

ARIZONA UNDERGROUND STORAGE TANK POLICY COMMISSION

May 3, 2008

The Honorable Timothy S. Bee
Senate President
Arizona State Senate
1700 West Washington Street, Room 204
Phoenix, Arizona 85007

Re: 2007 Arizona Underground Storage Tank Policy Commission Annual Report

Dear Senator Bee,

Pursuant to the reporting requirements of the Arizona Revised Statutes §49-1092, the Arizona Underground Storage Tank Policy Commission (Commission) is submitting the attached report to you. The report contains an evaluation of the Arizona Department of Environmental Quality's Underground Storage Tank Program conducted during calendar year 2007.

The Commission has worked to gather information needed to present a comprehensive and objective evaluation of the Underground Storage Tank Program. If you have any comments or questions regarding the Commission's 2007 Annual Report, please contact me or the Commission.

Sincerely,



Gail M. Clement, Chairperson
Underground Storage Tank Policy Commission

cc. Underground Storage Tank Policy Commission

Attachment

I. INTRODUCTION

This report has been prepared to satisfy the requirements of Arizona Revised Statutes (A.R.S.) §49-1092. The report describes the purpose of the Underground Storage Tank (UST) Policy Commission (the Commission), the accomplishments of the Commission for the calendar year 2007, evaluation of the Arizona Department of Environmental Quality (ADEQ) Underground Storage Tank Program (the Program) and a strategic plan for calendar year 2008. In addition, this report provides conclusions and recommendations based on the Commission's work.

The ADEQ UST Program is managed by the ADEQ Tank Programs Division and has three main components: 1) UST Notification, Inspections, Compliance, Leak Prevention, and Outreach, 2) UST Corrective Actions, and 3) the UST State Assurance Fund (SAF). Outreach is provided to ensure stakeholders have pertinent and timely information.

1. UST Notification, Inspections and Compliance activities comprise the release prevention part of the Program. ADEQ inspectors assess facilities to ensure the USTs are in compliance with the federal and state standards.
2. The UST Corrective Actions portion of the Program is responsible for providing regulatory oversight of investigations and remediation once a release is reported.
3. The SAF portion of the Program manages the distribution of money collected from a penny-per-gallon excise tax on motor fuel. The SAF was established to provide monetary assistance to eligible owners, operators and volunteers who are attempting to comply with federal and state corrective action requirements.

II. STATEMENT OF PURPOSE

The Commission was established to review and provide recommendations to improve ADEQ's UST Program established pursuant to Title 49, Chapter Six of the Arizona Revised Statutes. The Commission is tasked by A.R.S. §49-1092 with evaluating the overall effectiveness of the UST Program and submitting a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Director of ADEQ, at least annually. The Commission meets monthly and the approved meeting minutes can be found at <http://www.adeq.gov/environ/ust/commission/index.html#min>. The Commission consists of the following members who are appointed by the Governor for staggered three-year terms:

1. A representative from a city or town government that owns or operates underground storage tanks.
2. A representative of an environmental organization
3. A representative of the public who has environmental experience.
4. A representative of owners or operators with one hundred or more underground storage tanks in this state.

5. A representative of owners or operators with at least ten but fewer than one hundred underground storage tanks in this state.
6. A representative of owners or operators with fewer than ten underground storage tanks in this state.
7. A representative of environmental consultants who is qualified by the underground storage tank program.
8. A representative of the public who has experience in finance or insurance matters.
9. An environmental attorney not employed by the state.
10. A representative of the attorney general's office.
11. The director or the director's designee.

A list of the Commission members is attached as **Appendix A**. The Commission's had two subcommittees during 2007: the Evaluation (formerly Financial) Subcommittee and the Technical Subcommittee. Both committees meet monthly or less frequently, on an as needed basis. The Commission has a budget, which has been attached as **Appendix B**.

The Arizona Revised Statutes require that the annual report evaluate the overall effectiveness of the UST Program pursuant to A.R.S. §49-1092, including:

1. The adequacy of protection to human health and the environment.
2. The cost-effectiveness of corrective actions.
3. The appropriate use of assurance account monies.
4. The need for additional assurance account monies or other monies to meet the needs of the program.
5. Evaluation and recommendation of dates to phase out the assurance account and transfer responsibility for corrective action costs to the private insurance industry.
6. Ways to reduce future claims to the assurance account and encourage compliance with new tank standards by lowering claim ceilings and increasing co-payments.

III. SUMMARY OF UST POLICY COMMISSION ACCOMPLISHMENTS FOR 2007

The SAF was a primary topic of concern during 2007; and issues regarding the SAF proposed and final rules, coverage, eligibility and phase out were discussed in detail by the Commission and at the Evaluation and Evaluation Subcommittees' meetings. Senate Bill (SB) 1306 [46th Legislature, Second Regular Session, 2004] was passed and signed in 2004. SB 1306 established June 30, 2006 as the last date that a UST release could be reported and be eligible for SAF funding, and June 30, 2010 as the last date that an application can be filed for reimbursement or direct pay from the SAF for payment of eligible costs. Corrective action costs for UST releases reported after June 30, 2006, are not eligible for SAF funds and owners and operators are responsible for obtaining an alternative mechanism for compliance with financial responsibility (FR) requirements. The most common alternative FR mechanism is commercial insurance. The availability of commercial insurance to meet UST owner and operator FR requirements did not

appear to be a widespread problem during 2007. The availability of affordable commercial insurance will continue to be monitored as phase out of the SAF proceeds.

Because the last date for SAF eligibility had major significance to UST owners and operators, the Commission recommended outreach to UST owners, operators, and other stakeholders to make them aware of the end date for SAF eligibility and the associated implications. Beginning in 2005 and throughout 2007, ADEQ provided extensive outreach to UST owners, operators, and other stakeholders through emails, ADEQ website information, letters, newsletters, brochures, postcards, and meetings.

The Commission and the Technical Subcommittee conducted a series of meetings on the proposed No Further Action and Monitored Natural Attenuation (NFA/MNA) rules in 2007 and obtained a number of stakeholder comments. The Commission voted to support the NFA/MNA rules on May 23, 2007 with two recommendations: 1) addition of the ability to exit the MNA program, 2) inclusion of public notice to other parties conducting remediation in the vicinity of the site to be closed.

The Commission's Technical Subcommittee continued to meet during 2007 to discuss soil and groundwater investigation and remediation issues. The topics included: remediation system shutdown conditions, confirmation borings and sampling, and remediation system decommissioning

On August 8, 2005, the federal Energy Policy Act (Act) was signed into law by the President. This Act contains a number of UST compliance provisions, including requirements for inspections of each UST facility at least once every three years, delivery prohibition for significant non-compliance, secondary containment for new and repaired USTs, and operator training that will ultimately affect UST owners and operators and state programs. During 2007, EPA published and finalized guidance for implementation of the Act requirements. The federal legislation imposes a number of new state requirements, but it did not provide funding to implement the new requirements. The Commission and the Commission's Evaluation Subcommittee will continue to work with ADEQ and EPA as the new federal requirements are implemented.

IV. UST PROGRAM EVALUATION

As described in Section II, the Commission is tasked with writing an annual report that evaluates the overall effectiveness of the UST Program. Arizona Revised Statutes §49-1092(D)(2) mandated six criteria by which the UST Program could be evaluated. Each of those criteria is addressed separately below. Additionally, a list of ADEQ UST Program accomplishments is included in **Subsection B**.

A. MANDATE ANALYSIS

MANDATE 1:

THE ADEQUACY OF PROTECTION TO HUMAN HEALTH AND THE ENVIRONMENT

The Commission is tasked with evaluating the overall effectiveness of the UST Program in meeting this mandate. Some of the activities associated with the mandate include release prevention and corrective action activities such as: 1) inspecting operating and closed facilities for compliance with state and federal requirements, 2) meeting with the parties who are conducting corrective actions, 3) reviewing corrective action reports, 4) conducting state lead corrective actions, 5) conducting site visits and, if necessary, 6) pursuing enforcement. The Program also tracks inspections and corrective action milestones such as site inspections, site characterization, site remediation and site closures.

During 2007, ADEQ conducted 1,048 inspections. As part of the inspection process, ADEQ routinely reviews FR compliance documentation. Following the June 30, 2006 discontinuation of SAF eligibility for new releases, ADEQ determined that, of the 1,048 facility inspections conducted from January 1, 2007, through December 31, 2007, 74 percent demonstrated compliance with FR requirements at the time of inspections; and, with subsequent ADEQ compliance efforts, 96 percent of those 1,048 facilities documented compliance with FR requirements.

In 2007, 35 new releases were reported, and 214 releases were closed by ADEQ. Departmental oversight of open release sites is prioritized according to risk. Between the Program's inception and the end of 2007, 8,319 UST releases had been reported to ADEQ, and 7,057 UST release files had been closed, which is 85 percent of the total reported UST releases.

Risk assessments and the RBCA Tier II process were discussed throughout the year by the Commission and the Commission's Technical Subcommittee. The discussions centered on ADEQ's review of risk assessment reports in a timely manner; and the utility of the Tier II computer model developed by an ADEQ contractor. The Tier II computer model was created as a tool for UST owners and operators who wish to use the RBCA process for determining alternative cleanup standards protective of human health and the environment. The initial version of the Tier II model software was completed and made available to the public from ADEQ's web site. A number of problems were discovered by consultants who attempted to use the program, including the use of an outdated version of Excel software; the ability to save data after entry; and repeated program failures. During 2007, ADEQ fixed the programming problems and issued a revised version of the Tier II model software.

MANDATE 2:

THE COST EFFECTIVENESS OF CORRECTIVE ACTIONS

The Commission and the Commission's Technical Subcommittee continued to make recommendations to ADEQ regarding corrective action concerns including, source control, monitored natural attenuation, MTBE, and vapor migration. Addressing and clarifying these issues will ensure a more consistent approach to corrective actions by clearly identifying, communicating and uniformly applying ADEQ's expectations. A consistent approach to

corrective actions and clear ADEQ expectations, in turn, translates to more cost effective corrective actions.

MANDATE 3:

THE APPROPRIATE USE OF STATE ASSURANCE FUND MONIES

SAF monies are used to:

- 1) Provide coverage for eligible costs;
- 2) Reimburse the department for the reasonable and necessary costs incurred by the Department in administering the corrective action requirements;
- 3) Reimburse the department for the reasonable and necessary costs of administering the assurance account up to 5.7 million dollars or 21 percent of the money received by the assurance in the previous fiscal year, whichever is greater, and
- 4) Pay for the reasonable and necessary costs incurred by the department in taking State Lead corrective actions.

ADEQ updated the Commission on the status of the SAF at each Commission meeting. In 2007, despite low staffing levels, implementation of the new SAF rule, and changes imposed by SB 1306, the SAF program completed review of ADD claim applications. In addition, new SAF application forms were developed and training was provided on the new SAF applications and Cost Schedule. The Commission will continue to review and evaluate the status of SAF claims and will make recommendations based on the ongoing review.

MANDATE 4:

THE NEED FOR ADDITIONAL ASSURANCE ACCOUNT MONIES OR OTHER MONIES TO MEET THE NEEDS OF THE PROGRAM

The need for additional SAF monies was discussed by the Commission in 2007. The Commission believes that the funding to support the Program is sufficient to meet the current needs of the Program. However, in light of the phase out of SAF eligibility and the establishment of a Regulated Substance Fund by SB 1306, the Commission will continue to evaluate the need for additional or alternative funding to meet the Program's future requirements. In addition, SB 1306 requires ADEQ to submit a report to the Governor, President of the Senate and Speaker of the House regarding the anticipated financial liabilities of the UST assurance account based on applications submitted by June 30, 2009.

MANDATE 5:

EVALUATION AND RECOMMENDATION OF DATES FOR PHASING OUT THE SAF AND TRANSFER RESPONSIBILITY FOR CORRECTIVE ACTIONS COSTS TO THE PRIVATE INSURANCE INDUSTRY

The phase out of the SAF was established by SB 1306. June 30, 2006, was the last date that a release could be reported and be eligible for SAF funding, and June 30, 2010 is the last date that an application can be filed for reimbursement or direct pay from the SAF for payment of eligible costs.

MANDATE 6:

METHODS OF REDUCING FUTURE CLAIMS TO THE ASSURANCE ACCOUNT AND ENCOURAGING COMPLIANCE WITH NEW TANK STANDARDS BY LOWERING CLAIM CEILINGS AND INCREASING CO-PAYMENTS

Preventing new UST releases is the most effective way of reducing the cost of corrective actions in the future. The UST Program conducts inspections to verify whether the facilities are in compliance with federal laws governing spill and overfill protection and corrosion protection, as well as release detection and reporting requirements. The purpose for conducting operational inspections is to ensure that UST owner and operators are complying with requirements designed to mitigate or prevent underground storage tank releases. Fund liabilities can be reduced if tank standards are maintained that prevent future releases. The Program inspects facilities with open tank systems about once every three to five years. Because of requirements of the federal Energy Policy Act of 2005, ADEQ intends to increase its facility inspection frequency to at least once every three years.

B. LIST OF ADEQ UST PROGRAM ACCOMPLISHMENTS

One of the ways that the Commission evaluates the UST Program's successes is to track ADEQ's progress throughout the year. Appendix C contains several charts summarizing the productivity of the Program. In addition to the progress described in other sections of this report, the following is a list of ADEQ UST Program accomplishments for 2007:

1) Outreach: ADEQ continued to provide information both internally and externally on Program updates, legislation, UST related information and financial assurance. The ADEQ website, emails, guidance documents, newsletters, postcard announcements, conferences, brochures, local newspapers and the inspectors are used to disseminate Program information. Other activities included internal training involving 122 UST personnel, and attending 55 additional technical and administrative training sessions. In addition to the required training, UST personnel attended stakeholder sponsored training seminars that discussed laboratory procedures and quality control, the proposed Soil Rule; vapor intrusion, and Toastmasters-Communication and Leadership.

2) Municipal Tank Closure and Corrective Action Program: As of end of 2007, 32 cities and towns participated in the program, and 147 abandoned USTs were removed by ADEQ.

3) Oversight of Leaking Underground Storage Tank (LUST) Corrective Actions: As of the end of 2007, 8,319 UST releases (LUSTs) had been reported, and 7,057 LUST case files had been closed, which is 85% of reported LUSTs. In 2007, 35 new LUST cases were reported and 214 LUST cases were closed.

4) State-Lead LUST Sites: During 2007, the State Lead Program investigated 14 LUST sites, remediated and/or monitored 28 LUST sites, conducted monitored natural attenuation on 12 sites, and closed 3 LUST sites.

5) Tank Programs School Assistance Initiative: The Tank Programs Division developed the School Assistance Initiative to provide compliance assistance to schools with open USTs and/or open LUSTs. During 2007, ADEQ set up on-site meetings and training sessions with appropriate school personnel at the 46 schools with open USTs and the 17 schools with open LUSTs. The focus of the UST training was to help the responsible individuals understand how to operate and maintain their UST systems for compliance with regulatory requirements and best management practices to maximize release prevention. Each school was provided with a compliance assistance CD and individualized compliance assistance binders that included specifics of their UST systems, regulatory requirements and compliance schedules. The focus of the LUST training was to help schools initiate corrective action investigations, implement cleanup activities, and coordinate closure of their LUSTs. In some cases, the investigative and remedial corrective actions were conducted by the UST State Lead program, and, in others, ADEQ provided financial assistance through the State Assurance Fund. The UST and LUST compliance assistance efforts were well-received by all the schools and school districts.

6) Route 66 Initiative: ADEQ continued to communicate with UST stakeholders (UST owners, operators, volunteers; consultants and local officials) in the cities along the former Route 66, which includes the cities of Holbrook and Winslow to assist them in expediting corrective actions

7) No Further Action and Monitored Natural Attenuation Rule: The No Further Action (NFA) and Monitored Natural Attenuation (MNA) rules prescribed by SB 1306 were approved by the Governor's Regulatory Review Council and will go into effect on February 2, 2008.

8) Soil Rule: The revised ADEQ Soil Remediation Rule went into effect on May 5, 2007.

9) Risk-Based Corrective Action Tier 2 Software: ADEQ revised and released the Tier 2 software.

10) Customer Satisfaction Surveys: ADEQ surveys all customers regarding the services that the UST program provides, including inspections, public file reviews, and conferences. During 2007, the UST program distributed 1,013 customer satisfaction surveys. Out of 160 respondent surveys returned to ADEQ, 160 (100%) expressed "overall satisfaction" with the UST program's services.

11) UST Compliance Act of the Energy Policy Act of 2005: Federal UST requirements of the Energy Policy Act of 2005 (Act) were signed into law by President Bush in August 2005. Statutory authorization (A.R.S. Title 49, Chapter 6) is required for implementation of some of the UST requirements, including delivery prohibition, operator training, and secondary containment. Recognizing the significance of the requirements and the need to inform stakeholders, ADEQ has conducted numerous outreach events. In anticipation of legislation to obtain statutory authority in the 2008 legislative session, ADEQ held multiple stakeholder

meetings to develop consensus for draft language (July, 11, 2007; August 16, 2007; and October 23, 2007). The draft language and issues were reviewed by the Commission, and the Commission voted to approve the draft language at its December 12, 2007 meeting with one recommended clarification. The Commission recommended that the proposed legislation clarify that the UST owner and operator are responsible for preventing fuel delivery to a tank with a stop-use order.

V. OTHER MANDATED ACTIVITIES

In 2007, no other mandated activities were undertaken by the Commission.

VI. PRIORITIES FOR CALENDAR YEAR 2008

In the seventh year of operation, the Commission focused its attention on those issues and activities that were of current priority. During the year 2008, the Commission will continue its review and evaluation of the Arizona UST Program. It will focus on those topics that are currently of the highest priority, and on issues that may arise during the year. The Commission anticipates that its priorities for 2008 will be:

- Implementation of the NFA/MNA rules.
- Evaluating the effects of the phase out of the SAF on owners and operators, particularly the availability and affordability of commercial insurance to meet FR requirements.
- Evaluating the need for additional assurance account monies or other monies to meet the needs of the UST Program, including the UST leak prevention program.
- Evaluating appropriate use of SAF monies.
- Evaluating the effectiveness of the UST and SAF Programs.
- Evaluating impacts to the Program from implementation of the federal Energy Policy Act of 2005.

In addition, the Commission will continue to monitor and make recommendations about technical, financial and other programmatic issues that may develop during the year.

APPENDIX A

UST POLICY COMMISSION MEMBERS		
William (Bill) Bunch	Owner/Operator with greater than 100 USTs	Circle K Stores, Inc. 1130 W. Warner, Bldg. B, Tempe, AZ 85281
Manoj Vyas	Owner/Operator with less than 10 USTs	City of Globe 1780 Century Drive, Unit B, Globe, AZ 85501
Philip McNeely	ADEQ Representative	ADEQ 1110 W. Washington St., Phoenix, AZ 85007
Tamara Huddleston	AG's Rep	Attorney General's Office 1275 W. Washington, Phoenix, AZ 85007
Gail Clement, Chair	Representative of public w/environmental experience	G.M. Clement & Associates, Inc., 40099 N. 52nd St., Cave Creek, AZ 85331
Cathy Chaberski	City representative	City of Glendale 5850 W. Glendale Ave., Glendale AZ 85301
Theresa Kalaghan	Representative of environmental consultants	SECOR International, Inc. 1403 W. 10 Place, Suite B-107, Tempe, AZ 85281
Jon Findley	Representative of environmental organization	Sierra Club, Palo Verde Group 1030 E. Baseline Rd., Tempe, AZ 85283
Tricia Johnson	Owners/Operators with 10 - 100 USTs	Safeway, Inc. 2750 S. Priest Rd, Tempe AZ 85282
Michael O'Hara	Representative of the public w/experience in finance or insurance matters)	O'Hara and Associates 21630 N. 19th Ave., Phoenix, AZ 85027
Karen Gaylord	Environmental attorney not employed by the state	Salmon, Lewis and Weldon, PLC 2850 E. Camelback Road, Phoenix, AZ 85016

APPENDIX B

POLICY COMMISSION BUDGET – 2007

(Total Budget Allotment = \$10,000)

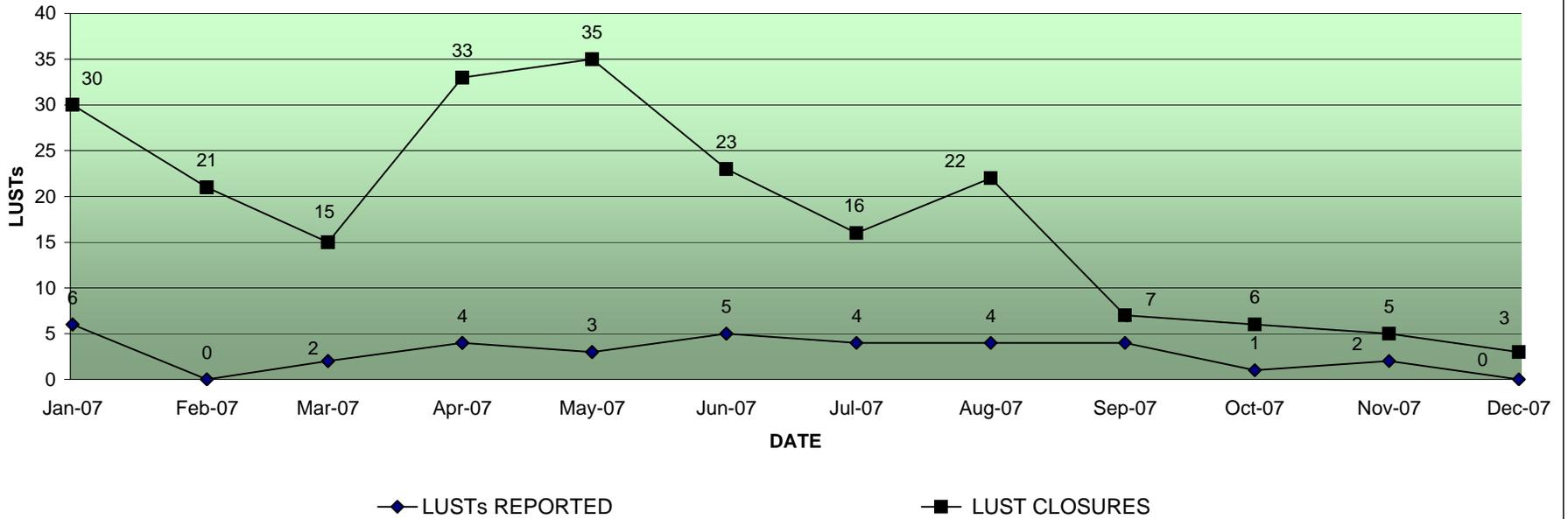
EXPENDITURES

ACTIVITY	ACTIVITY ALLOTMENT	AMOUNT EXPENDED	REMAINING BALANCE
Professional & Outside Services	\$6,000	\$2,200	\$3,800
In-State Travel	\$3,000	0	\$3,000
Other Operating Expenditures	\$1,000	0	\$1,000
TOTAL	\$10,000	\$2,200	\$7,800

APPENDIX C

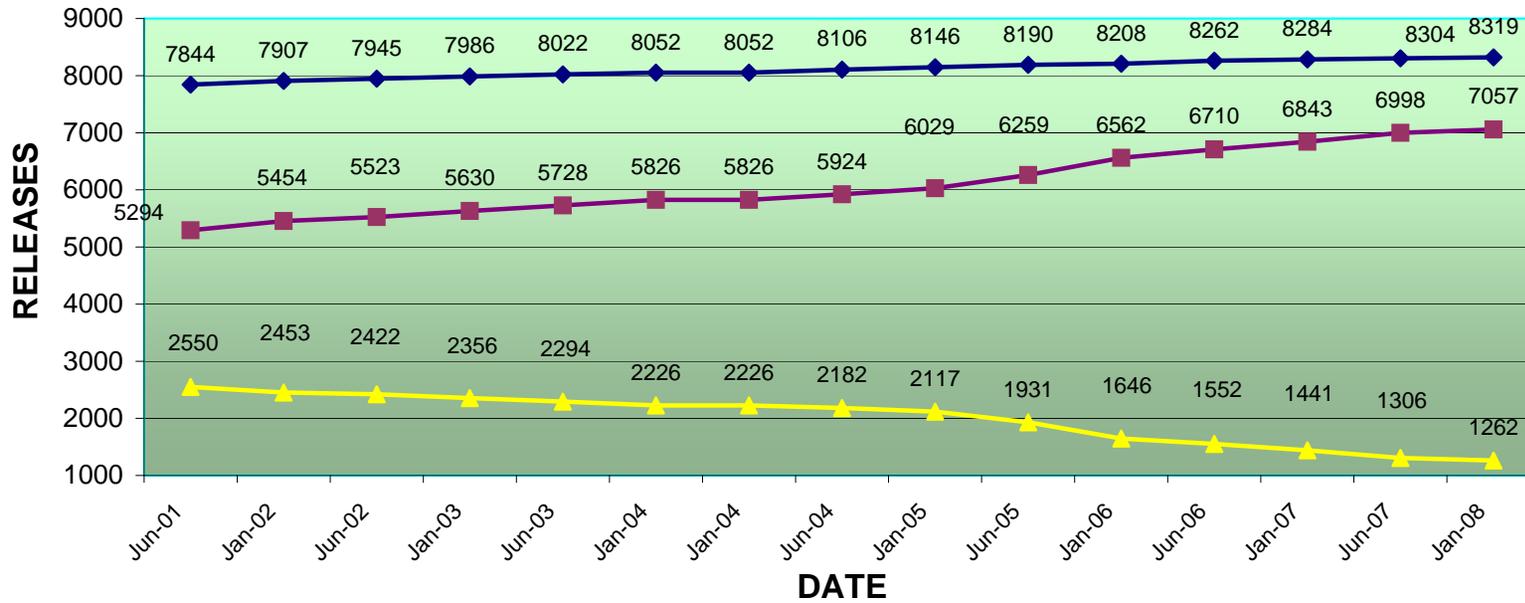


LUSTs REPORTED/CLOSED 2007



	Jan-07	Feb-07	Mar-07	Apr-07	May-07	Jun-07	Jul-07	Aug-07	Sep-07	Oct-07	Nov-07	Dec-07	TOTAL
LUSTs REPORTED	6	0	2	4	3	5	4	4	4	1	2	0	35
LUST CLOSURES	30	21	15	33	35	23	16	22	7	6	5	3	216
TOTAL LUSTs REPORTED	8290	8290	8292	8296	8299	8304	8308	8312	8316	8317	8319	8319	8319
TOTAL LUST CLOSURES	6871	6892	6907	6940	6975	6998	7014	7036	7043	7049	7054	7057	7057
TOTAL OPEN LUSTs	1419	1398	1385	1356	1324	1306	1294	1276	1273	1268	1265	1262	1262

CUMULATIVE LUST STATISTICS June 2001 - January 2008



	Jun-01	Jan-02	Jun-02	Jan-03	Jun-03	Jan-04	Jun-04	Jan-05	Jun-05	Jan-06	Jun-06	Jan-07	Jun-07	Jan-08
LUSTs Reported	7844	7907	7945	7986	8022	8052	8106	8146	8190	8208	8262	8284	8304	8319
LUSTs Closed	5294	5454	5523	5630	5728	5826	5924	6029	6259	6562	6710	6843	6998	7057
LUSTs Open	2550	2453	2422	2356	2294	2226	2182	2117	1931	1646	1552	1441	1306	1262