

ARIZONA UNDERGROUND STORAGE TANK POLICY COMMISSION

April 29, 2009

The Honorable Janice K. Brewer
Governor of Arizona
Office of the Governor
1700 West Washington Street
Phoenix, Arizona 85007

Re: 2008 Arizona Underground Storage Tank Policy Commission Annual Report

Dear Governor Brewer:

Pursuant to the reporting requirements of the Arizona Revised Statutes §49-1092, the Arizona Underground Storage Tank Policy Commission (Commission) is submitting the enclosed 2008 Arizona Underground Storage Tank Annual Report to you. The Annual Report contains an evaluation of the Arizona Department of Environmental Quality's Underground Storage Tank Program performance during calendar year 2008.

The Commission has worked to gather information needed to present a comprehensive and objective evaluation of the Underground Storage Tank Program. The availability of funding in FY 2010 and future years to meet the Program's current and ongoing obligations is of particular concern to the Commission as noted in the Annual Report. If you have any comments or questions regarding the Commission's 2008 Annual Report, please contact me or the Commission.

Sincerely,



Gail M. Clement, Chairperson
Underground Storage Tank Policy Commission

cc. Underground Storage Tank Policy Commission

Enclosure

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 Policy Commission (the Commission), the accomplishments of the Commission for the calendar year 2008, an evaluation of the Arizona Department of Environmental Quality (ADEQ) Underground Storage Tank (UST) Program (the Program) and a strategic plan for calendar year 2009. 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 to prevent releases.
2. The UST Corrective Actions portion of the Program is responsible for providing regulatory oversight of investigations and remediation once a release from an underground storage tank (LUST) 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 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 or less frequently, on an as needed basis. The Commission's 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 has two Subcommittees, an Evaluation Subcommittee and a Technical Subcommittee. The Commission's subcommittees meet monthly or less frequently, on an as needed basis. The Commission has a budget, which is 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 2008

The SAF was a major topic of discussion during 2008, and issues regarding SAF coverage, eligibility and phase out were discussed in detail by the Commission. 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 2008. The availability of

affordable commercial insurance will continue to be monitored as phase out of the SAF proceeds.

The Commission and the Technical Subcommittee discussed the No Further Action/Monitored Natural Attenuation (NFA/MNA) rules, which became effective on February 2, 2008. The Policy Commission supported the rule in 2007 with two minor recommendations and approved of ADEQ's outreach meeting (March 18, 2008) to inform the public of the new rules and their requirements. The Commission's Technical Subcommittee continued to meet during 2008 to discuss soil and groundwater investigation and remediation issues. The topics included: remediation system shutdown conditions, confirmation borings and sampling, remediation system operational performance measures, 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, fuel 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. House Bill (HB) 2425 was the legislation proposed to provide ADEQ with the statutory authority to implement the federal requirements for delivery prohibition, secondary containment, and operator training. During January 2008, the Commission and Evaluation Subcommittee discussed the requirements of the federal Act. In a January 22, 2008 letter to the legislature, governor and ADEQ director, the Commission recommended approval of the bill with one clarification emphasizing the owner's and operator's responsibility to prevent fuel delivery to a tank with a stop-use order. HB2425 was passed and signed on May 20, 2008. The Commission and the Evaluation Subcommittee continued working with ADEQ to develop appropriate outreach to the regulated public, to discuss the delivery prohibition requirements, and to address development of draft rules for implementation of the operator training requirements.

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 Calendar Year 2008, ADEQ conducted 1,061 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 1,061 facility inspections conducted from January 1, 2008, through December 31, 2008, 75 percent demonstrated compliance with FR requirements at the time of inspections; and, with subsequent ADEQ compliance efforts, 95 percent of those 1,061 facilities documented compliance with FR requirements.

In Calendar Year 2008, 22 new releases were reported, and 220 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 Calendar Year 2008, 8,492 UST releases had been reported to ADEQ, and 7,401 UST release files had been closed, which is 87 percent of the total reported UST releases. Cumulative LUST statistics are provided in **Appendix C**.

The Commission and the Technical Subcommittee discussed ADEQ's NFA/MNA rules which became effective on February 2, 2008. The Policy Commission supported the rule in 2007 with two minor recommendations and approved of ADEQ's outreach meeting (March 18, 2008) to inform the public of the new rules and their requirements.

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, corrective action plans, remediation system performance, groundwater sampling, corrective action guidance and vapor migration. Addressing and clarifying these issues will ensure a more consistent approach to corrective actions by 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 account 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 2008, despite low staffing levels, the SAF program completed review of 707 claim applications received and made 764 interim determinations. In addition, a new 2008 Cost Schedule was reviewed by the Commission and implemented by ADEQ. 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 2008. The Commission was concerned about the impacts of ongoing and potential future legislative transfers from the SAF to address statewide budget shortfalls in FY 2009 and beyond. Additionally, in light of the phase out of SAF eligibility and the establishment of a Regulated Substance Fund by SB 1306 (2004), the Commission will continue to evaluate the need for additional or alternative funding to meet the Program's future obligations. Currently, the statutes establishing the underground storage tank tax and the SAF will be repealed upon the transfer of \$60 million of carry-over funds from the SAF (or from a combination of the SAF and tax revenue) to the Regulated Substance Fund, or December 31, 2013, whichever occurs earlier. The Regulated Substance Fund was established to fund state-lead cleanup of orphan sites and implementation of the Monitored Natural Attenuation (MNA) program. The Commission is concerned that there may be insufficient funds available to the Regulated Substance Fund to cover these remaining state obligations. In the short term, this may begin to affect ADEQ's willingness to close sites with residual groundwater contamination above the state aquifer water quality standards as there may be insufficient funds to later address these sites if conditions under which these sites were closed change. In the long term, lack of funding to deal with contaminated groundwater at orphan sites and MNA sites may limit the availability of groundwater for local water supply.

In addition, SB 1306 (2004) requires ADEQ to submit a report to the Governor, President of the Senate and Speaker of the House by September 1, 2009 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 (2004). 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. The Commission will continue to monitor and evaluate the availability of funds to meet the obligations of the SAF and the Regulated Substance Fund as state budgetary shortfalls are anticipated to continue during FY 2010.

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 and state laws governing spill and overflow 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 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 2008:

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:

- ADEQ's website contains comprehensive Program information, including UST and LUST data, SAF, and other outreach information. The ADEQ UST Program website was continuously updated during 2008 to provide timely information to UST owners and operators and other interested parties.
- On April 15, 2008, ADEQ, the City of Kingman, Mohave County, and the U.S. Environmental Protection Agency (USEPA) brought together about 50 government officials,

builders, property owners and consultants at the Powerhouse Visitor Center in Kingman, Arizona to share ideas on how to transform orphan tank sites and other "Brownfields" properties from community blight to community benefit along Route 66.

- ADEQ held an annual UST Conference during October 2008 that was attended by about 60 UST owners and operators, stakeholders, consultants, attorneys, and realtors. The Conference emphasized compliance and the need for better communication. In addition, there were presentations providing updates on the SAF, Corrective Action, and UST programs; the Energy Policy Act and HB 2425 (2008); LUST closure and "tools" ADEQ has to address closure; the MNA program; and discussion of ethanol-blended fuels and biodiesel.

2) Municipal Tank Closure and Corrective Action Program: As of the end of 2008, 40 cities and towns participated in the program, and 178 abandoned USTs were removed by ADEQ.

3) Oversight of Leaking Underground Storage Tank (LUST) Corrective Actions: As of the end of 2008, 8,492 UST releases had been reported, and 7,401 LUST case files had been closed, which is 87% of reported LUSTs. In 2008, 22 new LUST cases were reported and 220 LUST cases were closed. Cumulative LUST statistics are provided in **Appendix C**.

4) State-Lead LUST Sites: During 2008, the State Lead Program investigated 15 facilities with LUSTs, remediated 27 LUSTs, conducted monitored natural attenuation on nine, and closed nine LUSTs.

5) Tank Programs School Assistance Initiative (SAI): The School Assistance Initiative was developed to provide compliance assistance to schools with USTs and/or LUSTs. During 2007, ADEQ set up on-site meetings and training sessions with appropriate school personnel at the 47 schools with open USTs and the 18 schools with open LUSTs. The focus of the 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 and to help schools initiate corrective action investigations, implement cleanup activities, and coordinate closure of their LUSTs. In April 2008, USEPA recognized ADEQ with an "Environmental Award for Outstanding Achievement" for the School Assistance Initiative. The award is given to individuals and programs that excel at protecting public health and the environment. Since its inception, the SAI has been instrumental in addressing and closing the LUSTs at 14 of the original 18 schools with open LUSTs.

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, Winslow and Kingman to assist them in expediting corrective actions. On April 15, 2008, ADEQ, the City of Kingman, Mohave County, and the USEPA brought together about 50 government officials, builders, property owners and consultants in Kingman, Arizona to share ideas on how to transform orphan tank sites and other "Brownfields" properties from community blight to community benefit along Route 66.

7) No Further Action and Monitored Natural Attenuation Rules: The No Further Action and Monitored Natural Attenuation rules prescribed by SB 1306 were approved by the Governor's Regulatory Review Council and went into effect on February 2, 2008. ADEQ held a stakeholder meeting in March 2008 to discuss the new rules and to address their implementation.

8) SAF: The SAF program completed review of 707 claim applications, made 764 interim determinations, and implemented a new 2008 Cost Schedule. Additionally, the SAF program continued to process all SAF applications within 90 days of receipt.

9) Customer Satisfaction Surveys: ADEQ surveys all customers regarding the services that the UST program provides, including inspections, public file reviews, and conferences. During 2008, the UST program distributed 1,122 customer satisfaction surveys. Out of 179 respondent surveys returned to ADEQ, 177 (99%) expressed "overall satisfaction" with the UST program's services.

10) UST Compliance Act of the Energy Policy Act of 2005: Federal UST requirements of the Energy Policy Act of 2005 were signed into law by President Bush in August 2005. ADEQ worked with the regulated public, the Commission and legislators to develop consensus language in HB 2425 for ADEQ to obtain statutory authorization (A.R.S. Title 49, Chapter 6) for implementation of delivery prohibition, operator training, and secondary containment. HB 2425 (2008) was passed and signed into law in May 2008. ADEQ sent out a fact sheet to the regulated public in 2008 informing them of the new requirements, posted information on its website, and provided information in a December 2008 UST Newsletter. ADEQ and the Commission continue discussion of issues associated with development of draft rules for implementation of operator training requirements. One of the requirements of the Act was to publish the first "Public Record" report. This annual report compiles information on the compliance status of all USTs inspected during the federal fiscal year (October 1 through September 30), plus information on all releases provided during the same time period. This report covered the period October 1, 2007 through September 30, 2008 and was put on ADEQ's website in December 2008.

11) Soil Vapor Sampling Guidance: ADEQ finalized and published this guidance for the UST Corrective Action and other ADEQ programs in July 2008.

V. OTHER MANDATED ACTIVITIES

In 2008, no other mandated activities were undertaken by the Commission.

VI. PRIORITIES FOR CALENDAR YEAR 2009

In the eighth year of operation, the Commission focused its attention on those issues and activities that were of current priority. During the year 2009, 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 2009 will be:

- Evaluating the effects of the phase out of the SAF on owners and operators [SB 1306 (2004)], 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 and Regulated Substance Fund, particularly as state budgetary shortfalls are anticipated to continue during FY 2010.
- 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 and HB2425 (2008).

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

NAME	POSITION	AFFILIATION
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
Mike Fulton	ADEQ representative	ADEQ 1110 W. Washington St., Phoenix, AZ 85007
Tamara Huddleston	Attorney General's representative	Attorney General's Office 1275 W. Washington, Phoenix, AZ 85007
Gail Clement, Chair	Representative of public with 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 to 100 USTs	Safeway, Inc. 2750 S. Priest Rd, Tempe AZ 85282
Vacant	Representative of the public with experience in finance or insurance matters	
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 – FY 2008

(Total Budget Allotment = \$10,000)

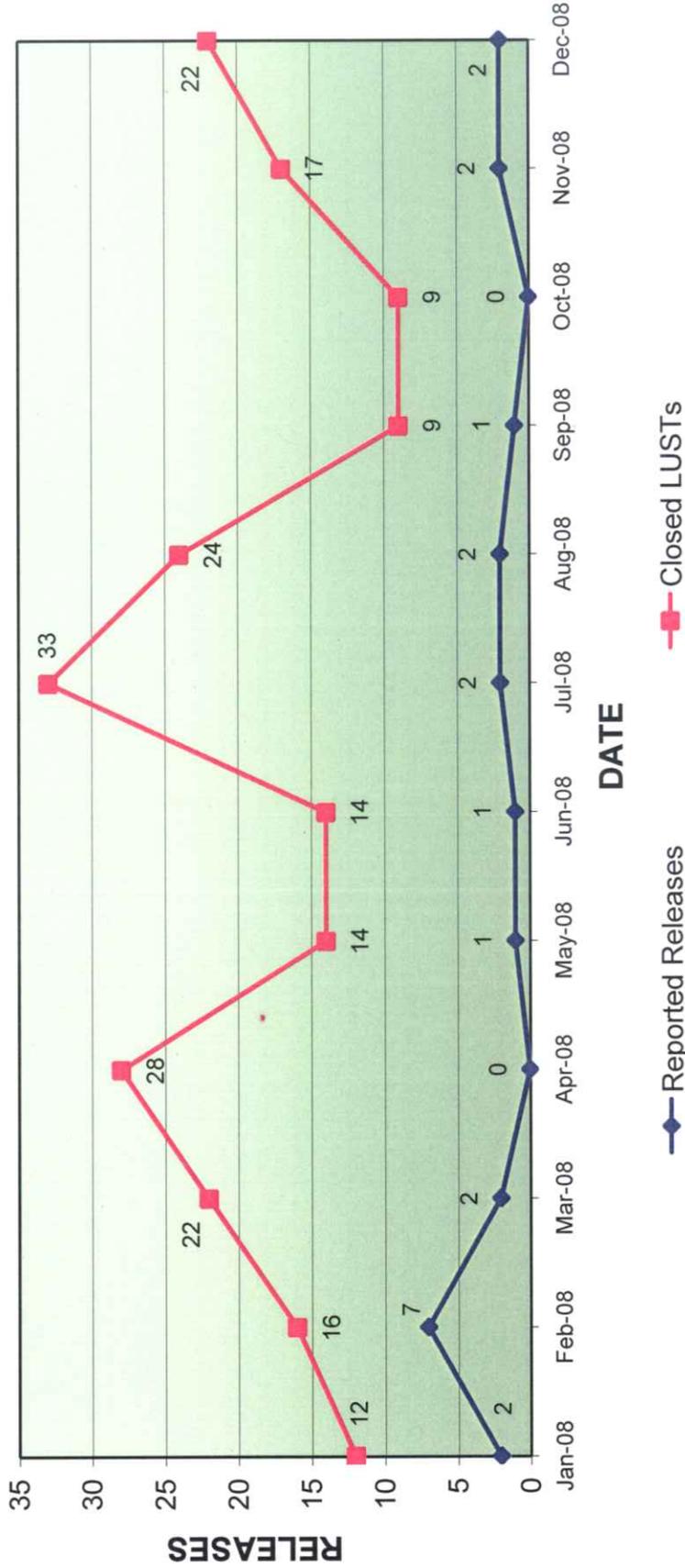
EXPENDITURES

ACTIVITY	ACTIVITY ALLOTMENT	AMOUNT EXPENDED	REMAINING BALANCE
Professional & Outside Services	\$6,000	\$3,273	\$2,727
In-State Travel	\$3,000	0	\$3,000
Other Operating Expenditures	\$1,000	0	\$1,000
TOTAL	\$10,000	\$3,273	\$6,727

APPENDIX C



LUST RELEASES REPORTED AND CLOSED CALENDAR YEAR 2008

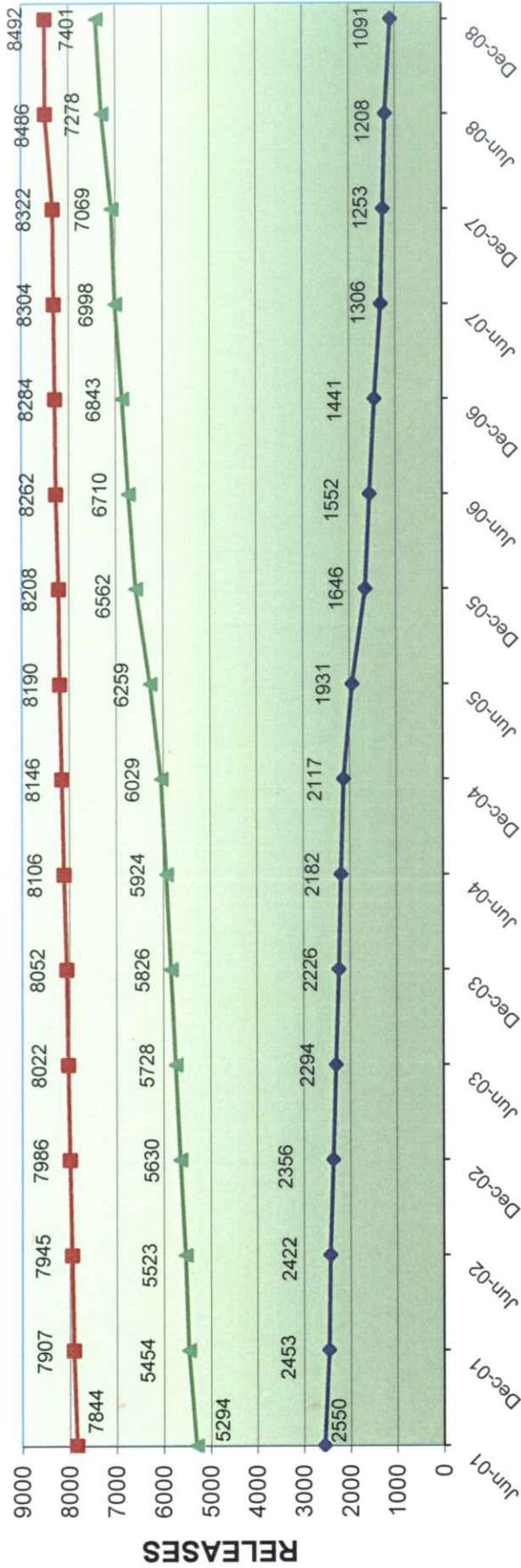


	Jan-08	Feb-08	Mar-08	Apr-08	May-08	Jun-08	Jul-08	Aug-08	Sep-08	Oct-08	Nov-08	Dec-08	TOTAL
Reported Releases	2	7	2	0	1	1	2	2	1	0	2	2	22
Closed LUSTs	12	16	22	28	14	14	33	24	9	9	17	22	220
Total Closed	7069	*7187	*7216	7244	7264	7278	7311	7346	7355	7368	7385	*7401	7401
Total Open	1253	*1294	*1270	1242	1219	1208	1177	1146	1134	1121	1106	*1091	1091
Total LUST	8322	8481	8486	8486	8483	8486	8487	8488	8489	8489	8491	*8492	8492

* database correction

CUMULATIVE LUST STATISTICS

June 2001 - December 2008



DATE

◆ LUSTs Open
 ▲ LUSTs Closed
 ■ LUSTs Reported

	Jun-01	Dec-01	Jun-02	Dec-02	Jun-03	Dec-03	Jun-04	Dec-04	Jun-05	Dec-05	Jun-06	Dec-06	Jun-07	Dec-07	Jun-08	Dec-08
LUSTs Reported	7844	7907	7945	7986	8022	8052	8106	8146	8190	8208	8262	8284	8304	8322	8486	8492
LUSTs Closed	5294	5454	5523	5630	5728	5826	5924	6029	6259	6562	6710	6843	6998	7069	7278	7401
LUSTs Open	2550	2453	2422	2356	2294	2226	2182	2117	1931	1646	1552	1441	1306	1253	1208	1091