

ADEQ State Assurance Fund Analysis

February 16, 2009

UST Program Revenues

- Underground Storage Tank Fund
Approximate balance as of February 1, 2009: \$ 24,800,000
 - State Assurance Fund
Approximate projected SAF revenue 2/1/09 to 12/31/13:
(assumes \$29.4 million per year) \$145,000,000
- Total Projected UST Projected Revenue: \$169,800,000**

UST Program Liabilities

- Eligible UST Releases: \$108,700,000

The UST Program currently has 493 facilities that have at least one SAF eligible release. Approximately 396 of those facilities have releases to both soil and groundwater, and 97 have releases that have impacted soil only.

In ADEQ's experience, \$250,000 will be required for a facility at which both soil and groundwater cleanup is required, and \$100,000 for a soil only facility cleanup. The estimated cost to remediate these 493 facilities is approximately \$108.7 million. To be eligible for SAF coverage, Arizona law requires SAF applicants to complete cleanups and submit claims by June 30, 2010.*

- Cost to Administer the SAF/Corrective Action Program: \$31,200,000

Cost to administer the SAF program and implement the corrective action program through December 31, 2013 is approximately \$31.2 million (an average of \$6.2 million per year for five years).

- FY2009 Transfers from UST Fund: \$18,271,900

Includes UST Fund transfers of \$2,571,900 (authorized through SB1001) and \$15,700,000 in lieu of WIFA Drinking Water and Clean Water Revolving Fund transfers.

Total Projected UST Program Liability: \$158,171,900

Regulated Substance Fund

In 2004, Senate Bill 1306 in Arizona Revised Statute §49-1015.01, and Session Law Section 14 of SB 1306 established the Regulated Substance Fund for ADEQ to continue monitoring groundwater sites not closed before releases become ineligible for SAF on June 30, 2010 and to continue cleanup of orphan UST facilities. Up to a maximum of \$60,000,000 is to be transferred from the SAF to the regulated substance fund after all eligible claims are paid based on SB 1306. Current projections of revenues minus liabilities indicate substantially less will be available for transfer.

Total Projected UST Program Revenue: \$169,800,000
Total Projected SAF Liability: \$158,171,900

Total Available for Transfer to Regulated Substance Fund \$11,628,100

* It is unlikely that \$108,700,000 in cleanup work will be completed by owners, operators and volunteers by June 30, 2010 (the deadline for filing SAF direct pay and reimbursement applications). \$108,700,000 is the maximum ADEQ expects to be expended for cleanup.

State Assurance Fund Status
 FY 2009
 February 25, 2009 UST Policy Commission Meeting

a.) Sources

Beginning Balance (July 1, 2008)	\$34,108,300
Projected Revenue	<u>\$28,631,700</u> ⁽¹⁾
Projected Total Available Funds	\$62,740,000

b.) Uses

Projected Expenditures	\$29,651,700
FY2009 Estimated Transfers	<u>\$29,626,400</u> ⁽²⁾
Total Uses	\$59,278,100

c.) Summary

Projected Total Available Funds	\$62,740,000
Total Uses	<u>-\$59,278,100</u>
Projected Ending Balance	\$3,461,900

NOTES:

(1) Revenue (taxes, cost recovery, and interest) may vary depending on fuel demand and current cash balances.

(2) Source: FY 2009 and FY 2010 Appropriations Chairmen Budget Options and Cash Flow Analysis. Transfers include the following:

- a. From Chapter 285 § 24, 48th Legislature
 - i. \$12,000,000 fund balance transferred August, 2008
 - ii. \$14,997,000 fund balance transfer in lieu of WIFA. The remainder of the \$15,700,000 will come from the Regulatory and MTCP funds.
- b. From Chapter 285 § 46, 48th Legislature
 - i. \$57,500 Vacancy Savings Reversion transferred in October, 2008
- c. From Senate Bill 1001:
 - i. \$495,900 Excess Balance Transfer (EBT)
 - ii. \$1,910,600 Fund Reduction and Transfer (FRAT). FRATs reduce an agency's operating budget and the savings would be transferred to the State General Fund.
 - iii. \$165,400 Personnel Expense Reduction Savings transfer

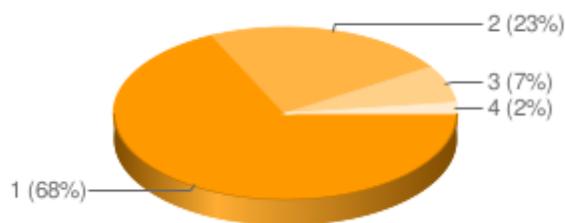
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
 Tank Programs Division

Corrective Action Section

LUST Statistics

	JANUARY
New reported	5
New closed	19
Cumulative reported	8,498
Cumulative closed	7,428 (87 %)
Cumulative open	1,070 (13 %)

Open LUST Priority Status



Corrective Action Documents Pending Review
 (February 12, 2009)

Document Review Type	Number Pending
SCR	3
SCR NOD responses	0
CAP	0
CAP Modification Requests	1
Closure Requests	12
SAF Work plans	2
Risk Assessments	1
Other	0
Total	19

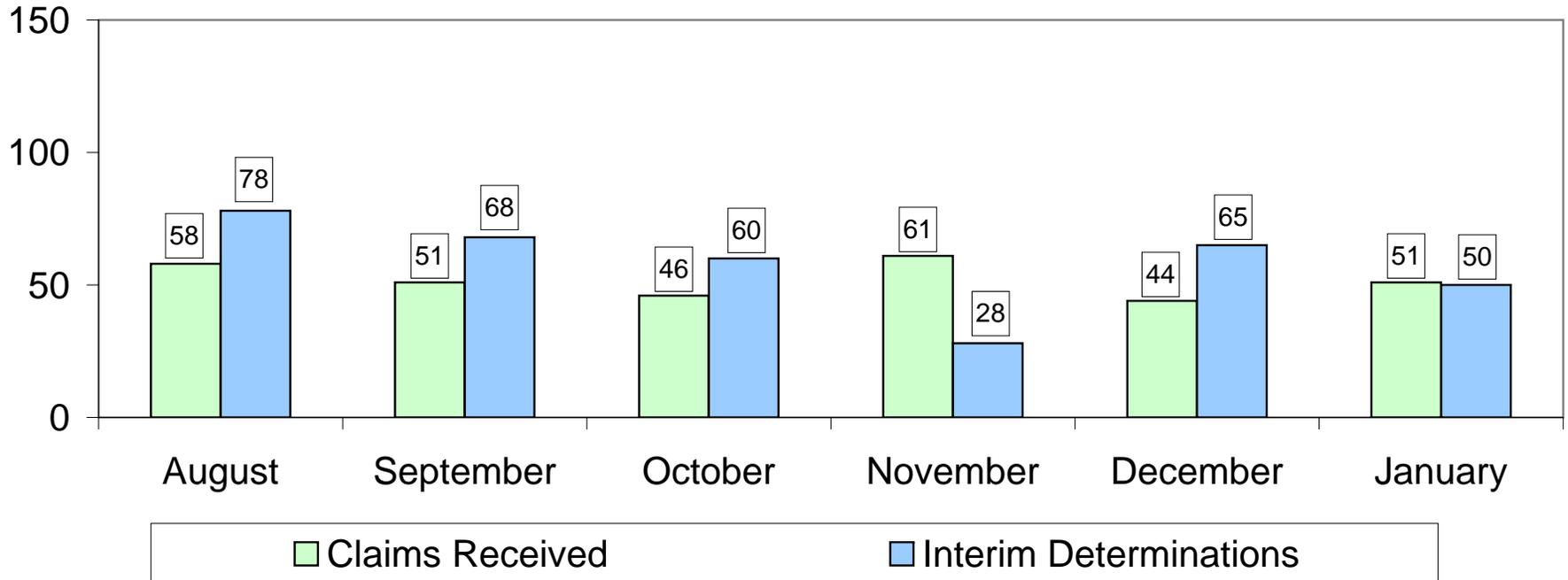
Municipal Tank Closure Program (MTCP)
 (January 20, 2009)

Applications received	101
Cities/Counties	40
Applications approved	89
UST closure completed	85
USTs removed	178

Other Activities

- Route 66 Initiative
- School Assistance Initiative
- MNA Program development

State Assurance Fund January 2009



Claim Type	Claims Received This Month	Number of Interim Determinations	Claims Pending Less Than 90 Days	Claims Pending More Than 90 Days	Claims Pending More Than 180 Days	Claims Pending More Than 365 Days	Total Number of Active Claims
Direct Pay	22	20	35	0	0	0	35
Pre Approval	1	0	3	0	0	0	3
Reimbursement	28	30	44	0	0	0	44
Totals	51	50	82	0	0	0	82

State Assurance Fund Work in Process Summary
January 2009

Administrative Review				
	Less than 90 days	Over 90 days	Over 180 days	Over 365 days
Direct Payment	18	0	0	0
Preapproval	0	0	0	0
Reimbursement	18	0	0	0

Technical Review/Corrective Action Review				
Direct Payment	16	0	0	0
Preapproval	3	0	0	0
Reimbursement	24	0	0	0

Payment Processing				
Direct Payment	1	0	0	0
Preapproval	0	0	0	0
Reimbursement	2	0	0	0

Summary				
Direct Payment	35	0	0	0
Preapproval	3	0	0	0
Reimbursement	44	0	0	0
Total	82	0	0	0

State Assurance Fund

January 2009

Informal Appeal Requests Received

November	December	January
22	15	18

Informal Appeal Determinations

November	December	January
17	37	23

Formal Appeal Requests Received

November	December	January
2	2	8

Formal Appeal Determinations

November	December	January
10	2	1

No Hearings were held in January

State Assurance Fund Appeals

As with any process that involves a decision by one party that affects another, there are disagreements. SAF determinations, as well as many technical decisions, have two processes for appeal. The informal appeal process, provided for in A.R.S. '49-1091, is an opportunity for the applicant to request that ADEQ re-evaluate the decisions or determinations made. It also provides the applicant with an opportunity to provide additional information for ADEQ to review. As provided for in A.R.S. '49-1091(E), this informal appeal process is the opportunity for both the applicant and SAF to explain their position and exchange information related to the matter appealed. This free exchange of information is intended to resolve issues in dispute without the necessity of pursuit of the formal administrative appeal process under A.R.S. Title 41.

Analysis of Appropriation Chairmen's Options (CO) dated January 15, 2009 and Other Issues– FY 2010

ADEQ has already contributed \$138.5 million (\$41.6 in FY 2008 and \$96.9 million in FY 2009) toward reducing the budget deficit. Further, ADEQ has 66 fewer employees as of December 31, 2008 than it had on December 31, 2002.

Budget Concerns**1. \$3,000,000 Lump Sum General Fund Reduction of Operating Budget (CO, page 100):**

ADEQ opposes the \$3,000,000 in budget authority that would be reduced across ADEQ general funded programs.

Impact: The cut of \$2.0 million from the ADEQ operating budget in January of 2009 required ADEQ to move all employee health and dental insurance costs, rent and computer costs to the Indirect Fund. The additional \$1 million dollar FY 10 reduction will require additional agency-wide furloughs/or reductions of existing staff that are required in many core human health programs which include hazardous waste inspections that protect neighborhoods, landfill inspections, regulation that protects Arizona's groundwater, and drinking water permitting which safeguards the drinking water for 6 million Arizona citizens.

Alternative: ADEQ proposes the \$1 million in General Fund be reduced from the WQARF CIT transfer in FY 2010. A second alternative is a \$1 million permanent, additional appropriation from the Air Quality Fund for ADEQ program operations which will require an increase in the appropriation authority from that fund.

2. \$1,524,700 Elimination of the Arizona Pollution Discharge Elimination System [AZPDES] (CO, page 102):

ADEQ opposes the General Fund reduction of the AZPDES program in FY 2010 as the legislature already implemented this reduction in June of 2008 in HB 2209, Chapter 285, pg 59, line 28. There is no General Fund money left in this program. AZPDES is now funded from the WIFA non-program fees under an Intended Use Plan (IUP) with EPA. The AZPDES surface water permitting program is a delegated program from the United States Environmental Protection Agency in San Francisco California, and has strong support from the Arizona business community.

Impact: This reduction can not be implemented because there is no General Fund to reduce for the AZPDES program for FY 2010.

Alternative: First, the AZPDES program could be funded from fees, but such fees are prohibited by Arizona law. The department would need statutory changes, exempt rulemaking powers to set fees and lead time to collect revenues to implement this alternative for FY 2010. The second alternative would be to continue an appropriation from the WIFA non program fees for \$1,524,700 in FY 2010.

3. \$588,300 Hazardous Waste Program Reduction; Return of Program to EPA San Francisco (CO, page 104):

Impact: A \$588,300 reduction in the Hazardous Waste General Fund allocation will cause the loss of the EPA-delegated RCRA Hazardous Waste Program and approximately \$1.6 million in state matched federal dollars. This \$588,300 is the GF support for the Hazardous Waste match requirement for Arizona's EPA grant which generates \$1.6 million in federal dollars. If the General Fund is cut, Arizona may tender the program to EPA Region 9 in San Francisco.

Alternative: Compensate for the reduction of \$588,300 in General Fund monies as enacted for FY 09 with an additional FY 2010 appropriation of \$588,300 from the Air Quality Fee Fund balance in order to keep the federally delegated Hazardous Waste program which the \$588,300 in General Fund previously supported.

4. Reversal of WIFA Drinking Water and Clean Water Revolving Funds transfers (FY 09 issue, not in CO)

EPA has already advised ADEQ that they believe the \$15.7 M transfer from the state revolving funds for FY 2009, authorized under Ch. 285, 48th Legislature, Second Regular Session, HB 2209, Section 24, A., p 62 lines 37-38, is illegal under the Clean Water Act (CWA) and Safe Drinking Water Act, and federal appropriations law as well.

Impact: Transferring money from the Clean Water and Drinking Water Revolving funds (WIFA) will require Arizona to disclose the transfer to the bond market under the federal securities laws, and that disclosure may bring adverse consequences to Arizona's bonding entities like ADOT or school facilities from the transfer in HB 2209. ADEQ seeks repeal of the transfers and **substitution of a transfer from the SAF of \$15.7 M in FY 2009**. EPA has advised ADEQ that if any monies are transferred from WIFA accounts to the State's General Fund, EPA may immediately stop WIFA from drawing down any further federal grant funds. This would stop Arizona from receiving from EPA any stimulus money grants from the stimulus legislation Congress is assembling; Arizona's share could be up to **\$180 Million**.

Alternative: Amend Ch. 285, 48th Legislature, Second Regular Session, HB 2209, Laws 2008, Section 24, A., p 62, by deleting lines 37-38, and substituting at line 37 "\$15.7 million from the Underground Storage Tank Revolving Fund" so that \$15.7 million in UST funds are transferred to the General Fund in FY 09.

5. \$5,000,000 WQARF Reduction (CO, page 103) -The Water Quality Assurance Revolving Fund has already sustained significant cuts for FY 2009 of \$15,109,300 and investigation work has been stopped on many sites to meet enacted reductions. WQARF was reduced from an annual \$15 million transfer from the Corporate Income Tax (CIT) as stipulated in ARS 49-282 to \$11 million in FY 2009. The FY 2010 proposal reduces WQARF by \$5 million, from a \$15 million transfer to a \$10 million transfer.

Impact: Further cuts to WQARF will cause ADEQ to terminate active remediation, meaning cleanup, at some or all of the 13 sites in active cleanup now. Further cuts hamper the agency's mission to clean up all of the 35 sites around the state that continue to threaten our precious ground and surface water resources.

6. \$1,676,900 County Travel Reduction Program Required by Arizona's State Clean Air Plan (CO, page 101):

The Travel Reduction Programs were developed for Maricopa, Pima, and Pinal Counties to reduce automobile emissions from commuting to and from work places and schools. These programs require employers to assist their employees with the use of alternatives to single-occupant-vehicle commuting. The federal court ordered the State of Arizona to write a State Implementation Plan (SIP) to comply with Clean Air Act standards. In response, the Arizona Legislature passed the 1988 Air Quality Bill (ARS 49-581 et seq.) which mandated a Trip Reduction Program (TRP) for employers and schools in affected areas.

Impact: This reduction makes this legal obligation an unfunded mandate. The state or the counties must fund this program under the SIP requirement enforceable by EPA and citizen lawsuits.

Alternative: This program could be funded from the Vehicle Emissions Inspection Fund as a part of the emissions program. ADEQ seeks \$1,676,900 in additional expenditure authority in the Emissions Inspection Fund to pay for the \$1,676,900 county travel reduction program.

Other FY 2010 ADEQ Budget Issues

1. Lump Sum Budget Authority

Lump Sum gives the agency the flexibility it needs to effectively manage its limited resources especially during tight budget times. Allowing ADEQ to have this authority which most state agencies have will permit the agency to allocate diminishing resources in the most effective manner possible in order to protect Arizona's air, water and land.

2. Indirect Cost Recovery Fund Restoration

The Indirect Cost Recovery Fund appropriation authority has been reduced by almost \$3 million in FY 09 and needs to be restored to pay for the \$12 million in indirect costs that the state and federal funding recovered specifically to pay for the ADEQ's administrative indirect costs and that is required as a condition of federal grants administered by ADEQ. In addition to the \$12 million, ADEQ seeks an additional \$2 million in expenditure authority to absorb the costs shifted from the General Fund in FY 2009 (employee health and dental insurance costs, rent and computer costs). The total expenditure authority needs to be \$14 million. ADEQ will not have funding to meet fixed obligations such as payroll, rent, phone, AFIS computer costs, and employee health and dental insurance if the appropriation authority is not restored.

3. Excess Balance Transfers

Excess Balance Transfers of \$14,478,100 for FY 2010 were moved to FY 2009 in the January 2009 appropriations bills. These balances were moved ahead one year to fund the Governor's budget amendment that restored health and welfare funding for behavioral health care, aging services, developmental disabilities, the homeless and Alzheimer's research, among other things.

FY 2010 EBTs estimates are now reduced by the January 2009 appropriations bills for the following funds and are no longer available: Air Quality, \$2,113,100; Emissions Inspection, \$2,800,000; WQARF, \$8,900,000; Water Quality Fee Fund, \$500,000 and Greenfields, \$165,000. These balances will not be available to resolve FY 2010 reduction issues.