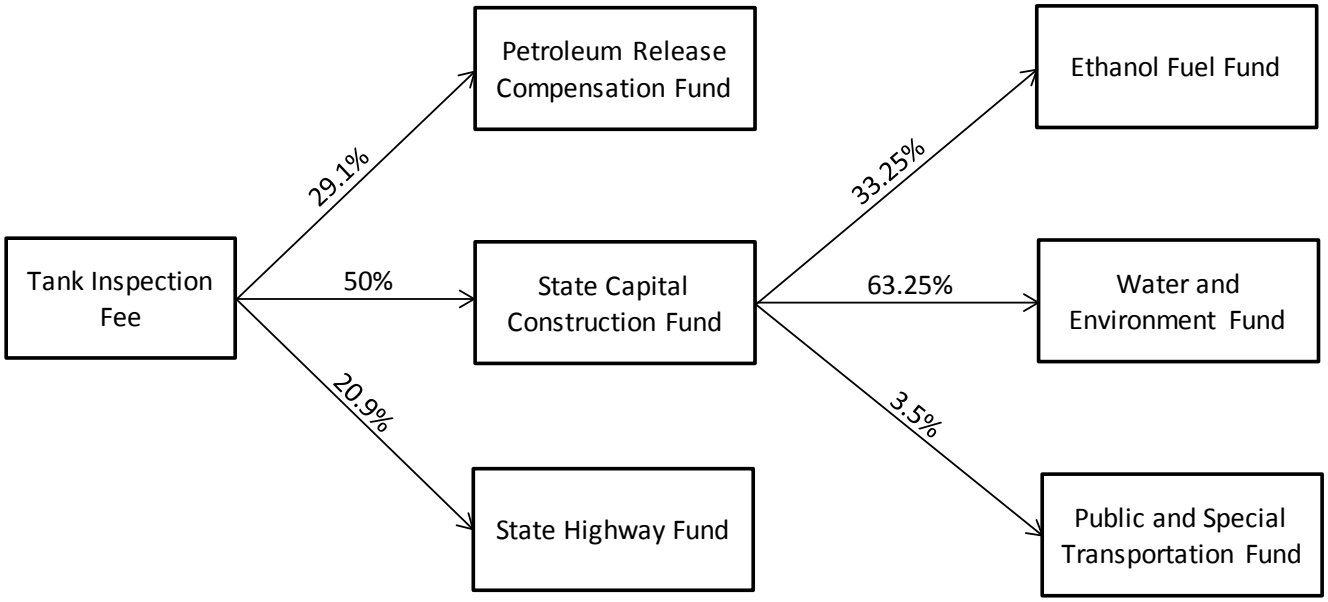
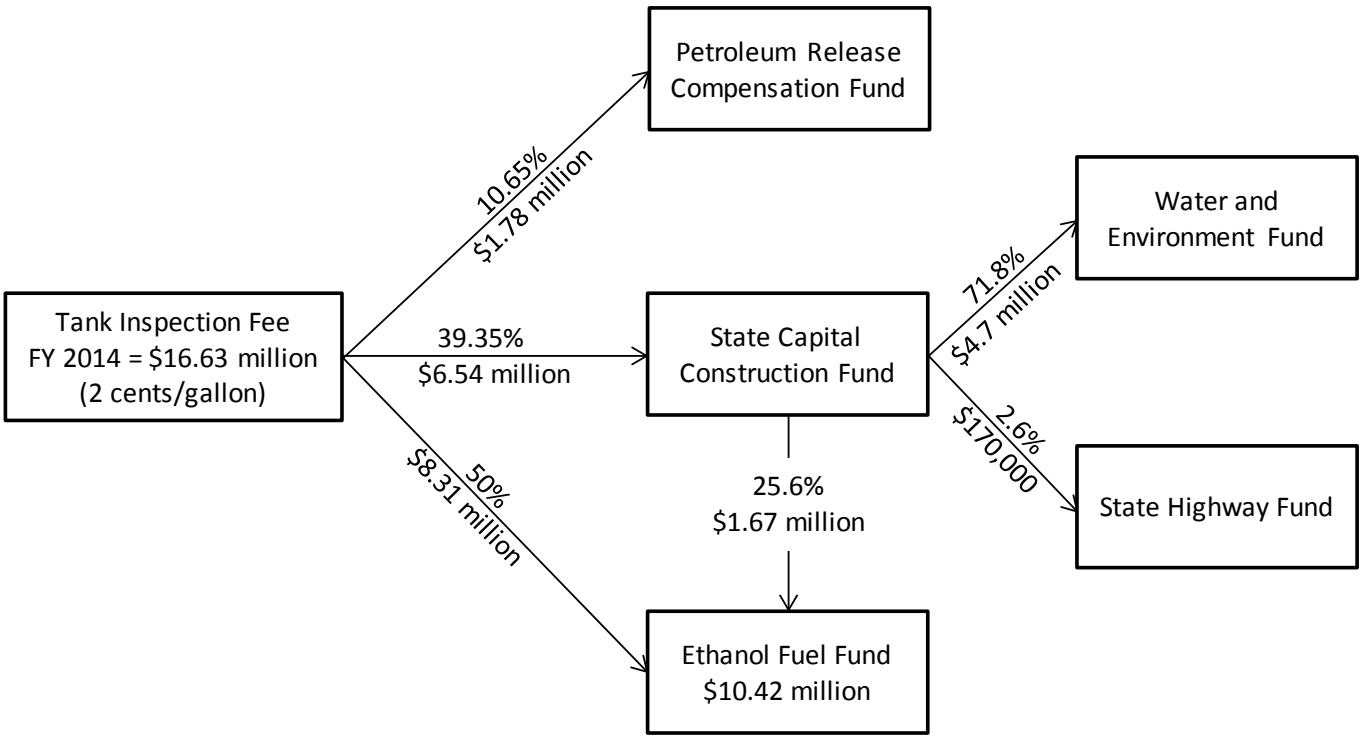


Figure 2 – Distribution of the tank inspection fee from January 1, 2003 to present, as modified by SB 166. Figure 2 also shows the FY 2014 tank inspection fee distribution.



The Ethanol Fuel Fund provides funding for ethanol production incentive payments, the Ethanol Infrastructure Incentive Fund, and the Revolving Economic Development and Initiative Fund. The Water and Environment Fund supports the solid waste management program, the consolidated water facilities construction program, and the state water resources management system, while the State Highway Fund is the primary fund that supports the state's transportation programs.

The statutes for the SCCF are found in chapter 5-27 of the SDCL. The SCCF is a pass-through fund and all funds received by the SCCF are transferred out to other funds as displayed in Figure 2. In addition to 39.35 percent of tank inspection fee revenue, the SCCF also receives revenue from the sale of on-line lottery tickets after the first $1.4 million is deposited in the General Fund.

Revenues, Expenditures, and Transfers

The tank inspection fee generates roughly $16.5 million a year. Table 2 displays the total revenue generated from the tank inspection fee from FY 2010 to FY 2014.

Table 2 – Tank inspection fee revenue from FY 2010 through FY 2014.

Tank Inspection Fee Revenue	
FY 2010	$16,499,122.26
FY 2011	$16,496,486.53
FY 2012	$15,903,371.17
FY 2013	$17,332,756.72
FY 2014	$16,629,447.94

The PRCF has also provided one-time revenues for various funds. In addition to revising the distribution of the tank inspection fee, SB 133, enacted during the 2002 Legislative Session, provided a one-time transfer of $15 million from the PRCF to the State Highway Fund. These funds were transferred to cover an expected deficit in matching federal highway dollars. However, this shortfall never occurred, and the 2003 Legislature passed HB 1069, which deposited the $15 million back into the PRCF. Ultimately, this $15 million was transferred out of the PRCF to the General Fund to help balance the structural deficit in FY 2004.

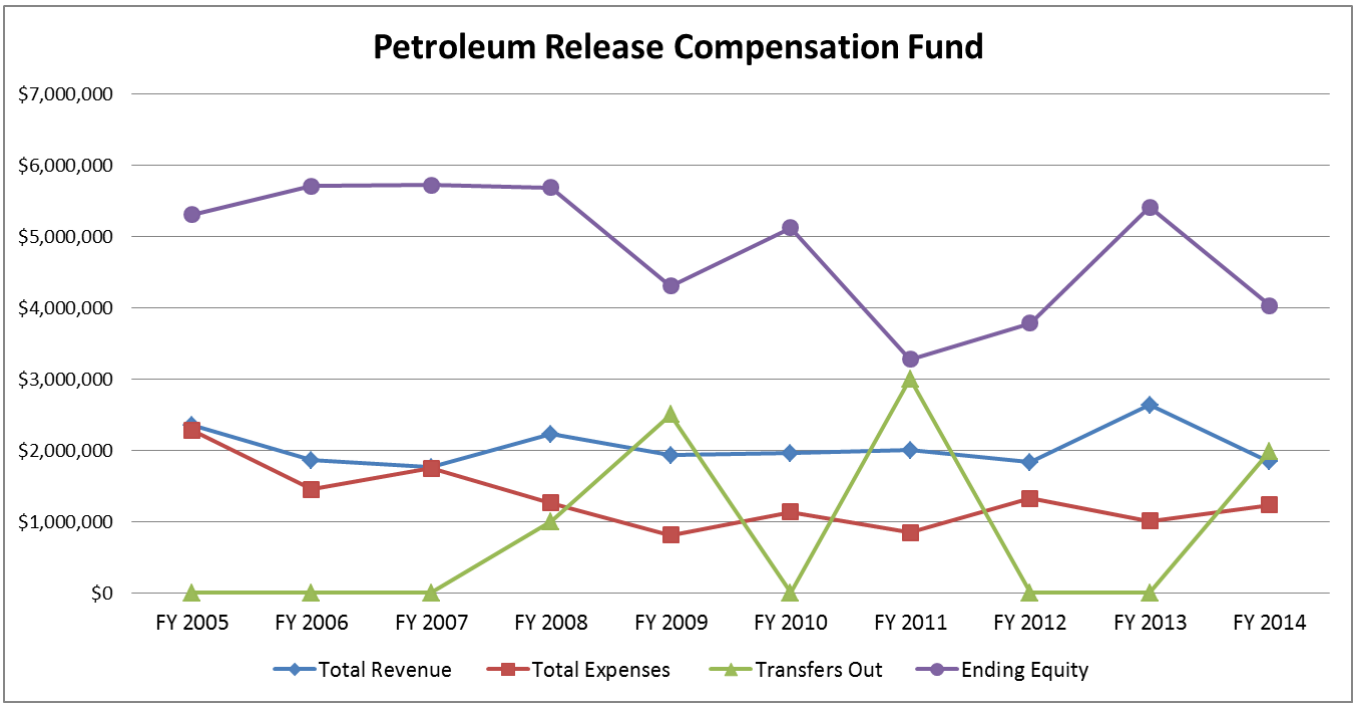
In 2014, the EPA required DENR to transfer $2,017,500 from the PRCF to the Regulated Substance Response Fund as part of the grant conditions for Leaking Underground Storage Tank funds the state receives from the EPA. This transfer was divided into two transfers due to SDCL 34A-13-8.1, which states "Reimbursement to an eligible covered party may not exceed one million nine hundred ninety thousand dollars within any fiscal year . . ." Therefore, the first transfer in FY2014 was $1.99 million, and the second transfer in FY 2015 was $27,500. Table 3 summarizes transfers in and transfers out of the PRCF since 2002.

Table 3 – Transfers in and transfers out of the PRCF since 2002.

Transfers in and transfers out of the PRCF	
SB 133 (2002)	Authorized the transfer of $15 million from the PRCF to the State Highway Fund on April 1, 2002.
HB 1069 (2003)	Authorized the transfer of $15 million from the State Highway Fund to the PRCF.
HB 1283 (2003)	Authorized the transfer of $15 million from the PRCF to the General Fund in FY 2004.
HB 1281 (2007)	Authorized the transfer of $1 million from the PRCF to the General Fund in FY 2008.
SB 203 (2008)	Authorized the transfer of $2.5 million from the PRCF to the State Highway Fund in FY 2009.
SB 169 (2010)	Authorized the transfer of $2 million to the South Dakota Science and Technology Authority and $1 million to the General Fund in FY 2011.
FY 2014	$1.99 million was transferred from the PRCF to the Regulated Substance Response Fund.
FY 2015	$27,500 was transferred from the PRCF to the Regulated Substance Response Fund.
Total Transfers Out Since 2002	**$23,517,500 million**

The following graph shows the revenue, expenditures, transfers out, and cash balance of the PRCF from FY 2005 to FY 2014. Expenses include one-time transfers.

Graph 1 – PRCF cash balance from FY 2005 to FY 2014.



Conclusion

When the tank inspection fee was established in 1988, all the revenue from the fee was deposited into the PRCF. However, many modifications have been made to the allocation of the tank inspection fee, which is now distributed among the Ethanol Fuel Fund, SCCF, and PRCF. The PRCF has also provided one-time revenues for the State Highway Fund, General Fund, South Dakota Science and Technology Authority, and Regulated Substance Response Fund.

This issue memorandum was written by Stephanie Gruba, Fiscal Analyst on 9/18/2014 for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.